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

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

17 Plaintiffs,

18 v.

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

23 Defendants.

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

28 Plaintiffs,

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

**JOINT CASE MANAGEMENT
 STATEMENT**

THE HONORABLE WILLIAM H. ALSUP

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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 Further to the discussion at the last Case Management Conference and the Court's subsequent
2 instruction, Dkt. 369, the Parties hereby advise the Court that Defendants' Petition for a Writ of
3 Certiorari in these two cases was denied on June 14, 2021. *See Chevron Corp. v. Oakland*, No. 20-
4 1089, 2021 WL 2405350 (U.S. June 14, 2021). There are no pending proceedings before the Supreme
5 Court in these cases.¹

6 As explained more fully below, the People's renewed motion to remand is fully briefed and
7 ready to be heard by this Court and the Parties are ready to proceed with that motion if the Court is
8 inclined to do so. The Parties note, however, that the Supreme Court recently granted Defendants'
9 Petition for a Writ of Certiorari in *County of San Mateo v. Chevron Corp.*, vacated the Ninth Circuit's
10 judgment, and remanded to the Ninth Circuit, which is now poised to decide two grounds for removal
11 (jurisdiction under the Outer Continental Shelf Lands Act ("OCSLA") and federal enclave jurisdiction)
12 that were presented by the Defendants in that case and in this case. Given the pendency of those issues
13 before the Ninth Circuit, the Parties understand that the Court may prefer to wait for further guidance
14 in *San Mateo* before proceeding on the People's pending motions to remand and amend.

15 The Parties dispute whether any grounds for removal *other than* the two grounds pending before
16 the Ninth Circuit in *San Mateo* are properly before this Court. Defendants maintain that two additional
17 grounds for removal presented here will not be addressed or resolved by the Ninth Circuit in *San Mateo*
18 and, therefore, will need to be decided by this Court, including (1) federal officer removal on a
19 significantly more robust evidentiary record than was before the Ninth Circuit and (2) *Grable*
20 jurisdiction because the People's claims include elements required by the First Amendment. This
21 evidence and these legal arguments were not raised by the defendants in *San Mateo* and, as explained
22 in their opposition to the People's renewed motion to remand (Dkt. 349),² Defendants here maintain
23 that Court can and must decide whether these grounds for removal are proper. The People disagree
24 with respect to both grounds for the reasons stated in their renewed remand briefing, and thus disagree

25 _____
26 ¹ In joining this Case Management Statement, Defendants BP P.L.C., ConocoPhillips, Exxon Mobil
27 Corporation, and Royal Dutch Shell plc, do not waive any argument or defense regarding the
28 Court's lack of personal jurisdiction over them, nor do they seek to vacate or alter the Court's
previous personal-jurisdiction order under Rule 12(b)(2).

² All docket citations are to *City of Oakland v. BP P.L.C.*, No. 3:17-cv-6011.

1 with Defendants’ position that the Court will be required to address those additional removal grounds
2 if the Ninth Circuit affirms the district court’s remand order in *San Mateo*. Given that there is a dispute
3 as to whether *San Mateo* will resolve all the grounds presented for removal here, Defendants believe it
4 would also be reasonable to proceed on the renewed motion to remand now, and the People have no
5 objection to proceeding.

6 **A. Procedural History**

7 On September 19, 2017, the People of the State of California, by and through the San Francisco
8 City Attorney, filed their Complaint in the Superior Court for the County of San Francisco; and the
9 People of the State of California, by and through the Oakland City Attorney, filed their Complaint in
10 the Superior Court for the County of Alameda.

11 Defendants removed these cases on October 20, 2017. *See* Dkt. 1. On February 27, 2018, this
12 Court denied the People’s motions to remand, concluding that their claims necessarily arise under
13 federal common law. *See* Dkt. 134. On June 25, 2018, this Court granted Defendants’ motions to
14 dismiss for failure to state a claim under federal common law, *see* Dkt. 283, and on July 27, 2018, it
15 granted motions to dismiss for lack of personal jurisdiction with respect to four Defendants, *see*
16 Dkt. 287.

17 On August 12, 2020, the Ninth Circuit vacated this Court’s order denying the People’s motions
18 to remand these actions to state court, holding that the People’s “state-law claim for public nuisance
19 does not arise under federal law for purposes of 28 U.S.C. § 1331.” *City of Oakland v. BP PLC*, 969
20 F.3d 895, 900 (9th Cir. 2020). Because this Court “did not address the alternative bases for removal”
21 asserted in Defendants’ notice of removal, the Ninth Circuit “remand[ed] these cases to the district
22 court to determine whether there was an alternative basis for jurisdiction.” *Id.* at 911.

23 On May 17, 2021, the Supreme Court issued its decision in *BP P.L.C. v. Mayor & City Council*
24 *of Baltimore* and vacated the decision of the Fourth Circuit, which had held that an appellate court may
25 review only the defendants’ federal officer removal ground on an appeal. 141 S. Ct. 1532 (2021). The
26 Court then remanded *City of Baltimore* to the Fourth Circuit to consider defendants’ other grounds for
27 removal. Soon thereafter, the Supreme Court granted the defendants’ Petition for a Writ of Certiorari
28 in *County of San Mateo v. Chevron Corp.*, No. 20-884, which presented the same threshold question

1 of appealability as *City of Baltimore*, and it vacated the judgment and remanded the case to the Ninth
2 Circuit for further consideration in light of *City of Baltimore*.

