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17 UNITED STATES DISTRICT COURT
 18 NORTHERN DISTRICT OF CALIFORNIA
 19 SAN FRANCISCO DIVISION

20 THE PEOPLE OF THE STATE OF
 21 CALIFORNIA, acting by and through the San
 22 Francisco City Attorney DENNIS J.
 23 HERRERA,

24 Plaintiff,

25 v.

26 BP P.L.C., a public limited company of
 27 England and Wales; CHEVRON
 28 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.

CASE NO. _____

NOTICE OF REMOVAL

[Removal from the Superior Court of the State of
 California, County of San Francisco, Case No.
 CGC-17-561370]

Action Filed: September 19, 2017

1 **TO THE CLERK OF THE ABOVE-TITLED COURT AND TO PLAINTIFF THE PEOPLE**
2 **OF THE STATE OF CALIFORNIA, THROUGH THE SAN FRANCISCO CITY ATTOR-**
3 **NEY, AND ITS COUNSEL OF RECORD:**

4 PLEASE TAKE NOTICE THAT Defendants BP p.l.c. (“BP”), Chevron Corporation (“Chev-
5 ron”), ConocoPhillips Company (“ConocoPhillips”), Exxon Mobil Corporation (“ExxonMobil”), and
6 Royal Dutch Shell plc (“Shell,” and collectively “Defendants”) remove this action—with reservation
7 of all defenses and rights—from the Superior Court of the State of California for the County of San
8 Francisco, Case No. CGC-17-561370, to the United States District Court for the Northern District of
9 California pursuant to 28 U.S.C. §§ 1331, 1334, 1441(a), 1442, 1452 and 1367(a), and 43 U.S.C.
10 § 1349(b). All named defendants join in this Notice of Removal. Consequently, without conceding
11 that each Defendant has been properly joined and served in this action, it is clear that any and all de-
12 fendants who have been properly joined and served have joined in the removal of this action.

13 This Court has original federal question jurisdiction under 28 U.S.C. § 1331, because the
14 Complaint arises under federal laws and treaties, and presents substantial federal questions as well as
15 a claim that is completely preempted by federal law. Plaintiff asserts a single claim against Defend-
16 ants, but to the extent Plaintiff argues or this Court construes any part of Plaintiff’s claim as being
17 non-federal, this Court has supplemental jurisdiction under 28 U.S.C. § 1367(a) over any claims over
18 which it does not have original federal question jurisdiction because they form part of the same case
19 or controversy as those claims over which the Court has original jurisdiction. As set forth below, re-
20 moval is proper pursuant to 28 U.S.C. §§ 1441, 1442, 1446, and 1452, and 43 U.S.C. § 1349(b).

21 In addition, the Complaint is legally without merit, and, at the appropriate time, Defendants
22 will move to dismiss Plaintiff’s claim pursuant to Rule 12 of the Federal Rules of Civil Procedure.

23 Through its Complaint, Plaintiff the People of the State of California, through the San Fran-
24 cisco City Attorney (“Plaintiff”), calls into question longstanding decisions by the Federal Govern-
25 ment regarding, among other things, national security, national energy policy, environmental protec-
26 tion, development of outer continental shelf lands, the maintenance of a national petroleum reserve,
27 mineral extraction on federal lands (which has produced billions of dollars for the Federal Govern-
28 ment), and the negotiation of international agreements bearing on the development and use of fossil

1 fuels. Several of the Defendants (and/or their affiliates, which Plaintiff improperly amalgamate with
2 Defendants) have contracts with the Federal Government to develop and extract minerals from fed-
3 eral lands and to sell fuel and associated products to the Federal Government for the Nation's de-
4 fense. The gravamen of the Complaint calls into question all of those Federal Government policies
5 and seeks to force Defendants to finance an "abatement fund" to pay for "infrastructure" purportedly
6 needed as a result of Defendants' conduct pursuant to contracts with the Federal Government or na-
7 tional policies to develop fossil fuel resources.

8 In the Complaint's view, a state court, on petition by a City Attorney, may effectively regulate
9 the nationwide—and indeed, worldwide—economic activity of key sectors of the American econ-
10 omy, those that supply the fuels that power production and innovation, keep the lights on, and that
11 form the basic materials from which innumerable consumer, technological, and medical devices are
12 themselves fashioned. Though nominally asserted under state law, the Complaint puts at issue long-
13 established federal statutory, regulatory, and constitutional issues and frameworks. It implicates bed-
14 rock federal-state divisions of responsibility, and appropriates to itself the direction of such federal
15 spheres as nationwide economic development, international relations, and America's national secu-
16 rity. Reflecting the uniquely federal interests posed by greenhouse gas claims like this one, the Ninth
17 Circuit has recognized that causes of action of the type asserted here are governed by federal com-
18 mon law, not state law.

19 The Complaint has no basis in law and is inconsistent with serious attempts to address im-
20 portant issues of national and international policy. Accordingly, Plaintiff's Complaint should be
21 heard in this federal forum to protect the national interest by its prompt dismissal.

22 **I. TIMELINESS OF REMOVAL**

23 1. Plaintiff filed a Complaint against Defendants in the Superior Court for San Francisco
24 County, California, Case No. CGC-17-561370, on September 19, 2017. All Defendants were served
25 (or purportedly served) on or after September 21, 2017. Copies of all process, pleadings, or orders
26 served (or purportedly served) upon Defendants are attached as Exhibits A-E to the Declaration of
27 William E. Thomson, filed concurrently herewith.

1 2. This notice of removal is timely under 28 U.S.C. § 1446(b) because it is filed fewer
2 than 30 days after service. 28 U.S.C. § 1446(b). All Defendants that have been properly joined and
3 served as of this date join in this removal.¹

4 **II. SUMMARY OF ALLEGATIONS AND GROUNDS FOR REMOVAL**

5 3. Plaintiff brings a claim against Defendants for alleged injuries relating to climate
6 change, including from sea level rise. Plaintiff asserts a single cause of action for public nuisance on
7 behalf of the People of the State of California. Plaintiff seeks a finding that Defendants are “jointly
8 and severally liable for causing, creating, assisting in the creation of, contributing to, and/or maintain-
9 ing a public nuisance,” and an order requiring Defendants to pay for an “abatement fund” to “provide
10 for infrastructure in San Francisco necessary for the People to adapt to global warming impacts such
11 as sea level rise.” Compl., Relief Requested.

