UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

STATE OF RHODE ISLAND,

Plaintiff,

v.

CHEVRON CORP.;
CHEVRON USA, INC.;
EXXONMOBIL CORP.;
BP, PLC;
BP AMERICA, INC.;
BP PRODUCTS NORTH AMERICA, INC.;
ROYAL DUTCH SHELL, PLC;
MOTIVA ENTERPRISES, LLC;
SHELL OIL PRODUCTS COMPANY, LLC;
CITGO PETROLEUM CORP.;
CONOCOPHILLIPS;
CONOCOPHILLIPS COMPANY;
PHILLIPS 66;
MARATHON OIL COMPANY;
MARATHON OIL CORPORATION;
MARATHON PETROLEUM CORP.;
MARATHON PETROLEUM COMPANY, LP;
SPEEDWAY LLC;
HESS CORP.;
LUKOIL PAN AMERICAS, LLC;
GETTY PETROLEUM MARKETING,
INC.; AND DOES 1 through 100, inclusive,

Defendants.

Case No. 1:18-cv-395-WES-LDA

REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF DEFENDANTS' MOTION TO EXTEND THE STAY OF THE REMAND ORDER PENDING APPEAL

TABLE OF CONTENTS

Page

I. INTRODUCTION 1
II. ARGUMENT 2
  A. The Entire Remand Order Is Reviewable On Appeal 2
  B. Defendants Are Likely To Succeed On The Merits Of Their Appeal 7
    1. Federal Common Law 9
    2. Federal Officer Removal 10
    3. Other Removal Grounds 12
  C. Defendants Will Be Irreparably Harmed Absent A Stay 13
  D. The Balance Of Harm Tilts Decisively In Defendants' Favor 16
III. CONCLUSION 17

TABLE OF AUTHORITIES

Page(s)

Cases

Acevedo-Garcia v. Vera-Monroig,
296 F.3d 13 (1st Cir. 2002) (per curiam) 16

Am. Policyholders Ins. Co. v. Nyacol Prod., Inc.,
989 F.2d 1256 (1st Cir. 1993) 3

California v. BP P.L.C.,
2018 WL 1064293 (N.D. Cal. Feb. 27, 2018) 9

County of San Mateo v. Chevron Corp.,
294 F. Supp. 3d 934 (N.D. Cal. 2018) 9

Bd. of Comm'rs v. Tenn. Gas Pipeline Co.,
850 F.3d 714 (5th Cir.), *cert. denied*, 138 S. Ct. 420 (2017) 13

Bos. Taxi Owners Ass'n, Inc. v. City of Boston,
187 F. Supp. 3d 339 (D. Mass. 2016) 8, 9, 13

Broadway Grill, Inc. v. Visa Inc.,
2016 WL 6069234 (N.D. Cal. Oct. 17, 2016) 14

Browning v. Navarro,
743 F.2d 1069 (5th Cir. 1984) 17

Canterbury Liquors & Pantry v. Sullivan,
999 F. Supp. 144 (D. Mass. 1998) 8

Castrignano v. E.R. Squibb & Sons, Inc.,
546 A.2d 775 (R.I. 1988) 11

Chang v. Univ. of R.I.,
107 F.R.D. 343 (D.R.I. 1985) 8

Chang v. Univ. of R.I.,
606 F. Supp. 1161 (D.R.I. 1985) 8

Chevron U.S.A. Inc. v. Nat. Res. Def. Council, Inc.,
467 U.S. 837 (1984) 4

City of New York v. BP P.L.C.,
325 F. Supp. 3d 466 (S.D.N.Y. 2018) 9, 15

City of Oakland v. BP P.L.C.,
325 F. Supp. 3d 1017 (N.D. Cal. 2018) 15

Connelly v. Hyundai Motor Co.,
351 F.3d 535 (1st Cir. 2003) 11

E.E.O.C. v. Astra U.S.A., Inc.,
94 F.3d 738 (1st Cir. 1996) 16

Ecker v. United States,
2008 WL 7542252 (D. Mass. July 24, 2008) 7, 8

Edwardsville Nat'l Bank & Tr. Co. v. Marion Labs., Inc.,
808 F.2d 648 (7th Cir. 1987) 1, 3

EP Operating Ltd. P'ship v. Placid Oil Co.,
26 F.3d 563 (5th Cir. 1994) 12

Fed. Deposit Ins. Corp. v. Santiago Plaza,
598 F.2d 634 (1st Cir. 1979) (per curiam) 17

Grable & Sons Metal Products, Inc. v. Darue Engineering & Manufacturing,
545 U.S. 308 (2005) 13

Hilton v. Kerry,
2013 WL 6244162 (D. Mass. Dec. 2, 2013) 8

In re E & G Waterworks, LLC,
571 B.R. 500 (Bankr. D. Mass. 2017) 15

In re Elias,
182 F. App'x 3 (1st Cir. 2006) (per curiam) 16

In re Extradition of Hilton,
2013 WL 3282864 (D. Mass. June 26, 2013) 7

In re Jarvis,
53 F.3d 416 (1st Cir.1995) 5

In re Williams,
156 F.3d 86 (1st Cir. 1998) 4

Ind. State Dist. Council of Laborers & Hod Carriers Pension Fund v. Renal Care Grp., Inc.,
2005 WL 2237598 (M.D. Tenn. Sept. 12, 2005) 14

Jacks v. Meridian Resource Co.,
701 F.3d 1224 (8th Cir. 2012) 6

Jane Doe No. 1 v. Backpage.com, LLC,
817 F.3d 12 (1st Cir. 2016)....................5

King v. Burwell,
135 S. Ct. 2480 (2015)....................5

Lu Junhong v. Boeing Co.,
792 F.3d 805 (7th Cir. 2015)....................3, 4, 5, 6

Maui Land & Pineapple Co. v. Occidental Chem. Corp.,
24 F. Supp. 2d 1083 (D. Haw. 1998)....................17

Mayor & City Council of Balt. v. BP P.L.C.,
2019 WL 2436848 (D. Md. June 10, 2019), *as amended* (June 20, 2019)....................9

Mayor & City Council of Balt. v. BP P.L.C.,
2019 WL 3464667 (D. Md. July 31, 2019)....................2, 5, 9

Mays v. City of Flint,
871 F.3d 437 (6th Cir. 2017)....................6

Mesa v. California,
489 U.S. 121 (1989)....................10

Morales v. Trans World Airlines, Inc.,
504 U.S. 374 (1992)....................10

Nken v. Holder,
556 U.S. 418 (2009)....................2, 7

Noel v. McCain,
538 F.2d 633 (4th Cir. 1976)....................2, 7

Northrop Grumman Tech. Servs. v. DynCorp Int'l LLC,
2016 WL 3180775 (E.D. Va. June 7, 2016)....................4, 5, 14, 15

Ohio Valley Envtl. Coal. v. U.S. Army Corps of Eng'rs,
2010 WL 11565166 (S.D.W. Va. May 4, 2010)....................8

Oliveira v. New Prime, Inc.,
857 F.3d 7 (1st Cir. 2017), *aff'd*, 139 S. Ct. 532 (2019)....................5

P.R. Hosp. Supply, Inc. v. Bos. Sci. Corp.,
426 F.3d 503 (1st Cir. 2005)....................16

