

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

THE CITY OF NEW YORK,

Plaintiff,

vs.

EXXON MOBIL CORPORATION,
EXXONMOBIL OIL CORPORATION,
ROYAL DUTCH SHELL PLC, SHELL OIL
COMPANY, BP P.L.C., BP AMERICA INC.,
and AMERICAN PETROLEUM INSTITUTE,

Defendants.

Case Number: 1:21-CV-04807-VEC-SDA

**PLAINTIFF THE CITY OF NEW YORK'S
NOTICE OF SUPPLEMENTAL AUTHORITY**

Plaintiff the City of New York (“the City”) hereby notifies the Court of supplemental authority with respect to its Motion to Remand (Dkt. 37).

On September 8, 2021, the United States District Court for the District of New Jersey granted Plaintiff’s Motion to Remand to State Court in *City of Hoboken v. Exxon Mobil Corp. et al*, Case No. 20-cv-14243-JMV, Dkt. 121 (D.N.J. Sept. 8, 2021), attached hereto as **Exhibit A** (“Order”).

Like the City in the case at bar, the plaintiff in *Hoboken* asserts state-law claims against fossil fuel industry entities, alleging that the defendants engaged in “greenwashing” campaigns that concealed and misrepresented the climate-change impacts of their products. Order at 3. In granting the motion to remand, the court analyzed and rejected seven theories of removal jurisdiction that Defendants have also asserted here:

- (1) **Federal common law.** *See* Order at 9–13 (concluding that there is no removal jurisdiction because “Defendants are in essence raising the affirmative defense that the federal common law preempts Plaintiff’s claims”).
- (2) **Jurisdiction under *Grable & Sons. Metal Prods., Inc. v. Darue Eng’g & Mfg.*, 545 U.S. 308 (2005).** *See* Order at 13–16 (explaining that defendants’ “general concern that federal law might be implicated or may guide the Court’s analysis is materially different than a claim, like that in *Grable*, that is dependent on the interpretation of federal law”).
- (3) **First Amendment.** *See* Order at 15–16 (finding “Defendants’ authority to be inapposite” and concluding that “Hoboken’s claims do not turn on federal law”).
- (4) **Outer Continental Shelf Lands Act.** *See* Order at 16–18 (applying “but-for test” and finding no OCSLA jurisdiction because defendants’ “chain of causation is too attenuated”).
- (5) **Federal officer removal.** *See* Order at 18–22 (rejecting federal officer jurisdiction because “Hoboken’s complaint is focused on Defendants’ decades long misinformation campaign that was utilized to boost Defendants’ sales to consumers. Defendants do not claim that any federal officer directed them to engage in the alleged misinformation campaign”).
- (6) **Federal enclave jurisdiction.** *See* Order at 23–24 (rejecting federal enclave jurisdiction because “[t]he focus of Hoboken’s claims is on harm that occurred in Hoboken rather than in a federal enclave”).
- (7) **Class Action Fairness Act.** *See* Order at 24 (rejecting CAFA jurisdiction “in short order because Plaintiff is not bringing this matter under Rule 23 or any similar state law”).

Dated: September 9, 2021

Respectfully submitted,

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/s/ Hilary Meltzer

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CERTIFICATE OF SERVICE

I hereby certify that, on the 9th day of September, 2021, the foregoing document was filed through the ECF system and will be sent electronically to the registered participants identified on the Notice of Electronic Filing.

/s/ Matthew K. Edling
Matthew K. Edling