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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:

Nothing in *Board of County Commissioners of Boulder County v. Suncor Energy (U.S.A.) Inc.*, 2022 WL 363986 (10th Cir. 2022) ("Op."), justifies denying federal jurisdiction here.

OCSLA: The Tenth Circuit erred in nullifying the statute's "in connection with" prong by requiring "but-for" causation. *See* Op. 22–24. In doing so, the court ignored the Supreme Court's recent decision in *Ford Motor Co. v. Montana Eighth Judicial District Court*, 141 S. Ct. 1017 (2021), which was issued after briefing in this appeal was completed and confirmed that the "requirement of a 'connection' between a plaintiff's suit and a defendant's activities" does not necessarily require but-for causation. *Id.* at 1026.

In any event, Defendants' substantial OCS operations satisfy even the "but-for" standard. *See* AOB.59–61. Plaintiffs allege 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. Indeed, Plaintiffs explicitly allege that "[t]he mechanism" of their alleged harm is "emissions." ER.239. 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" activities, ER.261, including Defendants' *substantial operations* on the OCS. Indeed, Defendants "have

historically produced as much as *one-third* of domestic oil and gas from the OCS in some years." AOB.59.

Federal Enclaves: The Tenth Circuit's analysis was limited to the location of *injuries*. Op. *21. Here, Plaintiffs' claims encompass global production and emissions, and thus *conduct* that occurred on federal enclaves. Reply Br. 25–26.

Federal Common Law: The Tenth Circuit erred by conflating "artful pleading" with complete preemption and therefore focused exclusively on "congressional intent." Op. *13. But the artful-pleading doctrine is not limited to whether Congress chooses to preempt state-law claims. *See* Reply Br. 7, 12. Here, our *constitutional structure* renders Plaintiffs' interstate-emissions claims exclusively federal in nature. *See* AOB.31. The application of federal common law therefore provides an independent basis for removal. *See* Reply Br. 9–10.[1]

Sincerely,

/s/ Theodore J. Boutrous, Jr.

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Chevron Corporation and Chevron U.S.A.

cc: All counsel of record (via ECF)

[1] Defendants submit this Court similarly erred in *City of Oakland v. BP PLC*, 969 F.3d 895 (9th Cir. 2020).