12 4. Several Defendants will deny that any California court has personal jurisdiction and
13 will object to the sufficiency of process and service of process, and those Defendants properly before
14 the Court will deny any liability as to Plaintiff’s claim. Defendants expressly reserve all rights in this
15 regard. For purposes of meeting the jurisdictional requirements for removal only, however, Defend-
16 ants submit that removal is proper on at least seven independent and alternative grounds.

17 5. **First**, the action is removable under 28 U.S.C. § 1441(a) and 28 U.S.C. § 1331 be-
18 cause Plaintiff’s claim, to the extent that it exists, implicates uniquely federal interests and is gov-
19 erned by federal common law, and not state common law. *See Nat’l Farmers Union Ins. Cos. v.*
20 *Crow Tribe of Indians*, 471 U.S. 847, 850 (1985). The Ninth Circuit has held that comparable
21 claims, in which a municipality alleged that the defendants’ greenhouse gas emissions led to global
22 warming-related injuries such as coastal erosion, were governed by federal common law. *See Native*
23 *Village of Kivalina v. ExxonMobil Corp.*, 696 F.3d 849, 855 (9th Cir. 2012) (“*Kivalina*”). Federal

24
25 ¹ In filing or consenting to this Notice of Removal, Defendants do not waive, and expressly pre-
26 serve, their right to challenge personal jurisdiction, insufficient process, and/or insufficient ser-
27 vice of process in any federal or state court with respect to this action. A number of Defendants
28 contend that personal jurisdiction in California is lacking over them, that process was insufficient,
and/or that service of process was insufficient, and these Defendants will move to dismiss for lack
of personal jurisdiction, insufficient process, and/or insufficient service of process at the appropri-
ate time. *See, e.g., Carter v. Bldg. Material & Const. Teamsters’ Union Local 216*, 928 F. Supp.
997, 1000-01 (N.D. Cal. 1996) (“A petition for removal affects only the forum in which the ac-
tion will be heard; it does not affect personal jurisdiction.”).

1 common law applies only in those few areas of the law that so implicate “uniquely federal interests”
2 that application of state law is affirmatively inappropriate. *See, e.g., Boyle v. United Techs. Corp.*,
3 487 U.S. 500, 504, 507 (1988); *Am. Elec. Power Co., Inc. v. Connecticut*, 564 U.S. 410, 424 (2011)
4 (“*AEP*”) (“borrowing the law of a particular State would be inappropriate”). As a result, the Ninth
5 Circuit’s determination in *Kivalina* that federal common law applies to comparable claims of global
6 warming-related injuries necessarily means that state law should not apply to those types of claims.
7 Plaintiff’s claim, therefore, (to the extent it exists at all) arises under federal common law, not state
8 law, and is properly removed to this Court.

9 6. **Second**, removal is authorized under 28 U.S.C. § 1441(a) and 28 U.S.C. § 1331 be-
10 cause the action necessarily raises disputed and substantial federal questions that a federal forum may
11 entertain without disturbing a congressionally approved balance of responsibilities between the fed-
12 eral and state judiciaries. *See Grable & Sons Metal Prods., Inc. v. Darue Eng’g & Mfg.*, 545 U.S.
13 308 (2005). In fact, the cause of action as alleged in the Complaint attacks federal policy decisions,
14 threatens to upset longstanding federal-state relations, second-guesses policy decisions made by Con-
15 gress and the Executive Branch, and skews divisions of responsibility set forth in federal statutes and
16 the United States Constitution.

17 7. **Third**, removal is authorized under 28 U.S.C. § 1441(a) and 28 U.S.C. § 1331 because
18 Plaintiff’s claim is completely preempted by the Clean Air Act and/or other federal statutes and the
19 United States Constitution, which provide an exclusive federal remedy for plaintiffs seeking stricter
20 regulation of the nationwide and worldwide greenhouse gas emissions put at issue in the Complaint.

21 8. **Fourth**, this Court has original jurisdiction over this lawsuit and removal is proper
22 pursuant to the Outer Continental Shelf Lands Act (“OCSLA”), because this action “aris[es] out of,
23 or in connection with (A) any operation conducted on the outer Continental Shelf which involves ex-
24 ploration, development, or production of the minerals, or the subsoil or seabed of the outer Continen-
25 tal Shelf, or which involves rights to such minerals.” 43 U.S.C. § 1349(b); *see also Tenn. Gas Pipe-*
26 *line v. Houston Cas. Ins. Co.*, 87 F.3d 150, 155 (5th Cir. 1996).

27 9. **Fifth**, Defendants are authorized to remove this action under 28 U.S.C. § 1442(a)(1)
28 because, assuming the truth of Plaintiff’s allegations, a causal nexus exists between their actions,

1 taken pursuant to a federal officer's directions, and Plaintiff's claim; they are "persons" within the
2 meaning of the statute; and can assert several colorable federal defenses. *See Leite v. Crane Co.*, 749
3 F.3d 1117 (9th Cir. 2014).

4 10. **Sixth**, removal is authorized under 28 U.S.C. § 1441(a) and 28 U.S.C. § 1331 because
5 Plaintiff's claim arises on federal enclaves. As such, Plaintiff's claim arises under federal-question
6 jurisdiction and is removable to this Court. *See* U.S. Const., art. I, § 8, cl. 17; *Durham v. Lockheed*
7 *Martin Corp.*, 445 F.3d 1247, 1250 (9th Cir. 2006) ("Federal courts have federal question jurisdiction
8 over tort claims that arise on 'federal enclaves.'").

9 11. **Seventh and finally**, removal is authorized under 28 U.S.C. § 1452(a) and 28 U.S.C. §
10 1334(b) because Plaintiff's state-law claim is related to cases under Title 11 of the United States
11 Code. Plaintiff alleges that Defendants (improperly defined by Plaintiff to include the conduct of De-
12 fendants' subsidiaries, *see, e.g.*, Compl ¶ 32) engaged in conduct constituting a public nuisance over
13 many decades. Because Plaintiff's claim is predicated on historical activities of Defendants, includ-
14 ing predecessor companies and companies that they may have acquired or with which they may have
15 merged, and because there are hundreds, if not thousands, of non-joined necessary and indispensable
16 parties, there are many other Title 11 cases that may be related. *See PDG Arcos, LLC v. Adams*, 436
17 F. App'x 739 (9th Cir. 2011).

