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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

THE COUNTY OF SANTA CRUZ, individually and on behalf of THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, vs. CHEVRON CORP., et al., Defendants.	Case No. 3:18-cv-00450-VC **PLAINTIFFS' REPLY IN SUPPORT OF MOTION TO REMAND; MOTION TO REMAND IN RESPONSE TO DEFENDANT MARATHON PETROLEUM CORP.'S ADDITIONAL NOTICE OF REMOVAL** Date: April 4, 2018 Time: 10:00 a.m. Courtroom: 4, 17th Floor Judge: Hon. Vince Chhabria

THE CITY OF SANTA CRUZ, a municipal corporation, individually and on behalf of THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, vs. CHEVRON CORP., et al. Defendants.	Case No. 3:18-cv-00458-VC
THE CITY OF RICHMOND, a municipal corporation, individually and on behalf of THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, vs. CHEVRON CORP., et al., Defendants.	Case No. 3:18-cv-00732-VC

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I. INTRODUCTION

Plaintiffs County of Santa Cruz, City of Santa Cruz, and City of Richmond, individually and on behalf of the People of the State of California, submit this brief to respond to: (1) Defendants' Joint Opposition to Remand ("Opposition" or "Opp."), and (2) the new grounds for removal asserted by Defendant Marathon Petroleum Corp.[1]

As the Court held in the related cases (hereinafter, the "San Mateo Cases"), Plaintiffs' claims here do not fit "within one of a small handful of small boxes" that create removal jurisdiction, and remand to state court is required. *See* Order Granting Motions to Remand at 5, *County of San Mateo v. Chevron Corp*., et al., Case No. 3:17-cv-04929-VC ("*San Mateo*"), ECF No. 223 (Mar. 16, 2018); *City of Imperial Beach v. Chevron Corp.*, et al., Case No. 3:17-cv-04934-VC ("*Imperial Beach*"), ECF No. 207 (Mar. 16, 2018); and *County of Marin v. Chevron Corp.*, et al., Case No. 3:17-cv-04935-VC ("*Marin*"), ECF No. 208 (Mar. 16, 2018). Defendants' Opposition does not alter the result, and merely reargues their previous positions. Based on Judge Alsup's recent order in *California v. BP P.L.C.*, et al., No. 17-cv-6011, ECF No. 134, at 3 (N.D. Cal. Feb. 27, 2018) ("*BP* Order"), Defendants renew their contention that although Plaintiffs pleaded exclusively California state law claims, they are "governed by federal common law." Opp. at 1. The Court has correctly ruled, however, that they are not. *See San Mateo* ECF No. 223 at 3. The *BP* Order erred by accepting a preemption defense not properly before the court as a basis for jurisdiction, and did not apply the exclusive test required by the U.S. Supreme Court for determining if federal question jurisdiction lies over a well-pleaded state law complaint. Under that test, removal is proper only when a "a state-law claim necessarily raise[s] a stated federal issue, actually disputed and substantial, which a federal forum may entertain without disturbing any congressionally approved balance of federal and state judicial responsibilities." *See Grable &*

[1] The parties have agreed that this brief shall serve as Plaintiffs' reply in support of their original remand motion and Plaintiffs' motion to remand in response to Marathon's Additional Notice of Removal. *See Richmond*, Case No. 3:18-cv-00732-VC, ECF No. 95 (Mar. 15, 2018); *County of Santa Cruz*, Case No. 3:18-cv-00450-VC, ECF No. 108 (Mar. 15, 2018); *City of Santa Cruz*, Case No. 3:18-cv-00458-VC, ECF No. 107 (Mar. 15, 2018). No additional remand briefing is anticipated absent Court order.

Sons Metal Prods., Inc. v. Darue Eng'g & Mfg., 545 U.S. 308, 314 (2005).

Except in the rare circumstance described in *Grable*, there can be no federal question jurisdiction over a complaint that on its face alleges exclusively state law claims, even if those claims are arguably preempted by federal law or otherwise subject to a potential federal defense. *See, e.g.*, *Provincial Gov't of Marinduque v. Placer Dome, Inc.*, 582 F.3d 1083 (9th Cir. 2009) (federal question jurisdiction must satisfy both well-pleaded complaint rule and present a "federal issue embedded in state-law claims that meets the test set forth in *Grable*."). The Complaints before this Court include no federal issue, "embedded" or otherwise. Plaintiffs' right to relief arises under California state law without reference to any provision of the U.S. Constitution, federal statute, federal regulation, or exclusively federal duty. The Court has correctly ruled there is no basis to remove these cases under *Grable*. *San Mateo* ECF No. 223 at 3–4.

Defendants' "new" arguments equally lack merit. Marathon's proffered "navigable waters" ground for removal (which the other Defendants now belatedly adopt) fails for the same reason that Defendants' federal rule of decision ground fails; it confuses a potential federal preemption defense (which cannot support removal) with an essential element of Plaintiffs' affirmative claims (which is the exclusive focus of federal-question removal). Marathon's assertion of admiralty jurisdiction also fails, because no "vessel" caused the land-based injuries that Plaintiffs allege, and because the conduct at issue bears no resemblance to any traditional maritime activity. Besides, the "saving to suitors" clause of 28 U.S.C. § 1333 would preserve Plaintiffs' choice of a state forum even if there were some basis for asserting admiralty jurisdiction.

II. ARGUMENT

A. Plaintiffs' State Law Claims Do Not Arise Under Federal Common Law.

1. Well-Pleaded State Law Claims Only Arise Under Federal Law If They Satisfy *Grable*'s Four-Part Test.

The Court's finding in the San Mateo Cases that removal is not "warranted on the basis of *Grable* jurisdiction," *see San Mateo* ECF No. 133 at 3, is correct, and holds for Plaintiffs' Complaints here as well. The narrow category of cases removable under *Grable* is limited to cases where plaintiffs' otherwise well-pleaded state law claims "necessarily raise a stated federal issue,

actually disputed and substantial, which a federal forum may entertain without disturbing any congressionally approved balance of federal and state judicial responsibilities." 545 U.S. at 314.[2]

