

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

THE CITY OF NEW YORK,

Plaintiff,

vs.

EXXON MOBIL CORPORATION,
EXXONMOBIL OIL CORPORATION,
ROYAL DUTCH SHELL PLC, SHELL OIL
COMPANY, BP P.L.C., BP AMERICA INC.,
and AMERICAN PETROLEUM INSTITUTE,

Defendants.

Case Number: 1:21-CV-04807-VEC-SDA

**PLAINTIFF'S NOTICE OF MOTION AND
RENEWED MOTION TO REMAND TO STATE COURT**

TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD, PLEASE TAKE NOTICE that Plaintiff the City of New York (“the City”) hereby respectfully moves the Court for an Order pursuant to 28 U.S.C. § 1447(c), remanding this matter to the Supreme Court of the State of New York, County of New York, from which it was removed, and awarding the City just costs and any actual expenses, including attorney fees, incurred as a result of Defendants’ improper removal.

As grounds for this motion, the City asserts that removal was improper and without an objectively reasonable basis because the City’s Complaint does not raise any federal claims and the Supreme Court of the State of New York, County of New York, is the appropriate forum for adjudicating the City’s exclusively state-law claims. Defendants have not satisfied their burden to establish this Court’s jurisdiction under any of the bases cited in Defendants Exxon Mobil Corporation and ExxonMobil Oil Corporation’s Notice of Removal (Dkt. No. 1): 28 U.S.C. §§ 1331, 1332(a), 1332(d), 1441(a), 1442(a), and 1453(b); U.S. Const. art. I, § 8, cl. 17; and 43 U.S.C. § 1349(b)(1). These arguments fail for the following reasons:

- **28 U.S.C. §§ 1331 & 1441(a):** This Court lacks jurisdiction over the subject matter of this case because the City solely alleges violations of state law. The Complaint asserts no federal law claims, and no claim in the City’s well-pleaded Complaint arises under the Constitution, laws, or treaties of the United States, including federal common law. The City’s claims are thus not within this Court’s original jurisdiction under 28 U.S.C. § 1331. Nor does the Complaint necessarily raise any disputed, substantial questions of federal law sufficient to create federal question jurisdiction. *See Grable & Sons Metal Prods., Inc. v. Darue Eng’g & Mfg.*, 545 U.S. 308 (2005). The City’s municipal-law claims are not completely preempted by federal law. *See Marcus v. AT&T Corp.*, 138 F.3d 46, 54 (2d Cir. 1998). The City’s claims are therefore not

removable under 28 U.S.C. § 1441(a). *See Connecticut v. Exxon Mobil Corp.*, ___ F.4th ___, No. 21-1446-CV, 2023 WL 6279941, at *4–12 (2d Cir. Sept. 27, 2023) (“*Connecticut*”).

- **28 U.S.C. § 1442:** The case is not removable pursuant to 28 U.S.C. § 1442, because in carrying out the unlawful conduct alleged in the City’s Complaint, Defendants are not and have never been federal officers or persons acting under federal officers performing some act under color of federal office. Any acts Defendants may have conducted under a federal superior, moreover, are not related or connected to the City’s claims, and Defendants have not satisfied their burden to show a colorable federal defense. *See Connecticut*, 2023 WL 6279941, at *13–14.

- **43 U.S.C. § 1349(b):** The case is not removable pursuant to the Outer Continental Shelf Lands Act because it does not “aris[e] out of, or in connection with . . . any operation conducted on the Outer Continental Shelf which involves exploration, development, or production of the minerals, of the subsoil and seabed of the Outer Continental Shelf, or which involves rights to such minerals,” within the meaning of 43 U.S.C. § 1349(b)(1). *See Connecticut*, 2023 WL 6279941, at *15–16.

- **U.S. Const. art. I, § 8, cl. 17:** The case is not removable on the ground that some of the alleged injuries arose, or alleged conduct occurred, on “federal enclaves.” The City’s consumer protection claims did not arise on any federal enclave.

- **28 U.S.C. § 1332(d):** The Class Action Fairness Act (“CAFA”) does not provide jurisdiction because this is not a “class action” within the meaning of the statute.

- **13 U.S.C. § 1332(a):** There is no complete diversity of citizenship warranting federal diversity jurisdiction because Defendant ExxonMobil Oil Corporation is incorporated in New York. Defendants’ theory of fraudulent joinder must be rejected because it does not meet the

burden of proof to establish “outright fraud” by clear and convincing evidence and because it ignores the actual allegations of this Defendant’s misconduct giving rise to the City’s claims.

Dated: October 20, 2023

Respectfully submitted,

Hon. Sylvia O. Hinds-Radix
Corporation Counsel of
the City of New York

/s/ Hilary Meltzer

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CERTIFICATE OF SERVICE

I hereby certify that, on the 20th day of October, 2023, the foregoing document was filed through the ECF system and will be sent electronically to the registered participants identified on the Notice of Electronic Filing.

/s/ Matthew K. Edling
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