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PROTECTING PEOPLE AND THE PLANET

October 2, 2023

Via ECF

Molly C. Dwyer
Clerk of Court
The James R. Browning Courthouse
95 7th Street
San Francisco, CA 94103

Re: *City of Oakland, et al., v. B.P. PLC, et al.*, No. 22-16810
City and County of San Francisco, et al., v. B.P. PLC, et al., No. 22-16812
Plaintiffs–Appellees’ Notice of Supplemental Authority

Dear Ms. Dwyer,

Plaintiffs-Appellees submit this letter pursuant to Fed. R. App. P. 28(j) to identify recent relevant supplemental authority. In *Connecticut v. Exxon Mobil Corp.*, __ F.4th __, No. 21-1446, 2023 WL 6279941 (2d Cir. Sept. 27, 2023), the slip opinion of which is attached hereto as Exhibit A, the Second Circuit affirmed remand of a case alleging, similar to the allegations here, that Exxon Mobil “engaged in a decades-long ‘campaign of deception’ to knowingly mislead and deceive Connecticut consumers” about climate change and its relationship to fossil fuels. Ex. A at 3. The decision supports the Plaintiffs’ arguments here that the district court was correct in holding that removal by Exxon Mobil and four other companies was improper under the federal officer removal statute. *See generally* Plaintiffs-Appellees’ Consolidated Answering Brief at 9–11, Dkt. 37 (“Answering Br.”) & Ex. A at 37–45.

Defendants-Appellants argue that removal under the federal officer removal statute, 28 U.S.C. § 1442, is not foreclosed by the Ninth Circuit’s decision in *City & County of Honolulu v. Sunoco LP*, 39 F.4th 1101 (9th Cir. 2022), because they presented an “expanded record,” not considered in *Honolulu*, showing they each “produc[e] specialized fuels for the military,” and “act[ed] under the direction of the federal government during World War II.” *See* Appellants’ Opening Brief at 2, 16–34.

The Second Circuit panel considered these identical arguments and held that they did not support removal. That court’s reasoning fully applies here: any relationship between Defendants and the government during World War II long predates wrongful conduct alleged in Plaintiffs’ complaints, *compare* Answering Br. at 28–29, *with* Ex. A at 40–41, and there is no causal connection between Defendants’ purported fuel sales to the military and that complained-of conduct, *compare* Answering Br. at 29–38, *with* Ex. A at 41–45.

This Court, along with the First, Second, Third, Fourth, Eighth, and Tenth Circuits, have now all affirmed remand in materially similar cases. *See* Answering Br. at 1 n.1 (collecting cases); ECF No. 47 (supplemental authority). The Court should do so again here.

Respectfully submitted,

/s/ Victor M. Sher

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cc: All Counsel of Record (via ECF)