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July 3, 2018

VIA CM/ECF

Molly C. Dwyer
Clerk of Court
U.S. Court of Appeals for the Ninth Circuit
95 Seventh Street
San Francisco, CA 94103

Re: *County of San Mateo v. Chevron Corp. et al.*, No. 18-15499

Dear Ms. Dwyer,

Pursuant to FRAP 28(j), Plaintiffs write to respond to Defendants' letter dated June 29, 2018, regarding *City of Oakland v. BP P.L.C.*, 2018 WL 3109726 (N.D. Cal. June 25, 2018) ("*Oakland*"). That decision, dismissing the federal common law count for failure to state a claim, has no bearing on this case.

While the *Oakland* plaintiffs pled federal common law claims in their amended complaint, Plaintiffs in this case plead only state law claims. The district court here refused to recharacterize those state law claims as federal common law claims, and remanded the case to state court for lack of subject matter jurisdiction. While Defendants would have this Court review that decision, the pending motion explains why this Court lacks jurisdiction to consider that question.

The removal jurisdictional question is distinct and arises only in this case. Even if the plaintiffs in *Oakland* have preserved,* and intend to raise, a challenge to the *denial* of their remand motion, an as-yet unfiled appeal will raise no jurisdictional question under 28 U.S.C. § 1447(d), which applies only to decisions *granting* remand.

Nor would anything the Court may decide in *Oakland* have any bearing on the jurisdictional question here. At most, a decision there might suggest that the district court's remand here was wrong. But it is black letter law that "Section 1447(d) precludes review of a district court's jurisdictional decision even if it was clearly wrong." *Hansen v. Blue Cross of Cal.*, 891 F.2d 1384, 1387 (9th Cir. 1989).

* Defendants do not explain how removal jurisdiction – the *only* issue in the instant case – would be an issue in an as-yet unfiled appeal in *Oakland*. The *Oakland* plaintiffs forwent an opportunity to seek interlocutory review of the order denying remand in their case, electing instead to amend their complaint to expressly allege federal common law claims. 2018 WL 3109726, at * 3.

Defendants do not argue otherwise. Instead, they simply ask for the chance to persuade a merits panel to disregard this settled limitation on its authority. That request should be rejected.

Sincerely,

/s/ Kevin K. Russell

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CERTIFICATE OF SERVICE

I hereby certify that on July 3, 2018, I caused a copy of the foregoing to be electronically filed with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ Kevin K. Russell
KEVIN K. RUSSELL