

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: *City of Oakland, et al. v. BP P.L.C., et al.*, No. 18-16663

Dear Ms. Dwyer:

Defendant-Appellee Chevron writes in response to Plaintiffs-Appellants' March 10, 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 presence of removal jurisdiction.

First, the Fourth Circuit's federal-officer removal 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, 12, and therefore that Defendants' production activities under federal oversight and control were not sufficiently "related to" the claims at issue. 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.* 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* Dkt. 78 at 2, 10. Thus, even under the reasoning of *Baltimore*, federal-officer removal is appropriate.

Second, the Fourth Circuit did not consider whether removal was proper under any of the other grounds invoked by Defendants here because it believed that its appellate jurisdiction "d[id] not extend to the non-§ 1442 grounds that were considered" by the district court. *Baltimore*, 2020 WL 1069444, at *3 (citing 28 U.S.C. § 1447(d)). Because this appeal, unlike the one in *Baltimore*, comes from a final judgment rather than a remand order, there is

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no dispute that this court may affirm the decision below on any of these alternative grounds. *See Atel Fin. Corp. v. Quaker Coal Co.*, 321 F.3d 924, 926 (9th Cir. 2003).

Third, as Defendants and the United States have explained, Plaintiffs' voluntary amendment mooted their challenge to the remand order.

Sincerely,

/s/ Theodore J. Boutrous, Jr.

Theodore J. Boutrous Jr.

GIBSON, DUNN & CRUTCHER LLP

Counsel for Defendant-Appellee Chevron Corporation

cc: All counsel of record (via ECF)