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July 6, 2020

VIA ECF

Maria R. Hamilton
Clerk of Court
U.S. Court of Appeals for the First Circuit
John Joseph Moakley U.S. Courthouse
1 Courthouse Way, Suite 2500
Boston, MA 02210

Re: *State of Rhode Island v. Shell Oil Prods. Co., et al.*, No. 19-1818

Dear Ms. Hamilton:

Defendant-Appellant Chevron writes in response to Plaintiff-Appellee's May 28, 2020 letter regarding *County of San Mateo v. Chevron Corp.*, 960 F.3d 586 (9th Cir. 2020). Contrary to Plaintiff's arguments, that decision, which remains subject to further review on rehearing or certiorari, provides no support for its position here.

First, the Ninth Circuit's holding that Section 1447(d) limited its appellate jurisdiction to the federal-officer ground for removal was predicated on the Ninth Circuit's earlier decision in *Patel v. Del Taco, Inc.*, 446 F.3d 996 (9th Cir. 2006), the reasoning of which "applie[d] directly to [that] case." *San Mateo*, 960 F.3d at 596. The Ninth Circuit conceded that, were it "writing on a clean slate, [it] might conclude that *Lu Junhong* provides a more persuasive interpretation of § 1447(d) than *Patel*," but determined that it "remain[ed] bound by *Patel* until abrogated by an intervening higher authority." *Id.* at 597-98. Because this Court is not bound by any similar precedent, the Ninth Circuit's reasoning in *San Mateo*, if anything, *supports* Defendants' position.

Second, the Ninth Circuit's conclusion that jurisdiction did not exist under the federal-officer removal statute was based on a materially different record than here. To take just one example, the Ninth Circuit disregarded Standard Oil's production on the Elk Hills Strategic Petroleum Reserve under the Naval Petroleum Reserves Production Act because "[n]othing in the record indicat[e]d that the Secretary of the Navy 'ordered or demanded' that Standard produce oil on behalf of the Navy." *Id.* at 602 n.12. Here, however, Defendants demonstrated that, "[f]rom 1976 to 1998, Standard generated over \$17 billion for the U.S. Treasury from the Reserve," and that "[a]ll that production took place under the 'exclusive control' of the U.S. government" pursuant to the Naval Petroleum Reserves Production Act.

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Deft's Reply Br. at 5-6. Because Standard "help[ed] the Government to produce an item that it need[ed]," and "performed a job that, in the absence of a contract with a private firm, the Government itself would have had to perform," Standard "acted under" federal officers. *Watson v. Philip Morris Cos.*, 551 U.S. 142, 153-54 (2007).

Sincerely,

/s/ Theodore J. Boutrous, Jr.

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cc: All counsel of record (via ECF)