18 12. For the convenience of the Court and all parties, Defendants will address each of these
19 grounds in additional detail. Should Plaintiff challenge this Court's jurisdiction, Defendants will fur-
20 ther elaborate on these grounds and will not be limited to the specific articulations in this Notice.

21 **III. THIS COURT HAS FEDERAL-QUESTION JURISDICTION BECAUSE**
22 **PLAINTIFF'S CLAIM ARISES, IF AT ALL, UNDER FEDERAL COMMON LAW**

23 13. This action is removable because Plaintiff's claim, to the extent that such claim exists,
24 necessarily is governed by federal common law, and not state common law. 28 U.S.C. § 1331 grants
25 federal courts original jurisdiction over "claims founded upon federal common law as well as those
26 of a statutory origin." *Nat'l Farmers Union*, 471 U.S. at 850 (quoting *Illinois v. City of Milwaukee*,
27 406 U.S. 91, 100 (1972) ("*Milwaukee I*"). As the Ninth Circuit explained in holding that similar
28 claims for injuries caused by global warming were governed by federal common law, even "[p]ost-

1 *Erie*, federal common law includes the general subject of environmental law and specifically includes
2 ambient or interstate air or water pollution.” *Kivalina*, 696 F.3d at 855. As Plaintiff’s claim arises
3 under federal common law, this Court has federal-question jurisdiction and removal is proper. That
4 remains true even though Plaintiff’s claim in the final analysis fails to state a claim: among other de-
5 ficiencies, any such federal common law claim has been displaced by the Clean Air Act. *See, e.g.*,
6 *AEP*, 564 U.S. at 424; *Kivalina*, 696 F.3d at 856-67.

7 14. Though “[t]here is no federal *general* common law,” *Erie R. Co. v. Tompkins*, 304
8 U.S. 64, 78 (1938) (emphasis added), federal common law continues to exist, and to govern, in a few
9 subject areas in which there are “uniquely federal interests,” *Boyle*, 487 U.S. at 504. *See generally*
10 Henry J. Friendly, *In Praise of Erie—and the New Federal Common Law*, 39 N.Y.U. L. Rev. 383
11 (1964). Such uniquely federal interests will require the application of federal common law where, for
12 example, the issue is one that by its nature, is “within national legislative power” and there is “a
13 demonstrated need for a federal rule of decision” with respect to that issue. *AEP*, 564 U.S. at 421 (ci-
14 tation omitted). Federal common law therefore applies, in the post-*Erie* era, in those discrete areas in
15 which application of state law would be inappropriate and would contravene federal interests. *Boyle*,
16 487 U.S. at 504-07. The decision that federal common law applies to a particular issue thus inher-
17 ently reflects a determination that state law does *not* apply. *Nat’l Audubon Soc’y v. Dep’t of Water*,
18 869 F.2d 1196, 1204 (9th Cir. 1988); *see also City of Milwaukee v. Illinois & Michigan*, 451 U.S.
19 304, 312 n.7 (1981) (“*Milwaukee IP*”) (“[I]f federal common law exists, it is because state law cannot
20 be used.”).

21 15. In *Kivalina*, the Ninth Circuit held that federal common law governed a comparable
22 suit asserting a comparable public nuisance claim due to global warming against many of these same
23 defendants. 696 F.3d at 855. Quoting the Supreme Court’s decision in *AEP*, the court reiterated that
24 federal common law applies to “subjects within the national legislative power where Congress has so
25 directed or where the basic scheme of the Constitution so demands.” *Id.* at 855 (quoting *AEP*, 564
26 U.S. at 421) (citation and internal quotation marks omitted). Although Congress thus sometimes af-
27 firmatively directs the application of federal common law, the *Kivalina* court noted that, “[m]ore of-
28 ten, federal common law develops when courts must consider *federal* questions that are not answered

1 by statutes.” *Id.* (emphasis added). Given that claims asserting injuries from global warming have an
2 intrinsic interstate and transnational character, the Ninth Circuit held that such claims inherently raise
3 federal questions and fall within the settled rule that federal common law governs “the general sub-
4 ject of environmental law and specifically includes ambient or interstate air and water pollution.” *Id.*
5 at 855; *see also id.* (“federal common law can apply to transboundary pollution suits” such as the
6 plaintiff’s); *AEP*, 564 U.S. at 421 (“Environmental protection is undoubtedly an area within national
7 legislative power, [and] one in which federal courts may fill in statutory interstices.”). Thus, while
8 the Ninth Circuit had previously expressed skepticism that federal common law, as opposed to state
9 law, would govern a *localized* claim for air pollution arising from a *specific source* within a single
10 state, *see Nat’l Audubon Soc’y*, 869 F.2d at 1203-04, the court in *Kivalina* found that claims arising
11 from injuries allegedly caused by *global* warming implicate interstate and, indeed, international as-
12 pects that inherently invoke uniquely federal interests and responsibilities. *See Kivalina*, 696 F.3d at
13 856-57; *see also Massachusetts v. EPA*, 549 U.S. 497, 498 (2007) (“The sovereign prerogatives to
14 force reductions in greenhouse gas emissions, to negotiate emissions treaties with developing coun-
15 tries, and (in some circumstances) to exercise the police power to reduce motor-vehicle emissions are
16 now lodged in the Federal Government.”); *United States v. Solvents Recovery Serv.*, 496 F. Supp.
17 1127, 1134 (D. Conn. 1980) (describing Supreme Court jurisprudence recognizing “the strong federal
18 interest in controlling certain types of pollution and protecting the environment”).

19 16. Although *Kivalina* did not expressly address the viability of the plaintiff’s purported
20 alternative common law claims resting on state law (which the district court dismissed without preju-
21 dice), the *Kivalina* court’s finding that federal common law applied to the municipality’s global
22 warming-related claims means that state law *cannot* be applied to such claims. The conclusion that
23 federal common law governs an issue rests, not on a discretionary choice between federal law and
24 state law, but on a determination that the issue is so distinctively federal in nature that application of
25 state law to the issue would risk impairing uniquely federal interests. *Boyle*, 487 U.S. at 506-07; *see*
26 *also, e.g., Caltex Plastics, Inc. v. Lockheed Martin Corp.*, 824 F.3d 1156, 1159-60 (9th Cir. 2016) (li-
27 ability of defense contractor to third party under government contract for weapons systems implicated
28 “uniquely federal interests” in national security that would be impaired if disparate state-law rules

1 were applied); *Nat'l Audubon Soc'y*, 869 F.3d at 1204 (“[I]t is inconsistent to argue ‘that both federal
2 and state nuisance law apply to this case. . . . [I]f federal common law exists, *it is because state law*
3 *cannot be used.*’”) (emphasis added).

