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PROTECTING PEOPLE AND THE PLANET

July 13, 2020

Via ECF

Maria R. Hamilton
Clerk of Court
John Joseph Moakley U.S. Courthouse
1 Courthouse Way, Suite 2500
Boston, MA 02210

Re: *State of Rhode Island v. Shell Oil Products Company, LLC, et al.*, No. 19-1818
Plaintiff-Appellee's Response to Defendants-Appellants' Rule 28(j) Letter

Dear Ms. Hamilton,

Plaintiff-Appellee State of Rhode Island writes to respond to Defendant-Appellants' submission of *Baker v. Atlantic Richfield Co.*, __ F.3d __, 2020 WL 3287024 (7th Cir. Jun. 20, 2020) (en banc).

Although the Seventh Circuit in *Baker* concluded, on the facts presented, that defendant manufacturer had properly asserted federal-officer jurisdiction as the basis for removal, the court expressly distinguished cases from the Fourth and Ninth Circuits that rejected application of that doctrine on facts indistinguishable from those at issue in this case. *See id.* at *7 (finding the “factual situations” in *Mayor & City Council of Baltimore v. BP P.L.C.*, 952 F.3d 452 (4th Cir. 2020), and *County of San Mateo v. Chevron Corporation*, 960 F.3d 586 (9th Cir. 2020), “readily distinguishable” from the facts before it). As the Seventh Circuit concluded, “it strains credulity to equate” the *Baker* defendants' relationship to the federal government with those of the defendants in *Baltimore* or *San Mateo*. *Id.*; *see also Bd. of Cty. Comm'rs of Boulder Cty. v. Suncor Energy (U.S.A.)*, __ F.3d __, 2020 WL 3777996, at *17–23 (10th Cir. Jul. 7, 2020) (following *Baltimore*, 952 F.3d at 463–71, and *San Mateo*, 960 F.3d at 598–603, in rejecting federal-officer jurisdiction as grounds for removing state tort claims against oil and gas company defendants sued for wrongful conduct causing climate-change-related harms to public infrastructure).

In *Baker*, the federal government “all but nationalized [the defendants'] production during World War II” by “requir[ing]” the defendants to manufacture wartime commodities for the United States military according to detailed specifications that differentiated those commodities from the defendants' civilian production, and by “dictat[ing] to whom and in what amounts” defendants could sell their non-military production. 2020 WL 3287024 at *1–2, *7. Nothing in the arms-length commercial contracts or leases with the federal government cited by Defendants-Appellants here — which are identical to those rejected as support for federal-officer removal jurisdiction by the Fourth Circuit in *Baltimore*, the Ninth in *San Mateo*, and the Tenth in *Boulder* — remotely compares to the stringent war-time requirements imposed on the defendant in *Baker*.

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Respectfully submitted,

/s/ Victor M. Sher
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*Counsel for Appellee
State of Rhode Island*

cc: All Counsel of Record (via ECF)