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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
Defendants-Appellants' Response to Plaintiffs-Appellees' Citation of Supplemental Authorities

Dear Ms. Dwyer:

The district court opinion in *Delaware v. BP America, Inc.* was incorrect and has been appealed to the Third Circuit. The Ninth Circuit (like the Third) has not yet addressed removal under the Outer Continental Shelf Lands Act ("OCSLA") or federal enclaves doctrine, and the *Delaware* opinion is flawed.

The *Delaware* court granted remand on the incorrect premise that plaintiff's claims did not seek to "'regulate global climate change.'" 2022 WL 58484, at *7 (D. Del. Jan. 5, 2022). But here, Defendants' OCSLA and federal-enclaves removal arguments do not rely on any attempt to regulate climate change. Rather, removal is proper because, as Plaintiffs concede, their alleged injuries resulted from greenhouse-gas emissions from the production and use of petroleum products. In fact, the *Delaware* court recognized that plaintiff's "theory" is "about 'how the unrestrained production and use of [the defendants'] fossil fuel products contribute to greenhouse gas pollution.'" *Id.* at *11. Because a substantial portion of these products were produced and used on the OCS and federal enclaves, removal is appropriate.

The *Delaware* court incorrectly rejected removal under OCSLA because defendants' production was not a "but-for" cause of plaintiff's alleged injuries. *Id.* at *13–15. This but-for requirement improperly nullifies the statute's alternative prong establishing federal jurisdiction for claims "in connection with" OCS operations. 43 U.S.C. § 1349(b)(1). Moreover, the court overlooked the Supreme Court's recent decision in *Ford Motor Co. v.*

Montana Eighth Judicial District Court, 141 S. Ct. 1017, 2016 (2021), which confirmed that the "requirement of a 'connection' between a plaintiff's suit and a defendant's activities" does not necessarily require but-for causation.

Regardless, 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 fueled climate change and thereby caused Plaintiffs' alleged injuries. *See*, *e.g.*, ER.215–16; ER.239 ("The mechanism" of harm is "emissions."). Because "greenhouse gas molecules do not bear markers that permit tracing them to their source," ER.247, Plaintiffs' claims necessarily implicate *all* of Defendants' "extraction" and "production," ER.261, including those on the OCS and federal enclaves.

Sincerely,

/s/ Theodore J. Boutrous, Jr.

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cc: All counsel of record (via ECF)