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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 v. Sunoco LP*, No. 21-15313; *County of Maui v. Chevron USA Inc.*, No. 21-15318
Defendants-Appellants' Notice of Supplemental Authority

Dear Ms. Dwyer:

Another panel of this Court recently decided *County of San Mateo v. Chevron Corp.*, 2022 WL 1151275 (9th Cir. Apr. 19, 2022). During oral argument here, the panel inquired whether the *San Mateo* decision would leave any issues to be resolved here. The answer is yes.

San Mateo confirms that federal-officer removal is appropriate where a defendant supplies a product "used to help conduct a war." 2022 WL 1151275, at *12. Based on the limited record in *San Mateo*, that panel found the defendants did not "act[] under" federal officers. *Id.* at *15. Notably, the panel did not reach the relatedness prong. *Id.*

The Court here must apply this standard on a significantly expanded record. Defendants have identified additional activities, *see* Opening Brief ("OB") at 29–40, including executing government directives during wartime, OB.33–38, and developing, manufacturing, and selling fuels meeting highly unique specifications necessary for the U.S. government's military applications, OB.29–33, not presented in *San Mateo* and which the district court in this case "assume[d]" satisfied the acting-under prong, 1-ER-13; 1-ER-20 n.13. Defendants also included evidence here and below that cures the specific deficiencies identified by *San Mateo*. *See* OB.40–52.

Additionally, Defendants here presented new, unrebutted expert declarations detailing how federal officers directed and controlled Defendants to perform "basic governmental tasks" that "the Government itself would have had to perform" absent private assistance, *Watson v. Philip Morris Cos., Inc.*, 551 U.S. 142, 153–54 (2007). *See* OB.5. The Court must determine

whether this additional evidence satisfies the "liberal[]" federal-officer-removal standard. *Goncalves v. Rady Children's Hosp. San Diego*, 865 F.3d 1237, 1245 (9th Cir. 2017) (quoting *Watson*, 551 U.S. at 147). For the reasons explained previously, it clearly does. *See* OB.15–63.

Finally, Defendants' removal record includes expert evidence—evidence not before the *San Mateo* panel—that removal under OCSLA is appropriate because the "federal OCS program created an expanding market for offshore oil and gas and actively managed leases and operations to fulfill a critical national need for domestic energy," 2-ER-76, thereby driving the increased use of oil and gas upon which Plaintiffs base their claims.

Sincerely,

/s/ Theodore J. Boutrous, Jr.

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cc: All counsel of record (via ECF)