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21 **UNITED STATES DISTRICT COURT**
 22 **NORTHERN DISTRICT OF CALIFORNIA**
 23 **SAN FRANCISCO DIVISION**

24 CITY OF OAKLAND, a Municipal
 Corporation, and THE PEOPLE OF THE
 STATE OF CALIFORNIA, acting by and
 25 through Oakland City Attorney BARBARA J.
 PARKER,

26 Plaintiffs,

27 v.

First Filed Case No. 3:17-cv-6011-WHA
 Related to Case No. 3:17-cv-6012-WHA

**JOINT CASE MANAGEMENT
 STATEMENT**

Date: November 19, 2020
 Time: 11:00 AM
 Place: Courtroom 12, 19th Floor

1 BP P.L.C., a public limited company of
2 England and Wales, CHEVRON
3 CORPORATION, a Delaware corporation,
4 CONOCOPHILLIPS COMPANY, a Delaware
5 corporation, EXXON MOBIL
6 CORPORATION, a New Jersey corporation,
7 ROYAL DUTCH SHELL PLC, a public
8 limited company of England and Wales, and
9 DOES 1 through 10,

10 Defendants

11 CITY AND COUNTY OF SAN
12 FRANCISCO, a Municipal Corporation, and
13 THE PEOPLE OF THE STATE OF
14 CALIFORNIA, acting by and through the San
15 Francisco City Attorney DENNIS J.
16 HERRERA,

17 Plaintiffs,

18 v.

19 BP P.L.C., a public limited company of
20 England and Wales, CHEVRON
21 CORPORATION, a Delaware corporation,
22 CONOCOPHILLIPS COMPANY, a Delaware
23 corporation, EXXON MOBIL
24 CORPORATION, a New Jersey corporation,
25 ROYAL DUTCH SHELL PLC, a public
26 limited company of England and Wales, and
27 DOES 1 through 10,

28 Defendants.

Case No. 3:17-cv-6012-WHA

21 This Court set a further case management conference for November 19, 2020 at 11:00 a.m.
22 The parties provide a brief summary of the procedural history of these cases and their respective
23 positions regarding how these cases should proceed in case such information may be of assistance
24 to the Court during the case management conference or otherwise.¹

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27 ¹ In joining this Case Management Statement, Defendants BP P.L.C., ConocoPhillips Company, Exxon Mobil
28 Corporation, and Royal Dutch Shell PLC, do not waive any argument or defense regarding the Court's lack of
personal jurisdiction over them, nor do they seek to vacate or alter the Court's previous personal-jurisdiction order
under Rule 12(b)(2).

1 **A. Procedural History**

2 On September 19, 2017, the People of the State of California, by and through the San
3 Francisco City Attorney, filed their Complaint in the Superior Court for the County of San
4 Francisco, and the People of the State of California, by and through the Oakland City Attorney,
5 filed their Complaint in the Superior Court for the County of Alameda.

6 Defendants removed these cases on October 20, 2017. Case No. 17-6011 Dkt. No. 1; Case
7 No. 17-06012 Dkt. No. 1.² Defendants asserted seven grounds for removal: (1) that the People’s
8 claims arose under federal common law; (2) that the People’s claims raised disputed and
9 substantial federal issues; (3) that the People’s claims were completely preempted by federal law;
10 (4) that the People’s claims were removable under the Outer Continental Shelf Lands Act, 43
11 U.S.C. §1349(b) (“OCSLA”); (5) that the cases were removable under the federal officer removal
12 statute, 28 U.S.C. §1442(a)(1); (6) that federal enclaves jurisdiction was present; and (7) that the
13 cases were removable under the federal bankruptcy statute, 28 U.S.C. §1452(a). *Id.*

14 The Court issued an order relating the cases on October 31, 2017. Dkt. No. 32.

15 The People moved to remand on November 20, 2017. Dkt. No. 81. On February 27, 2018,
16 the Court denied the People’s motion to remand, concluding that their claims were necessarily
17 governed by federal law. Dkt. No. 134. The Court did not reach Defendants’ six other grounds
18 for removal. The People subsequently amended their complaints by adding a claim for public
19 nuisance under federal common law, while “reserv[ing] all rights with respect to whether
20 jurisdiction is proper in federal court.” Dkt. No. 199; Case No. 17-06012 Dkt. No. 168.