4 17. Accordingly, the Ninth Circuit’s holding in *Kivalina* that federal common law governs
5 global warming-related tort claims such as Plaintiff’s here necessarily means that state law cannot
6 govern such claims. Although Plaintiff purports to style its public nuisance claim as arising under
7 state law, the question of whether a particular common law claim is controlled by federal common
8 law rather than state law is itself a question of law that is governed by federal law as set forth in *Erie*
9 and its progeny. While Plaintiff contends that its claim arises under California law, the question of
10 which state, if any, may apply its law to address global climate change issues is a question that is it-
11 self a matter of federal law, given the paramount federal interest in avoiding conflicts of law in con-
12 nection with ambient air and water. Moreover, the law is well settled that, in determining whether a
13 case arises under federal law and is properly removable, the Plaintiff’s proffered position on a ques-
14 tion of law is not entitled to any deference but is instead subject to independent and *de novo* review
15 by the court. *See, e.g., United States v. California*, 932 F.2d 1346, 1349 (9th Cir. 1991) (“The issue
16 of whether state or federal [common] law governs is a question of law and is reviewable *de novo*.”);
17 *Flagstaff Med. Ctr., Inc. v. Sullivan*, 962 F.2d 879, 884, 889-91 (9th Cir. 1992) (same); *see also Pro-*
18 *vincial Gov’t of Marinduque v. Placer Dome, Inc.*, 582 F.3d 1083, 1086-87 (9th Cir. 2009) (applying
19 *de novo* review to removal based on federal common law).

20 18. The extent to which the global warming-related tort claims in this case and in *Kivalina*
21 would impair uniquely federal interests is confirmed by comparing these inherently interstate and
22 transnational claims to the more localized pollution claims that the Ninth Circuit in *National Audu-*
23 *bon* held were governed by state law. In *National Audubon*, the claims at issue involved a challenge
24 to the Los Angeles Department of Water and Power’s diversion of “four freshwater streams that
25 would otherwise flow into Mono Lake.” 869 F.2d at 1198. This discrete conduct in California alleg-
26 edly exposed part of Mono Lake’s lake bed, increased the lake’s “salinity and ion concentration,” and
27 led to “air pollution in the form of alkali dust storms from the newly exposed lake bed.” *Id.* at 1198-
28 99. The Ninth Circuit held that the allegation that some of the dust reached Nevada was not enough

1 to show that the case involved the sort of “interstate dispute previously recognized as requiring reso-
2 lution under federal law,” such that it was “inappropriate for state law to control.” *Id.* at 1204. Given
3 their essentially localized nature, the claims involved only a “domestic dispute” that did not fit within
4 the interstate paradigms that the Supreme Court had to that point recognized as properly governed by
5 federal common law. *Id.* at 1205; *cf. Int’l Paper Co. v. Ouellette*, 479 U.S. 481, 497-98 (1987) (hold-
6 ing that New York law applied to pollution claims arising from discharges from a lakeside New York
7 business, even though those effluents flowed to Vermont side of the lake and caused injury there).

8 19. In light of the federal nature of the issues raised by global warming, as described in
9 *AEP* and in *Massachusetts v. EPA*, the *Kivalina* court correctly reached a different conclusion with
10 respect to global warming-related tort claims such as the one presented here. Because (as Plaintiff
11 alleges, *e.g.*, Compl. ¶¶ 4, 10) global warming occurs only as the result of the undifferentiated accu-
12 mulated emissions of all emitters in the world over an extended period of time, any judgment as to
13 the reasonableness of particular emissions, or as to their causal contribution to the overall phenome-
14 non of global warming, inherently requires an evaluation at an interstate and, indeed, transnational
15 level. Thus, even assuming that state tort law may properly address local source emissions within
16 that specific state, the imposition of tort liability for allegedly unreasonably contributing to *global*
17 warming would require an overarching consideration of *all* of the emissions traceable to sales of De-
18 fendants’ (and/or the sales of their affiliates, which Plaintiff improperly amalgamates with Defend-
19 ants) products in each of the states, and, in fact, in the more than 190 nations of the world. Given the
20 Federal Government’s exclusive authority over foreign affairs and foreign commerce, and its preemi-
21 nent authority over interstate commerce, tort claims concerning global warming directly implicate
22 uniquely federal interests, and a patchwork of 50 states’ common law rules cannot properly be ap-
23 plied to such claims without impairing those interests. Indeed, the Supreme Court expressly held in
24 *AEP* that in cases like this, “borrowing the law of a particular State would be inappropriate.” 564
25 U.S. at 422. Such global warming-related tort claims, to the extent they exist, are therefore governed
26 by federal common law. *Kivalina*, 696 F.3d at 855-56.

27 20. Under the principles set forth above, Plaintiff’s claim, to the extent it exists at all, is
28 governed by federal common law. The gravamen of Plaintiff’s claim is that “Defendants’ cumulative

