

1 VICTOR M. SHER (SBN 96197)  
 vic@sheredling.com  
 2 MATTHEW K. EDLING (SBN 250940)  
 matt@sheredling.com  
 3 TIMOTHY R. SLOANE (SBN 292864)  
 tim@sheredling.com  
 4 KATIE H. JONES (SBN 300913)  
 katie@sheredling.com  
 5 MARTIN D. QUINONES (SBN 293318)  
 marty@sheredling.com  
 6 MEREDITH S. WILENSKY (SBN 309268)  
 meredith@sheredling.com  
 7 **SHER EDLING LLP**  
 100 Montgomery Street, Ste. 1410  
 8 San Francisco, CA 94104  
 Tel: (628) 231-2500  
 9 Fax: (628) 231-2929

10 *Attorneys for the Pacific Coast Federation of Fishermen's Associations, Inc.*

11 **UNITED STATES DISTRICT COURT**  
 12 **NORTHERN DISTRICT OF CALIFORNIA**  
**SAN FRANCISCO DIVISION**

13 CITY OF OAKLAND, a Municipal  
 Corporation, and THE PEOPLE OF THE  
 14 STATE OF CALIFORNIA, acting by and  
 through Oakland City Attorney BARBARA J.  
 15 PARKER,

16 Plaintiffs,

17 v.

18 BP P.L.C., a public limited company of  
 England and Wales, CHEVRON  
 19 CORPORATION, a Delaware corporation,  
 20 CONOCOPHILLIPS COMPANY, a Delaware  
 corporation, EXXON MOBIL  
 21 CORPORATION, a New Jersey corporation,  
 22 ROYAL DUTCH SHELL PLC, a public  
 limited company of England and Wales, and  
 23 DOES 1 through 10,

24 Defendants.

25 CITY AND COUNTY OF SAN  
 FRANCISCO, a Municipal Corporation, and  
 26 THE PEOPLE OF THE STATE OF  
 CALIFORNIA, acting by and through the San  
 27 Francisco City Attorney, DENNIS J.  
 HERRERA,  
 28

First Filed Case: No. 3:17-cv-6011-WHA  
 Related Case: No. 3:17-cv-6012-WHA  
 Related Case: No. 3:18-cv-7477

**PLAINTIFF'S OPPOSITION TO  
 DEFENDANT'S ADMINISTRATIVE  
 MOTION TO RELATE**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Plaintiffs,  
v.  
BP P.L.C., a public limited company of  
England and Wales, CHEVRON  
CORPORATION, a Delaware corporation,  
CONOCOPHILLIPS COMPANY, 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.

1 **I. Introduction**

2 The Administrative Motion to Relate *Pacific Coast Federation of Fishermen's*  
3 *Associations, Inc. v. Chevron Corp. et al.*, No. 3:18-cv-7477 (“PCFFA” or the “Fisheries Action”)  
4 to the above-captioned actions, *City of Oakland et al. v. BP p.l.c. et al.*, No. 3:17-cv-6011-WHA  
5 (“Oakland”), and *City and County of San Francisco et al. v. BP p.l.c. et al.*, No. 3:17-cv-6012-  
6 WHA (“San Francisco”), (collectively the “Closed Actions”) should be denied because the  
7 Fisheries Action is not related to the Closed Actions under the standard set forth in Local Rule 3-  
8 12. The Fisheries Action alleges injuries on behalf of a fishing industry association stemming from  
9 algal blooms that have hampered Dungeness crab harvesting. The Closed Actions, meanwhile,  
10 alleged injuries on behalf of two California municipalities, for harms to public safety and  
11 infrastructure from rising sea levels. The Closed Actions share no causes of action with the  
12 Fisheries Action, and the Fisheries Action names more than twenty defendants that are not parties  
13 to the Closed Actions. Importantly, the Closed Actions have been reduced to final judgment and  
14 are on appeal before the Ninth Circuit Court of Appeals. These cases are not related either in fact  
15 or under Local Rule 3-12.

16 To the extent the Fisheries Action is related to any pending case or cases, it is significantly  
17 more like *County of San Mateo v. Chevron Corp. et al.*, No. 3:17-cv-4929-VC; *City of Imperial*  
18 *Beach v. Chevron Corp. et al.*, No. 3:17-cv-4934-VC; *County of Marin v. Chevron Corp. et al.*,  
19 No. 3:17-cv-4935-VC; *City of Santa Cruz v. Chevron Corp. et al.*, No. 3:18-cv-458-VC; *County*  
20 *of Santa Cruz v. Chevron Corp. et al.*, No. 3:18-cv-450-VC; and *City of Richmond v. Chevron*  
21 *Corp., et al.*, No. 3:18-cv-732-VC, on appeal from orders of remand (collectively, the “Judge  
22 Chhabria Actions”). Those cases name virtually identical defendants and assert nearly identical  
23 causes of action as in the Fisheries Action.

