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Attorneys for Defendant Chevron Corporation

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

CITY OF OAKLAND, a Municipal
Corporation, and THE PEOPLE OF THE
STATE OF CALIFORNIA, acting by and
through Oakland City Attorney BARBARA J.
PARKER,

Plaintiffs,

v.

BP P.L.C., a public limited company of
England and Wales, CHEVRON
CORPORATION, a Delaware corporation,
CONOCOPHILLIPS COMPANY, a Delaware
corporation, EXXON MOBIL
CORPORATION, a New Jersey corporation,
ROYAL DUTCH SHELL PLC, a public
limited company of England and Wales, and
DOES 1 through 10,

Defendants.

CITY AND COUNTY OF SAN
FRANCISCO, a Municipal Corporation, and
THE PEOPLE OF THE STATE OF

First Filed Case: No. 3:17-cv-6011-WHA
Related Case: No. 3:17-cv-6012-WHA

JOINT STATUS REPORT

THE HONORABLE WILLIAM H. ALSUP

1 CALIFORNIA, acting by and through the San
2 Francisco City Attorney DENNIS J.
HERRERA,

3 Plaintiffs,

4 v.

5 BP P.L.C., a public limited company of
6 England and Wales, CHEVRON
CORPORATION, a Delaware corporation,
7 CONOCOPHILLIPS COMPANY, a Delaware
corporation, EXXON MOBIL
8 CORPORATION, a New Jersey corporation,
ROYAL DUTCH SHELL PLC, a public
9 limited company of England and Wales, and
DOES 1 through 10,

10 Defendants.
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Pursuant to this Court’s instruction, Dkt. 388, and in advance of the status conference on May 12, 2022, the Parties hereby submit this Joint Status Report.¹

Pending before the Court is the People’s renewed motion to remand, which is fully briefed and ready to be heard when the Court is ready to proceed. Dkt. 342, 349, 358. Proceedings in this case were stayed on August 24, 2021 “pending a more definitive answer from our court of appeals in *County of San Mateo v. Chevron Corp.*, No. 20-884.” Dkt. 379. On April 19, 2022, the Ninth Circuit issued its decision in *San Mateo*, affirming the district court’s remand orders. 2022 WL 1151275 (9th Cir. Apr. 19, 2022). Defendants intend to petition the Ninth Circuit for rehearing *en banc* and, depending on the outcome of that petition, to petition the Supreme Court for a writ of certiorari. The Parties have met and conferred and have different positions on what the next steps in this case should be. The Parties’ respective positions are provided below. The Parties look forward to discussing these and other issues with the Court at the May 12 status conference.

The People’s Position

The Ninth Circuit’s unanimous April 19 decision in *County of San Mateo* held that the public entity plaintiffs’ cases must be remanded to state court because none of the defendants’ asserted grounds for federal removal jurisdiction had merit. In that decision, the Ninth Circuit affirmed that removal had been improper under the defendants’ federal officer, federal enclave, Outer Continental Shelf Lands Act (“OCSLA”), and bankruptcy theories of removal. Now that *County of San Mateo* has been decided, the Court has sufficient guidance on every ground for removal asserted by Defendants here and should proceed on the People’s renewed motion to remand these cases to state court. *See also City of Oakland v. BP PLC*, 969 F.3d 895 (9th Cir. 2020), *cert. denied sub nom. Chevron Corp. v. City*

¹ In joining this Status Report, Defendants BP P.L.C., ConocoPhillips, Exxon Mobil Corporation, and Shell plc (f/k/a Royal Dutch Shell plc), do not waive any argument or defense regarding the Court’s lack of personal jurisdiction over them, nor do they seek to vacate or alter the Court’s previous personal-jurisdiction order under Rule 12(b)(2).

1 of *Oakland, Cal.*, 141 S. Ct. 2776 (2021). The Ninth Circuit’s upcoming decisions in *City & County of*
 2 *Honolulu v. Sunoco LP, et al.*, No. 21-15313, and *County of Maui v. Chevron USA Inc., et al.*, No. 21-
 3 15318, will not impact this Court’s decision on the motion to remand. For the reasons described in the
 4 People’s briefing in support of their renewed motion to remand, the “more robust evidentiary record”
 5 on federal officer and OCSLA removal presented in those cases is not before the Court in this case,
 6 and Defendants’ theory of removal may not now be re-pleaded. *See* Dkt. No. 342 at 6 n.3 & Dkt. No.
 7 358 at 5–8.

