IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

CITY OF CHARLESTON,

Plaintiff,

v.

BRABHAM OIL COMPANY, INC.; COLONIAL GROUP, INC.; ENMARK STATIONS, INC.; COLONIAL PIPELINE COMPANY; PIEDMONT PETROLEUM CORP.; EXXON MOBIL CORPORATION; EXXONMOBIL OIL CORPORATION; ROYAL DUTCH SHELL PLC; SHELL OIL COMPANY; SHELL OIL PRODUCTS COMPANY LLC; CHEVRON CORPORATION; CHEVRON U.S.A. INC.; BP P.L.C.; BP AMERICA INC.; MARATHON PETROLEUM CORPORATION; MARATHON PETROLEUM COMPANY LP; SPEEDWAY LLC; MURPHY OIL CORPORATION; MURPHY OIL USA, INC.; HESS CORPORATION; CONOCOPHILLIPS; CONOCOPHILLIPS COMPANY; PHILLIPS 66; AND PHILLIPS 66 COMPANY,

Defendants.

Civil Action No. 2:20-cv-03579-RMG

DEFENDANTS PIEDMONT PETROLEUM CORP. AND BRABHAM OIL COMPANY, INC.'S REPLY IN SUPPORT OF MOTION FOR LEAVE TO FILE SUR-REPLY IN OPPOSITION TO PLAINTIFF'S RENEWED MOTION TO REMAND

Piedmont Petroleum Corp. ("Piedmont") and Brabham Oil Company, Inc. ("Brabham") submit this reply in support of their motion for leave to file a sur-reply in opposition to the City's renewed motion to remand (ECF No. 143) and in reply to the City's response in opposition to their motion for leave (ECF No. 147).

The City asks the Court not to consider Piedmont and Brabham's sur-reply (ECF No. 143-1) because, according to the City, Piedmont and Brabham could have addressed the City's failure to warn theory in an earlier brief. *See generally* ECF No. 147 (citing cases where courts have refused to allow a sur-reply because the party could have briefed the issue previously). But, unlike

the cases cited by the City, this case presents unique circumstances that make it appropriate for the Court, in its discretion, to consider Piedmont and Brabham's sur-reply.

First, the City has filed four separate briefs in support of its motion to remand, in which the City has created a moving target when explaining why Piedmont and Brabham supposedly may be liable to the City. Importantly, in its response to Piedmont and Brabham's motion for leave to file a sur-reply, the City fails to provide any meaningful response to two of the primary points in Piedmont and Brabham's motion: (1) the City argued that Piedmont and Brabham may be liable under a failure to warn theory only in its reply briefs (ECF Nos. 116 and 142), but omitted this argument from its initial motion to remand and its supplemental motion to remand (ECF Nos. 103 and 139); and (2) the City did not merely omit any argument about a failure to warn theory when discussing fraudulent joinder in its motion to remand; instead, the City affirmatively stated, in the context of its fraudulent joinder argument, that liability is "*cabined to* those who coordinated, directed, or implemented the decades-long efforts to mislead consumers, regulators, and the public about the dangers of fossil fuel consumption." ECF No. 103 at 63 (emphasis added).

Moreover, although the Local Rules allowed each defendant to file a separate 35-page memorandum opposing the City's motion to remand (which would have resulted in up to 840 pages of response briefing), the parties stipulated, in the interests of efficiency, that Defendants would limit their response briefing to a single memorandum of no more than 65 pages during the first round of briefing (ECF No. 53), and a single memorandum of no more than 35 pages during the second round of briefing (ECF No. 137). Also, Defendants oppose the City's motion to remand on numerous grounds, only one of which is fraudulent joinder. In an attempt to be efficient in addressing the City's fraudulent joinder arguments, Piedmont and Brabham addressed the arguments made in the City's motion and renewed motion rather than the failure to warn theory

that the City limited to its reply briefing and appeared to concede away in its motion to remand.

Finally, this is a significant case in which the City seeks to hold Defendants liable for damages arising from climate change, and the motion to remand presents the significant issue of whether this case will be litigated in federal court or state court. Also, the Court has permitted the City (with Defendants' consent) to file over 150 pages of briefing in support of its motion to remand. Under these circumstances, the Court should exercise its discretion to consider the arguments in Piedmont and Brabham's 9-page sur-reply brief (ECF No. 143-1), rather than decide the City's motion to remand on an incomplete record.

Under these circumstances, and "[i]n the interest of full consideration of the issues," the Court should exercise its discretion to grant Piedmont and Brabham's motion for leave to file a sur-reply. *See Genesis Health Care, Inc. v. Soura*, 165 F. Supp. 3d 443, 456 (D.S.C. 2015) (granting plaintiff's motion for leave to file sur-reply "[i]n the interest of full consideration of the issues"); *Perez v. S.C. Dep't of Lab., Licensing & Regul.*, No. CV 3:17-3187-JFA, 2018 WL 2455093, at *4 n.10 (D.S.C. June 1, 2018) ("It is within the discretion of the court whether to allow the sur-reply.").

Respectfully submitted,

/s/PATRICK C. WOOTEN
DUFFY & YOUNG, LLC
Brian C. Duffy, Esq. (Fed. I.D. No.: 9491)
bduffy@duffyandyoung.com
Patrick C. Wooten, Esq. (Fed. I.D. No.: 10399)
pwooten@duffyandyoung.com
96 Broad Street
Charleston, SC 29401
Telephone (843) 720-2044

Attorneys for Defendant Piedmont Petroleum Corp.

ROBINSON GRAY STEPP & LAFFITTE, LLC
J. Calhoun Watson (Fed. I.D. No.: 4794)
cwatson@robinsongray.com
Sarah C. Frierson (Fed. I.D. No.: 13825)
sfrierson@robinsongray.com
Post Office Box 11449
Columbia, South Carolina 29211
Telephone (803) 929-1400

Attorneys for Defendant Brabham Oil Company, Inc.

January 20, 2023
Charleston, South Carolina