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PROTECTING PEOPLE AND THE PLANET

January 24, 2022

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 and County of Honolulu, et al. v. Sunoco LP, et al.*, No. 21-15313;
County of Maui v. Sunoco LP, et al., No. 21-15318;
Plaintiffs-Appellees' Citation of Supplemental Authorities

Dear Ms. Dwyer,

Pursuant to Federal Rule of Appellate Procedure 28(j), Plaintiffs-Appellees City and County of Honolulu, the Honolulu Board of Water Supply, and County of Maui submit *Parish of Plaquemines v. Riverwood Production Co.*, No. 2:18-cv-05217, 2022 WL 101401 (E.D. La. Jan. 11, 2022) (**Ex. A**) (“Order”), as supplemental authority. The decision undermines Defendants-Appellants’ theory that they “acted under . . . federal officers.” AOB 41.

In *Plaquemines*, Louisiana coastal parishes filed lawsuits against fossil fuel companies under a state statute, “alleging that dredging, drilling, and waste disposal caused coastal land loss and pollution.” Order 1–2. The defendants removed on federal officer and other grounds, and the court remanded. *Id.* at 1.

The court rejected the companies’ arguments that they “acted under” federal officers from the Petroleum Administration for War during World War II. *Id.* at 23–26. Although the companies were “regulated even more strictly” than usual during this “critical period” to “fuel the government’s war effort,” such regulatory compliance did not establish that the companies “acted under” federal officers. *Id.* at 23.

The same is true here. Defendants-Appellants’ wartime production of fuel for the military, *see* AOB 33-38, does not establish that they “acted under” federal officers, *see* Response Br. 50–53.¹

Plaquemines also confirms that Defendants-Appellants fail to raise a colorable defense because they do not explain how or why their purported defenses apply. *See* Order at 17 (rejecting some of the asserted defenses as implausible).²

¹ Although *Plaquemines* suggests that certain refineries receiving contractual “directives” from the federal government during World War II might successfully assert federal-officer removal, *see* Order 20–21, that dictum is irrelevant because it is tethered to specific contracts. Here, the Defendants-Appellants have failed to identify any instance where federal officers directly controlled or supervised wartime activities. *See* Response Br. 24–29.

² The court found the nexus element met in *Plaquemines* because the charged conduct was directly related to the defendants’ production activities for the federal government. *See* Order 26–28. In contrast, Plaintiffs-Appellees’ case is based on deception to consumers and the public—conduct unrelated to their purported actions under federal officers. *See* Response Br. 35–39.

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Respectfully submitted,

/s/ Victor M. Sher

Victor M. Sher

Sher Edling LLP

Counsel for Plaintiffs-Appellees
in Nos. 21-15313, 21-15318

cc: All Counsel of Record (via ECF)