21 On June 25, 2018, this Court granted Defendants’ motions to dismiss for failure to state a
22 claim. Dkt. No. 283. On July 27, 2018, the Court granted Defendants’ motions to dismiss for lack
23 of personal jurisdiction, which four of the five Defendants filed. Dkt No. 287.

24 On appeal, the Ninth Circuit held the Court erred in asserting jurisdiction under 28 U.S.C.
25 § 1331. *City of Oakland v. BP PLC*, 960 F.3d 570, 582 (9th Cir. 2020). The Ninth Circuit further
26 held that the People had not waived their challenge to subject matter jurisdiction by amending their
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28 ² Unless otherwise noted, all docket references are to Case No. 17-cv-06011.

1 complaints to add a cause of action under federal common law. *Id.* at 585. The Ninth Circuit then
 2 remanded “these cases to the district court to determine whether there was an alternative basis for
 3 jurisdiction.” *Id.*³

4 On August 12, 2020, the Ninth Circuit panel amended its opinion to clarify that it was
 5 rejecting the Defendants’ argument that federal-question jurisdiction existed because the navigable
 6 waters of the United States were the alleged instrumentality of the People’s claimed harms. *City*
 7 *of Oakland v. BP PLC*, 969 F.3d 895 (9th Cir. 2020). The Ninth Circuit denied Defendants’
 8 petition for rehearing or rehearing en banc. *Id.* Defendants intend to file a petition for a writ of
 9 certiorari to request Supreme Court review of the Ninth Circuit’s decision, which is due by January
 10 11, 2021.

11 On May 26, 2020, the same Ninth Circuit panel issued an opinion affirming Judge
 12 Chhabria’s remand order in a substantially similar climate change case in which each of the five
 13 Defendants here were sued. *County of San Mateo v. Chevron Corp.*, 960 F.3d 586 (9th Cir. 2020)
 14 (*San Mateo*). In *San Mateo*, the Ninth Circuit considered and rejected arguments concerning
 15 federal-officer jurisdiction, but found that it did not have jurisdiction to consider other grounds
 16 asserted by Defendants. *Id.* at 598–603. The Ninth Circuit granted Defendants’ motion to stay
 17 the mandate pending the resolution of Defendants’ certiorari petition. Defendants also intend to
 18 file a petition for a writ of certiorari from the Ninth Circuit’s decision in *San Mateo*, which is due
 19 by January 4, 2021.

20 On August 21, 2020, the Ninth Circuit issued its mandate in these cases. ECF No. 256.

21 **B. The Parties’ Positions**

22 **1. The People’s Position**

23 The Court should grant the parties leave to file supplemental briefing on the People’s
 24 motion to remand to enable them to address new federal court decisions, including the substantial
 25 number of cases that have remanded substantially similar climate cases to their respective state
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27 ³ The Ninth Circuit did “not reach the question whether the district court lacked personal jurisdiction over four of
 28 the defendants. If, on remand, the district court determines that the cases must proceed in state court, the Cities are
 free to move the district court to vacate its personal-jurisdiction ruling.” *Id.* at 585 n.13.

1 courts.⁴ Concurrent briefing should also be permitted on the People’s anticipated motions to amend
2 their Complaints to withdraw their claims for relief under federal common law and for vacatur of
3 the Court’s personal-jurisdiction order under Rule 12(b)(2). A hearing should follow, at which the
4 People will request that (1) the Court allow the People to amend their Complaints to withdraw
5 their federal common law claims (which were added only as a protective measure, in response to
6 this Court’s ruling that federal common law controls); (2) the Court vacate its ruling on personal
7 jurisdiction without prejudice to Defendants renewing their personal-jurisdiction motions in state
8 court; and (3) remanding these actions to state court.