For *Grable*'s narrow jurisdictional ground to apply, it is not enough that federal law will likely, or even inevitably, be raised as an affirmative defense. *See, e.g.*, *California Shock Trauma Air Rescue v. State Comp. Ins. Fund*, 636 F.3d 538, 541–42 (9th Cir. 2011) (because a potential "preemption issue cannot satisfy the well-pleaded complaint rule, there is no basis for federal question jurisdiction"). Otherwise, this special category would eviscerate the basic jurisdictional rule that plaintiff's *complaint* must state a federal question. Nor is it enough that federal law provides the required content for a state-law rule, as for example a state-law negligence or unfair business practices claim based on a predicate violation of federal law. *See., e.g.*, *Grable*, 545 U.S. at 318–19, citing *Merrell Dow Pharm. Inc. v. Thompson*, 478 U.S. 804, 811–12 (1986). Rather, to justify removal based on *Grable*, the federal question must be substantial, unavoidable, and must comprise "a necessary element of one of the well-pleaded state claims." *Franchise Tax Bd. of State of Cal. v. Constr. Laborers Vacation Tr. for S. California*, 463 U.S. 1, 13 (1983); *see also San Mateo* Memo. of Points & Auths. In Support of Motion to Remand, ECF No. 157 ("*San Mateo* Mot. to Remand"), at 21–26.

The well-pleaded complaint rule remains the "basic principle marking the boundaries of the federal question jurisdiction of the federal district courts." *Metro. Life Ins. Co. v. Taylor*, 481 U.S. 58, 63 (1987). Therefore, as summarized by the Ninth Circuit:

> [T]o bring a case within the federal-question removal statute, a right or immunity created by the Constitution or laws of the United States must be an element, and an essential one, of the plaintiff's cause of action. . . . That is, the presence or absence of federal-question jurisdiction is governed by the "well-pleaded complaint rule," which provides that federal jurisdiction exists only when a federal question is

[2] The narrow exception for claims subject to "complete preemption" applies only to those "extraordinary" situations in which Congress by statute (*see* Section 502(a) of ERISA, Section 301 of the LMRA, and the National Bank Act) has expressly vested federal courts with exclusive jurisdiction over a particular claim or group of claims. For the reasons plaintiffs have earlier stated, no such complete preemption exists here. As the Court correctly noted in the San Mateo Cases, "[t]he defendants do not point to any applicable statutory provision that involves complete preemption," and removal is not "warranted under the doctrine of complete preemption." *See San Mateo* ECF No. 223 at 3.

> presented on the face of the plaintiff's properly pleaded complaint. . . . A defense is not part of a plaintiff's properly pleaded statement of his or her claim. . . . Alternatively, the complaint must raise a federal issue embedded in state-law claims that meets the test set forth in *Grable*.

Placer Dome, 582 F.3d at 1091 (punctuation omitted) (citing *Rivet v. Regions Bank of Louisiana*, 522 U.S. 470, 475 (1998)). The test applies whether the asserted "embedded" federal issue is statutory or based in federal common law. *See Placer Dome*, 582 F.3d at 1086 (finding no jurisdiction under *Grable* where removal based on "federal common law of foreign relations").

The *BP* Order concluded that claims "brought under federal common law" are removable, and that "the well-pleaded complaint rule does not bar removal" where plaintiffs' claims "necessarily arise under federal common law." *BP* Order at 3, 7 (citing *Illinois v. City of Milwaukee*, 406 U.S. 91 (1972) ("*Milwaukee I*"), and *Wayne v. DHL Worldwide Express*, 294 F.3d 1179, 1184 (9th Cir. 2002)). The court thus bypassed the required threshold inquiry into whether plaintiffs had actually pleaded a federal claim or whether a federal question was an implicit and unavoidable element of the plaintiffs' well-pleaded state law claims within the meaning of *Grable*, by deciding a federal preemption issue not properly before the court.

Since *Erie R. Co. v. Tompkins*, 304 U.S. 64 (1938), it has been settled that in the absence of federal constitutional or statutory authorization, there is no "general" federal common law, and "[e]xcept in matters governed by the Federal Constitution or by Acts of Congress, the law to be applied in any case is the law of the State." *Id.* That principle is of particular importance where the historic police powers of the state are at issue, as here, and can only be overcome where the legislative or constitutional authority is "clear and manifest." *See, e.g., Puerto Rico Dep't of Consumer Affairs v. Isla Petroleum Corp.*, 485 U.S. 495, 500 (1988).

Plaintiffs' claims for relief rest entirely upon California law. Federal law, whether asserted as a preemption defense or otherwise, does not form a necessary element of *any* of Plaintiffs' claims. As already discussed in the San Mateo Cases' briefing, Defendants' wrongful promotion and marketing of defective fossil fuel products, despite knowledge of their dangers, form well-established bases for liability under California law. *See San Mateo* Mot. to Remand at 20–30; *San Mateo* Reply to Defendants' Joint Opposition to Plaintiffs' Motion to Remand, ECF No. 203 ("*San*

Mateo Reply"), at 11–24. As a result, this Court has no basis for asserting federal question jurisdiction over this state law action, and these cases should be remanded to state court.

Neither *Milwaukee I* nor *Wayne* (the two cases cited in the *BP* Order) speak to federal question removal jurisdiction, and neither supplants the Supreme Court's test articulated more recently in *Grable* (or the Ninth Circuit's application of *Grable* in *Placer Dome*). *Milwaukee I* involved a claim brought under the original jurisdiction of the Supreme Court, which was expressly pleaded under the federal common law of nuisance and did not involve any removal issue. *See Milwaukee I*, 406 U.S. at 93. In *Wayne*, which the Ninth Circuit decided several years before *Grable*, the court stated that "[f]ederal jurisdiction would exist in this case if the claims arise under federal common law," but found the claims did not arise under the federal common law of common carrier liability. 294 F.3d at 1185. The Ninth Circuit, of course, has since clarified that the way to determine whether well-pleaded state law "claims arise under federal common law" is to ask whether those claims "meet[ ] the test set forth in *Grable*." *Placer Dome*, 582 F.3d at 1091. Because Plaintiffs' claims do not meet that test, remand is required.