Parker Drilling Mgmt. Servs., Ltd. v. Newton,
139 S. Ct. 1881 (2019)....................12

Pokorny v. Quixtar, Inc.,
2008 WL 1787111 (N.D. Cal. Apr. 17, 2008) 6

Powerex Corp. v. Reliant Energy Servs., Inc.,
551 U.S. 224 (2007) 4

Providence Journal Co. v. FBI,
595 F.2d 889 (1st Cir. 1979) 14

Raskas v. Johnson & Johnson,
2013 WL 1818133 (E.D. Mo. Apr. 29, 2013) 15

Rivera-Santos v. Sec'y of U.S. Dep't of Veterans Affairs,
2017 WL 3498655 (D.P.R. Aug. 15, 2017) 11

Rivera-Torres v. Ortiz Velez,
341 F.3d 86 (1st Cir. 2003) 7

Ross-Simons of Warwick, Inc. v. Baccarat, Inc.,
102 F.3d 12 (1st Cir. 1996) 16

Sawyer v. Foster Wheeler LLC,
860 F.3d 249 (4th Cir. 2017) 10, 11

Ten Taxpayer Citizens Grp. v. Cape Wind Assocs., LLC,
373 F.3d 183 (1st Cir. 2004) 12

Tenn. ex rel. Slatery v. Tenn. Valley Auth.,
2018 WL 3092942 (M.D. Tenn. June 22, 2018) 4

United States v. Wilkinson,
626 F. Supp. 2d 184 (D. Mass. 2009) 6

Westefer v. Snyder,
2010 WL 4000599 (S.D. Ill. Oct. 12, 2010) 7

Willcox v. Stroup,
358 B.R. 835 (D.S.C. 2006) 8, 9

Wong v. Kracksmith,
764 F. App'x 583 (9th Cir. 2019) 5

Statutes

28 U.S.C. § 1291 5

28 U.S.C. § 1292 ....3, 4, 5

28 U.S.C. § 1441 3

28 U.S.C. § 1442 .... *passim*

28 U.S.C. § 1447 .... *passim*

43 U.S.C. § 1333 12

Other Authorities

15A Charles Alan Wright et al., *Federal Practice & Procedure* § 3914.11 (2d ed. updated Aug. 2019) 4, 5, 6

H.R. Rep. No. 112–17(I) (2011) 14

D.R.I. L.R. 26(a) 15

I. INTRODUCTION

Defendants' appeal[1] raises complex jurisdictional questions that have divided federal district courts across the country and are now under review by the First, Fourth and Ninth Circuits—a clear indication that this appeal presents "serious and difficult questions of law in an area where the law is somewhat unclear." Indeed, this Court recognized that this case would benefit from appellate review. *See* Remand Hr'g Tr. dated Feb. 6, 2019, ECF No. 113 ("Remand Hr'g Tr."), at 59:25-60:3. Plaintiff's contention that most issues addressed in this Court's Remand Order (ECF No. 122 ("Remand Order")) are unreviewable on appeal is at odds with the plain text of 28 U.S.C. § 1447(d), the Supreme Court's interpretation of almost identical statutory language, and the leading treatise on federal jurisdiction. It also has no support in First Circuit case law. The entire Remand Order is reviewable on appeal, and the issues therein present serious questions about which courts have disagreed. For these reasons, Defendants have made a strong showing that their appeal presents a likelihood of success on the merits, and Plaintiff's arguments to the contrary lack merit.

Plaintiff's irreparable harm arguments are also unavailing. Without a stay, the state court may reach final judgment before Defendants' appeal is resolved. That prospect increases if Supreme Court review is necessary to resolve the scope of appellate review under § 1447(d), and potentially whether federal law governs Plaintiff's claims (and those at issue in nearly identical cases currently pending before the Second, Fourth, and Ninth Circuits). A stay would avoid having the parties unnecessarily litigate complex motions to dismiss (and various other motions) premised on substantive state law in state court, then re-litigate them under federal law in federal court if

[1] This Reply is submitted subject to and without waiver of any defense, affirmative defense, or objection, including personal jurisdiction, insufficient process, or insufficient service of process.

Defendants prevail on appeal. And although Plaintiff contends discovery will proceed immediately whether the claims are litigated in state or federal court, discovery in this District typically does not begin until after dispositive Rule 12 motions are resolved. If the First Circuit concludes that removal was proper and the claims return to federal court, there is a strong likelihood that the claims will be promptly dismissed (as two federal district courts have already done with almost identical claims). A stay therefore may obviate the need for *any* discovery.

Finally, Plaintiff complains about delay, but it identifies *no* harm that would result from a stay pending appeal. A stay would simply preserve the status quo until the First Circuit decides which law governs Plaintiff's claims and, thus, where they should be litigated.

II. ARGUMENT

The Remand Order should be stayed pending appeal because Defendants have made a strong showing that (1) they are likely to succeed on the merits; (2) they will be irreparably injured absent a stay; (3) a stay will not substantially injure Plaintiff; and (4) a stay is in the public interest. *Nken v. Holder*, 556 U.S. 418, 434 (2009).

A. The Entire Remand Order Is Reviewable On Appeal

Plaintiff relies heavily on Judge Hollander's decision denying Defendants a stay pending appeal. *See* Plaintiff's Opposition to Defendants' Motion to Extend the Temporary Stay of the Remand Order Pending Appeal, ECF No. 129 ("Opp.") at 1, 5, 12, 19, 20 (citing *Mayor & City Council of Balt. v. BP P.L.C.*, 2019 WL 3464667 (D. Md. July 31, 2019)). Judge Hollander's decision, however, rested on the premise that only federal-officer removal was subject to appellate review under a four decades-old Fourth Circuit decision. *See Mayor & City Council of Balt.*, 2019 WL 3464667 at *4 (citing *Noel v. McCain*, 538 F.2d 633, 635 (4th Cir. 1976)); Memorandum of Law in Support of Defendants' Motion to Extend the Stay of the Remand Order Pending Appeal, ECF No. 126–1 ("Mot.") at 9 n.4. That premise is incorrect, and as Plaintiff admits, the First

Circuit "has not addressed" this issue. Opp. at 4. There is no reason to believe that the First Circuit would adopt Plaintiff's erroneous interpretation of the statute.[2]

The plain text of § 1447(d) authorizes review of the remand "order" in cases removed under § 1442 or § 1443. Plaintiff argues that § 1447(d) does not extend appellate review to other "grounds" or "bases" for removal. Opp. at 4. But, as the Seventh Circuit recognized, "when a statute provides appellate jurisdiction over an order, 'the thing under review is the order,' and the court of appeals is not limited to reviewing particular 'questions' underlying the 'order.'" *Lu Junhong v. Boeing Co.*, 792 F.3d 805, 811 (7th Cir. 2015) (Easterbrook, J.) (quoting *Edwardsville Nat'l Bank & Tr. Co. v. Marion Labs., Inc.*, 808 F.2d 648, 650 (7th Cir. 1987)).

