

SHER EDLING LLP

PROTECTING PEOPLE AND THE PLANET

January 13, 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: *County of San Mateo v. Chevron Corp.*, No. 18-15499, consolidated with *City of Imperial Beach v. Chevron Corp.*, No. 18-15502; *County of Marin v. Chevron Corp.*, No. 18-15503; *County of Santa Cruz v. Chevron Corp.*, No. 18-16376;
Plaintiffs-Appellees' Citation of Supplemental Authorities

Dear Ms. Dwyer,

Pursuant to Federal Rule of Appellate Procedure 28(j), Plaintiffs-Appellees submit *Delaware v. BP America Inc.*, Case No. 20-cv-01429-LPS, Dkt. 120 (D. Del. Jan. 5, 2022) (**Ex. A**) ("Order"), as supplemental authority. The decision granted the State of Delaware's motion to remand in a state-law action that seeks to hold fossil-fuel companies liable for concealing and misrepresenting the harms caused by their products. The opinion is relevant for at least four reasons.

First, the court rejected analogous attempts to rewrite the complaint. In *Delaware*, as here, the defendants insisted that the lawsuit sought to "regulate global climate change" and "supplant decades of national energy, economic, and environmental policies." Order at 11, 13. But as the district court rightly recognized, "[t]hese statements [were] not consistent with a fair reading of [Delaware's] claims." *Id.* at 12. Instead, those claims narrowly targeted "Defendants' alleged disinformation campaign," just as Plaintiffs-Appellees' claims do here. *Id.* at 12.

Second, the court rebuffed the same arguments for OCSLA jurisdiction advanced by Defendants-Appellants here. In *Delaware*, as in this case, the defendants "failed to satisfy the 'but for' requirement" of OCSLA removal because they failed to show "that [Delaware] would not have been injured 'but for' Defendants' operations on the OCS." *Id.* at 26. In reaching this conclusion, the district court rejected the defendants' "conten[tion] that the 'but for' requirement is 'contrary to the text of the statute.'" *Id.* Instead, it agreed with the Fifth Circuit that this requirement is a "reasonable" and "necessary" construction of the statutory language. *Id.* at 26-27.

Third, *Delaware* confirms what Defendants-Appellants appear to concede in their submissions to this Circuit: that federal-question jurisdiction does not apply to Plaintiffs-Appellees' state-law claims. *Compare* Dkt 269 at 3-4 (acknowledging that this jurisdictional basis is "largely foreclosed by *City of Oakland v. BP PLC*, 969 F.3d 895 (9th Cir. 2020)"), with Order at 5-16 (rejecting the defendants' theories of federal-common-law removal and *Grable* jurisdiction).

Molly C. Dwyer
Clerk of Court
January 13, 2022
Page 2

Finally, although Defendants-Appellants insist that federal-enclave jurisdiction exists here, many of those same defendants abandoned that very same jurisdictional theory in *Delaware*. *See* Order at 4.

Respectfully submitted,

/s/ Victor M. Sher

Victor M. Sher

Sher Edling LLP

Counsel for Plaintiffs-Appellees
in Nos. 18-15499, 18-15502, 18-15503,
and 18-16376

cc: All Counsel of Record (via ECF)