2. Plaintiffs' State Law Claims Are Not "Governed By" Federal Common Law.

The Court correctly held in the San Mateo Cases that "federal law does not govern the plaintiffs' claims" and that "these cases should not be removed on the basis of federal common law that no longer exists" in light of *American Electric Power Co. v. Connecticut*, 564 U.S. 410 (2011) ("*AEP*"), and *Native Village of Kivalina v. ExxonMobil Corp.*, 696 F.3d 849 (9th Cir. 2012), *cert. denied*, 133 S. Ct. 2390 (2013) ("*Kivalina*"). Moreover, even if the *BP* court were correct that some federal common law survives under the Clean Air Act, it would not encompass Plaintiffs' claims concerning Defendants' wrongful promotion and marketing of defective fossil fuel products, and their failures to warn of known dangers of unabated use of those products. Plaintiffs' Claims do not raise any "uniquely federal interest," let alone an interest that conflicts with California's in protecting its cities, counties, and residents from the California-specific consequences of that tortious conduct. *See, e.g.*, *San Mateo* Reply at 6–11. Indeed, the courts have rejected attempts to expand federal common law to sellers of products based on assertions

that disputes over the consequences of the product's use "may transcend state lines," may implicate difficult or contentious issues of public policy or science, and/or may implicate foreign economies or foreign policy. *See, e.g.*, *Jackson v. Johns-Manville Sales Corp.*, 750 F.2d 1314, 1324 (5th Cir. 1985); *In re Agent Orange Prod. Liab. Litig.*, 635 F.2d 987 (2d Cir. 1980); *Patrickson v. Dole Food Co.*, 251 F.3d 795 (9th Cir. 2001).

In *Jackson*, the Fifth Circuit held that state law claims could proceed against manufacturers of asbestos, notwithstanding that asbestos-related injuries were "a national problem of immense proportions" that had already spurred personal injury lawsuits throughout the country. 750 F.2d at 1323–25. The court reasoned that "a dispute over a common fund or scarce resources cannot become 'interstate,' in the sense of requiring the application of federal common law, merely because the conflict is not confined within the boundaries of a single state." *Id.* at 1324. The Ninth Circuit subsequently relied on *Jackson*, when it concluded that there was no basis for creating a federal common law standard for determining eligibility for attorneys' fees under the substantial benefit doctrine, even though that doctrine rested upon overlapping state and federal statutory rights. *See Sederquist v. Court*, 861 F.2d 554, 556 (9th Cir. 1988).

There is no reason why state law and federal regulation cannot coexist and supplement each other where, as here, a manufacturer or seller of a product promotes and markets its product in a manner that causes identifiable localized harms. *See San Mateo* Reply at 7–8. The Ninth Circuit has already recognized the State of California's interest and role in mitigating climate change apart from and in addition to the federal government efforts. See *Rocky Mountain Farmers Union v. Corey*, 730 F.3d 1070, 1093 (9th Cir. 2013) (upholding California's global warming law, which regulated fossil fuels sold in interstate commerce). Even Defendants concede that global warming does not itself implicate "uniquely federal interests." Opp. at 7, n.6 (California "plainly does" have an interest in preventing harm from global warming).

Moreover, the sale and combustion of fossil fuels products both domestically and outside of the United States does not preclude application of state law for the in-state injuries they cause. The Second Circuit confirmed that principle in *In re Agent Orange*, in which it held that state law, not federal common law, governed a class action brought against the manufacturers of Agent

Orange by millions of members of the U.S. Armed Forces who had served in Vietnam. 635 F.2d at 994–95. Even though the exposure to Agent Orange occurred exclusively in Vietnam, *id.* at 989, and despite the "obvious" federal interest in veterans' welfare, the Second Circuit held:

> [T]here is no federal interest in uniformity for its own sake. . . . The fact that application of state law may produce a variety of results is of no moment. It is in the nature of a federal system that different states will apply different rules of law, based on their individual perceptions of what is in the best interests of their citizens. That alone is not grounds in private litigation for judicially creating an overriding federal law.

Id. at 994.

Nor does the *BP* Court's concern about "the relationships between the United States and all other nations," *BP* Order at 8, support federal court jurisdiction. For example, in *Patrickson*, 251 F.3d at 801–05, a case involving state tort claims asserted against multinational fruit and chemical companies for pesticide exposures suffered overseas, the Ninth Circuit rejected an attempted removal based on the "uniquely federal" interest in foreign relations and potential interference with the economies of Latin American nations. The court noted that the complaints alleged no participation by any foreign government, *id.* at 800, and concluded "if federal courts are so much better suited than state courts for handling cases that might raise foreign policy concerns, Congress will surely pass a statute giving us that jurisdiction." *Id.* at 804; *accord Placer Dome*, 582 F.3d at 1089, 1091 (removal improper under *Grable* because foreign relations "implicated here only defensively").

In *National Audubon Society v. Department of Water*, 869 F.2d 1196 (9th Cir. 1988), the Ninth Circuit emphasized that Congress never authorized courts to develop a federal common law of air or water pollution, and that in the absence of "uniquely federal interests" based on such "'narrow areas as those concerned with the rights and obligations of the United States, interstate and international disputes implicating the conflicting rights of states or our relations with foreign nations, and admiralty cases,'" federal common law *cannot* be created to serve as the governing rule of decision. *Id.* at 1202 (quoting *Texas Indus., Inc. v. Radcliff Materials, Inc.*, 451 U.S. 630, 640–41 (1981)). To expand the scope of federal common law to apply to manufacturers and sellers of a product based solely upon their wrongful marketing and promotion of that product—which is

what *this* case is all about—would extend federal common law far beyond any uniquely federal interest and improperly encroach upon the states' historic police power interest in protecting the health and safety of their residents.

3. The Viability of Plaintiffs' State Law Claims Raises Ordinary Questions of Federal Preemption.

As the Court has held, whether Plaintiffs' state-law claims are preempted by some body of federal law is "for the state courts to decide upon remand." *San Mateo* ECF No. 223 at 3. Whether a federal statute permits disputes potentially within its ambit to be decided as a matter of state law raises an ordinary question of federal preemption that state courts are well-equipped to handle. *See San Mateo* Reply at 5–6. Indeed, the Supreme Court has long held, "[b]y unimpeachable authority, a suit brought upon a state [law] does not arise under an act of Congress or the Constitution of the United States because prohibited thereby." *Gully v. First Nat. Bank*, 299 U.S. 109, 116 (1936).

