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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

**NOTICE OF DEVELOPMENTS IN *BOARD
OF COUNTY COMMISSIONERS OF
BOULDER COUNTY V. SUNCOR ENERGY
(U.S.A.) INC.***

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.

Defendants submit this notice to inform the Court that earlier this week, on October 3, 2022, the Supreme Court invited the Solicitor General to file a brief expressing the views of the United States on the petition for a writ of certiorari in *Suncor Energy (U.S.A.) Inc. v. Board of County Commissioners of Boulder County*, No. 21-1550, another set of climate change-related cases that were remanded to state court.¹ As the Court is aware, the defendants in those cases filed a petition for a writ of certiorari on June 8, 2022, asking the Supreme Court to decide two questions: (1) “Whether federal common law necessarily and exclusively governs claims seeking redress for injuries allegedly caused by the effect of interstate greenhouse-gas emissions on the global climate,” and (2) “Whether a federal district court has jurisdiction under 28 U.S.C. 1331 over claims necessarily and exclusively governed by federal common law but labeled as arising under state law.” Petition for a Writ of Certiorari at i, *Suncor Energy (U.S.A.) Inc. v. Board of County Commissioners of Boulder County*, No. 21-1550 (U.S.). Defendants will present these same issues to the Supreme Court in *San Mateo* and *Honolulu*. See *Chevron Corp. v. San Mateo County*, No. 22A196 (U.S.); *Sunoco LP v. City & County of Honolulu*, No. 22A239 (U.S.).

The Supreme Court’s invitation to the Solicitor General is significant because a petition for a writ of certiorari “is over 46 times more likely to be granted” once the Court has requested the Solicitor General’s views.² Moreover, the United States has taken the position that climate change-related claims similar to the ones asserted here are removable because “they are inherently and necessarily federal in nature.” Brief for the United States as *Amicus Curiae* Supporting Petitioners at 26, *BP p.l.c. v. Mayor & City Council of Baltimore*, 141 S. Ct. 1532 (2021) (No. 19-1189) (citing *City of Oakland v. B.P. p.l.c.*, No. 18-16663 (9th Cir.), Dkt. 198); see also Transcript of Oral Argument at 31:2-12, *BP p.l.c. v. Mayor & City Council of Baltimore*, 141 S. Ct. 1532 (2021) (No. 19-1189) (“potentially conflicting” state law inappropriate because the case “depends on alleged injuries . . . caused by

¹ In submitting this update, 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).

² David C. Thompson & Melanie F. Wachtell, *An Empirical Analysis of Supreme Court Certiorari Petition Procedures: The Call for Response and the Call for the Views of the Solicitor General*, 16 Geo. Mason L. Rev. 237, 274 (2009).

emissions from all over the world”); *Oakland*, Dkt. 198 at 2 (“A putative state-law claim is also removable if alleged in a field that is properly governed by federal common law such that a cause of action, if any, is necessarily federal in character.”). And the United States has warned of the risk that common-law suits targeting greenhouse gas emissions might interfere with federal regulations, noting that “EPA has directly entered the field plaintiffs would have governed by common-law nuisance suits” by “actively exercising its judgment and statutory discretion to determine when and how emissions from different categories of sources of greenhouse gases will be regulated.” Brief for the Tennessee Valley Authority as Respondent Supporting Petitioners at 45–46, *American Electric Power Co. v. Connecticut*, 564 U.S. 410 (2011) (No. 10-174). The conflict between the United States’ position and that of the Ninth Circuit (and the Tenth Circuit) further weighs in favor of Supreme Court review.

If the Supreme Court ultimately grants certiorari in *Suncor* and answers the questions presented in the affirmative, these cases would be removable and heard in federal court. And such a decision would vindicate this Court’s holding in its initial Order Denying Motions to Remand that “Plaintiffs’ nuisance claims . . . are necessarily governed by federal common law” and that “[f]ederal jurisdiction over these actions is therefore proper.” Dkt. 134 at 3. Given this recent development, Defendants respectfully submit that it may advance the interests of judicial efficiency and conservation of resources for the Court to await further guidance from the Supreme Court before ruling on Plaintiffs’ Renewed Motion to Remand.

Dated: October 6, 2022

Respectfully submitted,

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