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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

RESPONSE TO NOTICE OF SUPPLEMENTAL AUTHORITY

THE HONORABLE WILLIAM H. ALSUP

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

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.

Defendants respectfully submit this response to Plaintiffs' notice of supplemental authority regarding *City of Hoboken v. Chevron Corp.*, __ F.4th __, 2022 WL 3440653 (3d Cir. Aug. 17, 2022).[1] Contrary to Plaintiffs' assertions, this out-of-Circuit decision does not "support[] [their] Renewed Motion to Remand" for multiple reasons. Dkt. 414 at 1.

First, the Third Circuit's holding regarding the federal officer removal ground does not apply here because the facts and theories alleged in these Complaints are substantially different from those in the *Hoboken* complaints. The court in *Hoboken* did not disagree that the defendants produced substantial amounts of oil and gas under the direction of federal officers, but concluded that it could disregard this production because "[i]n their complaints, both Hoboken and Delaware insist that they are not suing over emissions caused by fuel provided to the federal government." 2022 WL 3440653, at *8. Indeed, the complaints in *Hoboken* and *Delaware* are unequivocal on this point: "This Complaint disclaims injuries . . . that arose from Fossil Fuel Company Defendants' provision of fossil fuel products to the federal government for military and national defense purposes." *City of Hoboken v. Exxon Mobil Corp.*, No. 2:20-cv-14243 (D.N.J.), Dkt. 1-2 ("*Hoboken* Compl.") ¶ 222 n.202; *see also State of Delaware v. BP America Inc.*, No. 1:20-cv-1429 (D. Del.), Dkt. 1-1 ("*Delaware* Compl.") ¶ 14 ("The State hereby disclaims injuries arising . . . from Defendants' provision of fossil fuel products to the federal government, and seeks no recovery or relief attributable to such injuries."). Here, by contrast, Plaintiffs do not, and cannot, make any such disclaimer.

Second, the allegations regarding petroleum production are central to the Complaints at issue before this Court. The Third Circuit correctly recognized that the Outer Continental Shelf Lands Act ("OCSLA") does *not* require a causal connection between a defendant's operations on the Outer Continental Shelf ("OCS") and a plaintiff's claims. *Hoboken*, 2022 WL 3440653, at *4–5. But the Third Circuit nonetheless held that the plaintiffs' claims were "all too far away from Shelf oil production" to support OCSLA jurisdiction because the plaintiffs "[we]re upset, not by Shelf production, but by what oil companies did with their oil after it hit the mainland: sell it for people to burn." 2022 WL 3440653, at *7. Here, however, Plaintiffs' Complaints leave no question that their claims necessarily encompass

[1] This Court has already found that several Defendants are not subject to personal jurisdiction. This is submitted subject to, and without waiver of, that jurisdictional finding.

production activities on the OCS. Indeed, Plaintiffs expressly allege that "*[p]roduction of fossil fuels causes global warming*." Dkt. 199 ("Compl.") ¶ 74 (emphasis added); *see also, e.g.*, *id.* ¶ 4 ("Defendants' planned production of fossil fuels into the *future* will exacerbate global warming, accelerate sea level rise even further, and require greater and more costly abatement actions to protect Oakland.").[2] And Plaintiffs have told this Court that "the primary conduct giving rise to liability remains defendants' *production and sale* of fossil fuels." Dkt. 235 at 13 (emphasis added).

Third, *Hoboken*'s rejection of *Grable* jurisdiction based on substantial and disputed First Amendment issues is too cursory to carry any persuasive force. The Third Circuit offered just two sentences on this issue: "But though the First Amendment limits state laws that touch speech, those limits do not extend federal jurisdiction to every such claim. State courts routinely hear libel, slander, and misrepresentation cases involving matters of public concern." 2022 WL 3440653, at *4. But that is not Defendants' argument. In fact, Defendants acknowledge that "most state-law misrepresentation claims are not subject to removal because they do not implicate broader federal interests," and assert that "[h]ere, however, the federal interests are unquestionably substantial" given the uniquely significant policy and security implications of the subject matter of the relevant speech. Dkt. 408 at 17. The Third Circuit in *Hoboken* did not engage with these arguments, and thus its limited analysis on this issue is inapplicable in this case.

Fourth, and finally, the court in *Hoboken* did not address federal enclave jurisdiction, which provides an independent basis for removal here.

Respectfully submitted,

Dated: September 6, 2022

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[2] All docket references are to *City of Oakland v. BP P.L.C.*, No. 3:17-cv-0611-WHA (N.D. Cal.).

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** Pursuant to Civ. L.R. 5-1(i)(3), the electronic signatory has obtained approval from this signatory