1 production of fossil fuels over many years places each of them among the top sources of global
2 warming pollution in the world,” and that such production of fossil fuels has contributed to global cli-
3 mate change. Compl. ¶ 10; *see also, e.g., id.* ¶¶ 51, 53. Plaintiff alleges that “Defendants have pro-
4 duced such vast quantities of fossil fuels that they are five of the ten largest producers in all of his-
5 tory,” *id.* ¶ 53, and that “[o]ngoing and future warming caused by past and ongoing use of massive
6 quantities of fossil fuels will cause increasingly severe harm to San Francisco through accelerating
7 sea level rise,” *id.* ¶ 51. As evident from the term “global warming” itself, both the causes and the
8 injuries Plaintiff identifies are not constrained to particular sources, cities, counties, or even states,
9 but rather implicate inherently national and international interests, including treaty obligations and
10 federal and international regulatory schemes. *See id.* ¶ 8 (describing alleged global warming-related
11 effects in Greenland and Antarctica), ¶ 10 (describing Defendants as five of top ten “largest produc-
12 ers of fossil fuels *worldwide* from the mid Nineteenth Century to present”) (emphasis added); *see*
13 *also, e.g., Massachusetts*, 549 U.S. at 509, 523-24 (describing Senate rejection of the Kyoto Protocol
14 because emissions-reduction targets did not apply to “heavily polluting nations such as China and In-
15 dia,” and EPA’s determination that predicted magnitude of future Chinese and Indian emissions “off-
16 set any marginal domestic decrease”); *AEP*, 564 U.S. at 427-29 (describing regulatory scheme of the
17 Clean Air Act and role of the EPA); *see also* The White House, Statement by President Trump on the
18 Paris Climate Accord (June 1, 2017), *available at* <https://www.whitehouse.gov/the-press-of->
19 [fice/2017/06/01/statement-president-trump-paris-climate-accord](https://www.whitehouse.gov/the-press-of-fice/2017/06/01/statement-president-trump-paris-climate-accord) (announcing United States with-
20 drawal from Paris Climate Accord based on financial burdens, energy restrictions, and failure to im-
21 pose proportionate restrictions on Chinese emissions).

22 21. Indeed, the Complaint itself demonstrates that the unbounded nature of greenhouse
23 gas emissions, diversity of sources, and magnitude of the attendant consequences have catalyzed
24 myriad federal and international efforts to understand and address such emissions. *See, e.g.,* Compl.
25 ¶¶ 42-48. The paramount federal interest in addressing the worldwide effect of greenhouse gas emis-
26 sions is manifested in the regulatory scheme set forth in the Clean Air Act as construed in *Massachu-*
27 *setts v. EPA*. *See AEP*, 564 U.S. at 427-29. Federal legislation regarding greenhouse gas emissions
28 reflects the understanding that “[t]he appropriate amount of regulation in any particular greenhouse

1 gas-producing sector cannot be prescribed in a vacuum: as with other questions of national or interna-
2 tional policy, informed assessment of competing interests is required. Along with the environmental
3 benefit potentially achievable, our Nation’s energy needs and the possibility of economic disruption
4 must weigh in the balance.” *Id.* at 427. As a “question[] of national or international policy,” the
5 question of what is a reasonable amount of greenhouse gas emissions that underlies Plaintiff’s claim
6 implicates inherently federal concerns and is therefore governed by federal common law. *See id.*; *see*
7 *also Milwaukee II*, 451 U.S. at 312 n.7 (“[I]f federal common law exists, it is because state law can-
8 not be used.”). Because common law claims that rest on injuries allegedly caused by global warming
9 implicate uniquely federal interests, such claims (to the extent they exist at all) must necessarily be
10 governed by federal common law. This Court therefore has original jurisdiction over this action.

11 **IV. THE ACTION IS REMOVABLE BECAUSE IT RAISES DISPUTED AND**
12 **SUBSTANTIAL FEDERAL ISSUES.**

13 22. “Except as otherwise expressly provided by Act of Congress, any civil action brought
14 in a State court of which the district courts of the United States have original jurisdiction, may be re-
15 moved . . . to the district court of the United States for the district and division embracing the place
16 where such action is pending.” 28 U.S.C. § 1441(a). Federal district courts, in turn, “have original
17 jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.”
18 28 U.S.C. § 1331. The Supreme Court has held that suits apparently alleging only state-law causes of
19 action nevertheless “arise under” federal law if the “state-law claim[s] necessarily raise a stated fed-
20 eral issue, actually disputed and substantial, which a federal forum may entertain without disturbing
21 any congressionally approved balance of federal and state judicial responsibilities.” *Grable*, 545 U.S.
22 at 314. Applying this test “calls for a common-sense accommodation of judgment to the kaleido-
23 scopic situations that present a federal issue.” *Id.* at 313.

24 23. Plaintiff’s Complaint attempts to undermine and supplant federal regulation of green-
25 house gas emissions and hold a national industry responsible for the alleged consequences of rising
26 ocean levels allegedly caused by global climate change. There is no question that Plaintiff’s claim
27 raises a “federal issue, actually disputed and substantial,” for which federal jurisdiction would not up-
28 set “any congressionally approved balance of federal and state judicial responsibilities.”

1 24. The issues of greenhouse gas emissions, global warming, and sea level rise are not
2 unique to San Francisco, the State of California, or even the United States. Yet what the Complaint
3 attempts to do is to supplant and undermine decades of national energy, economic development, and
4 federal environmental protection and regulatory policies by prompting a California state court to or-
5 der massive payments into an “abatement” fund based on a cause of action that is contrary to the fed-
6 eral regulatory scheme.

7 25. Plaintiff’s cause of action depends on the resolution of disputed and substantial federal
8 questions in light of complex national considerations. Indeed, “the scope and limitations of a com-
9 plex federal regulatory framework are at stake in this case. And disposition of whether that frame-
10 work may give rise to state law claims as an initial matter will ultimately have implications for the
11 federal docket one way or the other.” *Bd. of Comm’rs of Se. La. Flood Protection Auth. v. Tenn. Gas*
12 *Pipeline Co*, 850 F.3d 714, 723 (5th Cir. 2017) (cert. petition pending) (“*Flood Protection Author-*
13 *ity*”).

14 26. Under federal law, federal agencies must “assess both the costs and benefits of [an]
15 intended regulation and, recognizing that some costs and benefits are difficult to quantify, propose or
16 adopt a regulation only upon a reasoned determination that the benefits of the intended regulation jus-
17 tify its costs.” Executive Order 12866, 58 Fed. Reg. 190. Under California law, were it to apply, a
18 nuisance claim requires a plaintiff to prove that the defendant’s conduct is “unreasonable”: in other
19 words, “the gravity of the harm [must] outweigh[] the social utility of the defendant’s conduct.” *San*
20 *Diego Gas & Elec. Co. v. Superior Ct.*, 13 Cal. 4th 893, 938 (1996). Plaintiff alleges that Defend-
21 ants, through their national and, indeed, global activities of “produc[ing] and promot[ing]” fossil
22 fuels, “ha[ve] caused, created, assisted in the creation of, contributed to, and/or maintained and con-
23 tinue[] to cause, create, assist in the creation of, contribute and/or maintain to global warming-in-
24 duced sea level rise, a public nuisance in San Francisco.” Compl. ¶ 96; *see also id.* ¶ 10. Plaintiff
25 alleges that “Defendants’ conduct constitutes a substantial and unreasonable interference with and
26 obstruction of public rights and property, including, *inter alia*, the public rights to health, safety, and
27 welfare of San Francisco residents and other citizens.” *Id.* ¶ 96.

