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VIA ECF

Molly C. Dwyer
Clerk of Court
U.S. Court of Appeals for the Ninth Circuit
95 Seventh Street
San Francisco, CA 94103-1526

Re: *County of San Mateo v. Chevron Corp. et al.*, No. 18-15499, consolidated with *City of Imperial Beach v. Chevron Corp. et al.*, No. 18-15502; *County of Marin v. Chevron Corp. et al.*, No. 18-15503; *County of Santa Cruz, et al. v. Chevron Corp. et al.*, No. 18-16376

Dear Ms. Dwyer:

Plaintiffs' cited case, *City of Hoboken v. Exxon Mobil Corp.*, incorrectly held that climate-change claims are not removable under the Outer Continental Shelf Lands Act ("OCSLA") because defendants' challenged conduct was allegedly not a "but-for" cause of plaintiff's alleged injuries. 2021 WL 4077541, at *8 (D.N.J. Sept. 8, 2021). But OCSLA confers federal jurisdiction over any actions "arising out of, *or in connection with*" OCS operations. 43 U.S.C. § 1349(b)(1) (emphasis added). *Hoboken*'s application of a "but-for" causation requirement impermissibly reads "in connection with" out of the statute. Moreover, the Supreme Court recently held in the personal-jurisdiction context that the "requirement of a 'connection' between a plaintiff's suit and a defendant's activities" does *not* always require a "causal showing," let alone but-for causation. *Ford Motor Co. v. Mont. Eighth Judicial Dist. Ct.*, 141 S. Ct. 1017, 1026 (2021).

In any event, Defendants' substantial OCS operations satisfy even the "but-for" standard. Plaintiffs' causal theory is that Defendants' production and sale of oil and gas increased greenhouse-gas emissions, which led to climate change and thereby caused Plaintiffs' alleged injuries. *See, e.g.*, ER.215–16; ER239 ("The mechanism" of harm is "emissions."). Because "greenhouse gas molecules do not bear markers that permit tracing them to their source," ER.247, Plaintiffs' allegations necessarily implicate *all* of Defendants' "extraction" and "production," ER.261. Plaintiffs insist their claims are solely for misrepresentations, but assert that the purpose of allegedly spreading misinformation was to

"accelerate [Defendants'] business practice of exploiting fossil fuel reserves," ER.264, including on the OCS.

Finally, *Hoboken* ignored that suits merely "affect[ing] the efficient exploitation of [OCS] resources" and "threaten[ing] the total recovery" fall within OCSLA jurisdiction. *EP Operating Ltd. P'ship v. Placid Oil Co.*, 26 F.3d 563, 570 (5th Cir. 1994). Plaintiffs seek potentially massive damages and disgorged profits, plus an order of "abate[ment]," ER.312—relief that would inevitably deter further OCS production. "If [Defendants] want to avoid all liability" under Plaintiffs' theory of the case, "their only solution would be to cease global production altogether," including on the OCS. *City of New York v. Chevron Corp.*, 993 F.3d 81, 93 (2d Cir. 2021).

Sincerely,

/s/ Theodore J. Boutrous, Jr.

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cc: All counsel of record (via ECF)