

March 24, 2020

VIA ECF

Molly C. Dwyer  
Clerk of Court  
U.S. Court of Appeals for the Ninth Circuit  
95 Seventh Street  
San Francisco, CA 94103-1526

Re: *County of San Mateo v. Chevron Corp. et al.*, No. 18-15499, consolidated with *City of Imperial Beach v. Chevron Corp. et al.*, No. 18-15502; *County of Marin v. Chevron Corp. et al.*, No. 18-15503; *County of Santa Cruz, et al. v. Chevron Corp. et al.*, No. 18-16376

Dear Ms. Dwyer:

Defendant-Appellant Chevron writes in response to Plaintiffs-Appellees' March 9, 2020 letter regarding the Fourth Circuit's decision in *Mayor and City Council of Baltimore v. BP P.L.C.*, \_\_\_ F.3d \_\_\_, 2020 WL 1069444 (4th Cir. Mar. 6, 2020). Contrary to Plaintiffs' assertions, the Court should not follow the decision in *Baltimore* regarding the scope of appellate jurisdiction under 28 U.S.C. § 1447(d) or the merits of federal-officer removal.

With respect to appellate jurisdiction: the Fourth Circuit considered itself bound by Circuit precedent. *Id.* at \*3. Although Plaintiffs contend that *Patel v. Del Taco, Inc.*, 446 F.3d 996 (9th Cir. 2006), similarly binds this Court, the jurisdictional question presented here was not briefed, analyzed, or decided in *Patel*. See No. 18-15499, Dkt. 126 at 2-4. And while the Fourth Circuit found that *Yamaha Motor Corp., U.S.A. v. Calhoun*, 516 U.S. 199 (1996), did not "abrogate[]" its precedent because "it did not purport to establish a general rule governing the scope of appellate jurisdiction for every statute that uses th[e] word" "order," the court did not provide a textual reason for reading the term differently in § 1447(d), and it acknowledged that "other circuit[s] ha[ve] found *Yamaha* persuasive in interpreting the word 'order' under § 1447(d) as a matter of first impression." *Baltimore*, 2020 WL 1069444, at \*4.

With respect to federal-officer removal: the Fourth Circuit's holding was based on its (incorrect) conclusion that *Baltimore* challenged only "the promotion and sale of fossil fuel products ... abetted by a sophisticated disinformation campaign," *id.* at \*9, and therefore that Defendants' production activities under federal oversight and control were not sufficiently

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“related to” Plaintiffs’ claims. But the court conceded that “[i]f production and sales went to the heart of Baltimore’s claims, we might be inclined to think otherwise.” *Id.* at \*10. Even accepting that some of Plaintiffs’ claims focus on the promotion and sale of fossil-fuel products, Plaintiffs’ public nuisance claims and asserted injuries clearly center on the production, sale, and ultimate combustion of fossil fuels. *See* No. 18-15499, Dkt. 77 at 16, 56. Thus, even under the reasoning of *Baltimore*, federal-officer removal is appropriate.

Sincerely,

/s/ Theodore J. Boutrous, Jr.

Theodore J. Boutrous Jr.  
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Chevron Corporation and Chevron U.S.A.

cc: All counsel of record (via ECF)