9 The People do not believe that any further stay of these proceedings is warranted. In a
10 substantially similar action, the District of Hawai’i denied a motion to stay proceedings pending
11 certiorari in *County of San Mateo v. Chevron Corp.*, which raised many of the same arguments
12 Defendants assert below. See *City and County of Honolulu v. Sunoco LP*, D. Haw. Case No. 20-
13 00163 Dkt. Nos. 111 (“Defendants in this case will not be ‘irreparably injured absent a stay’; a
14 further stay will, however, ‘substantially injure’ Plaintiff by unnecessarily prolonging these
15 proceedings for an indeterminate amount of time; and there is ‘always a public interest’ in the
16 ‘prompt’ resolution of a dispute.”), 115 (denying motion to reconsider order because “the Court
17 remain[ed] unpersuaded that the contingent utility of a stay in this case outweighs proceeding in
18 the normal course with, at the very least, Plaintiff’s anticipated motion to remand.”). Defendants
19 request for a stay should be denied here for similar reasons. The People do not believe that any
20 further stay of these proceedings is warranted and will respond to Defendants’ arguments regarding
21 a stay and other issues at an appropriate time and in an appropriate manner in response to a properly
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24 ⁴ See *Mayor & City Council of Baltimore v. BP P.L.C.*, 388 F. Supp. 3d 538 (D. Md. 2019) (granting motion to
25 remand), *as amended* (June 20, 2019), *aff’d in part, appeal dismissed in part*, 952 F.3d 452 (4th Cir. 2020), *petition*
26 *for cert. filed*, No. 19-1189 (Mar. 31, 2020); *Cty. of San Mateo v. Chevron Corp.*, 294 F. Supp. 3d 934, 937 (N.D. Cal.
27 2018) (same), *aff’d in part, appeal dismissed in part*, 960 F.3d 586 (9th Cir. 2020), *reh’g en banc denied* (Aug. 4,
28 2020); *Bd. of Cty. Comm’rs of Boulder Cty. v. Suncor Energy (U.S.A.) Inc.*, 405 F. Supp. 3d 947 (D. Colo. 2019)
(granting motion to remand), *aff’d in part, appeal dismissed in part*, 965 F.3d 792 (10th Cir. 2020); *Rhode Island v.*
Chevron Corp., 393 F. Supp. 3d 142 (D.R.I. 2019) (granting motion to remand), *aff’d* ___ F. 3d. ___, No. 19-1818,
2020 WL 6336000 (9th Cir. 2020); *Massachusetts v. Exxon Mobil Corp.*, ___ F. Supp. 3d ___, No. CV 19-12430-WGY,
2020 WL 2769681 (D. Mass. May 28, 2020) (same).

1 noticed motion. The People request that briefing on all four issues (remand, amendment, vacatur,
2 and stay) proceed concurrently upon the filing of appropriate motions.”

3 **2. Defendants’ Position**

4 Defendants are prepared to vigorously defend the propriety of removal on each of the
5 grounds that remain before this Court on any schedule that the Court desires, but Defendants
6 respectfully submit that it would be more efficient to defer further proceedings pending the U.S.
7 Supreme Court’s disposition of forthcoming petitions for writ of certiorari in this case and
8 *County of San Mateo*.

9 If the petition in this case is granted, the Supreme Court could eliminate any need for
10 further proceedings here by holding, as this Court correctly decided, that Plaintiffs’ claims
11 necessarily “arise under” federal law or that Plaintiffs were barred from challenging removal on
12 appeal after having cured any jurisdictional defect through their amended Complaints and
13 litigating the case to a judgment. Plaintiff’s reliance on Judge Watson’s decision not to stay
14 remand briefing in *City and County of Honolulu* is misplaced for several reasons including, most
15 obviously, that Defendants are seeking certiorari in this case, and therefore there is no question
16 that the Supreme Court proceedings will directly bear on the issues presented here.

17 The Supreme Court could also reverse the Ninth Circuit’s conclusion in *County of San*
18 *Mateo* that federal appellate jurisdiction is confined exclusively to the federal officer removal
19 statute. The entrenched circuit split on this issue seems the likely reason the Ninth Circuit stayed
20 the mandate in *County of San Mateo*. See Nos. 18-15499, Dkt. 238. If the Supreme Court grants
21 certiorari in that case and reverses, the Ninth Circuit will address the same grounds for removal
22 that remain pending in this action. And while there are factual differences between the two
23 cases, any decision the Ninth Circuit issues in *County of San Mateo* will likely guide this Court
24 in resolving the remaining issues in Plaintiffs’ remand motion here. Defendants note that on
25 October 2, 2020, the Supreme Court granted certiorari in another climate change related case, *BP*
26 *p.l.c. v. Mayor & City Council of Baltimore*, No. 19-1189 (U.S.), presenting the same question
27 that is raised in *County of San Mateo*: whether 28 U.S.C. § 1447(d) permits a court of appeals to
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1 review any issue encompassed in a district court’s order remanding a removed case to state court
2 where the removing defendant premised removal in part on the federal-officer removal statute,
3 28 U.S.C. § 1442, or the civil-rights removal statute, 28 U.S.C. § 1443.