Plaintiff contends that Judge Easterbrook "misread[]" *Yamaha Motor Corp., U.S.A. v. Calhoun* (Opp. at 8), which held that when a district court certifies an order for interlocutory review under 28 U.S.C. § 1292(b), "appellate jurisdiction applies to the *order* certified to the court of appeals, and is not tied to the particular question formulated by the district court." 516 U.S. 199, 205 (1996) (emphasis in original). But the Seventh Circuit's "application of *Yamaha* . . . to the word 'order' in § 1447(d) . . . [was] entirely textual." *Lu Junhong*, 792 F.3d at 812. Because *Yamaha* clarified that when a statute authorizes appellate review of a court order that would otherwise be unreviewable, the "appellate court may address any issue fairly included" in that "*order*," 516 U.S. at 205 (emphasis in original), courts of appeals have jurisdiction to review the

[2] Though Plaintiff argues otherwise (Opp. at 6–7), the First Circuit has taken a broad view of the scope of appellate review when it comes to removal issues. *See Am. Policyholders Ins. Co. v. Nyacol Prod., Inc.*, 989 F.2d 1256, 1261 (1st Cir. 1993). While, as Defendants have acknowledged (Mot. at 4), *American Policyholders* did not involve § 1447(d), the significance of that case is that, even after finding federal-officer removal was improper and even though "the parties steadfastly disclaim[ed] any independent basis for federal jurisdiction," the First Circuit nonetheless explored whether a federal question would support removal under 28 U.S.C. § 1441, citing "principles of equity." *Id.*

"*whole* order," not just particular issues decided in that order.[3] *Lu Junhong*, 792 F.3d at 811 (emphasis in original).

Plaintiff argues that *Yamaha*'s reasoning should not apply in the context of § 1447(d) where "Congress identified only two specific and tightly-constrained grounds for appellate review of remand issues." Opp. at 9. But § 1447(d) "was enacted to prevent appellate delay in determining where litigation will occur," not to shield certain district court decisions from appellate review. *Lu Junhong*, 792 F.3d at 813; *accord Powerex Corp. v. Reliant Energy Servs., Inc.*, 551 U.S. 224, 237 (2007) (discussing "§ 1447(d)'s general interest in avoiding prolonged litigation on threshold nonmerits questions"). "[O]nce Congress has authorized appellate review of a remand order—as it has authorized review of suits removed on the authority of § 1442—a court of appeals has been authorized to take the time necessary to determine the right forum." *Lu Junhong*, 792 F.3d at 813; *see also* 15A Charles Alan Wright et al., *Federal Practice & Procedure* § 3914.11 (2d ed. updated Aug. 2019) ("Once an appeal is taken there is very little to be gained by limiting review.").

Plaintiff suggests that the word "order" should have a different meaning in § 1447(d) than in § 1292(b) because § 1447(d) "makes certain remand orders . . . merely 'reviewable,'" while § 1292(b) "directly authorizes the appeal of the certified order." Opp. at 10. That distinction

[3] This is how appellate review normally works. Appellate courts review "judgments, not opinions." *Chevron U.S.A. Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 842 (1984). Just as the First Circuit's review of a judgment is typically not limited to the reasons for that judgment, the First Circuit's review of an appealable remand order should not be limited to the reasons for the order. *See In re Williams*, 156 F.3d 86, 90 (1st Cir. 1998) ("[F]ederal appellate courts review decisions, judgments, orders, and decrees—not opinions, factual findings, reasoning, or explanations."). Indeed, courts consider remand orders in cases removed under 28 U.S.C. § 1442 to be judgments. *E.g.*, *Tenn. ex rel. Slatery v. Tenn. Valley Auth.*, 2018 WL 3092942, at *1 n.3 (M.D. Tenn. June 22, 2018); *see also infra* at 5 (citing *Northrop Grumman Tech. Servs. v. DynCorp Int'l LLC*, 2016 WL 3180775, at *2 (E.D. Va. June 7, 2016)).

makes no sense. After all, "an order remanding a case which had previously been removed under a claim of § 1442 removability is a 'judgment' for purposes of the Federal Rules of Civil Procedure." *Northrop Grumman*, 2016 WL 3180775, at *2.[4] The remand order is thus appealable under 28 U.S.C. § 1291, which, like § 1292(b), "directly authorizes" appeals and imposes no restrictions on the issues that may be decided in the context of an appealable order.

Plaintiff complains that the Seventh Circuit's interpretation of § 1447(d) allows "an appeal *as of right* whenever a removing defendant asserts federal officer jurisdiction." Opp. at 16 (emphasis in original). But this consequence flows from the statute's plain text. Any policy disagreement should be directed to Congress, not the courts, because when "statutory language is plain," courts "must enforce it according to its terms." *King v. Burwell*, 135 S. Ct. 2480, 2489 (2015). Plaintiff's attempt to "artificially restrict the plain meaning of the text" ignores this basic canon of statutory construction. *Oliveira v. New Prime, Inc.*, 857 F.3d 7, 23 (1st Cir. 2017), *aff'd*, 139 S. Ct. 532 (2019); *see also, e.g.*, *Jane Doe No. 1 v. Backpage.com, LLC*, 817 F.3d 12, 23 (1st Cir. 2016) ("We start with the uncontroversial premise that, where feasible, 'a statute should be construed in a way that conforms to the plain meaning of its text.'") (quoting *In re Jarvis*, 53 F.3d 416, 419 (1st Cir.1995)).[5]

---

[4] In the Baltimore case, the plaintiff recently acknowledged as much. Opposition to Defendants' Conditional Motion to Stay Execution of Remand Order Should the Court Grant the Pending Motion to Remand, *Mayor & City Council of Balt.*, No. 18-cv-2357 (D. Md. Apr. 5, 2019), ECF No. 162 at 2.

[5] "[T]he only plausible concern" with the plain-text interpretation of § 1447(d) "is that an expanded scope of review will encourage defendants to rely on strained arguments under [§ 1442 or] § 1443 in an effort to support appeal on other grounds." 15A Charles Alan Wright et al., *Federal Practice & Procedure* § 3914.11. But "[s]ufficient sanctions are available to deter frivolous removal arguments[.]" *Id.*; *see also Lu Junhong*, 792 F.3d at 813 ("a frivolous removal leads to sanctions"); *see, e.g., Wong v. Kracksmith*, 764 F. App'x 583, 584 (9th Cir. 2019) (affirming remand and district court's imposition of sanctions for filing "a frivolous notice of removal" under § 1443). "What's more, a court may resolve frivolous interlocutory appeals summarily." *Lu Junhong*, 792

