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Page]*

**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.

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

**THE PEOPLE'S NOTICE OF RECENT
DECISION**

Date: September 28, 2022
Time: 9:00 a.m. (PT)
Place: Courtroom 12

CITY AND COUNTY OF SAN
FRANCISCO, a Municipal Corporation, and
THE PEOPLE OF THE STATE OF
CALIFORNIA, acting by and through the San
Francisco City Attorney DAVID CHIU,

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.

Case No. 3:17-cv-6012-WHA

1 The People of the State of California hereby notify the Court of *City of Annapolis v. BP*
 2 *P.L.C.*, Case Nos. 21-00772 & 21-01323, 2022 WL 4548226 (D. Md. Sept. 29, 2022) (**Ex. A**), a
 3 recent decision that supports the People’s Renewed Motion to Remand (Dkts. 342, 286).

4 In *City of Annapolis*, the District of Maryland granted motions to remand two climate-
 5 related cases brought in Maryland state court by the City of Annapolis and the County of Anne
 6 Arundel, Maryland. The court’s opinion holds that the defendants’ removal of the public entities’
 7 state-law claims on grounds of federal common law, *Grable* jurisdiction, the Outer Continental
 8 Shelf Lands Act, the federal officer statute, and the federal enclave doctrine have each “already
 9 been considered and rejected by the Fourth Circuit in Baltimore’s case.” Ex. A at *3; *see Mayor*
 10 *& City Council of Baltimore v. BP P.L.C.*, 31 F.4th 178 (4th Cir. 2022).

11 Although the defendants in *City of Annapolis* “present[ed] a materially expanded
 12 evidentiary record” in support of their federal officer jurisdiction argument, as well as new First
 13 Amendment argument for *Grable* jurisdiction, the district court held that these new arguments still
 14 “fail to provide grounds for federal jurisdiction.” *Id.* at *4. As here, the defendants in *City of*
 15 *Annapolis*—which include all Defendants here—sought to establish that they had “acted under”
 16 federal officers based on evidence purporting to establish that the federal government “exercised
 17 significant control over the production of high-octane aviation gasoline and the oil industry during
 18 World War II” and “contracted with Shell Oil Company, BP entities, and [others] to supply ‘highly
 19 specialized jet fuels,’ which defendants contended was required to conform with ‘enumerated
 20 ranges for conductivity, heat of combustion, and thermal stability’ and contain ‘military unique
 21 additives.’” *Id.* at *7. Those arguments, and that evidence, were identical to the evidence and
 22 arguments presented by the same defendants in this case.

23 In rejecting those defendants’ federal officer arguments, the district court concluded,
 24 among other things, that “[n]one of Defendants’ new examples of federal authority relates to the
 25 alleged concealment of the harms of fossil fuel products.” *Id.*; *see also id.* at *8 (“The fact that the
 26 federal government may have been a target of Defendants’ misrepresentations does not
 27 manufacture a federal relationship Defendants may now rely upon to access federal courts.”).
 28 Moreover, the court explained that the *City of Annapolis* complaint “d[id] not take issue with the

1 simple fact that Defendants produced oil and gas, they take issue with the fact that [Defendants]
 2 hid the harms of these products while doing it.” *Id.* at *7. For that reason, among others, the court
 3 concluded that defendants’ newly cited operations, even if conducted under the direction of a
 4 federal officer, “d[id] nothing to address the legal deficiency . . . identified by this Court and the
 5 Fourth Circuit in the *Baltimore* cases” because the defendants were not sued “for or relating to”
 6 any of that conduct. *Id.*

7 Defendants’ First Amendment *Grable* argument, as here, was that “th[e] case necessarily
 8 implicate[d] affirmative federal constitutional elements imposed by the First Amendment” which,
 9 according to the defendants, meant that substantial and disputed federal issues were necessarily
 10 raised and that the case was therefore removable under *Grable*. *See id.* at *9. The district court
 11 disagreed, concluding that “it would dramatically expand *Grable* to conclude that any state tort
 12 claim involving speech on matters of public concern could invoke federal court jurisdiction” and
 13 that any such ruling “would raise federalism concerns and counter the mandate for federal courts
 14 to ‘strictly construe’ removal statutes.” *Id.* at *9. The court further concluded that defendants had
 15 “fail[ed] to point to a single case that has relied on *Grable* to support federal jurisdiction in this
 16 way.” *Id.* at *9–10. Therefore, “[i]n the absence of any authority supporting Defendants’ expansive
 17 assertion of *Grable* jurisdiction” the court “decline[d] to extend the ‘slim category’ of cases to the
 18 breadth Defendants urge.” *Id.*

19
 20 Dated: October 3, 2022

Respectfully submitted,

21 **CITY OF OAKLAND**

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

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