By mischaracterizing Plaintiffs' state law claims as necessarily federal in nature, Defendants conflate the substantive preemption issue that should be decided on remand with the threshold jurisdictional issue now before this Court. Defendants assert that *AEP* and *Kivalina* created a new "two-part test" that asks first "whether, given the nature of the acts alleged, federal law governs the claims and second whether Plaintiffs have state claims upon which relief may be granted." Opp. at 4. But Defendants misconstrue the nature of the courts' inquiry by disregarding the context in which those cases arose. The only reason *Kivalina* posed a "threshold" question whether plaintiffs stated viable claims under federal common law was because *plaintiffs had pleaded federal common law claims.* The issue before the court was not whether the federal court had federal question jurisdiction over a claim pleaded under federal common law (which it obviously did), but whether plaintiffs had stated a valid federal claim given the potential displacement of plaintiffs' claim by the Clean Air Act—"an issue-specific inquiry." *See Kivalina*, 696 F.3d at 855–56. Similarly, in *AEP*, the plaintiffs invoked federal common law as their basis for their claims. 564 U.S. at 415.

Plaintiffs here stand in stark contrast. As masters of their own complaints, they have pleaded exclusively state law claims.[3] Neither *AEP* nor *Kivalina* considered whether or when a state law claim arises under federal common law, and neither case purported to create a jurisdictional test for determining when state law claims are properly removed to federal court. The governing test for deciding *that* question is set forth in *Grable*; and as previously shown, Plaintiffs' claims were not properly removed under *Grable* because, among other reasons, no federal question is both a necessary and substantial element of their well-pleaded state law claims. *See Franchise Tax Bd.*, 463 U.S. at 13.[4]

The cases Defendants cite, Opp. at 7, do not support removal either. Each was decided before *Grable*, none held that statutory displacement of federal common law claims renders state law claims removable, and most did not consider any issue of removal jurisdiction at all. *See Milwaukee I*, 406 U.S. at 107 (earlier version of Water Pollution Control Act did not preempt federal common law claims; no issue of removal jurisdiction);[5] *Nat'l Farmers Union Ins. Co. v. Crow Tribe of Indians*, 471 U.S. 845, 853 (1985) (federal question jurisdiction present where federal law defined boundaries of tribe's power to assert claim against non-Indian); *New SD, Inc. v. Rockwell Int'l Corp.*, 79 F.3d 953, 955 (9th Cir. 1996) (contract dispute implicating national security issues raise substantial question of federal law warranting removal).[6] Indeed, the Ninth

[3] For that reason, Defendants' reliance on *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83 (1998), is misplaced. The issue in *Steel Co.* was whether a federal statutory requirement under the Emergency Planning and Community Right to Know Act (EPCRA) was jurisdictional, *id.* at 89, and no state law claims were pleaded.

[4] Defendants' only explanation for characterizing Plaintiffs' state law claims as federal is that "disputes about global climate change are inherently federal in nature." Opp. at 5. Defendants offer no meaningful rebuttal to Plaintiffs' showing that many issues concerning global warming are *not* inherently federal and that a broad range of issues concerning greenhouse gas emissions have been extensively, and appropriately, regulated as a matter of state law. *See San Mateo* Reply at 7.

[5] In *City of Milwaukee v. Illinois*, 451 U.S. 304, 313 (1981) ("*Milwaukee II*"), the Supreme Court held that the plaintiff's claims pled under federal common law were displaced by amendments to the Clean Water Act, but did not consider any jurisdictional question or state law claim.

[6] *New SD* has been heavily criticized in light of *Grable*. *See Babcock Servs., Inc. v. CH2M Hill Plateau Remediation Co.*, No. 13-CV-5093-TOR, 2013 WL 5724465, at *4 (E.D. Wash. Oct. 21, 2013) (premise of *New SD* "no longer sound" after *Grable* and *Empire Healthchoice Assur., Inc. v. McVeigh*, 547 U.S. 677, 700–01 (2006)).

Circuit has clarified since *Grable* that "[w]hen a claim can be supported by alternative and independent theories—one of which is a state law theory and one of which is a federal law theory—federal question jurisdiction does not attach because federal law is not a necessary element of the claim." *Nevada v. Bank of Am. Corp.*, 672 F.3d 661, 675 (9th Cir. 2012). Plaintiffs' independent state law theories do not involve federal law as essential elements, either on their face or otherwise.

AEP and *Kivalina* are instructive not for how they dealt with the plaintiffs' federal law claims, but how they addressed plaintiffs' supplemental state law claims. In *AEP*, the Court did not find those state law claims to be necessarily federal in character, but instead left the validity of plaintiffs' state law nuisance claim to be determined on remand. *AEP*, 564 U.S. at 429. Similarly, in *Kivalina*, the district court declined to exercise supplemental jurisdiction over plaintiffs' state law claims and dismissed them without prejudice to plaintiffs refiling those claims in state court; it did *not* hold that those state law claims were transformed into federal law claims. *Kivalina*, 696 F.3d at 854–55, 859. As these cases confirm, when a federal common law claim has been displaced by federal statute, "the availability *vel non* of a state lawsuit depends, *inter alia*, on the preemptive effect of the federal Act," which is an issue to be decided on remand, not as a matter of applying federal question jurisdiction. *AEP*, 564 U.S. at 429.[7]

B. Defendants' *Grable* Theories Concerning "National Cost-Benefit Analysis" and "Navigable Waters" Are Meritless.

Just as in the San Mateo Cases, "[t]he defendants have not pointed to a specific issue of federal law that must necessarily be resolved to adjudicate the state law claims" alleged in Plaintiffs' Complaints, and removal is not "warranted on the basis of *Grable* jurisdiction." They instead "mostly gesture to federal law and federal concerns in a generalized way." *San Mateo* ECF 223 at 3–4. Their *Grable* analysis therefore fails at the very first step, and the arguments raised in their Joint Opposition here do not alter the analysis or result.

[7] Defendants' remaining points rehash the ordinary preemption arguments discussed at length in the briefing in the San Mateo Cases. *San Mateo* Opp. at 6–7. Defendants raise no new argument, but continue to rely *Int'l Paper Co. v. Ouellette*, 479 U.S. 481 (1987), a preemption case.

1. Plaintiffs' Claims Arise Entirely Under California Law, and Defendants' "National Cost-Benefit Analysis" Argument Presents at Most a Federal Preemption Defense.

