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15 **UNITED STATES DISTRICT COURT**
16 **NORTHERN DISTRICT OF CALIFORNIA**
17 **SAN FRANCISCO DIVISION**

18 CITY OF OAKLAND, a Municipal
Corporation, and THE PEOPLE OF THE
19 STATE OF CALIFORNIA, acting by and
through Oakland City Attorney BARBARA J.
20 PARKER,

21 Plaintiffs,

22 v.

23 BP P.L.C., a public limited company of
England and Wales, CHEVRON
24 CORPORATION, a Delaware corporation,
CONOCOPHILLIPS COMPANY, a Delaware
25 corporation, EXXON MOBIL
CORPORATION, a New Jersey corporation,
26 ROYAL DUTCH SHELL PLC, a public
limited company of England and Wales, and
27 DOES 1 through 10,

28 Defendants.

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

**NOTICE OF SUPPLEMENTAL
AUTHORITY**

THE HONORABLE WILLIAM H. ALSUP

1 CITY AND COUNTY OF SAN
2 FRANCISCO, a Municipal Corporation, and
3 THE PEOPLE OF THE STATE OF
4 CALIFORNIA, acting by and through the San
5 Francisco City Attorney DENNIS J.
6 HERRERA,

7 Plaintiffs,

8 v.

9 BP P.L.C., a public limited company of
10 England and Wales, CHEVRON
11 CORPORATION, a Delaware corporation,
12 CONOCOPHILLIPS COMPANY, a Delaware
13 corporation, EXXON MOBIL
14 CORPORATION, a New Jersey corporation,
15 ROYAL DUTCH SHELL PLC, a public
16 limited company of England and Wales, and
17 DOES 1 through 10,

18 Defendants.
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1 Defendants write to inform the Court of the Second Circuit’s decision in *City of New York v.*
 2 *Chevron Corp., et al.*, __ F.3d __, 2021 WL 1216541 (2d Cir. Apr. 1, 2021), which affirms—on the
 3 same reasoning adopted by this Court in its orders denying remand and dismissing on the merits—the
 4 dismissal of an action that, like this one, sought to hold energy producers liable for climate change-
 5 related harms under state tort law. In doing so, the Second Circuit specifically held that the plaintiff
 6 engaged in “artful pleading” by attempting to “transform the City’s Complaint into anything other
 7 than a suit over global greenhouse gas emissions.” *Id.* at * 5. That decision is relevant to this case
 8 for two reasons.¹

9 *First, City of New York* increases the likelihood that the Supreme Court will grant Defendants’
 10 certiorari petition in this case. *See Chevron Corp., et al. v. City of Oakland*, No. 20-1089 (U.S.).
 11 This Court previously denied Plaintiffs’ motion to remand, finding that removal was proper under the
 12 Court’s federal-question jurisdiction because Plaintiffs’ claims, despite being pleaded under state law,
 13 necessarily “arise under” federal common law. *See California v. BP P.L.C.*, 2018 WL 1064293, at *3
 14 (N.D. Cal. Feb. 27, 2018) (“Order Denying Remand”) (“Taking the complaints at face value, the
 15 scope of the worldwide predicament demands the most comprehensive view available, which in our
 16 American court system means our federal courts and our federal common law.”). The Ninth Circuit
 17 reversed, reasoning that Plaintiffs’ decision to plead their claims under state law was dispositive of
 18 this Court’s jurisdiction. *See City of Oakland v. BP PLC*, 969 F.3d 895, 906, 908 (9th Cir. 2020)
 19 (holding that “the district court lacked federal-question jurisdiction unless one of the two exceptions
 20 to the well-pleaded-complaint rule applies,” and that “neither exception to the well-pleaded-com-
 21 plaint rule applies to the Cities’ original complaints”).

22 The Second Circuit, however, adopted the approach taken by this Court—and even directly
 23 cited this Court’s order. *See City of New York*, 2021 WL 1216541, at *14 (citing Order Denying Re-
 24 mand). In particular, the Second Circuit followed the two-step framework advocated by Defendants
 25 here by first evaluating whether federal or state law governed the plaintiff’s claims (answer: federal),
 26 and only then considering whether the plaintiff had a valid claim under that law (answer: no). *See id.*

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 28 ¹ This Court has already found that several Defendants are not subject to personal jurisdic-
 tion. This is submitted subject to, and without waiver of, that jurisdictional finding.

