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16  
17 UNITED STATES DISTRICT COURT  
18 NORTHERN DISTRICT OF CALIFORNIA  
19 SAN FRANCISCO DIVISION

20 The COUNTY OF SAN MATEO, individually  
and on behalf of THE PEOPLE OF THE  
21 STATE OF CALIFORNIA,

22 Plaintiff,

23 v.

24 CHEVRON CORP.; CHEVRON U.S.A.,  
INC.; EXXONMOBIL CORP.; BP P.L.C.; BP  
25 AMERICA, INC.; ROYAL DUTCH SHELL  
PLC; SHELL OIL PRODUCTS COMPANY  
26 LLC; CITGO PETROLEUM CORP.;  
CONOCOPHILLIPS; CONOCOPHILLIPS  
27 COMPANY; PHILLIPS 66; PEABODY  
ENERGY CORP.; TOTAL E&P USA INC.;  
28 TOTAL SPECIALTIES USA INC.; ARCH  
COAL, INC.; ENI S.p.A.; ENI OIL & GAS

First Filed Case: No. 3:17-cv-4929-VC  
Related Case: No. 3:17-cv-4934-VC  
Related Case: No. 3:17-cv-4935-VC  
Related Case: No. 3:17-cv-06011-WHA  
Related Case: No. 3:17-cv-06012-WHA

**ADMINISTRATIVE MOTION TO RELATE  
CASES**

[Removal from the Superior Court of the State of  
California, County of San Mateo, Case No. 17  
CIV 03222]

Action Filed: July 17, 2017

The Honorable Vince Chhabria

1 INC.; RIO TINTO PLC; RIO TINTO LTD.;  
2 RIO TINTO ENERGY AMERICA INC.; RIO  
3 TINTO MINERALS, INC.; RIO TINTO  
4 SERVICES INC.; STATOIL ASA;  
5 ANADARKO PETROLEUM CORP.;  
6 OCCIDENTAL PETROLEUM CORP.;  
7 OCCIDENTAL CHEMICAL CORP.;  
8 REPSOL S.A.; REPSOL ENERGY NORTH  
9 AMERICA CORP.; REPSOL TRADING USA  
10 CORP.; MARATHON OIL COMPANY;  
11 MARATHON OIL CORPORATION;  
12 MARATHON PETROLEUM CORP.; HESS  
13 CORP.; DEVON ENERGY CORP.; DEVON  
14 ENERGY PRODUCTION COMPANY, L.P.;  
15 ENCANA CORP.; APACHE CORP.; and  
16 DOES 1 through 100, inclusive,

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Defendants.

Pursuant to Civil Local Rule 3-12(b), Chevron Corporation, BP p.l.c., ConocoPhillips Company, Exxon Mobil Corporation, and Royal Dutch Shell plc submit this Administrative Motion to give notice of the following actions in which they are defendants: *City Attorney of Oakland v. BP p.l.c. et al.*, Case No. 3:17-cv-06011 (the “Oakland Action”); and *City Attorney of San Francisco v. BP p.l.c. et al.*, Case No. 3:17-cv-06012 (the “San Francisco Action,” collectively, the “Newly Removed Actions”).<sup>1</sup> Each action was removed to this District on October 20, 2017. The Newly Removed Actions are related to each other, as well as to the above-captioned action, *County of San Mateo v. Chevron Corp. et al.*, Case No. 3:17-cv-4929-VC (the “San Mateo Action”), and the two actions this Court has already deemed related to the San Mateo Action, *City of Imperial Beach v. Chevron Corp. et al.*, Case No. 3:17-cv-4934-VC, and *County of Marin v. Chevron Corp. et al.*, Case No. 3:17-cv-4935-VC (collectively, the “Pending Climate Change Actions”).

## **I. Introduction**

Cases are related when: “(1) The actions concern substantially the same parties, property, transaction or event; and (2) It appears likely that there will be an unduly burdensome duplication of labor and expense or conflicting results if the cases are conducted before different Judges.” Civ. L.R. 3-12(a). The Newly Removed Actions and Pending Climate Change Actions are related under this standard, and such a finding will avoid the waste of the considerable judicial (and party) resources and potential for conflicting results that would stem from duplicative, uncoordinated litigation before different judges.

All of these actions are based on the same parties, property, transactions and events. In each of the five cases, a waterfront California locality or county (four of which border San Francisco Bay) seeks funds for “abatement” of alleged past and anticipated future harm to its territory and property from rising sea levels caused by global climate change supposedly caused by the defendants’ production, sale, and marketing of fossil fuels (the common “transaction” or “event”). The defendants in the Newly Removed Actions are all defendants in the Pending Climate Change Actions.

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<sup>1</sup> This administrative motion is not intended to operate as an admission of any factual allegation or legal conclusion and is submitted subject to and without waiver of any right, defense, affirmative defense, or objection, including, without limitation, personal jurisdiction, insufficient process, and/or insufficient service of process.

