Nos. 18-15499, 18-15502, 18-15503, 18-16376

IN THE

United States Court of Appeals for the Ninth Circuit

COUNTY OF SAN MATEO, Plaintiff-Appellee, v. CHEVRON CORPORATION, *et al.*, Defendants-Appellants.	No. 18-15499 No. 17-cv-4929-VC N.D. Cal., San Francisco Hon. Vince Chhabria presiding
CITY OF IMPERIAL BEACH, Plaintiff-Appellee, v. CHEVRON CORPORATION, *et al.*, Defendants-Appellants.	No. 18-15502 No. 17-cv-4934-VC N.D. Cal., San Francisco Hon. Vince Chhabria presiding
COUNTY OF MARIN, Plaintiff-Appellee, v. CHEVRON CORPORATION, *et al.*, Defendants-Appellants.	No. 18-15503 No. 17-cv-4935-VC N.D. Cal., San Francisco Hon. Vince Chhabria presiding
COUNTY OF SANTA CRUZ; et al., Plaintiffs-Appellees v. CHEVRON CORPORATION; et al., Defendants-Appellants.	No. 18-16376 Nos. 18-cv-00450-VC; 18-cv-00458-VC; 18-cv-00732-VC N.D. Cal., San Francisco Hon. Vince Chhabria presiding

APPELLANTS' CONSENT MOTION FOR SUPPLEMENTAL BRIEFING AND ORAL ARGUMENT

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Appellants, with the consent of Appellees, respectfully move the Court to set a schedule for supplemental briefing and oral argument in this appeal on remand from the Supreme Court, in order to provide the opportunity for this Court to fully and fairly consider the arguments and evidence supporting federal removal.

1. Plaintiffs filed six separate actions against more than 30 energy companies in California state court, alleging that "the dominant cause of global warming and sea level rise" is worldwide "greenhouse gas pollution," ER216, and that "Defendants, through their extraction, promotion, marketing, and sale of their fossil fuel products, caused approximately 20% of global fossil fuel product-related CO_2 between 1965 and 2015, with contributions currently continuing unabated," ER247. Asserting numerous causes of action ostensibly under California tort law, including product-liability claims and claims for public and private nuisance, Plaintiffs demand compensatory and punitive damages, disgorgement of profits, abatement of the alleged nuisances, and other relief. ER292–312.

Defendants removed the actions to the United States District Court for the Northern District of California. The notices of removal asserted seven independent grounds for federal jurisdiction: (1) that Plaintiffs'

claims are governed by federal common law; (2) that Plaintiffs' claims necessarily raise disputed and substantial federal questions; (3) that Plaintiffs' claims are completely preempted by the U.S. Constitution, the Clean Air Act, and other federal statutes; (4) that the district court had original jurisdiction under the Outer Continental Shelf Lands Act ("OCSLA"); (5) that federal-officer removal is authorized under 28 U.S.C. § 1442(a); (6) that Plaintiffs' claims are based on alleged conduct on federal enclaves; and (7) that removal is authorized under the bankruptcy-removal statute, 28 U.S.C. § 1452(a). ER145–47. Plaintiffs filed a motion to remand, which the district court granted. ER5–6. Defendants appealed.

In its original decision in this appeal, this Court addressed only federal-officer removal, concluding that it did not have appellate jurisdiction under 28 U.S.C. § 1447(d) to review any other basis for removal. *County of San Mateo v. Chevron Corp.*, 960 F.3d 586, 598 (9th Cir. 2020).

On May 17, 2021, the Supreme Court announced its decision in *BP P.L.C. v. Mayor & City Council of Baltimore*, 141 S. Ct. 1532 (2021). The Court clarified that, when a party seeks appellate review of an order remanding a "case … removed pursuant to section 1442 or 1443," "the

whole of [that] order bec[omes] reviewable on appeal." *Id.* at 1538 (quoting 28 U.S.C. § 1447(d)).

