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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 IN RESPONSE TO DEFENDANT MARATHON PETROLEUM CORP.'S ADDITIONAL NOTICE OF REMOVAL**
THE CITY OF SANTA CRUZ, a municipal corporation, individually and on behalf of THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,	Case No. 3:18-cv-00458-VC

vs. CHEVRON CORP., et al. Defendants.	
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

The Opposition filed by Defendant Marathon Petroleum Corporation ("Marathon Opp.")[1] recycles arguments that have already been briefed exhaustively by all parties in these and the related San Mateo Cases. Plaintiffs rest on the briefing already submitted, as summarized below.

Marathon's Opposition argues that generalized federal obligations and standards purportedly related to navigable waters create *Grable* jurisdiction, but this Court has rejected identical arguments. *Compare* Marathon Opp. at 2–3 (asserting that Plaintiffs "seek to supplant the federal regulatory scheme for the protection and preservation of navigable waters"), *with* Order Granting Motions to Remand at 4, *County of San Mateo v. Chevron Corp.*, et al., Case No. 3:17-cv-04929-VC, ECF No. 223 (Mar. 16, 2018) ("Nor does the mere existence of a federal regulatory regime mean that these cases fall under *Grable*."). Marathon newly asserts that an essential element of Plaintiffs' nuisance claims is that Defendants' conduct was "unlawful under the federal regime for the protection of navigable waters." Marathon Opp. at 3:24–26. But Marathon's selective quotation of California Civil Code § 3479 incorrectly restricts the universe of conduct that constitutes a nuisance under California law. In its entirety, § 3479 provides:

> Anything which is injurious to health, including, but not limited to, the illegal sale of controlled substances, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway, is a nuisance.

Thus, by the statute's own terms, a nuisance can encompass "anything which is injurious to health, including . . . an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property." *Id.* Unlawfulness, let alone a violation of federal law, is simply not a necessary element of California nuisance claims. Even if it were, Plaintiffs' right to relief is still entirely defined by California law, and demonstrating the violation of a federal standard to satisfy an element of a state law claim still does not mean the cause of action "arises under" federal law within the meaning of *Grable*. *See* San Mateo Reply, ECF No. 203, at 16–17 (discussing *Oregon*

[1] *County of Santa Cruz v. Chevron Corp.*, et al., Case No. 3:18-cv-00450-VC, ECF No. 119 (Mar. 20, 2018); *City of Santa Cruz v. Chevron Corp.*, et al., Case No. 3:18-cv-00458-VC, ECF No. 117 (Mar. 20, 2018); *City of Richmond v. Chevron Corp.*, et al., Case No. 3:18-cv-00732-VC, ECF No. 105 (Mar. 20, 2018).

ex rel. Kroger v. Johnson & Johnson, 832 F. Supp. 2d 1250 (D. Or. 2011), and *In re Roundup Prod. Liab. Litig.*, No. 16-MD-02741-VC, 2017 WL 3129098 (N.D. Cal. July 5, 2017)).

Further, Marathon's reliance on California Civil Code § 3482 is misplaced for the reasons already discussed in prior briefing. *See* San Mateo Reply, ECF No. 203, 18:15–19:2 & n.9. There is no reason why compliance with federal statutes and regulations governing the navigable waters of the United States should lead to any different result.

Nor does *Board of Commissioners v. Tennessee Gas Pipeline Co.*, 850 F.3d 714 (5th Cir. 2017), compel a different result here than in the related cases. *See* San Mateo Reply, ECF No. 203, at 15:21–16:6, 21:4–9; Santa Cruz Reply, ECF No. 109, at 13 n.10.

Finally, Marathon has not shown that these cases fall within the court's admiralty jurisdiction or that admiralty even provides a sufficient basis for removal. *See* Santa Cruz Reply, ECF No. 109, at 15–20.

There is no relevant difference between the San Mateo cases and these cases with respect to the Court's removal jurisdiction, and the same reasoning and authority the Court relied upon to support remand in those cases applies with equal force here. 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.

Respectfully submitted,

Dated: March 23, 2018

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CERTIFICATE OF SERVICE

I hereby certify that on March 23, 2018, the foregoing document was filed with the Clerk of the Court via CM/ECF. Notice of this filing will be sent by email to all registered parties by operation of the Court's electronic filing systems.

March 23, 2018

/s/ Victor M. Sher
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