

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

STATE OF MINNESOTA, BY ITS
ATTORNEY GENERAL, KEITH ELLISON,

Plaintiff,

v.

AMERICAN PETROLEUM INSTITUTE,
EXXON MOBIL CORPORATION,
EXXONMOBIL OIL CORPORATION, KOCH
INDUSTRIES, INC., FLINT HILLS
RESOURCES LP, and FLINT HILLS
RESOURCES PINE BEND,

Defendants.

Case No. 20-cv-1636-JRT-HB

FHR DEFENDANTS' RESPONSE TO PLAINTIFF'S
NOTICE OF SUPPLEMENTAL AUTHORITY

Koch Industries, Inc., Flint Hills Resources LP, and Flint Hills Resources Pine Bend (collectively, “FHR Defendants”) write in response to the State’s Notice of Supplemental Authority (ECF No. 74) regarding the District of Hawai‘i’s denial of a motion to stay the execution of a remand order in *City & County of Honolulu v. Sunoco LP* and *County of Maui v. Chevron U.S.A. Inc.*, Civ. Nos. 20-163 & 20-470, (D. Haw. Mar. 5, 2021). The District of Hawai‘i’s decision is of minimal, if any, relevance to the FHR Defendants’ Motion to Stay (ECF No. 58), for the reasons set forth herein.

First, the District of Hawai‘i court denied defendants’ motion to stay the court’s remand order, pending defendants’ appeal of the remand order to the Ninth Circuit. ECF No. 74, Ex. A at 1. The FHR Defendants have, on the other hand, moved this Court to stay and hold in abeyance its decision on the State’s motion to remand in the first place, until the United States Supreme Court issues its decisions in one or both of *BP p.l.c. v. Mayor & City Council of Baltimore*, No. 19-1189 (U.S.) and *Petition for Writ of Certiorari, Chevron Corporation et. al. v. City of Oakland, et al.*, (U.S., Jan. 8, 2021). *See* ECF No. 58. The stay requested by the defendants in the Hawai‘i case is entirely distinct from the stay requested by the FHR Defendants here, rendering the District of Hawai‘i’s decision inapposite.

Second, the District of Hawai‘i denied defendants’ motion to stay the remand order in part on the basis that defendants in that case are not likely to succeed on the merits of their appeal to the Ninth Circuit. ECF No. 74, Ex. A at 3-4. The court reasoned that “the Ninth Circuit has already and only recently addressed the sole issue from which Defendants can appeal with certainty [federal officer removal], and the Circuit has done so in a manner

unfavorable to Defendants.” *Id.* The court’s reasoning is not applicable here, where the FHR Defendants have requested a stay pending Supreme Court review, and Ninth Circuit precedent is not binding on the Supreme Court, the Eighth Circuit, or this Court.

Third, the State’s continued reliance on the District of Hawai‘i’s decisions further supports the stay requested by the FHR Defendants. In addition to the State’s present notice, the State previously filed a Notice of Supplemental Authority regarding the District of Hawai‘i’s remand order. ECF No. 71. In its remand decision, the District of Hawai‘i summarily rejected defendants’ federal common law and *Grable* jurisdiction bases for removal pursuant to the Ninth Circuit’s decision in *Oakland*. *See Sunoco*, 2021 WL 531237, at *2 n.8 (“[T]he Court does not discuss [the federal common law and *Grable* bases for removal] beyond rejecting them in light of binding Ninth Circuit authority” in *Oakland*). The State’s reliance on the District of Hawai‘i’s remand order, decided pursuant to *Oakland*, further counsels in support of the stay requested by the FHR Defendants, pending the Supreme Court’s decision on whether to grant certiorari in *Oakland*.

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William A. Burck (*pro hac vice*)
QUINN EMANUEL LLP
1300 I Street, NW, Suite 900
Washington, D.C. 20005-4107
Tel: (202) 538-8120
E-mail:
williamburck@quinnemanuel.com

Stephen A. Swedlow (*pro hac vice*)
Michelle Schmit (*pro hac vice*)
QUINN EMANUEL LLP
191 North Wacker Drive, Suite 2700
Chicago, IL 60606
Tel: (312) 705-7488
E-mail:
stephenswedlow@quinnemanuel.com
E-mail:
michelleschmit@quinnemanuel.com

Respectfully submitted,

/s/ Todd Noteboom
Todd Noteboom (MN #240047)
Andrew W. Davis (MN #386634)
Peter J. Schwingler (MN #388909)
STINSON LLP
50 South Sixth Street, Suite 2600
Minneapolis, MN 55402
Tel: (612) 335-1500
E-mail: todd.noteboom@stinson.com

Andrew M. Luger (MN #0189261)
JONES DAY
90 South Seventh Street, Suite 4950
Minneapolis, MN 55402
Tel: (612) 217-8862
E-mail: aluger@jonesday.com

Debra R. Belott (*pro hac vice*)
JONES DAY
51 Louisiana Avenue, NW
Washington, D.C. 20001-2113
Tel: (202) 879-3689
E-mail: dbelott@jonesday.com

*Attorneys for Defendants
Koch Industries, Inc., Flint Hills
Resources LP, and Flint Hills Resources
Pine Bend*