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PROTECTING PEOPLE AND THE PLANET

January 6, 2022

**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: *City and County of Honolulu, et al. v. Sunoco LP, et al.*, No. 21-15313; *County of Maui v. Sunoco LP, et al.*, No. 21-15318;  
Plaintiffs-Appellees' Citation of Supplemental Authorities

Dear Ms. Dwyer,

Pursuant to Fed. R. App. P. 28(j), Plaintiff-Appellees submit as supplemental authority *Buljic v. Tyson Foods, Inc. et al.*, Case No. 21-1010, 2021 WL 6143549 (8th Cir., Dec. 30, 2021) (**Ex. A**). The decision is relevant to the Court's consideration of Defendants-Appellants' federal officer removal arguments.

The Eighth Circuit in *Buljic* affirmed an order remanding to state court two cases presenting wrongful death claims on behalf of workers who died from the COVID-19 virus, allegedly contracted at a Tyson meat processing facility. Tyson removed on, *inter alia*, federal officer grounds. Tyson argued that federal executive branch statements, guidelines, and policies about the critical importance of the food industry both before and during the pandemic (including a presidential statement that "the food . . . sector[ was] 'working hand-in-hand with the federal government . . . to ensure food and essentials are constantly available'") indicated that it was acting under a federal officer when it employed the decedent workers. *See* 2021 WL 6143549 at \*1, \*5.

The court held that Tyson had not satisfied the "acting under" element for federal officer removal because, despite the meat processing industry's national importance, Tyson was not fulfilling a "basic governmental task" by processing meat, and was never directed by the government to continue its operations during the pandemic:

[W]hile the federal government may have an interest in ensuring a stable food supply, it is not typically the duty or task of the federal government to process meat for commercial consumption. It cannot be that the federal government's mere designation of an industry as important—or even critical—is sufficient to federalize an entity's operations and confer federal jurisdiction.

2021 WL 6143549 at \*5 (citations omitted).

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Appellants argue here that they acted under federal officers by, *e.g.*, filling an “identified national need for a reliable source of oil and gas,” AOB at 43, and that their mineral leases on the federally owned outer continental shelf serve the government by “align[ing] production with national needs,” AOB at 45. The *Buljic* decision illustrates that those averments are insufficient to show Appellants acted under a federal superior.

Respectfully submitted,

/s/ Victor M. Sher

Victor M. Sher

**Sher Edling LLP**

*Counsel for Plaintiffs–Appellees*  
in Nos. 21-15313, 21-15318

cc: All Counsel of Record (via ECF)