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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.

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

**THE PEOPLE'S RESPONSE TO
DEFENDANTS' NOTICE
DEVELOPMENTS IN BOARD OF
COUNTY COMMISSIONERS OF
BOULDER COUNTY v. SUNCOR ENERGY
(U.S.A.) INC.**

The Honorable William Alsup

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, by and through the City Attorney for the City of
 2 Oakland and the City Attorney for the City and County of San Francisco, respectfully submit this
 3 response to Defendants’ Notice of Developments (Case No. 3:17-cv-6011. Dkt. No. 428; Case No.
 4 3:17-cv-6012, Dkt. No. 354) (“Notice”) regarding *Board of County Commissioners of Boulder*
 5 *County v. Suncor Energy (U.S.A.) Inc.*, No.21-1550 (“*Boulder*”). In their submission, Defendants
 6 urge this Court to delay ruling on the People’s Renewed Motion to Remand because the Supreme
 7 Court recently called for the Solicitor General’s views on the pending certiorari petition in *Boulder*.
 8 *See* Notice at 2. That request is both procedurally inappropriate and entirely meritless.

9 Defendants use their self-styled “Notice of Developments” to argue that the Court should
 10 “await further guidance from the Supreme Court before ruling on Plaintiffs’ Renewed Motion to
 11 Remand.” Notice at 2. In doing so, Defendants not only violate the local rules of this Court, which
 12 expressly prohibit argument in post-briefing notices that are filed without prior Court approval.
 13 *See* Civil L-R 7-3(d); *see also* *Ctr. for Env’t Health v. Vilsack*, No. 18-CV-01763-RS, 2022 WL
 14 658965, at *4 n.4 (N.D. Cal. Mar. 4, 2022) (“no argument is allowed when filing supplemental
 15 authority”). They also ignore the proper procedures for requesting a stay of proceedings. If this
 16 Court decides to grant remand, Defendants can—at that time—file a motion to stay the remand
 17 order. The People will, in turn, oppose such a motion, arguing that Defendants do not meet any of
 18 the requirements for a stay and pointing to numerous courts in the Ninth Circuit and elsewhere that
 19 have denied analogous attempts to delay the remand of climate deception cases. The Court should
 20 therefore disregard Defendants’ *sub silentio* request for a stay as premature and fatally flawed in
 21 form.

22 In any event, “once a federal circuit court issues a decision, the district courts within that
 23 circuit are bound to follow it and have no authority to await a ruling by the Supreme Court before
 24 applying the circuit court’s decision as binding authority.” *Yong v. I.N.S.*, 208 F.3d 1116, 1119
 25 (9th Cir. 2000). As Defendants concede, the *Boulder* petition only concerns their federal-common-
 26 law theory of removal jurisdiction. *See* Notice at 1. And the Ninth Circuit has flatly rejected that
 27 theory—both in the People’s cases, *see City of Oakland v. BP PLC*, 969 F.3d 895, 906, 911–12
 28 (9th Cir. 2020), *cert. denied*, 141 S. Ct. 2776 (2021), and in the *San Mateo* cases, *see Cnty. of San*

1 *Mateo v. Chevron Corp.*, 32 F.4th 733, 747 (9th Cir. 2022). This Court should therefore disregard
 2 the *Boulder* petition and adhere to the Ninth Circuit’s clear mandate in *Oakland* by resolving the
 3 People’s Renewed Motion to Remand. *See Oakland*, 969 F.3d at 911 (“[W]e remand these cases
 4 to the district court to determine whether there was an alternative basis for jurisdiction.”).

5 Even if, moreover, the Court could consider the *Boulder* petition, Defendants engage in
 6 pure speculation when they posit that the Supreme Court’s call for the Solicitor General’s views
 7 might increase the chances of certiorari review, which might—in turn—lead to reversal of the
 8 Tenth Circuit’s judgment. According to the law review article Defendants cite, analyzing data all
 9 more than 17 years old, the Supreme Court denies certiorari petitions in about two thirds of cases
 10 in which it seeks the views of the United States, and the likelihood of denial increases to about 80
 11 percent when the United States recommends denying certiorari review. David C. Thompson &
 12 Melanie F. Wachtell, *An Empirical Analysis of Supreme Court Certiorari Petition Procedures:
 13 The Call for Response and the Call for the Views of the Solicitor General*, 16 Geo. Mason L. Rev.
 14 237, 276, 295 (2009) (analyzing data from 1998 to 2004). Defendants’ assumption that the
 15 Solicitor General will recommend granting the *Boulder* petition is unfounded. The United States
 16 has never taken a position on the cert-worthiness of Defendants’ novel federal-common-law theory
 17 of removal. *See* U.S. Sup. Ct. R. 10 (outlining the main indicia of a cert-worthy case). Regardless,
 18 the Solicitor General is free to revisit previous positions taken by the United States as *amicus*
 19 *curiae*. And in *Boulder*, she has ample reason to take a fresh look at the question presented in the
 20 petition because—in the past year alone—five circuits have unanimously ruled against Defendants
 21 on that question.

22 Indeed, even if the Solicitor General were to recommend granting certiorari review of the
 23 *Boulder* petition, and even if the Supreme Court followed that recommendation (two big “ifs”),
 24 Defendants cannot show irreparable harm—a precondition for the issuance of a stay. *Doe #1 v.*
 25 *Trump*, 957 F.3d 1050, 1058 (9th Cir. 2020). Nor can they demonstrate a strong likelihood of
 26 success on the merits, *id.*, given that the circuits are unanimous in their rejection of Defendants’
 27 federal-common-law theory of removal. Accordingly, this Court should not delay adjudication of
 28

the People's Renewed Motion to Remand based on the speculative and unlikely possibility that the Supreme Court will overturn the Ninth Circuit's decision in *Oakland*.

Dated: October 18, 2022

Respectfully submitted,

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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