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February 2, 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 v. Sunoco LP*, No. 21-15313; *County of Maui v. Chevron USA Inc.*, No. 21-15318  
Defendants-Appellants' Response to Plaintiffs-Appellees' Citation of Supplemental Authorities

Dear Ms. Dwyer:

Contrary to Plaintiffs' suggestion, the Eighth Circuit's decision in *Graves v. 3M Co.*, 17 F.4th 764 (8th Cir. 2021), issued three months ago, confirms removal is appropriate here.

In *Graves*, the Eighth Circuit held only that 3M failed to show it was acting under a federal officer when it sought the *advice* of an Army audiologist about instructions to accompany its earplugs for civilians. 17 F.4th at 770. By contrast, the Eighth Circuit recognized that when the government specified warnings on earplugs designed for use in the military and for federal contractors, the government exercised "control" over 3M, thereby warranting removal. *Id.* at 772. The same is true here: Defendants produced and sold products directly to the military tailored to the government's specifications, including the production and supply of specialized, non-commercial-grade military fuels. *See, e.g.*, 8-ER-1478. This is more than sufficient for removal. As the Supreme Court has explained, a contractor acts under a federal officer when, "[i]n the absence of ... contract[s] with ... private firm[s], the Government itself would have had to perform" the task. *Watson v. Philip Morris Cos.*, 551 U.S. 142, 154 (2007). *See* Opening Br. 28–52.

Moreover, Plaintiffs' claims are far afield from those asserted by the private plaintiffs in *Graves*. There, the private plaintiffs alleged claims and injuries that involved defendants' failure to warn earplug purchasers of the products' injury risks. 17 F.4th at 769. Here, Plaintiffs' claims and alleged injuries are not nearly so limited. Plaintiffs' Complaints define their alleged injuries as the physical effects of global climate change caused by the production, marketing, sale, and third-party combustion of Defendants' fossil fuels. In Plaintiffs' own

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words, Defendants’ fossil-fuel products, and the resulting greenhouse-gas emissions, are “the *main driver*” of climate change and Plaintiffs’ alleged injuries. 8-ER-1531. Indeed, Plaintiffs concede that “fossil fuel *production*,” not alleged disinformation, is “the delivery mechanism of [Plaintiffs’] injury.” 2-ER-42 (emphasis added). Accordingly, under Plaintiffs’ own theory, their alleged injuries result from Defendants’ supply of petroleum products, a substantial portion of which were produced at the direction of federal officers. *See* Opening Br. 18–20.

Sincerely,

/s/ Theodore J. Boutrous, Jr.

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*Chevron Corporation and Chevron U.S.A.*

cc: All counsel of record (via ECF)