24 **II. Factual and Procedural Background**

25 The complaints in the Closed Actions were both filed in California Superior Court on  
26 September 19, 2017. See *San Francisco*, Dkt. 1-2 at 17, *Oakland*, Dkt. 1-2 at 4. The municipal  
27 Plaintiffs in both cases alleged one cause of action for public nuisance on behalf of the People of  
28 the State of California against five defendants (BP P.L.C., Chevron Corporation, Conocophillips

1 Corporation, Exxon Mobil Corporation, and Royal Dutch Shell PLC). *Id.* The defendants in those  
2 cases removed them to the Northern District of California, where they were related and assigned  
3 to this Court. SF Dkt. 1; Oakland, Dkt. 1. Plaintiff in each case moved to remand, *San Francisco*,  
4 Dkt. 81; *Oakland*, Dkt. 64. This Court denied the motions, *San Francisco*, Dkt. 134; *Oakland*, Dkt.  
5 116, and later dismissed both cases under Rule 12(b) and entered final judgment in favor of the  
6 defendants. *San Francisco*, Dkt. 236, 239, 240; *Oakland*, Dkt. 283, 287, 288. Plaintiffs appealed  
7 from the final judgment in both cases, *see San Francisco*, Dkt. 289, *Oakland*, Dkt. 281, and those  
8 appeals are pending before the Ninth Circuit. *See generally City of Oakland et al. v. BP P.L.C. et*  
9 *al.*, Case No. 18-16663 (9th Cir.).

10 Plaintiff in the Fisheries Action filed its complaint in California Superior Court on  
11 November 14, 2018. Champion Decl. Ex. A at 2.<sup>1</sup> The complaint asserts causes of action for  
12 nuisance, strict products liability, and negligence, against thirty corporate defendants in the fossil  
13 fuel industry, for injuries arising out of commercial Dungeness Crab fishery closures in California  
14 and Oregon due to domoic acid, a marine contaminant that affects crabs and renders them unsafe  
15 to consume, and that is exacerbated by climate change. *Id.*, at 7-9, 11-24. The defendants removed  
16 that case to the Northern District of California on December 12, 2018. *PCFFA*, Dkt. 1. No motion  
17 to remand has been filed and no other docket activity has occurred.

### 18 **III. The Fisheries Action Is Not Substantially Similar to the Closed Actions.**

19 The Fisheries Action is unrelated to the Closed Actions in all respects relevant to Local  
20 Rule 3-12. Cases are related when: “(1) The actions concern substantially the same parties,  
21 property, transaction or event; and (2) It appears likely that there will be an unduly burdensome  
22 duplication of labor and expense or conflicting results if the cases are conducted before different  
23 Judges.” Civ. L.R. 3-12(a).

24  
25  
26  
27  
28  

---

<sup>1</sup> Page references are to ECF page numbers.

1           **A.     The Actions Do Not Concern Substantially the Same Parties, Property,**  
2           **Transaction, or Event.**

3           First, of the thirty defendants named in the Fisheries action, only five are named as  
4 defendants in the Closed Actions; twenty-five are not. Many of the Defendants named in the  
5 Fisheries Action are subsidiaries or successors of major fossil fuel companies, *see* Champion Decl.  
6 Ex. A at 11-24, while the five defendants named in the Closed Actions are ultimate corporate  
7 parents of independent corporate families in the fossil fuel industry. Meanwhile, the Fisheries  
8 Action plaintiff is a fishing industry association, and the Closed Actions' plaintiffs are California  
9 municipalities. In no meaningful sense do the cases involve "substantially the same parties."

10           Second, the "property, transaction or event" at issue is entirely different between the  
11 Fisheries Action and the Closed Actions. The Fisheries Action concerns, *inter alia*, impaired  
12 fishing opportunity on the Pacific Ocean off the coasts of California and Oregon, and the  
13 consequent impacts on fishing communities up and down the West Coast. *Id.* at 10. The Closed  
14 Actions alleged "interference with and obstruction of public rights and property" in the Cities of  
15 Oakland and San Francisco, California, including harm to public safety and public infrastructure,  
16 and increased flood risk to public and private property. San Francisco Dkt. 1-2 at 118; Oakland  
17 Dkt. 1-2 at 34-35. Movants' description of the tie between San Francisco and crab fishing simply  
18 recounts the importance of the commercial crab fishery to San Francisco's history and identity,  
19 and has nothing to do with the injuries or causes of action alleged in the Fisheries action, and do  
20 not establish that the actions involve the same "property."

