

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CITY OF OAKLAND, a
Municipal Corporation, and The
People of the State of California,
acting by and through the
Oakland City Attorney Barbara J.
Parker; and CITY AND
COUNTY OF SAN
FRANCISCO, a Municipal
Corporation, and The People of
California, acting by and through
the San Francisco City Attorney
Dennis J. Herrera,

Plaintiffs-Appellants,

v.

B.P. P.L.C., a public limited
company of England and Wales;
CHEVRON CORPORATION, a
Delaware corporation;
CONOCOPHILLIPS, a Delaware
corporation; EXXON MOBIL
CORPORATION, a New Jersey
corporation; ROYAL DUTCH
SHELL PLC, a public limited
company of England and Wales;
and DOES, 1 through 10,

Defendants-Appellees.

No. 18-16663

D.C. No. 3:17-cv-06011-WHA
D.C. No. 3:17-cv-06012-WHA
U.S. District Court for Northern
California, San Francisco

**PLAINTIFFS-APPELLANTS
CITY OF OAKLAND AND CITY
AND COUNTY OF SAN
FRANCISCO'S JOINT MOTION
FOR EXTENSION OF TIME**

JOINT MOTION FOR EXTENSION OF TIME

Pursuant to Federal Rule of Appellate Procedure 26(b) and Ninth Circuit Rule 31-2, Plaintiffs-Appellants City of Oakland and City and County of San Francisco respectfully file this joint motion for a 77-day extension of time for their consolidated Opening Brief in these appeals. Neither the City of Oakland nor the City and County of San Francisco have previously sought any extensions of time for these briefs. Defendants-Appellees have not consented to the requested extension.

As described in the attached Declaration of Michael Rubin, this motion is based on a showing of diligence and substantial need.

Dated: November 21, 2018

Respectfully submitted,

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/s/ Michael Rubin

Michael Rubin

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CERTIFICATE OF SERVICE

I hereby certify that on November 21, 2018, I electronically filed the foregoing Joint Motion for Extension of Time and the accompanying Declaration of Michael Rubin with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: November 21, 2018

Respectfully submitted,

/s/ Michael Rubin
Michael Rubin

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U.S. District Court for Northern
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**DECLARATION OF
MICHAEL RUBIN IN
SUPPORT OF JOINT
MOTION FOR EXTENSION
OF TIME**

I, Michael Rubin, hereby declare as follows:

1. I am a member in good standing of the bar of the State of California, a partner at the law firm of Altshuler Berzon LLP, and one of the counsel of record for Plaintiffs-Appellants City of Oakland and City and County of San Francisco in the above-captioned appeal.

2. The above-captioned appeal arises out of a dismissal of two cases brought originally in California Superior Court by the City of Oakland and the City and County of San Francisco, and by The People of the State of California acting by and through the City Attorneys of Oakland and San Francisco (collectively, “Cities”), alleging that Defendants-Appellees B.P. P.L.C. et al. substantially contributed to the public nuisance of global warming and should be held responsible for the costs of abating the harms associated with the resulting sea level rise. The District Court (Alsup, J.) related the two cases and subsequently denied the Cities’ motions to remand the cases to state court. The District Court further granted Defendants-Appellees’ motion to dismiss the amended complaints and granted the motions of four Defendants-Appellees to dismiss the complaints for lack of personal jurisdiction. The District Court entered judgment on July 27, 2018. The City of Oakland and the City and County of San Francisco separately appealed the District Court’s judgment.

3. The issues raised in the court below were substantial, and the briefing

on the issues in this appeal was voluminous. Defendants-Appellees' notice of removal is 32 pages and alleges seven purported bases for federal jurisdiction. Briefing on the removal question alone totaled 135 pages between the parties, excluding exhibits. In addition, the motion to dismiss briefing totaled 208 pages, excluding exhibits. The personal jurisdiction briefing totaled 203 pages, excluding exhibits.

4. On September 4, 2018, this Court docketed the appeals and set December 10, 2018 as the due date for Plaintiffs-Appellants to file their Opening Briefs. The Cities have not previously sought any extension of time.