1 at *5–12. Like this Court, the Second Circuit held that “[g]lobal warming presents a uniquely inter-
 2 national problem of national concern [and] is therefore not well-suited to the application of state
 3 law,” *id.* at *6, and as a result, claims seeking damages for the alleged impacts of global climate
 4 change “must be brought under federal common law,” *id.* at * 9. And also like this Court, but unlike
 5 the Ninth Circuit, the Second Circuit expressly rejected the plaintiff’s effort to disguise “those federal
 6 claims” as state-law claims. *Id.*; *see also id.* at *5 (“Artful pleading cannot transform the City’s com-
 7 plaint into anything other than a suit over global greenhouse gas emissions.”). To be sure, because
 8 the plaintiff in *City of New York* filed its complaint in federal court, that case did not present the same
 9 removal question at issue here. *See id.* at *8. But the Second Circuit’s rationale in disposing of the
 10 plaintiff’s claims *on the merits* on the ground that they necessarily arise under federal law clearly
 11 supports this Court’s previous ruling on removal—and the Supreme Court will consider whether to
 12 review the Ninth Circuit’s reversal of that ruling by the end of June.

13 *Second, City of New York* supports Defendants’ argument that federal jurisdiction exists under
 14 the federal officer removal statute, the Outer Continental Shelf Lands Act, and federal enclave juris-
 15 diction. In opposing removal on these grounds, Plaintiffs now try to recast their claims as going only
 16 to Defendants’ *marketing* of fossil-fuel products, rather than the production, sale, and combustion of
 17 those products. In particular, they contend that removal is improper because Defendants did not en-
 18 gage in any marketing under the direction or control of federal officers, *see* Dkt. 342 at 12,² nor did
 19 they engage in marketing on the Outer Continental Shelf or federal enclaves, *see id.* at 13, 20.

20 But as the Second Circuit explained, “emissions [are] the singular source of the City’s harm,”
 21 and “[g]reenhouse gases once emitted become well mixed in the atmosphere,” at which point they
 22 “cannot be traced back to their source.” *City of New York*, 2021 WL 1216541, at *5–6. As a result,
 23 the Second Circuit held that the plaintiff’s claims were inseparable from activities occurring world-
 24 wide: “In other words, the City requests damages for the cumulative impact of conduct occurring
 25 simultaneously across just about every jurisdiction on the planet.” *Id.* at *6. Although the plaintiff in
 26 *City of New York*, like Plaintiffs here, attempted to evade dismissal by focusing on a different “link in
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² All docket references are to *City of Oakland v. BP P.L.C.*, No. 3:17-cv-0611-WHA (N.D. Cal.).

1 ‘the causal chain’ of the City’s damages,” *id.* at *5, the Second Circuit squarely rejected this as
 2 “[a]rtful pleading,” *id.* at *5; *see also id.* at *11 (“[T]he City’s focus on this ‘earlier moment’ in the
 3 global warming lifecycle is merely artful pleading and does not change the substance of its claims.”).

4 Moreover, claims like these will necessarily impact the worldwide production of fossil fuels.
 5 As the Second Circuit explained, “while the City is not expressly seeking to impose a standard of
 6 care or emission restrictions on the Producers, the goal of its lawsuit is perhaps even more ambitious:
 7 to effectively impose strict liability for the damages caused by fossil fuel emissions no matter where
 8 in the world those emissions were released (or who released them).” *Id.* at *7. This necessarily in-
 9 cludes, among other things, the production of fossil fuels from the Outer Continental Shelf and under
 10 the direction, supervision, and control of federal officers—and, as *City of New York* confirms, neces-
 11 sarily “threatens to impair the total recovery of the federally-owned minerals” on the Outer Continen-
 12 tal Shelf. Dkt. 349 at 7 (quoting *EP Operating Ltd. v. Placid Oil Co.*, 26 F.3d 563, 570 (5th Cir.
 13 1994)). After all, “[i]f the Producers want to avoid all liability, then their only solution would be to
 14 cease global production altogether.” *City of New York*, 2021 WL 1216541, at *7.

15 Because Plaintiffs’ claims incontrovertibly involve the production, sale, and combustion of
 16 fossil fuels—which occurred under the direction, supervision, and control of federal officers, and
 17 which occurred on the Outer Continental Shelf and federal enclaves—Plaintiffs’ renewed motion to
 18 remand should be denied.

19
 20 Respectfully submitted,

21 Dated: April 8, 2021

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** Pursuant to Civ. L.R. 5-1(i)(3), the electronic signatory has obtained approval from this signatory