1 27. But Congress has directed a number of federal agencies to regulate Defendants' con-
2 duct, and in doing so to conduct the same analysis of benefits and impacts that Plaintiff would have
3 the state court undertake in analyzing Plaintiff's claim. The benefits and harms of Defendants' con-
4 duct are broadly distributed throughout the Nation, to all residents as well as all state and government
5 entities. Given this diffuse and broad impact, Congress has acted through a variety of federal stat-
6 utes—primarily but not exclusively the Clean Air Act—to strike the balance between energy extrac-
7 tion and production and environmental protections. *See* Clean Air Act, 42 U.S.C. § 7401(c) (Con-
8 gressional statement that the goal of the Clean Air Act is “to encourage or otherwise promote reason-
9 able Federal, State, and local governmental actions . . . for pollution prevention”); *see also, e.g.*, En-
10 ergy Reorganization Act of 1974, 42 U.S.C. § 5801 (Congressional purpose to “develop, and increase
11 the efficiency and reliability of use of, all energy sources” while “restoring, protecting, and enhancing
12 environmental quality”); Mining and Minerals Policy Act, 30 U.S.C. § 1201 (Congressional purpose
13 to encourage “economic development of domestic mineral resources” balanced with “environmental
14 needs”); Surface Mining Control and Reclamation Act, 30 U.S.C. § 1201 (Congressional findings
15 that coal mining operations are “essential to the national interest” but must be balanced by “coopera-
16 tive effort[s] . . . to prevent or mitigate adverse environmental effects”).

17 28. The question of whether the federal agencies charged by Congress to balance energy
18 and environmental needs for the entire Nation have struck that balance in an appropriate way is “in-
19 herently federal in character” and gives rise to federal question jurisdiction. *Buckman Co. v. Plain-*
20 *tiffs' Legal Comm.*, 531 U.S. 341, 347 (2001); *see also Pet Quarters, Inc. v. Depository Trust &*
21 *Clearing Corp.*, 559 F.3d 772, 779 (8th Cir. 2009) (affirming federal question jurisdiction where
22 claims implicated federal agency's acts implementing federal law); *Bennett v. Southwest Airlines Co.*,
23 484 F.3d 907, 909 (7th Cir. 2007) (federal removal under *Grable* appropriate where claims were “a
24 collateral attack on the validity of” agency action under a highly reticulated regulatory scheme). Ad-
25 judicating this claim in federal court, including whether a private right of action is even cognizable, is
26 appropriate because the relief sought by Plaintiff would necessarily undermine and alter the regula-
27 tory regime designed by Congress, impacting residents of the Nation far outside the state court's ju-
28

1 jurisdiction. *See, e.g., Grable*, 545 U.S. at 312 (claims that turn on substantial federal questions “just-
2 tify resort to the experience, solicitude, and hope of uniformity that a federal forum offers on federal
3 issues”); *West Virginia ex rel. McGraw v. Eli Lilly & Co.*, 476 F. Supp. 2d 230, 234 (E.D.N.Y. 2007)
4 (removal under *Grable* is appropriate where state common law claims implicate “an intricate federal
5 regulatory scheme . . . requiring some degree of national uniformity in interpretation”).

6 29. The Complaint also calls into question Federal Government decisions to contract with
7 defendants for the extraction, development, and sale of fossil fuel resources on federal lands. Such
8 national policy decisions have expanded fossil fuel production and use, and produced billions of dol-
9 lars in revenue to the federal treasury. Available, affordable energy is fundamental to economic
10 growth and prosperity generally, as well as to national security and other issues that have long been
11 the domain of the Federal Government. Yet, Plaintiff’s claim requires a determination that the com-
12 plained-of conduct—the lawful activity of placing fossil fuels into the stream of interstate and foreign
13 commerce and promoting the use of those products—is unreasonable, and that determination raises a
14 policy question that, under the Constitution and the applicable statutes, treaties, and regulations, is a
15 federal question. *See In re Nat’l Sec. Agency Telecomm’ns*, 483 F. Supp. 2d 934, 943 (N.D. Cal.
16 2007) (holding that removal jurisdiction existed over case that implicated state-secrets privilege be-
17 cause “the privilege is ‘not only a contested federal issue, but a substantial one,’ for which there is ‘a
18 serious federal interest in claiming the advantages thought to be inherent in a federal forum’” (quot-
19 ing *Grable*, 545 U.S. at 313)). The cost-benefit analysis required by the claim asserted in the Com-
20 plaint would thus necessarily entail a usurpation by the state court of the federal regulatory structure
21 of an essential, national industry. “The validity of [Plaintiff’s] claim would require that conduct sub-
22 ject to an extensive federal permitting scheme is in fact subject to implicit restraints that are created
23 by state law.” *Flood Control Authority*, 850 F.3d at 724; *see also Bader Farms, Inc. v. Monsanto*
24 *Co.*, No. 16-cv-299, 2017 WL 633815, at *3 (E.D. Mo. Feb. 16, 2017) (“Count VII is in a way a col-
25 lateral attack on the validity of APHIS’s decision to deregulate the new seeds.”); *Bennett*, 484 F.3d at
26 909 (holding that federal removal is proper under *Grable* “when the state proceeding amounted to a
27 collateral attack on a federal agency’s action”).

28

1 30. Plaintiff’s claim also necessarily implicates substantial federal questions by alleging
2 that Defendants have waged a “public relations campaign . . . to deny and discredit the mainstream
3 scientific consensus on global warming, downplay the risks of global warming, and even to launch
4 unfounded attacks on the integrity of leading climate scientists” in order to “increase sales,” “protect
5 market share,” and, ultimately, avoid regulation and payments for abatement. Compl. ¶¶ 6-7.