3 Defendants filed a Petition for a Writ of Certiorari in the *Oakland* and *San Francisco* cases on
4 January 8, 2021. The Supreme Court denied that Petition on June 14, 2021. *See Chevron Corp. v.*
5 *Oakland*, No. 20-1089, 2021 WL 2405350 (U.S. June 14, 2021).

6 On December 16, 2020, while the *City of Baltimore* case was pending and before the certiorari
7 petitions in *Oakland* and *San Francisco* were filed, this Court set a briefing schedule for the People’s
8 renewed motion to remand and motion to amend the complaints. *See* Dkt. 333. Briefing has been
9 completed and a hearing on those motions was set for April 22, 2021. *See* Dkt. 334.

10 On April 5, 2021, the Court vacated that hearing date and set a Case Management Conference
11 for May 20, 2021. After the May 20 Case Management Conference, the Court instructed the Parties to
12 “request a Case Management Conference pending developments in the pending Supreme Court case.”
13 Dkt. 369.

14 **B. The Parties’ Positions**

15 Because the People’s renewed motion to remand is fully briefed, the Parties are ready to proceed
16 and have this motion heard and decided if the Court is inclined to do so. The Parties recognize that the
17 Ninth Circuit in *San Mateo* will consider at least some of the grounds for removal asserted by
18 Defendants here. More specifically, as explained in Defendants’ opposition brief (Dkt. 349),
19 Defendants assert four primary arguments in opposition to remand: (1) the action is removable under
20 OCSLA; (2) the Court has jurisdiction because the People’s claims arise on federal enclaves; (3) the
21 action is removable under the Federal Officer Removal Statute (notwithstanding the Ninth Circuit’s
22 initial decision in *San Mateo*) in light of the substantial additional evidence presented in these cases;
23 and (4) to the extent the People’s claims are based on alleged misrepresentations, they are removable
24 under *Grable & Sons Metal Products, Inc. v. Darue Engineering & Manufacturing*, 545 U.S. 308
25 (2005), because such claims necessarily incorporate affirmative federal constitutional elements
26 imposed by the First Amendment.

27 The Parties agree that the Ninth Circuit is poised to consider the first two arguments in *San*
28 *Mateo* but will not consider the third or fourth arguments—*i.e.*, federal officer removal and *Grable*

1 jurisdiction.³ For the reasons stated in the People’s renewed remand motion, the People believe that
2 this Court is bound by the Ninth Circuit’s previous decisions in *San Mateo* (regarding federal officer
3 jurisdiction) and *Oakland* (regarding *Grable* jurisdiction). *See Cnty. of San Mateo v. Chevron Corp.*,
4 960 F.3d 586, 602–03 (9th Cir. 2020), *cert. granted, judgment vacated sub nom. Chevron Corp. v. San*
5 *Mateo Cnty., CA*, No. 20-884, 2021 WL 2044534 (U.S. May 24, 2021); *City of Oakland*, 969 F.3d at
6 907). Defendants disagree, contending that the Ninth Circuit’s previous ruling on federal officer
7 jurisdiction in *San Mateo* is not dispositive because Defendants have presented a record significantly
8 more expansive and robust than the record before the Ninth Circuit in *San Mateo*. Defendants further
9 contend that a portion of their *Grable* argument was not before the Ninth Circuit in *San Mateo* or
10 *Oakland* and, further, that the additional evidence they have presented in support of federal officer
11 removal also demonstrates that removal is proper under OCSLA.

12 Notwithstanding the Parties’ disagreement about whether or to what extent the Ninth Circuit’s
13 previous decisions in *San Mateo* and *Oakland* resolve the third and fourth arguments for federal
14 removal jurisdiction here, the Parties recognize that the Ninth Circuit’s forthcoming decision in *San*
15 *Mateo* could, at a minimum, limit the issues this Court would need to consider in ruling on the People’s
16 renewed motion to remand, either because the Ninth Circuit concludes that the *San Mateo* case was
17 properly removed or because it concludes that the grounds presented by the defendants do not support
18 removal in that case. Accordingly, the Parties understand that the Court may prefer to wait for guidance
19 from the Ninth Circuit in *San Mateo* before proceeding on the People’s pending motions to remand and
20 amend. However, given that there is a dispute as to whether *San Mateo* will resolve all the grounds
21 presented for removal here, Defendants believe it would also be reasonable to proceed on the renewed
22 motion to remand now and the People have no objection to proceeding.

23 //

24 //

27
28 ³ These grounds have also been presented to the Ninth Circuit in *City and County of Honolulu v. Sunoco LP, et al.*, No. 15313 (9th Cir.), and *County of Maui v. Chevron USA Inc., et al.*, No. 15318 (9th Cir.). Defendants’ opening briefs in those cases are currently due on July 19, 2021.

1 Dated: July 9, 2021

Respectfully submitted,

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