Finally, Plaintiff contends that an "overwhelming consensus" of Circuits favors its interpretation. Opp. at 8. As Defendants have explained, however, that "consensus" has been abrogated by the amendment to the removal statute—all but one of these cases predated the Removal Clarification Act of 2011, which first authorized appellate review of cases removed under the federal officer removal statute. Mot. at 6–7; Opp. at 4–5. The only published decision on Plaintiff's side of the split that postdated the Act—the Eighth Circuit's decision in *Jacks v. Meridian Resource Co.*, 701 F.3d 1224, 1229 (8th Cir. 2012)—cited "nothing" to support its statutory interpretation. *Lu Junhong*, 792 F.3d at 812 (distinguishing *Jacks*, 701 F.3d at 1229). Nor did it "discuss the significance of the statutory reference to review of an 'order'" or even "mention *Yamaha*." *Id.* The two more recent circuit decisions (*Lu Junhong* and *Mays v. City of Flint,* 871 F.3d 437, 442 (6th Cir. 2017)) adopt Defendants' interpretation. Not only is Plaintiff's interpretation irreconcilable with the plain text and *Yamaha*, it also is in conflict with the leading treatise on federal jurisdiction. *See* 15A Charles Alan Wright et al., *Federal Practice & Procedure* § 3914.11 ("§ 1447(d) allows review of the '*order* remanding' the case . . . . Review should . . . be extended to all possible grounds for removal underlying the order.") (emphasis added). Regardless of whether this Court accepts Defendants' interpretation of § 1447(d), the split among the courts of appeals alone satisfies the "serious and difficult questions" prong. Mot. at 7; *see also, e.g.*, *United States v. Wilkinson*, 626 F. Supp. 2d 184, 195 (D. Mass. 2009) (granting stay where the "appeal of this decision will raise serious and difficult issues on which two circuits have split"); *Pokorny v. Quixtar, Inc.*, 2008 WL 1787111, at *1–2 (N.D. Cal. Apr. 17, 2008) (granting stay in

---

F.3d at 813 (citations omitted). Here, even Plaintiff has not suggested that federal officer removal grounds were frivolously raised by the Defendants.

the face of "conflicting rulings demonstrat[ing] that the law is unsettled and guidance from the appellate court would be beneficial").[6]

B. Defendants Are Likely To Succeed On The Merits Of Their Appeal

Plaintiff argues that satisfaction of the first prong of the stay test requires Defendants to demonstrate "a *strong likelihood*" that they will prevail on appeal. Opp. at 4 (emphasis in original). But the requirement that the movant make a strong showing of success does *not* mean demonstrating that it is "more than 50% likely to succeed." *In re Extradition of Hilton*, 2013 WL 3282864, at *2 (D. Mass. June 26, 2013) (quoting *Westefer v. Snyder*, 2010 WL 4000599, at *3 (S.D. Ill. Oct. 12, 2010)). Such a standard "would require a district court to decide that its own ruling is likely to be reversed." *Ecker v. United States*, 2008 WL 7542252, at *3 (D. Mass. July 24, 2008) (emphasis added). "[N]o district court would ever grant a stay" if that standard applied. *See Hilton*, 2013 WL 3282864, at *2 (quoting *Westefer*, 2010 WL 4000599, at *3). After all, if a district court "thought an appeal would be successful, [the court] would not have ruled as [it] did in the first place." *Id.* (quoting *Westefer*, 2010 WL 4000599, at *3).

To be sure, Defendants must show "more than a mere possibility of relief." *Nken*, 556 U.S. at 434 (alterations omitted). But this bar is not particularly high: the analysis "closely resembles" a test that district courts use to determine whether an appeal would be "frivolous[]." *Rivera-Torres v. Ortiz Velez*, 341 F.3d 86, 95 (1st Cir. 2003). Thus, a party makes a strong showing of success on the merits when "there 'is a dearth of controlling precedent and . . . appreciable room for

[6] Plaintiff erroneously asserts that "the Fourth Circuit explained in *Noel*" that "Congress's incorporation of § 1442 in addition to § 1443 did not expand appellate jurisdiction beyond those two bases expressly listed in § 1447(d)." Opp. at 11. Yet cases removed under § 1442 became subject to appellate review only through the Removal Clarification Act of 2011, and *Noel* was issued in 1976. Indeed, *Noel* contains no citations to § 1442. *See generally Noel*, 538 F.2d at 634–36.

differences of opinion' on . . . 'difficult and pivotal questions[.]'" *Chang v. Univ. of R.I.*, 107 F.R.D. 343, 345 (D.R.I. 1985) (quoting *Chang v. Univ. of R.I.*, 606 F. Supp. 1161, 1279 (D.R.I. 1985)). This prong is also satisfied where an appeal contains "serious and difficult questions of law in an area where the law is somewhat unclear," or where the case presents an issue that is "neither elementary nor well-established." *Bos. Taxi Owners Ass'n, Inc. v. City of Boston*, 187 F. Supp. 3d 339, 341–42 (D. Mass. 2016) (quoting *Canterbury Liquors & Pantry v. Sullivan*, 999 F. Supp. 144, 150 (D. Mass. 1998)); *see* Mot. at 8.

Plaintiff argues that Defendants cannot satisfy this first prong because this Court "rejected the entirety of Defendants' notice of removal" and because their stay motion "cites the same authority that was before this Court throughout the parties' briefing." Opp. at 13. But that is not the standard. Defendants are not required to present new arguments, or to supplement their arguments with previously uncited materials. *See Ohio Valley Envtl. Coal. v. U.S. Army Corps of Eng'rs*, 2010 WL 11565166, at *3 (S.D.W. Va. May 4, 2010) (granting stay after finding "a reasonable argument that the Fourth Circuit may reverse" where the movant relied "on documents previously filed in this action").[7] Nor must Defendants convince the Court that its original decision will be overturned. *Hilton v. Kerry*, 2013 WL 6244162, at *2 (D. Mass. Dec. 2, 2013) ("[T]he moving party need not persuade the court that [it is] likely to be reversed on appeal[.]") (quoting *Canterbury Liquors & Pantry*, 999 F. Supp. at 150); *Ecker*, 2008 WL 7542252, at *3.[8] Instead, Defendants must simply show that their appeal raises "serious and difficult questions in an area

[7] Plaintiff's proposed standard, which would encourage parties to hold back helpful authority to support a later stay application, conflicts with appellate waiver rules that specifically discourage this type of sandbagging.

[8] *See also, e.g.*, *Willcox v. Stroup,* 358 B.R. 835, 838 (D.S.C. 2006) (granting stay "in no way implies that the court doubts the correctness of its order," but signifies that the "case presents serious, substantial and difficult issues of first impression that are a 'fair subject for appellate argument'").

where the law is somewhat unclear." *Bos. Taxi Owners Ass'n, Inc.*, 187 F. Supp. 3d at 341–42. As explained below, Defendants meet that standard here.

1. Federal Common Law

Plaintiff does not (and cannot) deny that courts have split on the question of whether Plaintiff's claims—despite their state-law labels—necessarily arise under federal common law. *Compare City of New York v. BP P.L.C.,* 325 F. Supp. 3d 466, 471–72 (S.D.N.Y. 2018) (Keenan, J.), *and California v. BP P.L.C.,* 2018 WL 1064293, at *2–3 (N.D. Cal. Feb. 27, 2018) (Alsup, J.), *with Mayor & City Council of Balt. v. BP P.L.C.,* 2019 WL 2436848, at *6–9 (D. Md. June 10, 2019), *as amended* (June 20, 2019) (Hollander, J.), *and County of San Mateo v. Chevron Corp.,* 294 F. Supp. 3d 934, 937 (N.D. Cal. 2018) (Chhabria, J.). These clashing precedents demonstrate that Defendants' appeal raises "serious and difficult questions of law in an area where the law is somewhat unclear." *Bos. Taxi Owners Ass'n, Inc.*, 187 F. Supp. 3d at 341–42.

