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May 20, 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' Response to Defendants-Appellants' Citation of Supplemental Authorities

Dear Ms. Dwyer,

County of San Mateo v. Chevron Corp., 32 F.4th 733 (9th Cir. 2022) ("*San Mateo II*"), disposes of the present appeal.[1]

Writing for a unanimous panel, Judge Ikuta rejected the very same arguments for OCSLA jurisdiction and federal-enclave jurisdiction that Defendants-Appellants advance here. *Id.* at 748-55. The court then "reprise[d]" its prior analysis of federal-officer removal, holding that the defendants failed the acting-under requirement of Section 1442. *Id.* at 755 n.14, 760. That holding controls here because Defendants' purportedly "new" evidence rehashes the same sorts of arm's-length business arrangements and regulator-regulated relationships that *San Mateo II* rejected. *See* Dkt. 63 at 13-35.

Moreover, Judge Ikuta's OCSLA analysis confirms that Defendants fail the nexus prong of federal-officer jurisdiction. *See San Mateo II*, 32 F.4th at 751-55. To remove under OCSLA, the *San Mateo* defendants needed to show that the complaints "ar[o]se out of, or in connection with" their fossil-fuel production on the OCS. *Id.* at 754 (cleaned up). They could not make that showing, however, because "the [plaintiffs'] claims focus[ed] on the defective nature of the [defendants'] fossil fuel products, [their] knowledge and awareness of the harmful effects of those products, and their 'concerted campaign' to prevent the public from recognizing those dangers." *Id.* at 754-55.

[1] Although "[t]he submission of this case [remains] vacated," Dkt. 115, Plaintiffs-Appellees respond to Defendants-Appellants' premature 28(j) letter out of an abundance of caution.

Defendants face an analogous burden in establishing federal-officer removal: they must show that Plaintiffs' climate-deception claims are "for or relating to" fossil-fuel production that Defendants conducted under government direction. 28 U.S.C. § 1442(a). There is no reason to believe that Section 1442's "for or relating to" standard is more relaxed than OCSLA's "arising out of, or in connection with" standard. *San Mateo II*, 32 F.4th at 752 (treating "relates to" and "in connection with" as interchangeable). And this lawsuit's connection to government-controlled fossil-fuel production is just as "attenuated" as its connection to OCS fossil-fuel production. *Id.* at 744. Following *San Mateo II*, then, this Court should reject federal-officer removal on nexus grounds, just as numerous other courts have done in related cases.

Respectfully submitted,

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cc: All Counsel of Record (via ECF)