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June 27, 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. et al.*, No. 18-15499, consolidated with *City of Imperial Beach v. Chevron Corp. et al.*, No. 18-15502; *County of Marin v. Chevron Corp. et al.*, No. 18-15503; *County of Santa Cruz, et al. v. Chevron Corp. et al.*, No. 18-16376 – Defendant-Appellant Chevron's Response to Rule 28(j) Letter

Dear Ms. Dwyer:

I write in response to Plaintiffs-Appellees' June 17, 2019 letter notifying the Court of the District of Maryland's recent decision in *Mayor and City Council of Baltimore v. BP P.L.C. et al.*, No. ELH-18-2357, 2019 WL 2436848 (D. Md. June 10, 2019). That decision—issued without the benefit of oral argument and currently on appeal, *see Mayor and City Council of Baltimore v. BP P.L.C., et al.*, No. 19-1644 (4th Cir.)—conflicts with Ninth Circuit and Supreme Court precedent and thus should be given no weight.

In holding that plaintiffs' claims were not removable under federal common law, Judge Hollander accepted plaintiff's argument that "[t]he well-pleaded complaint rule" barred removal because "the City does not plead any claims under federal law." Ex. A at *12. But as Defendants have explained here, even if a claim is nominally pleaded under state law, "the question arises under federal law, and federal question jurisdiction exists" if federal law governs the plaintiff's claims. Defendants-Appellants' Reply Br. at 7 (quoting *New SD, Inc. v. Rockwell Int'l Corp.*, 79 F.3d 953, 955 (9th Cir. 1996)). That is a choice-of-law determination, not a matter of preemption.

As the Supreme Court has explained, "a cause of action" "'arises under' federal law if the dispositive issues stated in the complaint require the application of federal common law." *Illinois v. City of Milwaukee*, 406 U.S. 91, 99 (1972). Because interstate pollution "cases should be resolved by reference to federal common law," *Int'l Paper Co. v. Ouellette*, 479 U.S. 481, 488 (1987), Judge Hollander incorrectly concluded that plaintiff's global warming claims must be litigated in state court. Judge Chhabria's decision below did not

apply Judge Hollander's reasoning that the well-pleaded complaint rule bars removal. *See* Appellants' Reply Br. at 12. And two other federal judges have rejected that conclusion. *California v. BP p.l.c.*, 2018 WL 1064293 (N.D. Cal. Feb. 27, 2018) (Alsup, J.); *City of New York v. BP p.l.c.*, 325 F. Supp. 3d 466 (S.D.N.Y. 2018) (Keenan, J.).

Judge Hollander also erred in rejecting the defendants' other grounds for removal, for the reasons set forth in Appellants' briefs.

Sincerely,

/s/ Theodore J. Boutrous, Jr.

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cc: All counsel of record (via ECF)