Indeed, two district courts concluded that almost identical claims "necessarily arise under federal common law." *BP*, 2018 WL 1064293, at *5; *accord City of New York*, 325 F. Supp. 3d at 472. While Judge Hollander ultimately disagreed with these determinations, she acknowledged that the federal common law ground of removal "presents a complex and unsettled legal question, as evidenced by the diverging opinions reached by other district courts that have considered the issue." *Mayor & City Council of Balt.*, 2019 WL 3464667, at *3. Judge Hollander also commented that Judge Alsup's reasoning "was well stated and presents an appealing logic."[9] *Mayor & City Council of Balt.*, 2019 WL 2436848, at *7–8 (citing *BP*, 2018 WL 1064293 at *1–5). Judge

[9] As discussed above (*supra* at 2-3), Judge Hollander denied Defendants' request for a stay after concluding that the Fourth Circuit does not permit appellate review of federal-question removal. The First Circuit has no such precedent, so the entire Remand Order, including Defendants' federal common law argument, should be subject to appellate review. *See id.*

Chhabria also rejected Defendants' federal common law argument, but stayed his remand order and *sua sponte* certified the issues for interlocutory appeal because the cases involved "controlling questions of law as to which there is substantial ground for difference of opinion." Order Granting Motions to Stay, *County of San Mateo*, No. 3:17-cv-04929 (N.D. Cal. Apr. 9, 2018), ECF No. 240. Because two district courts have held that almost identical claims necessarily arose under federal common law, and because even courts reaching contrary conclusions have recognized that reasonable minds could disagree on the question, Defendants have shown that their appeal raises serious legal questions in an area where the law is somewhat unclear. For this reason alone, the first prong is satisfied.

2. Federal Officer Removal

This Court rejected removal under 28 U.S.C. § 1442 because it concluded Defendants could not show a "causal connection" between Plaintiff's claims and any action undertaken at the direction of federal officers. Remand Order at 15. In particular, the Court stated that "Defendants cannot show the alleged promotion and sale of fossil fuels abetted by a sophisticated misinformation campaign were 'justified by [their] federal duty.'" *Id.* (quoting *Mesa v. California*, 489 U.S. 121, 131–32 (1989)); Opp. at 11. However, at least several of Plaintiff's claims plainly do not turn on Defendants' alleged promotion or concealment; they instead are based on Defendants' *production of fossil fuels*. A significant portion of that production occurred at the direction of federal officers, which is enough "to stand in some relation" or to "have bearing or concern" on Plaintiff's claims. *See Directed to Def. Ass'n of Phila.*, 790 F.3d 457, 471 (3d Cir. 2015) (quoting *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 383 (1992)); *see also Sawyer v. Foster Wheeler LLC*, 860 F.3d 249, 258 (4th Cir. 2017) ("In demanding a showing of a specific government direction, . . . the district court went beyond what § 1442(a)(1) requires, which is only that the charged conduct *relate to* an act under color of federal office.") (emphasis in original).

Indeed, Plaintiff asserts a claim for "Strict Liability for Design Defect" on the ground that "Defendants . . . extracted, refined, formulated, designed, packaged, [and] distributed . . . fossil fuel products," and that those "fossil fuel products have not performed as safely as an ordinary consumer would expect them to." Complaint, ECF No. 3–1 ("Compl.") ¶¶ 253, 255. To show a link between this claim and conduct undertaken at the direction of federal officers, Defendants would not need to prove that federal officers directed Defendants to engage in a "sophisticated misinformation campaign." Opp. at 11 (quoting Remand Order at 15). On the contrary, "the focus of strict liability is on whether the design itself was unreasonably dangerous"—not "on the conduct of the manufacturer." *Connelly v. Hyundai Motor Co.*, 351 F.3d 535, 542 (1st Cir. 2003); *accord Castrignano v. E.R. Squibb & Sons, Inc.*, 546 A.2d 775, 781 (R.I. 1988) ("[T]he traditional [strict-liability] analysis . . . focuses on the product's defects rather than the reasonableness of the manufacturer[.]"). Because federal officers directed certain Defendants to extract and produce the very "product" that Plaintiff claims is defective, Defendants have at least a colorable argument that the charged conduct relates to acts taken under federal control.

Plaintiff contends that Defendants have not established the requisite causal nexus for any "period" of time. Opp. at 12. But regardless of whether federal officers directed *all* of Defendants' production for any particular period, the Complaint alleges that Defendants' *cumulative* fossil-fuel production, including all production at the direction of federal officers, caused its alleged injuries. *E.g.* Compl. ¶¶ 45, 95–97, 185. At a minimum, Defendants' appeal raises a serious question as to whether there is "a connection or association between the act in question"—fossil-fuel production—"and the federal office." *Rivera-Santos v. Sec'y of U.S. Dep't of Veterans Affairs*, 2017 WL 3498655, at *1 (D.P.R. Aug. 15, 2017) (emphasis omitted) (quoting *Sawyer*, 860 F.3d at 258).

3. Other Removal Grounds

This case was also properly removed under the Outer Continental Shelf Lands Act ("OCSLA") because Plaintiff's claims arise out of Defendants' fossil-fuel extraction on the Outer Continental Shelf ("OCS"). As the Supreme Court recently held, "[u]nder OCSLA, all law on the OCS is federal law." *Parker Drilling Mgmt. Servs., Ltd. v. Newton*, 139 S. Ct. 1881, 1886 (2019). Plaintiff's contention that *Parker Drilling* is irrelevant because it addressed a "choice of law question with no relevance or relationship to removal jurisdiction" (Opp. at 16) lacks merit. *See Ten Taxpayer Citizens Grp. v. Cape Wind Assocs., LLC*, 373 F.3d 183, 192–93 (1st Cir. 2004) (holding that case was properly removed because the plaintiff's claims, "though ostensibly premised on Massachusetts law, arise under the 'law of the United States' under § 1333(a)(2)"). *Parker Drilling* supports the conclusion that federal jurisdiction is proper because federal law applies "to the same extent as if the [OCS] were an area of exclusive Federal jurisdiction located within a State," *i.e.*, a federal enclave. 43 U.S.C. § 1333(a)(1); *Parker Drilling*, 139 S. Ct. at 1889 ("our interpretation is consistent with the federal-enclave model—a model that the OCSLA expressly invokes").

Plaintiff points out that this Court rejected OCSLA jurisdiction on the rationale that Defendants failed to show that their OCS operations were the "but for" cause of Plaintiff's alleged injuries. Opp. at 16–17; *see also* Remand Order at 14–15. But Plaintiff does not dispute that other courts have found OCSLA jurisdiction—without conducting a "but-for" analysis—over claims that "threaten[ed] to impair the total recovery of the federally-owned minerals" from the OCS. *See, e.g.*, *EP Operating Ltd. P'ship v. Placid Oil Co.*, 26 F.3d 563, 570 (5th Cir. 1994). Plaintiff's claims threaten to do just that by making fossil-fuel production too costly to continue. Defendants' appeal thus presents a serious question as to whether "but-for" causation is even required, as well

as whether it is satisfied given Plaintiff's broad theory of causation and the geographic scope of its claims.

