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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: *County of San Mateo v. Chevron Corp. et al.*, No. 18-15499, consolidated with *City of Imperial Beach v. Chevron Corp. et al.*, No. 18-15502; *County of Marin v. Chevron Corp. et al.*, No. 18-15503; *County of Santa Cruz, et al. v. Chevron Corp. et al.*, No. 18-16376 – Defendant-Appellant Chevron's Response to Rule 28(j) Letter

Dear Ms. Dwyer:

I write in response to Appellees' July 17, 2019, letter regarding this Court's unpublished decision in *Wong v. Kracksmith, Inc.*, 764 F. App'x 583 (9th Cir. 2019). Contrary to Appellees' assertion, *Kracksmith* does not suggest that the panel here is bound by *Patel v. Del Taco, Inc.*, 446 F.3d 996 (9th Cir. 2006).

In *Kracksmith*, defendants removed a domestic dispute under 28 U.S.C. §1443(1) and various other removal statutes—though not 28 U.S.C. §1442. *See Kracksmith*, No. 17-56765, ECF No. 11 at 24. The district court remanded and imposed sanctions against defendant's counsel for filing "a frivolous notice of removal." 764 F. App'x at 584. On appeal, defendant-appellant argued that removal was proper under §1443(1) and challenged the sanctions award. *See* No. 17-56765, ECF No. 10, 2018 WL 1911061 (9th Cir.). Defendant-appellant did not contend that removal was proper under any other statute, or that §1447(d) authorized review of the entire remand order. *Id.* Plaintiff-appellee did not file an answering brief.

This Court affirmed. *See Kracksmith*, 764 F. App'x 583. Without addressing the text of §1447(d), the Removal Clarification Act of 2011, or the Supreme Court's decision in *Yamaha Motor Corp., U.S.A. v. Calhoun*, 516 U.S. 199 (1996), the Court held that it lacked jurisdiction to review any argument that "removal was proper under 28 U.S.C. §1441." *Id.* at 584 (citing *Patel*, 446 F.3d at 998).

Kracksmith does not suggest that the panel here should follow *Patel*, because the removal in *Kracksmith* was frivolous, defendant did not remove under §1442, and neither party addressed the scope of appellate review under §1447(d) or the ongoing vitality of *Patel*. And *Patel* is *not* binding because the scope-of-review question at issue here was "not briefed, analyzed, or decided" in that case. AOB.23.

Moreover, the sanctions award in *Kracksmith* illustrates that authorizing review of the entire remand order would *not* "encourage defendants to assert and appeal baseless federal officer removal claims," as Plaintiffs-Appellees contend. No. 18-15499, ECF No. 41 at 19; *see Lu Junhong v. Boeing Co.*, 792 F.3d 805, 813 (7th Cir. 2015) (rejecting similar argument because "frivolous removal leads to sanctions").

Sincerely,

/s/ Theodore J. Boutrous, Jr.

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cc: All counsel of record (via ECF)