California law creates and defines the elements of Plaintiffs' claims. While Defendants continue to speculate that adjudication of those claims will interfere with federal regulators' ability to perform their jobs, Defendants do *not* contend that federal regulations are the source of Plaintiffs' right to relief. The Court correctly held in the San Mateo Cases that "even if deciding [the plaintiffs'] nuisance claims were to involve a weighing of costs and benefits, and even if the weighing were to implicate the defendants' dual obligations under federal and state law, that would not be enough to invoke *Grable* jurisdiction." *San Mateo* ECF 223 at 4. The same obtains here.

a. No Federal Regulatory Cost-Benefit Analysis Is an Essential Element of Any of Plaintiffs' Claims.

Defendants' arguments fail at the outset because they cannot identify any substantial question of federal law that is a necessary element of Plaintiffs' well-pleaded state law claims. Plaintiffs' entitlement to relief is entirely determined by well-defined California public nuisance and tort law. *See San Mateo* Mot. to Remand at 21–26; *San Mateo* Reply at 12–21. Defendants do not contend otherwise. To the contrary, Defendants' entire argument rests on substantive elements they assert are "required as a matter of *California law*" to be proven in nuisance actions generally. *See* Opp. at 9 (emphasis added).

Defendants acknowledge that California cases, California jury instructions, and sections of the Restatement (Second) of Torts as applied in California, define the elements of the state law claims that they contend Plaintiffs are required to prove. *See generally id.* at 8–11. Although Defendants continue to assert that Plaintiffs' claims implicate "substantial federal interests," Santa Cruz Opp. at 10, n.8, they still have not identified any federal statute, regulation, rule, or any other federal issue that is an essential element of Plaintiffs' claims. That should be the end of the matter, because where a plaintiff's claims "are based entirely on California causes of action . . . , each of which does not, on its face, turn on a federal issue," the mere invocation of "significant federal

issues" does not satisfy *Grable*'s first element and does not create federal question jurisdiction. *California Shock Trauma*, 636 F.3d at 542–43.[8]

b. *Defendants' Arguments Present, at Most, a Conflict Preemption Defense for Consideration on Remand.*

Defendants mistakenly assert that the California courts' common law nuisance analysis would be "indistinguishable from the balancing conducted by the Secretary of Energy" under 42 U.S.C. § 13384. Opp. at 11. But even if that were true, any overlap (or conflict) between state-law and federal-regulatory analysis raises at most a possible conflict preemption defense. The Supreme Court in *Grable* and the Ninth Circuit in its post-*Grable* cases could not have been clearer that "preemption that stems from a conflict between federal and state law is a defense to a state law cause of action and, therefore, does not confer federal jurisdiction over the case." *ARCO Envtl. Remediation, L.L.C. v. Dep't of Health & Envtl. Quality of Montana*, 213 F.3d 1108, 1114 (9th Cir. 2000); *see also San Mateo* Mot. to Remand at 12–13, 30 & nn. 6, 7 (collecting cases).

There is a material difference between the regulatory balancing analysis required under certain federal statutes and the determination of "unreasonableness" under California nuisance law and the Restatement (Second) of Torts. The "primary" (but non-exclusive) test for unreasonableness asks "whether the gravity of the harm outweighs the social utility of the defendant's conduct, taking a number of factors into account" based on the specific tortious conduct committed and the specific rights invaded. *See Wilson v. S. Cal. Edison Co.*, 234 Cal. App.

[8] Many cases cited in the San Mateo Cases' briefing hold that there is no "arising under" jurisdiction where state law creates the right to relief, even if the state court may encounter weighty federal issues in the course of the litigation. *See, e.g., Williston Basin Interstate Pipeline Co. v. An Exclusive Gas Storage Leasehold*, 524 F.3d 1090, 1102 (9th Cir. 2008) (no "arising under" jurisdiction for state tort claims brought by natural gas pipeline operator alleging unlawful drainage of natural gas from underground formation, "because no provision of the [federal Natural Gas Act] constitutes an essential element of those claims"); *Bennett v. Sw. Airlines Co.*, 484 F.3d 907, 912 (7th Cir. 2007) (reversing denial of remand in personal injury case stemming from airline crash; despite extensive federal regulation of air travel, the fact "that some standards of care used in tort litigation come from federal law does not make the tort claim one 'arising under' federal law"); *Oregon ex rel. Kroger v. Johnson & Johnson*, 832 F. Supp. 2d 1250 (D. Or. 2011); *In re Roundup Prod. Liab. Litig.*, No. 16-MD-02741-VC, 2017 WL 3129098 (N.D. Cal. July 5, 2017); *see also San Mateo* Mot. to Remand at 21–23 & n.11 (collecting cases).

4th 123, 161 (2015) (citing Rest. 2d Torts, §§ 826–831).[9] Regulatory balancing is prospective in nature and has little concern for injuries already sustained for conduct already completed. *See, e.g.*, *Freeman v. Grain Processing Corp.*, 848 N.W.2d 58, 69 (Iowa 2014) (explaining differences). Thus, there is no reason a California court applying California common law would have to "determine that every federal agency that has concluded the benefits of fossil fuels outweigh the harms was wrong." *See* Opp. at 11. Even if that were true, it would represent at most a conflict preemption defense, not a basis for removal jurisdiction. *See ARCO*, 213 F.3d at 1114.

2. Federal Oversight of Navigable Waters Does Not Confer *Grable* Jurisdiction Here.

Defendants' attempts to re-cast Plaintiffs' Complaints as an attack on a laundry list of federal statutes, regulations, and activities related to navigable waters also fails to confer *Grable* jurisdiction. Defendants suggest, with no supporting detail and only inaccurate, misleading citations to the Complaints, that there are three ways Plaintiffs' claims might involve the navigable waters of the United States. None of these speculative assertions satisfies the *Grable* test.

First, the Complaints do not make any "collateral attack on a federal regulatory scheme." Marathon Not. of Rem. ¶¶ 11–19. None of Plaintiffs' claims challenge, or seek to modify or evade, any federal rule of navigation or navigable-water protection; Plaintiffs seek only damages, abatement, and disgorgement for Defendants' tortious conduct. *See, e.g.*, Richmond Compl., Prayer.[10] Nor would a state court be required to administer or modify any federal flood control

[9] The *Wilson* court ordered that on remand the jury be instructed to consider site- and party-specific factors, including "whether the harm involved a loss from the destruction or impairment of physical things she was using, or personal discomfort or annoyance," "[t]he value society places on the type of use or enjoyment invaded," and "[t]he suitability of the conduct that caused the interference to the character of the locality." 234 Cal. App. 4th at 163–64. Notably, the court reversed and remanded in part because the trial court failed to instruct the jury on "alternate tests to determine when an intentional invasion is unreasonable" under Restatement sections 829 through 831, which do not involve balancing the relative social values of the defendants' conduct and the plaintiff's injury. *Id.* at 162.