Thereafter, on May 24, 2021, the Supreme Court vacated this Court's judgment in this appeal and remanded for further proceedings in light of its decision in *Baltimore*. *See Chevron Corp. v. San Mateo Cnty.*, No. 20-884, 2021 WL 2044534 (U.S. May 24, 2021). The certified judgment of the Supreme Court will issue imminently. *See* S. Ct. R. 45.

2. Appellants, with the consent of Appellees, respectfully request that this Court permit the parties to submit supplemental briefing on the numerous issues to be decided on remand from the Supreme Court, and that the case be set for oral argument.

In their briefs before this Court, Appellants were constrained by the need to devote large portions of their brief to the scope of appellate review of the remand order—which the Supreme Court has now resolved in their favor. *See* AOB 18–29. And over half of the Argument section of Appellants' Opening Brief was spent arguing that Plaintiffs' claims arise under federal common law, AOB 30–45, that Plaintiffs' claims raise disputed and substantial federal issues, AOB 45–56, and that Plaintiffs' claims are completely preempted by federal law, AOB 56–58—all of which were

largely foreclosed by *City of Oakland v. BP PLC*, 969 F.3d 895 (9th Cir. 2020). As a result, Appellants' Opening Brief was able to spend, for example, only three pages on OCSLA jurisdiction, *see* AOB 58–61, and fewer than two pages on federal enclaves jurisdiction, *see* AOB 61–63—neither of which this Court has yet addressed.

Moreover, briefing before this Court closed in this case over two years ago, and there have been significant legal developments since then. For example, the district court in this case had cursorily dismissed removal under OCSLA—which gives federal courts original jurisdiction over any action "arising out of, or in connection with" an operation on the Outer Continental Shelf, 43 U.S.C. § 1349(b)(1)—on the basis that "the defendants have not shown that the plaintiffs' causes of action would not have accrued *but for* the defendants' activities on the shelf." ER6. But as the Supreme Court recently concluded in analyzing a similar formulation in the personal-jurisdiction context, the "requirement of a 'connection' between a plaintiff's suit and a defendant's activities" can be satisfied even absent "a strict causal relationship." *Ford Motor Co. v. Montana Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017, 1026 (2021) (interpreting the personal-jurisdiction case law requirement that "the suit 'arise out of or

relate to the defendant's contacts with the forum'" as "contemplat[ing] that some relationships will support jurisdiction without a causal showing"). Thus, *Ford Motor Co.* indicates that the district court applied the wrong standard to the analogously worded OCSLA provision.

For these reasons, Appellants respectfully submit that the Court would benefit from supplemental briefing and oral argument. Appellants propose that the parties be permitted to submit supplemental briefs as follows:

- Appellants file a principal brief of no more than 6,000 words, due 30 days after the Court's disposition of this Consent Motion.
- Appellees file a principal brief of no more than 6,000 words, due 30 days after Appellants' principal brief is submitted.
- Appellants file a reply brief of no more than 3,000 words, due 21 days after Appellees' principal brief is submitted.

The case can then be set for oral argument in the ordinary course.

3. Pursuant to Circuit Rule 27-1, counsel for Appellants have notified Appellees. Appellees have consented to this proposal and schedule

for supplemental briefing, although do not agree with all the statements or positions Appellants have made in support of their motion.

Dated: June 23, 2021

Respectfully submitted,

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** Pursuant to Ninth Circuit L.R. 25-5(e), counsel attests that all other parties on whose behalf the filing is submitted concur in the filing's contents.

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g)(1), the undersigned certifies that this consent motion complies with the applicable typeface, type-style, and type-volume limitations. This consent motion was prepared using a proportionally spaced type (New Century Schoolbook, 14 point). Exclusive of the portions exempted by Federal Rule of Appellate Procedure 32(f), this consent motion contains 1,003 words. This certificate was prepared in reliance on the word-count function of the word-processing system used to prepare this brief.

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CERTIFICATE OF SERVICE

I hereby certify that on June 23, 2021, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

All participants in the case are registered CM/ECF users and will be served by the appellate CM/ECF system.

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