Addressing the likelihood of success on removal under *Grable & Sons Metal Products, Inc. v. Darue Engineering & Manufacturing*, 545 U.S. 308 (2005), Plaintiff again improperly faults Defendants for citing "authority already considered" by this Court. Opp. at 15. Although Plaintiff believes the Court has successfully "distinguished" Defendants' cases, *id.*, the operative question on this motion is whether jurists could reasonably disagree on whether Plaintiff's nuisance claims, which require a determination of the "reasonableness" of Defendants' conduct, would entail second-guessing federal regulatory decisions that made the exact same determination. *See Bd. of Comm'rs v. Tenn. Gas Pipeline Co.*, 850 F.3d 714, 721, 725–26 (5th Cir.), *cert. denied*, 138 S. Ct. 420 (2017).

Plaintiff argues that the Court has already "rebuffed" or "rejected" Defendants' other grounds for removal. Opp. at 14, 17. But the standard for a stay is not whether this Court has already accepted the argument; such a standard would be meaningless. Rather the test is whether, even though the Court did not accept the Defendants' arguments, the arguments still raise "serious and difficult questions of law in an area where the law is somewhat unclear." *Bos. Taxi Owners Ass'n*, 187 F. Supp. 3d at 341–42. For these reasons, Defendants have made a strong showing of likelihood of success on appeal.

C. Defendants Will Be Irreparably Harmed Absent A Stay

If this Court denies Defendants' stay request, the state court could reach final judgment before Defendants' appeal is resolved, particularly if the Supreme Court grants certiorari to resolve the circuit split on the proper interpretation of § 1447(d), or potentially, whether federal law governs these and nearly identical global warming claims pending in other Circuits. Plaintiff does not dispute that a final judgment in state court would make the remand order effectively

"irrevocable" and therefore deny Defendants "[m]eaningful [appellate] review." *Providence Journal Co. v. FBI*, 595 F.2d 889, 890 (1st Cir. 1979). After all, this case cannot "return to this Court" (Opp. at 19) if it has already been resolved.

Defendants will also suffer irreparable harm without a stay because the increased likelihood of active state court litigation and rulings on a broad array of discovery issues threatens to render their statutory right to appeal "hollow." *Northrop Grumman*, 2016 WL 3346349, at *3 (collecting cases); *see also* H.R. Rep. No. 112–17(I), pt. 1, at 2–4 (2011) (Removal Clarification Act of 2011 designed to prevent federal officers from being forced to litigate in state courts). Plaintiff asserts that an appeal is rendered meaningless only in the "context of orders to disclose documents that would be impossible to claw back if released." Opp. at 18. But *Northrop Grumman* and the cases it cites are not so narrow. On the contrary, they reasoned broadly that "if [a] stay is denied, the case is actually remanded, and the state court proceeds to move it forward, then the appellate right would be an empty one." *Northrop Grumman*, 2016 WL 3346349, at *3 (quoting *Ind. State Dist. Council of Laborers & Hod Carriers Pension Fund v. Renal Care Grp., Inc.*, 2005 WL 2237598, at *1 (M.D. Tenn. Sept. 12, 2005)); Mot. at 16. It makes little sense to litigate the case in state court before the First Circuit has decided what law applies and whether the claims even belong there.

If the case returns to federal court after appeal, Plaintiff contends that proceedings "would presumably pick up exactly where they left off in state court." Opp. at 19. In Plaintiff's view, state-court proceedings may "help advance the resolution of the case." *Id.* at 18 (quoting *Broadway Grill, Inc. v. Visa Inc.*, 2016 WL 6069234, at *2 (N.D. Cal. Oct. 17, 2016)). But here a threshold issue on appeal is *which law* governs Plaintiff's claims, and dispositive motions briefed under state law in state court would need to be re-briefed and re-argued applying federal law in

this Court if the First Circuit determines that Plaintiff's claims arise under federal law. Allowing this case to proceed in state court could therefore result in a substantial duplication of effort and waste of judicial resources. *See Raskas v. Johnson & Johnson*, 2013 WL 1818133, at *2 (E.D. Mo. Apr. 29, 2013); *cf. In re E & G Waterworks, LLC*, 571 B.R. 500, 509 (Bankr. D. Mass. 2017) (entering stay to avoid simultaneous proceedings that would "not only waste . . . resources, but also run[] the risk of inconsistent rulings"). Resources needlessly expended litigating in state court cannot be recovered and thus constitute irreparable harm.

Simultaneous state-federal litigation may also create a labyrinth of "comity and federalism issues" for the parties and the Court to navigate upon return to federal court. *Northrop Grumman*, 2016 WL 3346349, at *4. After all, during the months (or years) that this case is pending before it, the state court may make numerous rulings—the validity of which would likely be disputed. *Id.* "District courts have been sensitive to [these] concerns" and have granted motions to stay pending appeal in response to them. *Id.*

Lastly, Plaintiff appears to assume it will obtain discovery before any dispositive motions are resolved—regardless of whether the case proceeds in state or federal court. Opp. at 18–19. But discovery in this District is generally deferred until after dispositive motions are decided. *See* D.R.I. L.R. 26(a). If the First Circuit concludes that Plaintiff's claims arise under federal law and Plaintiff's claims are dismissed for failure to state a claim upon return to federal court (the result in two cases where the district courts assumed jurisdiction over nearly identical claims, *see City of New York,* 325 F. Supp. 3d at 472–76; *City of Oakland v. BP P.L.C.,* 325 F. Supp. 3d 1017, 1024–26 (N.D. Cal. 2018)), then discovery against all Defendants will have been a waste of resources as well as irreversible. The prudent course is to allow the First Circuit to decide the fundamental

question of *which law governs* before state-court proceedings commence. Mot. at 15–17 (citing cases).

Moreover, "when the likelihood of success on the merits is great," as it is here given that two district courts have held that almost identical claims arose under federal common law, "a movant can show somewhat less in the way of irreparable harm." *E.E.O.C. v. Astra U.S.A., Inc.*, 94 F.3d 738, 743–44 (1st Cir. 1996); *see also Ross-Simons of Warwick, Inc. v. Baccarat, Inc.*, 102 F.3d 12, 18 (1st Cir. 1996) ("an attempt to show irreparable harm cannot be evaluated in a vacuum; the predicted harm and the likelihood of success on the merits must be juxtaposed and weighed in tandem"). "[W]hat matters . . . is not the raw amount of irreparable harm [a] party might conceivably suffer, but rather the risk of such harm in light of the party's chance of success on the merits[.]" *In re Elias*, 182 F. App'x 3, 4 (1st Cir. 2006) (per curiam) (quoting *P.R. Hosp. Supply, Inc. v. Bos. Sci. Corp.*, 426 F.3d 503, 507 n.1 (1st Cir. 2005)).[10]

D. The Balance Of Harm Tilts Decisively In Defendants' Favor

A stay would not prejudice Plaintiff's ability to seek damages or other relief. Plaintiff's Complaint disclaims any desire "to restrain Defendants from engaging in their business operations," and merely "seeks to ensure that [Defendants] bear the costs of those impacts." Compl. ¶ 12. Plaintiff thus does not, and cannot, point to harm reasonably likely to occur as a result of a stay, but which denial of a stay could avoid. At most, Plaintiff's alleged entitlement to money damages could be modestly delayed—the antithesis of irreparable harm.