[10] As already discussed in the San Mateo Cases briefing, the case law previously cited by Defendants is inapposite. The plaintiffs in *Board of Commissioners v. Tennessee Gas Pipeline Co., L.L.C.*, 850 F.3d 714, 722–24 (5th Cir. 2017), alleged a breach of duty that did not exist under state law and could only arise from federal law. The plaintiff in *Pet Quarters, Inc. v. Depository Trust*

regulation, or revisit any previous U.S. Army Corps of Engineers ("USACE") permitting decisions in formulating an appropriate remedy when Plaintiffs prevail, Marathon Not. of Rem. ¶¶ 16, *id.* ¶ 17, because California law creates Plaintiffs' right to relief. The Complaints do not require any analysis of whether Defendants' conduct (either as alleged in the Complaint or otherwise) violated the Clean Water Act or Rivers and Harbors Act either, because proof of federal statutory violations is not an element of any of Plaintiffs' claims (which rest on allegations that Defendants engaged in improper promotion and marketing of their products). *See* Richmond Compl. ¶¶ 209–95; *People v. Conagra Grocery Prods. Co.*, 17 Cal. App. 5th 51, 102–04 (2017), *reh'g denied* (Dec. 6, 2017), *rev. denied* (Feb. 14, 2018) (affirming California nuisance liability for out-of-state manufacturers' wrongful promotion of lead paint causing in-state injuries).

Second, Defendants' assertion that "every link in [the causal chain supporting liability] is inextricably intertwined with federal issues," Marathon Not. of Rem. ¶ 21, would not support *Grable* jurisdiction even if it were true (and Plaintiffs' Complaints do not use the term "navigable waters" in describing the chain of causation, contrary to Defendants' misquotation). *See* ¶ 21. That argument still identifies no question of federal law that is an essential element of Plaintiffs' claims.

Third, Defendants' argument that any eventual remedial order "will require interpretation of the extensive web of federal regulations" related to navigable waters, *id.* ¶ 22, fails *Grable*'s "necessarily raised" and "substantiality" requirements. That argument also lacks any foundation in the Complaints. Plaintiffs seek abatement of the alleged nuisance conditions within their own borders. Richmond Compl. Prayer ¶ 2. The exact form that abatement might take will be

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& Clearing Corp., 559 F.3d 772, 779 (8th Cir. 2009), alleged on the face of its complaint that a federal program's "very existence" led to its injuries. In *McKay v. City & Cnty. of San Francisco*, No. 16-CV-03561 NC, 2016 WL 7425927, at *1–2; *4–5 (N.D. Cal. Dec. 23, 2016), the plaintiff alleged a nuisance resulting from a commercial flightpath, necessarily challenging the Federal Aviation Administration's final decision approving the path. Here, Plaintiffs challenge the private corporate defendants' marketing and promotion of their products and do not explicitly or implicitly challenge any federal regulatory order. Finally, the complaint in *Bader Farms, Inc. v. Monsanto Co.*, No. 1:16-CV-299 SNLJ, 2017 WL 633815 (E.D. Mo. Feb. 16, 2017), alleged injury from the violation of a duty to make disclosures to a federal agency, which necessarily required the court to construe a federal disclosure statute. Plaintiffs' claims here rest on Defendants' duties to Plaintiffs and the public, not to any federal regulators.

determined at trial, and there is no basis for Defendant's assertion that it would necessarily require building structures in waters subject to federal permitting requirements. *See, e.g., Conagra*, 17 Cal. App. 5th at 134 (affirming establishment of an abatement fund rather than a specific abatement project). Determining whether a hypothetical abatement project "would be approved by the Corps," Marathon Not. of Rem. ¶ 22, would involve a fact-bound and situation-specific inquiry that, even if necessary, would not satisfy *Grable*'s separate substantiality requirement. *See, e.g., McVeigh*, 547 U.S. at 700–01 (a "nearly pure issue of [federal] law" that "would govern number [other] cases" is more likely to be substantial than a "fact-bound and situation-specific" inquiry). Regardless, Defendants' argument that Plaintiffs will be required to demonstrate their hypothetical abatement project is "consistent with federal action" raises yet another prospective conflict preemption defense for consideration on remand. *See* Marathon Not. of Rem. ¶ 22.

C. There Is No Admiralty Jurisdiction.

Through Marathon's Additional Notice of Removal, Defendants now seek to invoke an eighth basis for federal jurisdiction on top of their earlier seven: admiralty jurisdiction. Although the Constitution bestows federal courts original—but not exclusive—jurisdiction over admiralty and maritime claims, U.S. Const. art. III, § 2, cl. 1, a tort claim comes within admiralty jurisdiction only when it satisfies both the "location" and "connection to maritime activity" tests. *Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.*, 513 U.S. 527, 534 (1995); *In re Mission Bay Jet Sports, LLC*, 570 F.3d 1124, 1126 (9th Cir. 2009). Defendants have not established that Plaintiffs' claims satisfy either test.

1. No Tort Has Caused Injury on Navigable Water, and No Vessel on Navigable Water Has Caused an Injury on Land.

The location test requires a showing that the alleged tort occurred on navigable water, or if the injury were suffered on land, was caused by a vessel on navigable water. *Grubart*, 513 U.S. 527, 534 (1995) (citing 46 U.S.C. § 30101(a)); *Ali v. Rogers*, 780 F.3d 1228, 1235 (9th Cir. 2015). The location of a tort for purposes of admiralty jurisdiction is "the place where the injury occurs." *Tobar v. United States*, 639 F.3d 1191, 1197 (9th Cir. 2011) (quotations omitted). Injury

on navigable waters extends to all places within the "ebb and flow of the tides." *Complaint of Paradise Holdings, Inc.*, 795 F.2d 756, 759 (9th Cir. 1986).