21           The Fisheries Action concerns injuries arising from crab fishery closures due to domoic  
22 acid contamination attributable to harmful algal blooms caused by warming oceans. Champion  
23 Decl. Ex. A at 35-38. These phenomena are, in turn, the products of global warming wrought by  
24 the defendants' marketing and promotional decisions about their fossil fuel products. *Id.* at 35-40.  
25 While the Closed Actions also address Defendants' tortious marketing and promotion, they have  
26 nothing to do with harmful algal blooms, domoic acid outbreaks, or fishery closures.

27           Finally, similar legal theories are not a basis for relation under the Local Rules, and in any  
28 event the legal theories in the Fisheries Action and the Removed Actions have no overlap

1 whatsoever. Plaintiffs in the Closed Actions asserted only a public nuisance cause of action, *San*  
 2 *Francisco*, Dkt. 1-2 at 122-24; *Oakland*, Dkt. 1-2 at 37-38; Plaintiff in the Fisheries Action asserts  
 3 no such cause of action. Plaintiff in the Fisheries Action relies on strict products liability,  
 4 negligence, and nuisance theories; *See* Champion Decl. Ex. A at 80-94. Plaintiffs in the Closed  
 5 Actions brought no such claims. The Plaintiffs in the Closed Actions bring their claims in the name  
 6 of the People of California, whereas Plaintiff in the Fisheries Action seeks to protect itself, and its  
 7 members in commercial fishing communities in California and Oregon. While the culpable  
 8 conduct attributable to defendants in both sets of actions is similar, the grounds for legal liability—  
 9 and the proof necessary to establish that liability—are worlds apart. None of the elements of Local  
 10 Rule 3-12(a) are satisfied.

11 **B. Relation Will Not Prevent Duplication of Labor or Expense, nor Prevent**  
 12 **Conflicting Results.**

13 Relating active cases to cases on appeal is inappropriate as doing so saves no labor or  
 14 expense. *See, e.g., Reznier v. Bayerische Hypo-Und Vereinsbank AG*, 2009 WL 3458704 at \*1  
 15 (N.D. Cal. 2009) (Order Denying Administrative Motion to Relate Cases and Transfer)  
 16 (unreported) (denying relation of active cases to cases that were closed or on appeal); *Carlyle*  
 17 *Fortran Trust v. NVIDIA Corp.*, 2008 WL 4717467 (N.D. Cal. 2008) (Order Denying  
 18 Administrative Motion to Relate Cases where cases were “either on appeal before the Ninth  
 19 Circuit or have been inactive for over two years”) (unreported). The Closed Actions are presently  
 20 closed and before the Ninth Circuit on appeal of the order granting Defendants’ motions to dismiss.  
 21 There is no ongoing labor or expense in the Closed Actions to duplicate. Effort or resources  
 22 expended in these three cases will occur in the Fisheries Action alone.

23 Moreover, relating these cases will not avoid conflicting results because these cases  
 24 predicate their respective defendants’ liability on completely different legal theories.

25 **IV. Conclusion**

26 Movants would have the cases related to reinforce the mischaracterization of the Fisheries  
 27 and Closed Actions as factually and legally identical, in the hope that such false equivalency would  
 28 lead to removal and subsequent dismissal of the Fisheries Action as in the Closed Actions. But as

1 discussed herein, the Fisheries Action is even more dissimilar to the Closed Actions than the latter  
2 were to the Judge Chhabria Actions—and when the defendants in the Closed Actions sought  
3 relation of those two sets of cases, the Court’s Executive Committee denied the motion. *County of*  
4 *San Mateo v. Chevron Corp. et al.*, No. 3:17-cv-4929-VC, Dkt. 175.

5 For the foregoing reasons, Movant’s Administrative Motion to Relate the Fisheries Action  
6 with the Closed Actions should be denied.

7  
8 Dated: December 14, 2018

**SHER EDLING LLP**

9  
10 By: /s/ Victor M. Sher

VICTOR M. SHER  
MATTHEW K. EDLING  
TIMOTHY R. SLOANE  
KATIE H. JONES  
MARTIN D. QUIÑONES  
MEREDITH S. WILENSKY

11  
12  
13  
14  
15 *Attorneys for Pacific Coast Federation of*  
16 *Fishermen’s Associations, Inc.*  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28