6 31. To show causation, Plaintiff must establish that the government and public were mis-
7 led *and* would have adopted different energy and climate policies and consumption patterns absent
8 the alleged misrepresentations. Such determinations would require a court to construe federal regula-
9 tory decision-making standards, and determine how federal regulators would have applied those
10 standards under counterfactual circumstances. *See id.* ¶¶ 7-8 (“The purpose of all this promotion of
11 fossil fuels and efforts to undermine mainstream climate science was, like all marketing, to increase
12 sales and to protect market share. It succeeded. And now it will cost of billions of dollars to build
13 sea walls and other infrastructure to protect human safety and public and private property in San
14 Francisco from global warming-induced sea level rise.”); *id.* ¶ 57 (alleging that the purpose of pro-
15 moting fossil fuel use was to “foist onto the public the costs of abating and adapting to the public nui-
16 sance of global warming”); *see also Flood Protection Authority*, 850 F.3d at 723 (finding necessary
17 and disputed federal issue in plaintiffs’ state-law tort claims because they could not “be resolved
18 without a determination whether multiple federal statutes create a duty of care that does not otherwise
19 exist under state law”).

20 32. Plaintiff’s Complaint, which requests equitable relief requiring Defendants to pay po-
21 tentially “billions” into an abatement fund to address rising sea levels—despite Defendants’ uncon-
22 tested compliance with state and federal law—necessarily implicates numerous other disputed and
23 substantial federal issues. Beyond the strictly jurisdictional character of the points addressed above
24 and herein, it is notable that this litigation places at issue multiple significant federal issues, including
25 but not limited to: (1) whether Defendants can be held liable consistent with the First Amendment
26 for purportedly “engag[ing] in large-scale, sophisticated advertising and public relations campaigns”
27 that Plaintiff alleges misled the public and displaced the costs of responding to climate change
28 (Compl. ¶ 5); (2) whether a state court may hold Defendants liable for conduct that was global in

1 scale (production of fossil fuels), that allegedly produced effects that are global in scale (increased
2 CO₂ levels and rising sea levels), and on that basis, order Defendants to finance an “abatement fund”
3 to address these global impacts, consistent with the constitutional principles limiting the jurisdictional
4 and geographic reach of state law and guaranteeing due process; (3) whether fossil fuel *producers*
5 may be held liable, consistent with the Due Process Clause, for climate change when it is the combus-
6 tion of fossil fuels—including by the City of San Francisco and the People of the State of California
7 themselves—that leads to the release of greenhouse gases into the atmosphere; (4) whether a state
8 may impose liability under state common law when the Supreme Court has held that the very same
9 *federal* common law claims are displaced by federal statute, and notwithstanding the common sense
10 principle that “[i]f a federal common law cause of action has been extinguished by Congressional dis-
11 placement, it would be incongruous to allow it to be revived *in any form*,” *Kivalina*, 696 F.3d at 857
12 (emphasis added); (5) whether a state court may regulate and burden on a global scale the sale and
13 use of what federal policy has deemed an essential resource, consistent with the United States Consti-
14 tution’s Commerce Clause and foreign affairs doctrine, as well as other constitutional principles; (6)
15 whether a state court may review and assess the validity of acts of foreign states in enacting and en-
16 forcing their own regulatory frameworks; and (7) whether a state court may determine the ability to
17 sue based on alleged damages to land, such as coastal property and interstate highways (*see* Compl.
18 ¶ 88), which depends on the interpretation of federal laws relating to the ownership and control of
19 property.

20 33. Plaintiff’s Complaint also raises substantial federal issues because the asserted claim
21 intrudes upon both foreign policy and carefully balanced regulatory considerations at the national
22 level, including the foreign affairs doctrine. Plaintiff seeks to govern extraterritorial conduct and en-
23 croach on the foreign policy prerogative of the Federal Government’s executive branch as to climate
24 change treaties. “There is, of course, no question that at some point an exercise of state power that
25 touches on foreign relations must yield to the National Government’s policy, given the ‘concern for
26 uniformity in this country’s dealings with foreign nations’ that animated the Constitution’s allocation
27 of the foreign relations power to the National Government in the first place.” *Am. Ins. Assoc. v. Gar-*
28 *amendi*, 539 U.S. 396, 413 (2003). Yet, this is the precise nature of Plaintiff’s action brought in state

1 court. *See United States v. Belmont*, 301 U.S. 324, 331 (1937) (“The external powers of the United
2 States are to be exercised without regard to state laws or policies... [I]n respect of our foreign rela-
3 tions generally, state lines disappear.”); *Hines v. Davidowitz*, 312 U.S. 52, 63 (1941) (“Our system of
4 government . . . requires that federal power in the field affecting foreign relations be left entirely free
5 from local interference.”).

6 34. Through its action, Plaintiff seeks to regulate and punish greenhouse gas emissions
7 worldwide, far beyond the borders of the United States. This is premised in part, according to Plain-
8 tiff, on Defendants’ purported campaign to undermine international climate science and mislead the
9 public at large. *See* Compl. ¶¶ 5-7, 63-84. Plaintiff alleges that its injuries are caused by rising sea
10 levels, and that Defendants are a substantial contributing factor to such climate change as a result of
11 their collective operations on a worldwide basis, which Plaintiff claims makes them “among the top
12 sources of global warming pollution in the world.” *Id.* ¶ 10. But “[n]o State can rewrite our foreign
13 policy to conform to its own domestic policies. Power over external affairs is not shared by the
14 States; it is vested in the national government exclusively. It need not be so exercised as to conform
15 to State laws or State policies, whether they be expressed in constitutions, statutes, or judicial de-
16 crees.” *United States v. Pink*, 315 U.S. 203, 233-34 (1942). States have no authority to impose reme-
17 dial schemes or regulations to address what are matters of foreign affairs. *Ginergy v. City of Glen-*
18 *dale*, 831 F.3d 1222, 1228-29 (9th Cir. 2016) (“It is well established that the federal government
19 holds the exclusive authority to administer foreign affairs.”).

20 **V. THE ACTION IS REMOVABLE BECAUSE IT IS COMPLETELY PREEMPTED BY**
21 **FEDERAL LAW**

22 35. This Court also has original jurisdiction over this lawsuit because Plaintiff requests
23 relief that would alter or amend the rules regarding nationwide—and even worldwide—regulation of
24 greenhouse gas emissions. This action is completely preempted by federal law.

25 36. The Supreme Court has held that a federal court will have jurisdiction over an action
26 alleging only state-law claims where “the extraordinary pre-emptive power [of federal law] converts
27 an ordinary state common law complaint into one stating a federal claim for purposes of the well-
28 pleaded complaint rule.” *Metro. Life Ins. Co. v. Taylor*, 481 U.S. 58, 65 (1987).

