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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII**

CITY AND COUNTY OF
HONOLULU

Plaintiff,

v.

SUNOCO LP, et al.,

Defendants.

CASE NO. 20-CV-00163-DKW-RT

**PLAINTIFF'S RESPONSE TO
CHEVRON'S FURTHER UPDATE
TO STATUS REPORT AND
REQUEST FOR
RECONSIDERATION (ECF 113)**

Action Filed: March 9, 2020
No Trial Date Set

The City and County of Honolulu (“City”) writes in response to Defendants’ Update to Further Status Report and Request for Reconsideration of Stay. *See* Dkt. 113 (Sept. 4, 2020) (“Update”). As Defendants noted in their submission, the City opposes Defendants’ request that the Court “reconsider its August 21, 2020 decision” that lifted the then-pending stay and set a briefing schedule for the City’s motion to remand to state court. *See* Update at 2; *see also* Order, Dkt. 111. Defendants’ request should be rejected for at least three reasons.

First, Defendants have made no attempt to satisfy the necessary elements to obtain a stay under *Nken v. Holder*, 556 U.S. 418 (2009), cited in this Court’s August 21 Order. It was true when the Court ruled on August 21, and remains true today, that there is no substantial likelihood the Supreme Court will grant a writ of certiorari from *County of San Mateo v. Chevron Corp.*, 960 F.3d 586 (9th Cir. 2020) (“*San Mateo*”), let alone reverse; that Defendants will not suffer irreparable harm absent a stay; and that the City will suffer substantial prejudice “by unnecessarily prolonging these proceedings for an indeterminate amount of time.” *See* Order. Defendants have not met their burden of showing that the Ninth Circuit’s stay of mandate in the *San Mateo* matter alters any of those determinations.

Second, the *San Mateo* defendants’ anticipated petition for certiorari will ask the Supreme Court only “whether a court of appeals has jurisdiction under 28

U.S.C. § 1447(d) to review the entire remand order in a case removed in part under 28 U.S.C. §§ 1442 or 1443, or whether appellate jurisdiction is limited to those two grounds for removal.” *See* Mot. for Stay of Mandate, *Cty. of San Mateo v. Chevron Corp.*, No. 18-15499, Dkt. 236 (9th Cir. Aug. 10, 2020). The anticipated petition, if filed, will thus not address any standard or question of law that will govern this Court’s analysis of the City’s motion for remand. Seven of the eight grounds for removal Defendants assert here were not ruled on by the Ninth Circuit, and the anticipated petition will address only whether the Ninth Circuit erred in determining the scope of its own *appellate* jurisdiction to review the district court’s order of remand. *See San Mateo*, 960 F.3d at 593 (“Under 28 U.S.C. § 1447(d), we have jurisdiction to review the remand order only to the extent it addresses whether removal was proper under § 1442(a)(1).”).

Third, Defendants’ suggestion that staying this case indefinitely “would be consistent with” the stay of the underlying *San Mateo* cases before Judge Chhabria in the Northern District of California is misleading and only confirms that a further stay here is inappropriate. *See* Update at 2 n.2. Judge Chhabria stayed execution of the orders remanding the *San Mateo* cases *after* the court considered and granted the plaintiffs’ motions to remand, pending direct appeal from those orders. *See* Order Granting Motions to Stay, *Cty. of San Mateo v. Chevron Corp. et al.*, No.

3:17-cv-04929-VC, Dkt. 240 at 1 (N.D. Cal. Apr. 9, 2018) (“The motions to stay the remand orders in these three cases pending appeal are granted.”).

This Court correctly determined that this case should not be stayed for an indefinite period while the *San Mateo* defendants pursue their certiorari petition. Defendants’ request for reconsideration raises no cogent reason to change course and should be denied.

DATED: September 8, 2020

Respectfully Submitted,

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