1 Defendants understand that last month the Court recused itself from a case in which the City  
2 of San Francisco was a party. *Fisher v. City & County of San Francisco*, No. 3:17-Cv-05347. To the  
3 extent the Court considers the fact that the City Attorney of San Francisco is a plaintiff in one of the  
4 Newly Removed Actions requires that a different judicial officer decide this Administrative Motion,  
5 it appears that the motion should be decided by the judge assigned to the next lowest-numbered case,  
6 which is the Oakland Action. *See* Civ. L.R. 3-12(f)(2) (if Judge assigned to the lowest numbered  
7 case declines to relate the cases, the question should be submitted “to the Judges assigned to the other  
8 cases in order of filing”).

## 9 **II. Factual Background.**

10 On July 17, 2017, the Pending Climate Change Actions were filed against 37 named defend-  
11 ants, asserting eight causes of action and alleging that the defendants’ conduct has contributed to cli-  
12 mate change that has caused and will continue to cause sea levels to rise, and seeking damages, abate-  
13 ment, and declaratory relief. (*See* Dick Decl. Ex. A-C (Pending Climate Change Complaints).)  
14 These cases were removed to this District and, on September 12, 2017, were related to each other and  
15 assigned to this Court. On September 19, 2017, the City Attorney of San Francisco initiated the San  
16 Francisco Action in the San Francisco Superior Court and the City of Oakland filed its action in the  
17 Alameda County Superior Court against the same five defendants, asserting a cause of action for pub-  
18 lic nuisance. Both claimed defendants’ conduct has contributed to climate change that has caused  
19 and will continue to cause sea levels to rise, and seeking abatement and declaratory relief. (*See, e.g.,*  
20 Dick Decl. Ex. D-E (Newly Removed Action Complaints).) On October 20, 2017, defendants re-  
21 moved the Oakland and San Francisco Actions. On October 26, 2017, plaintiffs in the San Francisco  
22 Action and Oakland Action filed an administrative motion to relate those two cases, which Judge  
23 Alsop granted on October 31, 2017. Oakland Action, Dkt. 32.

## 24 **III. The Newly Removed Actions Are Related to the Pending Climate Change Actions.**

### 25 **A. The Newly Removed Actions and the Pending Climate Change Actions Involve 26 the Same Events, Allegations, Legal Theories and Overlapping Parties.**

27 Each of the defendants in the Newly Removed Actions is named as a defendant in the Pend-  
28 ing Climate Change Actions. While the five actions have been filed by five different municipalities,  
each one purports to be brought on behalf of (at least in part) the People of the State of California.

1 The Newly Removed Actions and the Pending Climate Change Actions also involve many of the ex-  
2 act same factual allegations, events, and legal theories. The Newly Removed Actions are a virtually  
3 identical attempt to blame the same defendants’ extraction, production, and sale of fossil fuels for  
4 global climate change that allegedly impacted and injured Oakland and San Francisco in the same  
5 way that San Mateo County, Marin County, and the City of Imperial Beach claim to be impacted and  
6 injured, even though the plaintiffs in both sets of cases concede that no defendant violated any law,  
7 rule, statute, or regulation. Exactly like in the Newly Removed Actions, the complaints in the Pend-  
8 ing Climate Change Actions allege that the “pollution from the production and use of defendants’  
9 fossil fuel products plays a direct and substantial role in the unprecedented rise in emissions of green-  
10 house gas pollution and increased atmospheric CO<sub>2</sub> concentrations” and “gravely dangerous changes  
11 occurring to the global climate.” (*See, e.g.,* San Mateo Compl. ¶ 2; *see also, e.g.,* Oakland Compl.  
12 ¶ 2 (alleging “Defendants are substantial contributors to the public nuisance of global warming”).)

13 Also just as in the Newly Removed Actions, the Pending Climate Change Actions allege that  
14 defendants “have known for nearly a half century that unrestricted production and use of their fossil  
15 fuel products create greenhouse gas pollution that warms the planet and changes our climate” but  
16 “nevertheless engaged in a coordinated, multi-front effort to conceal and deny their own knowledge  
17 of those threats, discredit the growing body of publicly available scientific evidence, and persistently  
18 create doubt . . . about the reality and consequences of the impacts of their fossil fuel pollution.”  
19 (*See, e.g.,* San Mateo Compl. ¶ 1; *see also, e.g.,* Oakland Compl. ¶ 56 (“For decades, Defendants  
20 have known that their fossil fuel products pose risks of ‘severe’ and even ‘catastrophic’ impacts on  
21 the global climate through the work and warnings of their own scientists or through their trade associ-  
22 ation.”).)