A stay would also conserve the parties' and judicial resources by avoiding costly litigation that could be rendered irrelevant if the First Circuit reverses. Contrary to Plaintiff's contention

[10] These cases involve applications for preliminary injunctions, but the same general test applies to motions for stays pending appeal. *E.g. Elias*, 182 F. App'x at 4 (citing *Acevedo-Garcia v. Vera-Monroig*, 296 F.3d 13, 16 (1st Cir. 2002) (per curiam)).

that the appeal itself could be a "fruitless exercise," Opp. at 20, this Court recognized the benefit of appellate review, *see* Remand Hr'g Tr. at 59:25–60:3, and the appeal raises substantial legal questions, as explained above.

Plaintiff contends that the balance of harms tilts in its favor because it has a "right . . . to proceed in Rhode Island state court." Opp. at 20. But whether Plaintiff has such a right is the *precise issue* raised in Defendants' appeal. And unlike the cases Plaintiff cites (*id*. at 20), there are no pending state court proceedings with which a stay would interfere. *See Maui Land & Pineapple Co. v. Occidental Chem. Corp.*, 24 F. Supp. 2d 1083, 1087 (D. Haw. 1998) (declining to recall remand where "action [had] already been certified to the state court"); *Browning v. Navarro*, 743 F.2d 1069, 1078–79 (5th Cir. 1984) (after remand issues to the state court, the "district judge is without power to take any further action") (quoting *Fed. Deposit Ins. Corp. v. Santiago Plaza*, 598 F.2d 634, 636 (1st Cir. 1979) (per curiam)).

III. CONCLUSION

For the foregoing reasons and those stated in Defendants' opening brief, the Court should grant Defendants' Motion and stay the Remand Order pending resolution of Defendants' appeal in the First Circuit. Alternatively, if the Court denies this Motion, Defendants request that the Court enter a further temporary stay of the Remand Order to allow the First Circuit to consider and decide a motion to stay pending appeal pursuant to Federal Rule of Appellate Procedure 8(a)(2), which may extend beyond the 30-day stay to which the parties have stipulated (ECF No. 124).

Dated: August 30, 2019

Respectfully submitted,

Defendants
BP p.l.c., BP America Inc., and BP Products North America Inc.

/s/ *John A. Tarantino*

John A. Tarantino (#2586)
Patricia K. Rocha (#2793)
Nicole J. Benjamin (#7540)
ADLER POLLOCK & SHEEHAN P.C.
One Citizens Plaza, 8th Floor
Providence, RI 02903
Tel.: (401) 427-6262
Fax: (401) 351-4607
E-mail: jtarantino@apslaw.com
E-mail: procha@apslaw.com
E-mail: nbenjamin@apslaw.com

Philip H. Curtis (*pro hac vice*)
Nancy G. Milburn (*pro hac vice*)
ARNOLD & PORTER KAYE SCHOLER LLP
250 West 55th Street
New York, NY 10019-9710
Telephone: (212) 836-8383
Facsimile: (212) 715-1399
E-mail: philip.curtis@arnoldporter.com
E-mail: nancy.milburn@arnoldporter.com

Matthew T. Heartney (*pro hac vice*)
ARNOLD & PORTER KAYE SCHOLER LLP
777 South Figueroa Street, 44th Floor
Los Angeles, California 90017-5844
Telephone: (213) 243-4000
Facsimile: (213) 243-4199
E-mail: matthew.heartney@arnoldporter.com
Attorneys for Defendants BP P.L.C., BP AMERICA INC., and BP PRODUCTS NORTH AMERICA INC.

By: /s/ *Gerald J. Petros*

Gerald J. Petros (#2931)
Robin L. Main (#4222)
Ryan M. Gainor (#9353)
HINCKLEY, ALLEN & SNYDER LLP
100 Westminster Street, Suite 1500
Providence, RI 02903
(401) 274-2000 (Telephone)
(401) 277-9600 (Fax)
E-mail: gpetros@hinckleyallen.com
E-mail: rmain@hinckleyallen.com
E-mail: rgainor@hinckleyallen.com

Theodore J. Boutrous, Jr. (*pro hac vice*)
Joshua S. Lipshutz (*pro hac vice*)
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071
Telephone: (213) 229-7000
Facsimile: (213) 229-7520
E-mail: tboutrous@gibsondunn.com
E-mail: jlipshutz@gibsondunn.com

Neal S. Manne *(pro hac vice)*
SUSMAN GODFREY LLP
1000 Louisiana, Suite 5100
Houston, TX 77002
Telephone: (713) 651-9366
Facsimile: (713) 654-6666
E-mail: nmanne@susmangodfrey.com

Attorneys for Defendants CHEVRON CORP. and CHEVRON U.S.A., INC.

By: /s/ *Matthew T. Oliverio*

Matthew T. Oliverio, Esquire (#3372)
OLIVERIO & MARCACCIO LLP
55 Dorrance Street, Suite 400
Providence, RI 02903
Tel.: (401) 861-2900
Fax: (401) 861-2922
E-mail: mto@om-rilaw.com

Theodore V. Wells, Jr. (*pro hac vice*)
Daniel J. Toal (*pro hac vice*)
Jaren Janghorbani (*pro hac vice*)
PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP
1285 Avenue of the Americas
New York, New York 10019-6064
Telephone: (212) 373-3000
Fax: (212) 757-3990
E-mail: twells@paulweiss.com
E-mail: dtoal@paulweiss.com
E-mail: jjanghorbani@paulweiss.com

Attorneys for Defendant EXXONMOBIL CORP.

By: /s/ *Robert D. Fine*

Robert D. Fine (2447)
Douglas J. Emanuel (5176)
CHACE RUTTENBERG & FREEDMAN, LLP
One Park Row, Suite 300
Providence, Rhode Island 02903
Phone: (401) 453-6400
E-mail: rfine@crfllp.com

Jerome C. Roth (*pro hac vice*)
Elizabeth A. Kim (*pro hac vice*)
MUNGER, TOLLES & OLSON LLP
560 Mission Street
Twenty-Seventh Floor
San Francisco, California 94105-2907
Telephone: (415) 512-4000
Facsimile: (415) 512-4077
E-mail: jerome.roth@mto.com
E-mail: elizabeth.kim@mto.com

David C. Frederick (*pro hac vice*)
KELLOGG, HANSEN, TODD, FIGEL & FREDERICK, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
Telephone: (202) 326-7900
Facsimile: (202) 326-7999
E-mail: dfrederick@kellogghansen.com

Attorneys for Defendants SHELL OIL PRODUCTS COMPANY LLC and ROYAL DUTCH SHELL, plc

By: /s/ *Stephen J. MacGillivray*

John E. Bulman, Esq. (#3147)
Stephen J. MacGillivray, Esq. (#5416)
PIERCE ATWOOD LLP
One Financial Plaza, 26th Floor
Providence, RI 02903
Telephone: 401-588-5113
Fax: 401-588-5166
E-mail: jbulman@pierceatwood.com
E-mail: smacgillivray@pierceatwood.com

Nathan P. Eimer, Esq. (*pro hac vice*)
Pamela R. Hanebutt, Esq. (*pro hac vice*)
Lisa S. Meyer, Esq. (*pro hac vice*)
EIMER STAHL LLP
224 South Michigan Avenue, Suite 1100
Chicago, IL 60604
Telephone: (312) 660-7600
Facsimile: (312) 692-1718
E-mail: neimer@EimerStahl.com
E-mail: phanebutt@EimerStahl.com
E-mail: lmeyer@EimerStahl.com

Attorneys for Defendant CITGO PETROLEUM CORP.

