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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 Response to  
Defendants' Third Notice of  
Supplemental Authority**

Defendants’ submission of *Arlington County, Virginia v. Express Scripts Pharmacy, Inc.*, 996 F.3d 243 (4th Cir. May 3, 2021), as supplemental authority supporting their arguments for federal officer removal, Def. Notice, ECF No. 117, does nothing of the sort.

Most critically, *Arlington* leaves fully intact—and *cites approvingly to*—the Fourth Circuit’s decision in *Mayor & City Council of Baltimore v. BP P.L.C.*, 952 F.3d 452, 461 (4th Cir. 2020), *vacated & remanded on other grounds by BP P.L.C. v. Mayor & City Council of Baltimore*, 141 S. Ct. 1532 (2021), which rejected Defendants’ federal officer removal claim in a closely analogous state law climate change tort case.<sup>1</sup> *See Arlington Cnty., Va.*, 996 F.3d at 250-51, 253, 256. Specifically, *Arlington* reaffirms *Baltimore*’s holding that “a private company selling ‘standardized consumer product[s]’ to the federal government does not implicate the federal officer removal statute . . . , [e]ven when a contract specifies the details of the sales and authorizes the government to supervise the sale and delivery.” *Id.* at 251 (quoting *Baltimore*, 952 F.3d at 464). Those principles, as well as the others that led the *Baltimore* court to reject federal officer removal, still control here. *See* Pl. Mot., ECF No. 94, at 39-48. *Arlington* does not alter them or

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<sup>1</sup> The Supreme Court vacated the Fourth Circuit’s ruling in *Baltimore* that the appellate court lacked jurisdiction to review any removal ground other than federal officer removal. 141 S. Ct. at 1533. It did not address the Fourth Circuit’s holding that federal officer removal was improper, which remains good law.

the three other federal Circuit Courts and seven federal District Courts that have uniformly rejected Defendants' federal officer removal claims, including their newly concocted allegations concerning fuel sales to the military. *Id.* at 5-6.<sup>2</sup>

*Arlington* also arises under wholly different facts. Defendants' Notice of Supplemental Authority, their third in the three months since Plaintiff filed its reply brief, primarily uses *Arlington* as a vehicle to rehash their arguments as to why Defendants' fuel sales to the military should give rise to federal officer removal. *See* Def. Notice at 3-6. But unlike *Arlington*, Plaintiff here has expressly disclaimed all claims arising from Defendants' fuel sales to the military, those sales predominantly predate the allegations in the Complaint, and the record makes clear that those sales were a "cooperative" endeavor—to say nothing of Defendants' half-century disinformation campaign that forms the core of Plaintiff's claims. Pl. Reply, ECF No. 101, at 2-8, 14-18. *Arlington* simply does not change the impropriety of federal officer removal in this case.

Dated: June 1, 2021  
New York, New York

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<sup>2</sup> Since Plaintiff filed its motion to remand, the District of Hawaii and the District of Minnesota joined the five other federal District Courts that had already rejected Defendants' federal officer removal claims. *See Minnesota v. American Petroleum Institute*, No. 20 Civ. 1636, 2021 WL 1215656 (D. Minn. Mar. 31, 2021); *City and Cnty. of Honolulu v. Sunoco LP*, No. 20 Civ. 00163, 2021 WL 531237 (D. Haw. Feb. 12, 2021).

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