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PROTECTING PEOPLE AND THE PLANET

November 28, 2023

Via ECF

Patricia S. Connor
Clerk of Court
U.S. Court of Appeals for the Fourth Circuit
1100 East Main Street, Suite 501
Richmond, Virginia 23219

Re: *Anne Arundel County, Maryland v. BP P.L.C., et al.*, and *City of Annapolis, Maryland v. BP P.L.C., et al.*, Case Nos. 22-2082 and 22-2101
Plaintiffs-Appellees' Citation of Supplemental Authority
Oral argument scheduled for December 6, 2023

Dear Ms. Connor,

Plaintiffs-Appellees City of Annapolis and Anne Arundel County write pursuant to Federal Rule of Appellate Procedure ("FRAP") 28(j) to provide notice of supplemental authority. Attached as **Exhibit A** is the Ninth Circuit's memorandum disposition in *City of Oakland v. BP P.L.C.*, Nos. 22-16810 and 22-16812, 2023 WL 8179286 (9th Cir. Nov. 27, 2023), which affirmed remand to state court. The decision is citable under FRAP 32.1, Fourth Circuit Rule 32.1, and Ninth Circuit Rule 36-3.

Defendants-Appellants assert here that their "expanded" factual record establishes that they "acted under" federal officers by: "(i) producing specialized fuels for the military, (ii) acting under the direction of the military during World War II and the Korean War, and (iii) supplying oil to the Strategic Petroleum Reserve." See Opening Brief (Dkt. 99) 16, 32; see also Reply Brief (Dkt. 103) 3–4, 17–29. They also rely on an anticipated First Amendment defense to support removal jurisdiction under *Grable & Sons Metal Products, Inc. v. Darue Engineering & Manufacturing*, 545 U.S. 308 (2005). See Opening Brief 60–67; Reply Brief 31–34.

In *Oakland*, however, the district court considered the same "expanded" factual record and rejected all three of the "acting under" arguments raised here. See *City of Oakland v. BP P.L.C.*, No. C 17-06011 WHA, 2022 WL 14151421, at *6–*8 (N.D. Cal. Oct. 24, 2022). The Ninth Circuit affirmed, holding that defendants' World War II activities were merely "compliance with the law while executing arms-length business agreements," and that defendants' specialized fuel contracts "were no more than 'arms-length business agreements,' and accordingly, the Energy Companies were not 'acting under' federal officers." Ex. A at 6 (cleaned up). The court also rejected defendants' assertion that their anticipated First Amendment defenses supported removal jurisdiction under *Grable*. Ex. A at 7.

Thus, *Oakland* rejects the very arguments Defendants-Appellants make here, adding to the overwhelming weight of authority supporting remand in similar cases as discussed in Plaintiffs-Appellees' Response Brief.

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We would appreciate it if you would circulate this letter to the Panel in this action at your earliest convenience.

Respectfully submitted,

/s/ Victor M. Sher

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City of Annapolis, Maryland*

cc: All Counsel of Record (via ECF)