4 Deferring further proceedings in this Court will not cause undue delay. The petitions for
5 certiorari in this case and *County of San Mateo* are due on January 4 and January 11, 2021,
6 respectively. The Supreme Court could rule on the petitions relatively soon thereafter,
7 depending on how long Plaintiffs take to respond. *See* S.Ct. Rule 16.5 (“If a brief in opposition
8 is timely filed, the Clerk will distribute the petition . . . no less than 14 days after the brief in
9 opposition is filed.”). Even if Plaintiffs take the full time available to them to respond, the
10 Supreme Court will still likely rule on the petitions before the end of the coming Term.

11 As noted above, Defendants are prepared to litigate the outstanding issues presented by
12 Plaintiffs’ remand motions if the Court is so inclined. Whenever the cases move forward,
13 however, Defendants request that the Court permit the parties to submit supplemental briefing on
14 those issues to address new case law and present an augmented evidentiary record. *See*
15 *Manoukian v. John Bean Techs. Corp.*, 2018 WL 6133679, at *5 (C.D. Cal. Apr. 23, 2018)
16 (“Court shall exercise its discretion to request . . . supplemental briefing, supported by admissible
17 evidence” before deciding plaintiff’s motion to remand.); *Warren v. Comm’r*, 282 F.3d 1119,
18 1121-22 (9th Cir. 2002) (holding that a court may exercise its discretion to request supplemental
19 briefing “to obtain more information in order to make a more informed and reasoned decision”)
20 (citing *United States Nat’l Bank v. Independent Ins. Agents of America, Inc.*, 508 U.S. 439, 445-
21 48 (1993)).⁵

22 In the nearly two-and-a-half years that have elapsed since this Court first denied
23 Plaintiffs’ motions to remand and granted Defendants’ motions to dismiss, the Defendants have
24 developed an even more robust factual record supporting the grounds for removal asserted in
25 these cases. Defendants have identified substantial additional facts, evidence, and authorities

26 _____
27 ⁵ Chevron may file and serve additional third-party complaints against other foreign state-owned energy companies.
28 Shortly after Plaintiffs moved to remand and before the Court ruled on that motion, Chevron served a third-party
complaint against a foreign state-owned entity, Equinor (formerly Statoil ASA), which could remove these cases to
federal court under the Foreign Sovereign Immunities Act, § 28 U.S.C. 1441(d). Dkt. No. 67.

1 confirming that removal is proper under the Outer Continental Shelf Lands Act and the federal
2 officer removal statute. Defendants would respectfully request the opportunity to present this
3 more developed factual record to the Court for its consideration. Given the stakes of this
4 litigation—and given that this Court has already concluded that Plaintiffs’ claims fail on the
5 merits—there is no reason to resolve the question of whether federal jurisdiction exists without
6 the benefit of a full and complete record, accompanied by full and complete argument.⁶ That
7 said, for the reasons stated above, Defendants believe it would be more efficient to defer any
8 further proceedings in this Court until the Supreme Court has resolved Defendants’ forthcoming
9 petitions for writ of certiorari.

10 Dated: November 10, 2020

Respectfully submitted,

CITY OF OAKLAND

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13 By: /s/ Malia McPherson

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FRANCISCO**

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21 By: /s/ Matthew D. Goldberg

DENNIS J. HERRERA, State Bar #139669

City Attorney

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25 _____
26 ⁶ Defendants submit that Plaintiffs’ requests to amend their complaints and seek vacatur of the Court’s ruling on
27 personal jurisdiction are premature and should move forward, if at all, only after additional briefing on Plaintiffs’
28 motions to remand and the Court’s decision on whether it has subject matter jurisdiction over these cases. See 969
F.3d at 911 n.13 (“If, on remand, the district court determines that the cases must proceed in state court, the Cities
are free to move the district court to vacate its personal-jurisdiction ruling.”) (emphasis added).

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