Relying on a single case, Defendants wrongly assert that the alleged injuries to Plaintiff City of Richmond have occurred "on the navigable waters of San Francisco Bay[.]" Opp. at 20:2–5 & Marathon Not. of Rem. ¶ 26 (quoting *Red Shield Ins. Co. v. Barnhill Marina & Boatyard, Inc.*, No. C 08-02900 WHA, 2009 WL 1458022, at *1 (N.D. Cal. May 21, 2009)). In *Red Shield*, the alleged injury occurred to a floating home that had run aground in the waters of a marina—an area clearly within the ebb and flow of the tides. *See Red Shield*, 2009 WL 1458022, at *1. Here, in contrast, injury has occurred and will occur on lands threatened by unprecedented flooding and sea level rise, as well as by drought, extreme precipitation, and heat waves—in areas far beyond the tidal zone. *See, e.g.*, Richmond Compl. ¶ 200 (sea level rise endangers wastewater treatment facilities, residential neighborhoods, and other structures on land). Defendants cite no case—nor are Plaintiffs aware of any—in which flood waters alone conferred admiralty jurisdiction for an injury on dry land. *See Grubart*, 513 U.S. at 534 (tunnel flooded by navigable waters was treated as "land"; tort had maritime location only because flooding was caused by a vessel on navigable waters); *see also In re Hurricane Katrina Canal Breaches Litig.*, 324 F. App'x 370 (5th Cir. 2009) (no party argued that flooding converted New Orleans itself into navigable waters"; instead, the court looked to whether dredging vessels caused the flooding of a shipping canal).

The *BP* Court's characterization of coastal land flooding as "the very instrumentality of plaintiffs' alleged injuries," *BP* Order at 8, finds no support in the law of admiralty, which makes clear that a tort occurring on land only falls within admiralty if the "instrumentality" of that injury was a *vessel*. *See* 46 U.S.C. § 30101(a) (extension of admiralty jurisdiction for injury "caused by a vessel on navigable waters . . . consummated on land"). Despite Defendants' arguments, the production of some unspecified amount of fossil fuels by "mobile offshore drilling units" ("MODUs") does not transform Plaintiffs' state law tort claims into claims under federal admiralty law. *See* Opp. at 20:5–9 & Marathon Not. of Rem. ¶ 26. Whether or not MODUs, or even traditional fixed drilling platforms "underway to a drilling operation," Marathon Not. of Rem. ¶ 27, are "vessels" within the meaning of § 30101(a), there is no allegation in the Complaints, nor

have Defendants contended, that those "vessels" *caused* the injuries on land. As the Complaints allege, the proximate cause of Plaintiffs' injuries arises from the nature of the products themselves and from Defendants' promotion of those products with knowledge of their dangers, not from any Defendants' operation of an MODU.

2. The Claims Have No Substantial Relationship to Traditional Maritime Activity.

Defendants also fail to meet the maritime connection test, which requires the activity giving rise to the incident to have a "substantial relationship to traditional maritime activity." *Grubart*, 513 U.S. at 534. "The key inquiry is whether the allegedly tortious activity is so closely related to activity traditionally subject to admiralty law that the reasons for applying special admiralty rules would apply in the suit at hand." *Id.* at 539–40. As the Supreme Court has recognized, the "law of admiralty has evolved over many centuries, designed and molded to handle problems of vessels," including, for example, navigational rules, seaworthiness of ships, maritime liens, and cargo damage. *Exec. Jet Aviation, Inc. v. City of Cleveland, Ohio*, 409 U.S. 249, 269–70 (1972). For the tort to have a "substantial relationship" with the traditional maritime activity, moreover, this activity must be "a proximate cause of the incident." *Grubart*, 513 U.S. at 541.

Oil and gas production—even from MODUs—is not itself a "traditional maritime activity." In *Herb's Welding, Inc. v. Gray*, 470 U.S. 414, 425 (1985), the Supreme Court concluded that the "exploration and development of the Continental Shelf are not themselves maritime commerce." Although *Herb's Welding* involved a fixed drilling platform, courts have extended this proposition to torts arising on "vessels" engaged in offshore oil and gas production, focusing on whether the specific injurious activity was related to a traditional subject of admiralty law, e.g. navigation.[11]

[11] *See, e.g.*, *Texaco Expl. & Prod., Inc. v. AmClyde Engineered Prod. Co.*, 448 F.3d 760, 771 (5th Cir. 2006) (claims involving an accident on a vessel constructing a drilling platform did not arise from "traditionally maritime activities"); *Barker v. Hercules Offshore, Inc.*, 713 F.3d 208, 218 (5th Cir. 2013) (in a personal injury case on a MODU, "the act which gave rise to the incident in question—in this case, replacing a casing over a well—was in furtherance of the non-maritime activity of offshore oil exploration and drilling." (Clement, J., concurring)).

Even if some of Defendants' activities qualified as "traditional maritime activities," they still are not alleged to be a proximate cause of Plaintiffs' injuries. Marathon refers to just five MODUs, which Defendants have operated for only a few years. *See* Marathon Not. of Rem. ¶ 26. More importantly, Defendants' marketing and promotion of fossil fuels—the critical conduct at issue in Plaintiffs' cases—has nothing to do with navigable waters. *See, e.g.*, *Conagra*, 17 Cal. App. 5th at 84 (public nuisance liability based on deceptive product promotion). Those land-based activities do "not require the special expertise of a court in admiralty as to navigation or water-based commerce." *Myhran v. Johns-Manville Corp.*, 741 F.2d 1119, 1122 (9th Cir. 1984).

D. Admiralty Jurisdiction Is Not a Basis for Removal.

Even if Plaintiffs' claims arose in admiralty, which they do not, such claims "are not removable under 28 U.S.C. § 1441 absent some other jurisdictional basis, such as diversity or federal question jurisdiction." *Morris v. Princess Cruises, Inc.*, 236 F.3d 1061, 1069 (9th Cir. 2001) (citing *Romero v. Int'l Terminal Operating Co.*, 358 U.S. 354, 371 (1959)). Despite Defendants' arguments to the contrary, Marathon Not. of Rem. ¶ 32, Opp. at 20:22–24, the 2011 amendments to § 1441 do not disrupt this well-established rule, which has persisted "throughout the history of federal admiralty jurisdiction—from the Judiciary Act of 1789 through *Romero* and up to the present." *Coronel v. AK Victory*, 1 F. Supp. 3d 1175, 1187 (W.D. Wash. 2014).

