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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

CITY OF HOBOKEN, Plaintiff, -against- EXXON MOBIL CORP., EXXONMOBIL OIL CORP., ROYAL DUTCH SHELL PLC, SHELL OIL COMPANY, BP P.L.C., BP AMERICA INC., CHEVRON CORP., CHEVRON U.S.A. INC., CONOCOPHILLIPS, CONOCOPHILLIPS COMPANY, PHILLIPS 66, PHILLIPS 66 COMPANY, AMERICAN PETROLEUM INSTITUTE, Defendants.	Civil Action No. 2:20-cv-14243 **Plaintiff's Notice of Supplemental Authority and Response to Defendants' Notice**

Defendants' submission of *City of New York v. Chevron Corp., et al.*, __ F.3d __, 2021 WL 1216541 (2d Cir. Apr. 1, 2021), as supplemental authority supporting their position, ECF No. 108,[1] is disingenuous. The Second Circuit said itself that it was addressing an entirely different question than that posed to this Court by Plaintiff's motion to remand, and that it did not question the holdings of the many courts that have held such cases belong in state court, cases Defendants continue to ignore. More on point are recent decisions by the Central District of California in *Earth Island Institute v. Crystal Geyser Water Company*, No. 20-CV-02212-HSG, 2021 WL 684961 (N.D. Cal. Feb. 23, 2021) and the District of Minnesota in *Minnesota v. American Pertroleum Institute, et al.*, No. CV 20-1636 (JRT/HB), 2021 WL 1215656 (D. Minn. Mar. 31, 2021), both of which rejected Defendants' well-worn arguments against remand, that have now—by Plaintiff's count—been rejected by a dozen federal courts and have not been accepted by a single one.[2]

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[1] Plaintiff is compelled to note that, again, Defendants have sought to reserve rights they already waived expressly. *Compare* ECF No. 108 at 1 n.1 (no waiver of any defense of "insufficient process, or insufficient service of process") *wth* ECF No. 40, at 2 ("Defendants acknowledge that they have been properly served in this action and/or waive any defense or objection based on allegations of inadequate service of process.").

[2] The Ninth Circuit also recently denied Defendants' motion to stay pending their speculative writs of certeriori from *County of San Mateo v. Chevron Corp.*, 960 F.3d 586 (9th Cir. 2020) and *City of Oakland v. BP PLC*, 969 F.3d 895 (9th Cir. 2020). *See* Order Denying Stay, *County of Maui v. Chevron USA Inc., et al.*, No.

First, Defendants' contention that "*City of New York* supports Defendants' argument" for remand is facially untrue. ECF No. 108 at 1. Over a page of its opinion, the Second Circuit held that it *did not* question the correctness of the "parade" and "fleet" of "recent opinions" remanding actions to state court "under the heightened standard unique to the removability inquiry." *Ciy of New York*, 2021 WL 1216541, at *8. It *affirmed* the reasoning of those decisions: "The single issue before each of those federal courts was thus whether the defendants' anticipated defenses could singlehandedly create federal-question jurisdiction under 28 U.S.C. § 1331 in light of the well-pleaded complaint rule." *Id.*

And Defendants' very same argument about the persuasive effect of the district court's holding in *City of New York* has been rejected by the district courts in Colorado, Rhode Island, Maryland, and Massachusetts, all of which Plaintiff's noted in its opening brief. *See* ECF No. 94 at 21-22. Defendants—as they have done so often—omit the relevant language from the Second Circuit and refuse to engage with opinions they find inconvenient. They just use that case to once again advance the same meritless arguments raised in their Notice of Remand. See ECF

21-15318 (9th Cir. March 13, 2021). The *Minnesota* court also rejected Defendant's motion to stay. 2021 WL 1215656, at *14 (noting that *Baltimore* will only affect the scope of appellate review and that the potential for the grant of certeriori in *Oakland* is speculative). Of course, in this case, Defendants did not properly raise that argument for the Court, relegating it to a footnote in their opposition, with no reasoning. *See* ECF No. 101 at 33-34 n.20.

No. 108 at 2-5 (retreading arguments for *Grable,* "federal common law" removal, and Outer Continental Shelf removal, without pointing to a single instance of the Second Circuit accepting those theories, or acknowledging binding and contrary Third Circuit law). Yet another reason for costs under 28 U.S.C. § 1447(c).[3]

City of New York adds nothing to this Court's consideration of the propriety of remand, but two other recent cases have addressed the precise issue facing it. At the risk of citing redundant caselaw to the Court, Plaintiff notes that the District of Minnesota and the Central District of California have joined the ever-growing chorus of courts that have rejected Defendants' arguments for removal *in toto.*

On Defendants' invented "federal common law removal," the *Minnesota* court held:

> [N]either the Eighth Circuit nor the Supreme Court has found that implied federal common law claims establish a separate and independent exception to the well-pleaded complaint rule. To the extent that the cases Defendants cite carve out a third exception, this approach lacks support in this circuit and is contrary to Supreme Court precedent establishing the specific and defined parameters for federal jurisdiction over exclusively state law claims.

Minnesota, 2021 WL 1215656, at *6.

Nor is it only in climate change cases that defendants lose such arguments. On February 23, 2021, the Central District of California rejected the argument that

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[3] Plaintiff does not want to retread tired ground here beyond noting Defendants' chutzpah in filling a sur-sur-reply to the motion to remand, dressed up as a reply on their "motion to strike." *See* ECF No. 109.

state common law nuisance claims can be removed to federal court merely on the basis that "federal interests" may conceivably require federal common law to apply to the case, or that the Clean Water Act or federal common law may preempt such claims so completely as to require removal. *Earth Island Inst.*, 2021 WL 684961, at *4-6. It rejected the very same arguments Defendants have made based on *Tex. Indus., Inc. v. Radcliff Materials, Inc.*, 451 U.S. 630 (1981), *American Electric Power Co. v. Connecticut*, 564 U.S. 410 (2011), *Illinois v. City of Milwaukee*, 406 U.S. 91 (1972), *City of Milwaukee v. Illinois and Michigan*, 451 U.S. 304 (1981), *Native Village of Kivalina v. Exxon Mobil Corp.*, 696 F.3d 849 (9th Cir. 2012), and *New SD, Inc. v. Rockwell Intern. Corp.*, 79 F.3d 953 (9th Cir. 1996).

To return to *Minnesota*, the district court there also rejected *Grable* removal. It rejected the idea that such a case "necessarily raises issues related to management of navigable waters, transboundary pollution, or foreign policy," 2021 WL 1215656, at *7, and rejected the idea that any other "federal issues" were "necessarily raised by the Complaint's state-law claims," *id.* at *8. For good measure, it also held that the issues were not actually disputed or substantial, and that Defendants' sweeping theory could "disrupt the balance between state and federal judicial authority." *Id.* *Earth Island Institute* held the same: "[Defendants] claim that Plaintiff's nuisance claim implicates a 'substantial' issue of federal law because 'an entire industry or industries will be affected.' But the 'entire

industries affected' standard is not one recognized by the Ninth Circuit as creating a 'substantial' federal issue." 2021 WL 684961, at *8 (quoting defendants' brief).

Minnesota also rejected federal officer removal, Outer Continental Shelf Lands Act removal, federal enclave removal, and CAFA removal, *see* 2021 WL 1215656, at *8-13, and *Earth Island Institute* rejected federal enclave removal, 2021 WL 684961, at *9-10. These cases add to the cavalcade of authority supporting Plaintiff's motion to remand.

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