9 The *County of San Mateo* decision was unequivocal and is entirely consistent in its rejection of
 10 the defendants’ various ground for removal with the other circuit court decisions addressing those
 11 grounds. *See, e.g., Mayor & City Council of Baltimore v. BP P.L.C.*, No. 19-1644, 2022 WL 1039685
 12 (4th Cir. Apr. 7, 2022); *Bd. of Cty. Comm’rs of Boulder Cty. v. Suncor Energy (U.S.A.) Inc.*, 25 F.4th
 13 1238 (10th Cir. 2022). Ten district courts in different parts of the country have reached that same
 14 conclusion in other similar cases as well.²

16 In the interests of justice and of the Parties, and given the considerable harm to the People in
 17 continuing to delay the merits of these matters, the Court should promptly rule on the People’s pending
 18 and fully briefed motions to remand (Dkt. No. 342) and for leave to amend (Dkt. No 343).

19 **Defendants’ Position**

20 Defendants do not oppose proceeding on the People’s renewed motion to remand and are ready
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 24 ² In addition to the decisions affirmed in the *County of San Mateo*, *Baltimore*, *Boulder*, and *Rhode*
 25 *Island*, motions to remand have been granted in *Connecticut*, *Delaware*, *Hawaii*, *Minnesota*,
 26 *Massachusetts*, and *New Jersey*. *See Delaware v. BP Am. Inc.*, No. CV 20-1429-LPS, 2022 WL 58484
 27 (D. Del. Jan. 5, 2022), *appeal pending*, No. 22-1096 (3d Cir.); *City of Hoboken v. Exxon Mobil Corp.*,
 28 No. 20-cv-142343-JMV, 2021 WL 4077541 (D.N.J. Sept. 8, 2021), *appeal pending*, No. 21-2728 (3d
 Cir.); *Connecticut v. Exxon Mobil Corp.*, No. 3:20-CV-1555 (JCH), 2021 WL 2389739 (D. Conn.
 June 2, 2021), *appeal pending*, No. 21-1446 (2d Cir.); *Minnesota v. Am. Petroleum Inst.*, No. CV 20-
 1636 (JRT/HB), 2021 WL 1215656 (D. Minn. Mar. 31, 2021), *appeal pending*, No. 21-1752 (8th
 Cir.); *City & Cnty. of Honolulu v. Sunoco LP, et al.*, No. 20-CV-00163-DKW, 2021 WL 531237 (D.
 Haw. Feb. 12, 2021), *appeal pending*, Nos. 21-15313, 21-15318 (9th Cir.); *Massachusetts v. Exxon*
Mobil Corp., 462 F. Supp. 3d 31 (D. Mass. 2020).

1 to proceed if the Court is inclined to do so.

2 Defendants disagree, however, that *County of San Mateo* provides this Court with “sufficient
3 guidance on every ground for removal asserted by Defendants here.” As explained in Defendants’
4 briefing, there are multiple bases for removal asserted here that were not presented or addressed by the
5 Ninth Circuit in *County of San Mateo*. These include: (1) federal officer removal on a significantly
6 more robust evidentiary record than was before the *San Mateo* panel; (2) removal under the Outer
7 Continental Shelf Lands Acts (“OCSLA”) on a significantly more robust evidentiary record than was
8 before the *San Mateo* panel; and (3) jurisdiction under *Grable & Sons Metal Products, Inc. v. Darue*
9 *Engineering & Manufacturing*, 545 U.S. 308, 314 (2005) because, to the extent the People’s claims are
10 based on alleged misrepresentation, such claims necessarily include affirmative constitutional elements
11 imposed by the First Amendment. Defendants maintain these arguments and supporting evidence—
12 including un rebutted expert declarations from leading academics—are properly before this Court and
13 establish that removal is proper. Dkt. 349. Indeed, these expert declarations, for example, detail how
14 federal officers directed and controlled Defendants in performing basic tasks to accomplish national
15 security, energy and economic objectives, including by providing the U.S. military with specialized,
16 non-commercial grade fuels that are essential for unique military missions and conducting operations
17 on the Outer Continental Shelf. The People maintain that the Court should ignore these arguments and
18 evidence, but that position is deeply flawed and without merit. *Id.*

19 As noted above, Defendants intend to petition the Ninth Circuit for rehearing *en banc* and,
20 depending on the outcome of that petition, to petition the Supreme Court for a writ of certiorari. Further
21 guidance from the Ninth Circuit *en banc* and/or the Supreme Court may have bearing on the
22 removal/remand issues presently before this Court. Relatedly, the Ninth Circuit recently heard oral
23 argument in *City & County of Honolulu v. Sunoco LP, et al.*, No. 21-15313, and *County of Maui v.*
24 *Chevron USA Inc., et al.*, No. 21-15318. That consolidated appeal also implicates issues relevant to
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Plaintiff's renewed motion to remand. However, given that there is a threshold dispute between the Parties as to what removal arguments and evidence this Court should consider, Defendants think it is reasonable to proceed on the People's renewed motion to remand now and are ready to do so. If the Court is inclined to proceed, Defendants submit that a hearing on the People's motion should be scheduled. Defendants maintain that the Court should defer proceeding on the People's motion for leave to amend the complaint until the removal issues are resolved.

Dated: May 5, 2022

Respectfully submitted,

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