23 Moreover, the Pending Climate Change Actions allege identical types of injuries as the Newly  
24 Removed Actions. Just like the Newly Removed Actions, the complaints in the Pending Climate  
25 Change Actions allege that plaintiffs—political subdivisions “bordered on two [or three] sides by wa-  
26 ter”—are “among the most vulnerable counties to sea level rise in California” and “particularly sus-  
27 ceptible to injuries from sea level” rise. (*See, e.g.,* San Mateo Compl. ¶ 8; *see also, e.g.,* Oakland  
28

1 Compl. ¶¶ 1, 87-88 (alleging that “accelerated sea level rise” carries “severe, and potentially cata-  
 2 strophic consequences for Oakland” and that “[r]ising sea levels imminently threaten” the “low-lying  
 3 areas of Oakland that border the San Francisco Bay”); San Francisco Compl. ¶¶ 88-90 (alleging that  
 4 “San Francisco is extremely vulnerable to accelerated sea level rise, storm surges, and inundation be-  
 5 cause it is surrounded by water on three sides” and that rising sea levels threaten San Francisco’s  
 6 “low-lying shorelines,” “infrastructure,” and “some of San Francisco’s most iconic and valuable  
 7 buildings”).)

8 Finally, the Pending Climate Change Actions involve the same cause of action and legal theo-  
 9 ries and seek overlapping relief for similar alleged injuries. All cases include a cause of action for  
 10 public nuisance under California law based on the production and promotion of fossil fuels and seek  
 11 abatement, declaratory relief, attorneys’ fees, and costs and expenses for alleged injuries stemming  
 12 from sea level rise. (*See, e.g.*, San Mateo Compl. ¶¶ 179-267 & p. 98; *see also* Oakland Compl.  
 13 ¶¶ 93-98 & p. 34; San Francisco Compl. ¶¶ 94-99 & p. 39.)

14 In their motion to relate the Newly Removed Actions, plaintiffs foreshadow the arguments  
 15 they will likely raise in opposition to this Motion. But plaintiffs miss the mark. Their primary argu-  
 16 ment is that the Pending Climate Change Actions name additional defendants, assert more causes of  
 17 action, seek additional relief, and make additional factual allegations. But plaintiffs ignore the fact  
 18 that the Newly Removed Actions name the *same* defendants (albeit a smaller subset), seek the *same*  
 19 relief (again, albeit a smaller subset), and assert an *identical* cause of action for public nuisance that is  
 20 predicated on nearly identical factual allegations as made in the Pending Climate Change Actions.  
 21 *See, e.g., Our Children’s Earth Found. v. Nat’l Marine Fisheries Serv.*, No. 14-1130 SC, 2015 WL  
 22 4452136, at \*12 (N.D. Cal. July 20, 2015) (granting motion despite cases “involv[ing] slightly differ-  
 23 ing parties”); *Fin. Fusion, Inc. v. Ablaise Ltd.*, No. C-06-2451 PVT, 2006 WL 3734292, at \*3 (N.D.  
 24 Cal. Dec. 18, 2006) (granting motion where plaintiffs raised similar claims and were similarly situ-  
 25 ated).<sup>2</sup> The fact that there are some differences between the allegations in both sets of Complaints, or  
 26 in the relief sought, does not mean that both sets of Complaints are not “substantially similar” to each  
 27

28 <sup>2</sup> The cases cited by the plaintiffs in their motion to relate the Newly Removed Actions are inap-  
 29 posite because they all involved much less closely related facts and claims.

1 other. Indeed, plaintiffs cannot dispute that the gravamen of both sets of cases is that coastal commu-  
 2 nities were allegedly injured by rises in sea levels caused by the production and use of defendants’  
 3 fossil fuel products. For example, Oakland, San Francisco and San Mateo were all purportedly in-  
 4 jured by a rise in water levels in the San Francisco Bay. Plaintiffs also argue that plaintiffs in the  
 5 Pending Climate Change Actions made “concessions” that are harmful to their case. Oakland Action  
 6 Dkt. No. 31, at 4. But whatever weaknesses the plaintiffs see in each other’s theories are not relevant  
 7 to the relatedness analysis. And while the Newly Removed Actions may be somewhat “smaller,” it  
 8 cannot be disputed that they involve the same parties, assert the same cause of action predicated on  
 9 the same factual and legal theories, and seek the same relief sought in the Pending Climate Change  
 10 Actions.

11 **B. Relating the Newly Removed Actions and the Pending Climate Change Actions**  
 12 **Will Promote Judicial Economy.**

13 Given the similarity of the parties, allegations of wrongdoing and injury, and the claims for  
 14 relief, relating the Newly Removed Actions to the Pending Climate Change Actions will avoid need-  
 15 less duplication of judicial resources. Even if, as plaintiffs will likely argue, the Newly Related Ac-  
 16 tions present fewer and narrower legal issues, the core of those issues are identical to those asserted  
 17 in the Pending Climate Change Actions: Whether defendants can be liable based on their fossil fuel  
 18 businesses for causing climate change that is alleged to have caused rising sea levels and thereby in-  
 19 jured a coastal community. Having a “different judge[.]” preside over the Newly Removed Actions  
 20 would thus result in “an unduly burdensome duplication of labor and expense” and increase the risk  
 21 of “conflicting rulings.” Civ. L.R. 3-12(a).

22 **IV. Conclusion**

23 For the foregoing reasons, this Motion should be granted.

24 Respectfully submitted,

25 Dated: November 2, 2017

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