By: /s/ *Michael J. Colucci*

Michael J. Colucci, Esq. #3302
OLENN & PENZA, LLP
530 Greenwich Avenue
Warwick, RI 02886
PHONE: (401) 737-3700
FAX: (401) 737-5499
E-mail: mjc@olenn-penza.com

Robert G. Flanders, Jr. (#1785)
Timothy K. Baldwin (#7889)
WHELAN, CORRENTE, FLANDERS,
KINDER & SIKET LLP
100 Westminster Street, Suite 710
Providence, RI 02903
PHONE: (401) 270-4500
FAX: (401) 270-3760
E-mail: rflanders@whelancorrente.com
E-mail: tbaldwin@whelancorrente.com

Steven M. Bauer (*pro hac vice*)
Margaret A. Tough (*pro hac vice*)
LATHAM & WATKINS LLP
505 Montgomery Street, Suite 2000
San Francisco, CA 94111-6538
PHONE: (415) 391-0600
FAX: (415) 395-8095
E-mail: steven.bauer@lw.com
E-mail: margaret.tough@lw.com

Sean C. Grimsley, Esq. (*pro hac vice*)
Jameson R. Jones, Esq. (*pro hac vice*)
BARTLIT BECK HERMAN
PALENCHAR & SCOTT LLP
1801 Wewatta Street, Suite 1200
Denver, CO 80202
PHONE: (303) 592-3100
FAX: (303) 592-3140
E-mail: sean.grimsley@bartlit-beck.com
E-mail: jameson.jones@bartlit-beck.com

Attorneys for Defendants CONOCOPHILLIPS and CONOCOPHILLIPS COMPANY

By: /s/ *Robert G. Flanders, Jr.*

Robert G. Flanders, Jr. (#1785)
Timothy K. Baldwin (#7889)
WHELAN, CORRENTE, FLANDERS,
KINDER & SIKET LLP
100 Westminster Street, Suite 710
Providence, RI 02903
PHONE: (401) 270-4500
FAX: (401) 270-3760
E-mail: rflanders@whelancorrente.com
E-mail: tbaldwin@whelancorrente.com

Steven M. Bauer (*pro hac vice*)
Margaret A. Tough (*pro hac vice*)
LATHAM & WATKINS LLP
505 Montgomery Street, Suite 2000
San Francisco, CA 94111-6538
PHONE: (415) 391-0600
FAX: (415) 395-8095
E-mail: steven.bauer@lw.com
E-mail: margaret.tough@lw.com

Attorneys for Defendant PHILLIPS 66

By: /s/ *Jeffrey B. Pine*

Jeffrey B. Pine (SB 2278)
Patrick C. Lynch (SB 4867)
LYNCH & PINE
One Park Row, 5th Floor
Providence, RI 02903
Tel: (401) 274-3306
Fax: (401) 274-3326
E-mail: JPine@lynchpine.com
E-mail: Plynch@lynchpine.com

Shannon S. Broome (*pro hac vice*)
HUNTON ANDREWS KURTH LLP
50 California Street
San Francisco, CA 94111
Tel: (415) 975-3718
Fax: (415) 975-3701
E-mail: SBroome@HuntonAK.com

Shawn Patrick Regan (*pro hac vice*)
HUNTON ANDREWS KURTH LLP
200 Park Avenue
New York, NY 10166
Tel: (212) 309-1046
Fax: (212) 309-1100
E-mail: SRegan@HuntonAK.com

Ann Marie Mortimer (*pro hac vice*)
HUNTON ANDREWS KURTH LLP
550 South Hope Street, Suite 2000
Los Angeles, CA 90071
Tel: (213) 532-2103
Fax: (213) 312-4752
E-mail: AMortimer@HuntonAK.com

Attorneys for Defendants MARATHON PETROLEUM CORP. MARATHON PETROLEUM COMPANY, LP, *and SPEEDWAY LLC*

By: /s/ *Jason C. Preciphs*

Jason C. Preciphs (#6727)
ROBERTS, CARROLL, FELDSTEIN
& PEIRCE, INC.
10 Weybosset Street, 8th Floor
Providence, RI 02903
Tel: (401) 521-7000
Fax: (401) 521-1328
E-mail: jpreciphs@rcfp.com

J. Scott Janoe (*pro hac vice*)
Matthew Allen (*pro hac vice*)
BAKER BOTTS LLP
910 Louisiana Street
Houston, TX 77002
Tel: (713) 229-1553
Fax: (713) 229-7953
E-mail: scott.janoe@bakerbotts.com
E-mail: matt.allen@bakerbotts.com

Megan Berge (*pro hac vice*)
BAKER BOTTS LLP
1299 Pennsylvania Avenue, NW
Washington, DC 20004
Tel: (202) 639-7700
Fax: (202) 639-1171
E-mail: megan.berge@bakerbotts.com

Attorneys for Defendant HESS CORP.

By: /s/ *Lauren Motola-Davis*

Lauren Motola-Davis (#3396)
Samuel A. Kennedy-Smith (#8867)
LEWIS BRISBOIS BISGAARD & SMITH LLP
1 Citizen Plaza, Suite 1120
Providence, RI 02903
Tel: (401) 406-3313
Fax: (401) 406-3312
E-mail: Lauren.MotolaDavis@lewisbrisbois.com
E-mail: samuel.kennedy-smith@lewisbrisbois.com

Attorneys for Defendant LUKOIL Pan Americas, LLC

By: /s/ *Robert D. Fine*

Robert D. Fine (#2447)
Douglas J. Emanuel (#5176)
CHACE RUTTENBERG & FREEDMAN, LLP
One Park Row, Suite 300
Providence, Rhode Island 02903
Telephone: (401) 453-6400
Facsimile: (401) 453-6411
E-mail: rfine@crfllp.com

Attorneys for Defendant MOTIVA ENTERPRISES, LLC

By: *<u>/s/ Stephen M. Prignano</u>*

Stephen M. Prignano (#3649)
MCINTYRE TATE LLP
50 Park Row West, Suite 109
Providence, RI 02903
Tel.: (401) 351-7700
Fax: (401) 331-6095
E-mail: SPrignano@McIntyreTate.com

James Stengel (*pro hac vice*)
ORRICK, HERRINGTON &
SUTCLIFFE, LLP
51 West 52nd Street
New York, NY 10019-6142
Tel.: (212) 506-5000
Fax: (212) 506-5151
E-mail: jstengel@orrick.com

Robert Reznick (*pro hac vice*)
ORRICK, HERRINGTON &
SUTCLIFFE, LLP
1152 15th Street NW
Washington, DC 2005
Tel.: (202) 339-8400
Fax: (202) 339-8500
E-mail: rreznick@orrick.com

Attorneys for Defendants MARATHON OIL CORPORATION and MARATHON OIL COMPANY

Certificate of Service

I hereby certify that the foregoing document was filed through the ECF system on the 30th day of August, 2019, and will be sent electronically to the registered participants identified on the Notice of Electronic Filing.

/s/ John A. Tarantino