

## GOLDSTEIN & RUSSELL, P.C.

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7475 Wisconsin Ave.  
Suite 850  
Bethesda, MD 20814

May 6, 2019

### VIA ECF

Molly C. Dwyer  
Clerk of Court  
U.S. Court of Appeals for the Ninth Circuit  
95 Seventh Street  
San Francisco, CA 94103-1526

Re: *County of San Mateo v. Chevron Corp.*, No. 18-15499, consolidated with *City of Imperial Beach v. Chevron Corp.*, No. 18-15502; *County of Marin v. Chevron Corp.*, No. 18-15503; *County of Santa Cruz v. Chevron Corp.*, No. 18-16376

Dear Ms. Dwyer:

Appellees are writing pursuant to Federal Rule of Appellate Procedure 28(j) to notify the Court of the Fifth Circuit's decision in *Gee v. Texas*, No. 18-11186, 2019 WL 1958740 (5th Cir. Apr. 30, 2019) (per curiam) (attached as Exhibit A). The decision is relevant to the scope of this Court's jurisdiction to review the remand order in this case.

In its decision, the Fifth Circuit explained that “[w]hile we ordinarily cannot review an order to remand a case to state court, we may do so when removal was brought pursuant to sections 1442 or 1443 of the United States Code.” 2019 WL 1958740, at \*1. Consistent with this Court's precedent in *Patel v. Del Taco, Inc.*, 446 F.3d 996 (9th Cir. 2006), the Fifth Circuit held that “[w]here a party has argued for removal on multiple grounds, we only have jurisdiction to review a district court's remand decision for compliance with those provisions.” 2019 WL 1958740, at \*1. For this proposition, it cited the Circuit's prior decisions in *City of Walker v. Louisiana*, 877 F.3d 563, 566 n.2 (5th Cir. 2017) and *Robertson v. Ball*, 534 F.2d 63, 65-66 (5th Cir. 1976) (per curiam). *See id.* at \*1 n.2.

The decision is relevant to the jurisdictional question addressed in Appellees' Motion for Partial Dismissal (Doc. 41 at 14-15) and to Appellants' assertion that *City of Walker* is inapposite. *See* Opposition to Motion for Partial Dismissal 11 n.5 (Doc. 52); Appellants' Opening Br. 21 n.6. The decision also shows the error in Appellants' reading of *Decatur Hospital Authority v. Aetna Health, Inc.*, 854 F.3d 292 (5th Cir. 2017). *See* Opposition to Motion for Partial Dismissal 10; Appellants' Opening Br. 13, 21. That is, *Gee* makes clear that although the Fifth Circuit will review *procedural* grounds for remanding cases removed under the federal officer removal provision, *see Decatur*, 854 F.3d at 296-97, it will not extend that review to examine the district court's rejection of a defendant's invocation of *other* removal provisions, as Appellants urge here. *See also Morgan v. Huntington Ingalls, Inc.*, 879 F.3d 602, 607 n.9 (5th Cir. 2018).

2

Sincerely,

/s/ Kevin K. Russell  
Kevin K. Russell  
Goldstein & Russell, P.C.  
Counsel for Appellees in Nos. 18-15499,  
18-15502, and 18-15503

cc: All counsel of record (via ECF)

# Exhibit A

2019 WL 1958740  
Only the Westlaw citation  
is currently available.

This case was not selected for  
publication in West's Federal Reporter.  
See Fed. Rule of Appellate Procedure  
32.1 generally governing citation  
of judicial decisions issued on or  
after Jan. 1, 2007. See also U.S.Ct.  
of App. 5th Cir. Rules 28.7 and 47.5.  
United States Court of  
Appeals, Fifth Circuit.

STEVE SAMUEL GEE,  
JR., Plaintiff - Appellant  
v.  
STATE OF TEXAS; STACEY  
D. GEE; ADORA L. LOCKABY,  
Defendants - Appellees

No. 18-11186  
|  
April 30, 2019

Appeal from the United States District  
Court for the Northern District of Texas  
USDC No. 3:18-CV-833

Before HIGGINBOTHAM, ELROD, and  
DUNCAN, Circuit Judges.

### Opinion

PER CURIAM:\*

\*1 Steve S. Gee, Jr. removed a Texas  
divorce proceeding to federal court. The  
district court remanded the proceeding to  
state court, and Gee appeals. We affirm the  
district court's remand order in part and

dismiss the appeal for lack of jurisdiction in  
part.

While we ordinarily cannot review an order  
to remand a case to state court, we may  
do so when removal was brought pursuant  
to sections 1442 or 1443 of the United  
States Code.<sup>1</sup> Where a party has argued  
for removal on multiple grounds, we only  
have jurisdiction to review a district court's  
remand decision for compliance with those  
provisions.<sup>2</sup> Gee asserted that he could  
remove the divorce proceeding under section  
1443, so we will review the district court's  
remand order to the extent it rejected this  
argument. We examine the district court's  
decision de novo.<sup>3</sup>

<sup>1</sup> See 28 U.S.C. § 1447(d).

<sup>2</sup> See *City of Walker v. Louisiana*, 877 F.3d 563, 566 n.2  
(5th Cir. 2017) (discussing *Robertson v. Ball*, 534 F.2d  
63, 65–66 (5th Cir. 1976)).

<sup>3</sup> Cf. *Legendre v. Huntington Ingalls, Inc.*, 885 F.3d  
398, 400 (5th Cir. 2018) (reviewing a remand order  
addressing 28 U.S.C. § 1442 de novo).

We agree with the magistrate judge's report  
and recommendation, accepted and adopted  
by the district court, that Gee could not  
remove this case under section 1443. The  
report and recommendation explains that  
under the Supreme Court's and our own  
settled caselaw, "[t]o gain removal to federal  
court under 28 U.S.C. § 1443, the defendant  
must show both that (1) the right allegedly  
denied it arises under a federal law providing  
for specific rights stated in terms of racial  
equality; and (2) the removal petitioner  
is denied or cannot enforce the specified  
federal rights in the state courts due to

2019 WL 1958740

some formal expression of state law.”<sup>4</sup> Gee concedes that “his claims in this case do not arise under a federal law pertaining specifically to racial equality, yet he asks that we disregard the Supreme Court’s construction of § 1443(1) as error. This we cannot do.”<sup>5</sup>

<sup>4</sup> *Texas v. Gulf Water Benefaction Co.*, 679 F.2d 85, 86 (5th Cir. 1982); see *Johnson v. Mississippi*, 421 U.S. 213, 219 (1975).

<sup>5</sup> *McMullen v. Cain*, 726 F. App’x 257 (per curiam).

The district court’s judgment is affirmed to the extent that it addressed section 1443, and the appeal is otherwise dismissed for lack of jurisdiction.

### All Citations

--- Fed.Appx. ----, 2019 WL 1958740 (Mem)

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