The "saving to suitors" clause in 28 U.S.C. § 1333 grants district courts jurisdiction over admiralty claims, "saving to suitors in all cases all other remedies to which they are otherwise entitled." The U.S. Supreme Court has interpreted this clause as prohibiting removal of cases for which state courts have concurrent (as opposed to exclusive) admiralty jurisdiction. *See, e.g.*, *Romero*, 358 U.S. at 372 n.32, 396–97. "[T]he clause reserves to plaintiffs all remedies traditionally available at common law via in personam proceedings." *Lewis v. Lewis & Clark Marine, Inc.*, 531 U.S. 438, 455 (2001). Federal courts' admiralty jurisdiction "is 'exclusive' only as to those maritime proceedings in rem, that is, where a vessel or thing is itself treated as the offender and made the defendant by name or description." *Madruga v. Superior Court of State of Cal. in & for San Diego Cty.*, 346 U.S. 556, 561 (1954). There is no plausible basis to characterize Plaintiffs' claims as in rem proceedings, and federal jurisdiction could not be exclusive here.

For in personam cases, like those now before this Court, the "saving to suitors" clause "leave[s] state courts competent to adjudicate maritime causes of actions in proceedings in personam, that is, where the defendant is a person, not a ship or some other instrument of navigation." *Madruga*, 346 U.S. at 560–61 (quotations omitted). "Therefore, a plaintiff with in personam maritime claims has three choices: He may file in federal court under the federal court's admiralty jurisdiction, in federal court under diversity jurisdiction if the parties are diverse and the amount in controversy is satisfied, or in state court." *Ghotra by Ghotra v. Bandila Shipping, Inc.*, 113 F.3d 1050, 1054 (9th Cir. 1997). Plaintiffs exercised their congressionally protected right to file state law claims in state court, and § 1333 "saves" their option to select this forum, prohibiting Defendants from asserting admiralty jurisdiction as the basis for removal (which is presumably why Defendants previously did not assert admiralty jurisdiction as a ground for removal).

Congress clarified in its 2011 revisions to 28 U.S.C. § 1441(b) that complete diversity is required only where diversity jurisdiction is the basis of removal. Nothing in those amendments suggests any intent to disturb the plaintiff's choice of forum under the "saving to suitors" clause. *See* Pub. L. No. 112-63, 125 Stat. 758 (Dec. 7, 2011) ("Federal Courts Jurisdiction and Venue Clarification Act"). While a handful of district courts in the Fifth Circuit have held that this change now authorizes removal of in personam admiralty claims, *see Ryan v. Hercules Offshore, Inc.*, 945 F. Supp. 2d 772, 778 (E.D. Tex. 2013),[12] the vast majority of courts to consider the question—including every court to have considered it in the Ninth Circuit[13]—have concluded this change

[12] *Ryan*'s validity is in doubt—the court that authored it has since determined based on developing of case law and commentary that maritime cases cannot be removed absent an independent basis for jurisdiction. *See Sanders v. Cambrian Consultants*, 132 F. Supp. 3d 853, 858 (S.D. Tex. 2015).

[13] *See Coronel v. AK Victory*, 1 F. Supp. 3d 1175, 1187 (W.D. Wash. 2014) (reviewing the history of admiralty jurisdiction and the 2011 amendments to § 1441, and concluding that "28 U.S.C. § 1333 alone does not provide federal subject matter jurisdiction over maritime claims on the law side of the court"); *Barglowski v. Nealco Int'l LLC*, No. CV 16-00209 LEK-KSC, 2016 WL 5107043, at *8 (D. Haw. Sept. 20, 2016) ("The Court agrees with the other district courts in the Ninth Circuit, and concludes that, even considering the 2011 amendments to § 1441, common law maritime claims are not removable . . . absent separate grounds for jurisdiction."); *Moreno v. Ross Island Sand & Gravel Co.*, No. 2:13-CV-00691-KJM, 2015 WL 5604443, at *19 (E.D. Cal. Sept. 23, 2015) ("District courts in this circuit agree with" majority view maritime cases not removable); *Bartman v. Burrece*, No. 3:14-CV-0080-RRB, 2014 WL 4096226, at *3 (D. Alaska Aug. 18, 2014)

does not affect the longstanding rule that savings clause cases cannot be removed absent a non-admiralty ground for federal jurisdiction. *See, e.g.*, *Boudreaux v. Glob. Offshore Res., LLC*, No. CIV.A. 14-2507, 2015 WL 419002, at *3 (W.D. La. Jan. 30, 2015) (collecting cases and siding with majority view that savings clause cases are not removable). This is because, as amended, § 1441 allows removal of civil actions in the original jurisdiction of the federal courts "[e]xcept as otherwise expressly provided by Act of Congress." Under *Romero*, the savings clause of § 1333 is just such an exception, because "it was unquestioned aim of the saving clause of 1789 to preserve" concurrent state court jurisdiction over admiralty matters and the "historic option of a maritime suitor pursuing a common-law remedy to select his forum." 358 U.S. 371–72.

Defendants mischaracterize the few cases they cite in support of their position. *Lu Junhong v. Boeing Co.*, 792 F.3d 805, 817 (7th Cir. 2015), flagged the issue of maritime removability after the § 1441 amendments but declined to reach it based on its determination that the plaintiffs waived any "saving to suitors" argument. *See also Brown v. Porter*, 149 F. Supp. 3d 963 (N.D. Ill. 2016) (rejecting *Lu Junhong*'s position as dicta and holding that the "saving to suitors" clause prohibited removal). *Tennessee Gas Pipeline v. Houston Cas. Ins. Co.*, 87 F.3d 150 (5th Cir. 1996), was not a savings clause case because, as the court recognized, the Outer Continental Shelf Lands Act provided a separate ground for removal, *id.* at 155–56, and the Fifth Circuit has since reinforced the traditional rule that maritime claims filed in state court "are exempt from removal by the 'saving-to-suitors' clause . . . and therefore may only be removed when original jurisdiction is based on another jurisdictional grant, such as diversity of citizenship." *Barker*, 713 F.3d at 219. In sum, Defendants offer admiralty jurisdiction as a lifeboat for their sinking removal ship, but it cannot save them.

III. CONCLUSION

For the reasons set forth above and in Plaintiffs' previous briefs, this Court lacks subject-matter jurisdiction and should remand these actions to the California Superior Courts.

(despite the § 1441 amendments, "removal based on admiralty jurisdiction is still limited by the statutory grant of original jurisdiction in 28 U.S.C. § 1333").

Respectfully submitted,

Dated: March 16, 2018

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