UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

STATE OF MINNESOTA, by its Attorney General, Keith Ellison, Plaintiff, v. AMERICAN PETROLEUM INSTITUTE, EXXON MOBIL CORPORATION, EXXONMOBIL OIL CORPORATION, KOCH INDUSTRIES, INC., FLINT HILLS RESOURCES LP, FLINT HILLS PINE BEND, Defendants.	Case No. 20-cv-1636-JRT-HB

PLAINTIFF STATE OF MINNESOTA'S
NOTICE OF SUPPLEMENTAL AUTHORITY

Plaintiff the State of Minnesota ("State") hereby notifies the Court of supplemental authority with respect to its Motion to Remand (Dkt. 35).

On February 12, 2021, the U.S. District Court for the District of Hawai'i issued an order granting plaintiffs' motion to remand in *City & County of Honolulu v. Sunoco LP*, Case No. 20-cv-00163-DKW-RT, Dkt. 128 (D. Haw. Feb. 12, 2021) ("*Honolulu*"), and *County of Maui v. Chevron U.S.A. Inc.*, Case No. 20-cv-00470-DKW-KJM, Dkt. 99 (D. Haw. Feb. 12, 2021) ("*Maui*"), attached hereto as **Exhibit A** (hereinafter "Order"). Like the case at bar, the public entity plaintiffs in *Honolulu* and *Maui* are asserting state-law claims against fossil fuel companies, alleging that the defendant companies deceived the public for decades about harms that they knew would result from the use of their products. And, like the case at bar, the defendants in *Honolulu* and *Maui* attempted to assert multiple grounds for federal jurisdiction, including "(1) the Outer Continental Shelf Lands Act (OCSLA); (2) federal officer jurisdiction; (3) federal enclave jurisdiction; (4) federal common law; (5) *Grable* jurisdiction; [and] (6) federal preemption." *See* Order at 3; *see also* Defendants' Opposition to Motion to Remand (Dkt. 44) (asserting same grounds for removal, with additional arguments as to the Class Action Fairness Act and diversity jurisdiction).

In granting the motions to remand in *Honolulu* and *Maui*, Judge Watson analyzed and rejected three theories of federal jurisdiction that Defendants have also advanced

here: "(1) jurisdiction under the [Outer Continental Shelf Lands Act]; (2) federal officer removal; and (3) federal enclave jurisdiction."[1] Order at 6.

First, as to OCSLA, the court held that "this case does not arise out of or in connection with [d]efendants' operations on the outer Continental Shelf" because "conduct of [d]efendants targeted in the Complaints," i.e. defendants' "alleged *failure to warn* about the hazards of using their fossil fuel products and *disseminating* misleading information about the same . . . . simply have nothing to do with the 'exploration, development, or production' of minerals from the outer Continental Shelf, as those terms are defined in the statute." *Id*. at 7–8.

Second, as to federal officer removal, the court "reject[ed] [defendants' argument] that the alleged 'special relationship' between the federal government and [d]efendants results in [d]efendants acting under a federal officer for purposes of Section 1442(a)(1)" because defendants' "rel[iance] on broad policy goals and announcements of various political administrations, interlaced with occasional reference to 'supervis[ion][,]' 'control[,]' and 'military specifications,'" did not explain "why any of this constitutes an agency-type relationship, close direction, the fulfillment of basic government tasks, or the risk of state-court prejudice." *Id*. at 11–12. In light of *County of San Mateo v. Chevron Corp.*, 960 F.3d 586 (9th Cir. 2020), the court also rejected defendants' conclusory arguments that they "acted under a federal officer with respect to oil and gas leases with

[1] Though he did not discuss them in depth, Judge Watson also rejected defendants' arguments as to "(1) federal common law, (2) federal preemption, and (3) *Grable*" jurisdiction "in light of binding Ninth Circuit authority." *See* Order at 6 n.8 (citing *City of Oakland v. BP PLC*, 969 F.3d 895, 906–08 (9th Cir. 2020)).

the government," or with respect to the Elk Hills Reserve or the strategic petroleum reserve. Order at 14–16. As to the causal nexus between the actions defendants purported to take at the direction of a federal officer and the plaintiffs' claims, the court held that "even if [d]efendants had done all of the acts discussed above at the direction of a federal officer . . . none of them are causally connected to Plaintiffs' claims." *Id.* at 19. In so finding, the court rejected defendants' argument "that [p]laintiffs' claims rest upon the 'cumulative production of petroleum products,'" instead finding that "[p]laintiffs' claims focus on [d]efendants' alleged '*exacerbation* of global warming.'" *Id.* at 17. Finally, the court held that defendants had "failed to show a colorable federal defense exists" based on their "[c]onclusory assertions." *Id.* at 19–20.

Third, the court rejected the federal enclave theory of jurisdiction because "[i]t would require the most tortured reading of the Complaints to find that" the tort claims at issue had "arisen" on federal enclaves. *Id.* at 21. "[T]he relevant conduct here, let alone 'all' of it, is not the production or refining of oil and gas," but "instead, the warning and disseminating of information about the hazards of fossil fuels," and there was "no dispute such conduct did not occur on a federal enclave." *Id.*

Respectfully Submitted,

Dated: February 16, 2021

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