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December 30, 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; and *County of Santa Cruz, et al. v. Chevron Corp. et al.*, No. 18-16376.
Plaintiffs-Appellees' Response to Defendants-Appellants' Rule 28(j) Letter

Dear Ms. Dwyer,

Defendants-Appellants' December 19, 2019 letter cites *United States v. Swiss American Bank, Ltd.*, 191 F.3d 30 (1st Cir. 1999), as newly discovered authority under Rule 28(j). That 20-year-old case is inapposite.

In any event, *Swiss Am. Bank* is inapposite. There, the United States sued several foreign banks in federal court to recover assets subject to a criminal forfeiture order. *Id.* at 34. The government argued personal jurisdiction existed over the banks under Fed. R. Civ. P. 4(k)(2), because its conversion claims against them were governed by federal common law. 191 F.3d at 38–39. The court narrowly held that "when the United States sues … to recoup assets … forfeited to it, the rights that it has acquired find their roots in, and must be adjudicated in accordance with, a federal source." *Id.* at 44–45.

Defendants contend that Plaintiffs' claims "arise under" federal common law for purposes of removal jurisdiction for the same reason the United States' claim in *Swiss American Bank* arose under federal law for purposes of Rule 4(k)(2). But the controlling authority in the removal context is *Grable & Sons Metal Prods., Inc. v. Darue Engineering & Mfg.*, 545 U.S. 308 (2005), decided six years after *Swiss American Bank*, in which the Supreme Court sought to "bring some order to th[e] unruly doctrine" of when state law claims arise under federal law for removal purposes. *See Gunn v. Minton*, 568 U.S. 251, 258 (2013). The federal government brought its claims in *Swiss American Bank* in federal court to recoup funds pursuant to its "federal-law power to punish criminals, including its right to require forfeiture of racketeering proceeds," over which "state law has no direct bearing." *See* 191 F.3d at 45. The claims here were brought by municipal entities in state court under well-established California tort law.

As Plaintiffs have shown, *see* Plaintiffs-Appellees' Brief at 38–48, no "substantial" federal question is "necessarily raised" and "actually disputed" by the allegations of Plaintiffs' complaints, and Plaintiffs' state-law claims into federal court would impermissibly disrupt the balance of federal-state responsibility. *Grable*, 545 U.S. at 314–15.

Respectfully submitted,

/s/ Victor M. Sher
Victor M. Sher
Sher Edling LLP

Counsel for Plaintiffs-Appellees

cc: All Counsel of Record (via ECF)