5. The Cities intend to file a single, consolidated Opening Brief in this appeal. The Cities jointly request that the deadline for the Opening Brief be extended by 77 days. If the Court grants this extension, Plaintiffs-Appellants' Opening Brief would be due on February 25, 2019. (A 75-day extension would result in the Opening Brief being due on Saturday, February 23, 2019.)

6. Earlier this week, my law firm and the San Francisco law firm of Sher Edling LLP were retained by the Cities to co-counsel with them on this appeal. Under the supervision of the Oakland City Attorney and the San Francisco City Attorney, my partner Barbara J. Chisholm and I will have principal responsibility for researching and drafting the Cities' Opening Brief. The requested extension of time is necessary because, as new counsel, we will need time to review the record,

conduct the appropriate research, and prepare the Opening Brief in coordination with the Oakland City Attorney and the San Francisco City Attorney and with attorneys in their offices.

7. My office has been diligent in beginning work on this appeal, but we are not in a position to complete work on the Opening Brief by December 10, 2018. Reviewing the legal and factual materials and arguments will take substantial time. The volume of briefing and the complexity of the issues as well as the numerous other professional obligations that Ms. Chisholm and I have between now and the end of the year support the requested 77-day extension of time. My additional responsibilities include:

- Plaintiffs' Motion for Reconsideration re Class Certification (with leave of court) in *Blair v. Rent-A-Center*, N.D. Cal., November 26, 2018.
- Oral Argument in Opposition to Motion for Summary Adjudication in *Sanchez v. McDonald's*, Los Angeles Superior Court No. BC499888, December 3, 2018.
- Public Comments on NLRB's Notice of Proposed Rulemaking Concerning "The Standard for Determining Joint Employer Status," due December 13, 2018.

- Oral Argument on Appeal in *Chang v. Winklevoss*, Massachusetts Appeals Court No. 2018-P-0329, December 13, 2018.
- Plaintiffs' Answering Brief in *Ibarra v. Wells Fargo Bank*, Ninth Circuit No. 18-55626, due December 14, 2018.
- Appellants' Reply Brief in *City of San Francisco, et al. v. Exxon Mobil Corp.*, Court of Appeals, Second Appellate District of Texas at Fort Worth, No. 02-18-00106-CV, due December 17, 2018.
- Plaintiffs' Reply Brief in *Oman v. Delta Airlines*, California Supreme Court No. S248726, due January 4, 2019.

8. Ms. Chisholm's additional responsibilities between now and the end of the year include:

- Pre-trial rebuttal expert reports in *NRDC v. Zinke*, E.D. Cal. No. 1:05-cv-01207-LJO-EPG, due December 5, 2018.
- Six additional expert depositions in *NRDC v. Zinke*, E.D. Cal. No. 1:05-cv-01207-LJO-EPG, to be held between December 5, 2018 and January 18, 2019.
- Public Comments on NLRB's Notice of Proposed Rulemaking Concerning "The Standard for Determining Joint Employer Status," due December 13, 2018.

- Appellants' Reply Brief in *City of San Francisco, et al. v. Exxon Mobil Corp.*, Court of Appeals, Second Appellate District of Texas at Fort Worth, No. 02-18-00106-CV, due December 17, 2018.
- Pre-trial filing re: legal and factual issues for trial in *NRDC v. Zinke*, E.D. Cal. No. Cal. No. 1:05-cv-01207-LJO-EPG, due December 21, 2018.
- Plaintiffs' Reply Brief in *Oman v. Delta Airlines*, California Supreme Court No. S248726, due January 4, 2019.
- Arbitration hearing in two matters involving UNITE HERE Local 30 and Westin Hotels, on a date yet to be scheduled, but prior to January 10, 2019.

9. On November 15, 2018, San Francisco deputy city attorney Matthew Goldberg emailed counsel for Defendants-Appellees to ask whether Defendants-Appellees object to this request for an extension. They responded that Defendants-Appellees declined to consent to the requested extension of the deadline for the Cities' Opening Brief to February 25, 2019.

I declare that the foregoing is true and correct. Executed this 21st day of November 2018 at Palm Beach, Florida.

/s/Michael Rubin

Michael Rubin