1 37. A state cause of action is preempted under this “complete preemption” doctrine where
2 a federal statutory scheme “provide[s] the exclusive cause of action for the claim asserted and also
3 set[s] forth procedures and remedies governing that cause of action.” *Beneficial Nat’l Bank v. Ander-*
4 *son*, 539 U.S. 1, 8 (2003). It also requires a determination that the state-law cause of action falls
5 within the scope of the federal cause of action, including where it “duplicates, supplements, or sup-
6 plants” that cause of action. *Aetna Health Inc. v. Davila*, 542 U.S. 200, 209 (2004).

7 38. Both requirements for complete preemption are present here. Among other things,
8 Plaintiff’s Complaint attempts to redefine the “reasonable” amount of emissions that have caused a
9 global climate change and a rise in sea levels. As such, it calls into question greenhouse gas emis-
10 sions far beyond the borders of California and even the borders of the United States. But such a
11 reimagining of U.S. policy can be accomplished only by a nationwide and global reduction in the
12 emission of greenhouse gases; even assuming that such relief can be ordered against Defendants for
13 their production and sale of fossil fuels, which are then combusted by others at a rate Plaintiff claims
14 causes the alleged injuries, this claim must be decided in federal court because Congress has created a
15 cause of action by which a party can seek the creation or modification of nationwide emission stand-
16 ards by petitioning the EPA. That federal cause of action was designed to provide the exclusive
17 means by which a party can seek nationwide emission regulations. Because Plaintiff’s stated cause
18 of action would “duplicate[], supplement[], or supplant[]” that exclusive federal cause of action, it is
19 completely preempted. “If a federal common law cause of action has been extinguished by Congres-
20 sional displacement, it would be incongruous to allow it to be revived in any form.” *Kivalina*, 696
21 F.3d at 857.

22 **A. The Clean Air Act Provides the Exclusive Cause of Action for Challenging EPA**
23 **Rulemakings.**

24 39. The Clean Air Act permits private parties, as well as state and municipal governments,
25 to challenge EPA rulemakings (or the absence of such) and to petition the EPA to undertake new
26 rulemakings. *See, e.g.*, 5 U.S.C. § 553(e); 42 U.S.C. §§ 7604, 7607. In addition, Congress created an
27 independent scientific review committee, to include at least one person representing State air pollu-
28 tion control agencies, with a statutory role in the rulemaking process. *See* 42 U.S.C. § 7409(d)(2)(A).

1 40. A petition for rulemaking under the Clean Air Act led to the determination in *Massa-*
2 *chusetts* that greenhouse gases were air pollutants that could be regulated under the Act, *Massachu-*
3 *setts*, 549 U.S. at 510, and eventually led to the regulation of greenhouse gases from motor vehicles
4 under section 202(a) of the Act, 75 Fed. Reg. 25,324 (May 7, 2010).

5 41. Rulemakings (and petitions for rulemaking) regarding the regulation of nationwide
6 greenhouse gas emissions are subject to the federal statutory and regulatory scheme outlined in detail
7 by the Clean Air Act. *See Massachusetts*, 549 U.S. at 516-17.

8 42. Under the Clean Air Act, “emissions have been extensively regulated nationwide.”
9 *North Carolina v. Tennessee Valley Auth.*, 615 F.3d 291, 298 (4th Cir. 2010). Regulation of green-
10 house gas emissions, including carbon dioxide, is governed by the Clean Air Act, *see Massachusetts*,
11 549 U.S. at 528-29, and the EPA has regulated these emissions under the Act, *see, e.g.*, 40 C.F.R. §§
12 51.166(b)(1)(i), 52.21(b)(1)(i) (regulation of greenhouse gases through the Act’s prevention of signif-
13 icant deterioration of air quality permitting program); 77 Fed. Reg. 62,624 (Oct. 15, 2012) (regulation
14 of greenhouse gas emissions from light-duty motor vehicles); 81 Fed. Reg. 73,478 (Oct. 25, 2016)
15 (regulation of greenhouse gas emissions from medium- and heavy-duty engines and motor vehicles).

16 43. Congress manifested a clear intent that judicial review of Clean Air Act matters must
17 take place in federal court. 42 U.S.C. § 7607(b). This congressionally provided statutory and regula-
18 tory scheme is thus the “exclusive” means for seeking the nationwide regulation of greenhouse gas
19 emissions and “set[s] forth procedures and remedies” for that relief, *Beneficial Nat’l Bank*, 539 U.S.
20 at 8, irrespective of the savings clauses applicable to some other types of claims. Federal courts have
21 made clear that the Clean Air Act preempts state common law nuisance cases because “[i]f courts
22 across the nation were to use the vagaries of public nuisance doctrine to overturn the carefully en-
23 acted rules governing airborne emissions, it would be increasingly difficult for anyone to determine
24 what standards govern. Energy policy cannot be set, and the environment cannot prosper, in this
25 way.” *North Carolina*, 615 F.3d at 298.

1 **B. Plaintiff's Asserted State-Law Cause of Action Duplicates, Supplements, and/or**
2 **Supplants the Federal Cause of Action.**

3 44. Plaintiff directly attacks the reasonableness of Defendants' conduct—the production,
4 promotion, and sale of fossil fuels and resulting emissions—which is undertaken in accordance with
5 federal statutes and regulations, including nationwide emissions standards. Plaintiff also requests the
6 Court to order Defendants to pay potentially “billions” of dollars into an “abatement fund” designed
7 to address purported “global warming impacts.” Compl., Relief Requested.

8 45. According to Plaintiff's own allegations, however, the alleged nuisance can be abated
9 only by a global—or at the very least national—reduction in greenhouse gas emissions. *See, e.g.,*
10 Compl. ¶ 51 (emphasizing rise in “global average surface temperature” as a result of production and
11 use of fossil fuels) (emphasis added).

12 46. It is well established that state tort law is a form of public regulation. *See BMW of N.*
13 *Am., Inc. v. Gore*, 517 U.S. 559, 572 n.17 (1996) (“State power may be exercised as much by a jury's
14 application of a state rule of law in a civil lawsuit as by a statute.”); *New York Times Co. v. Sullivan*,
15 376 U.S. 254, 278 (1964) (“Plainly the Alabama law of civil libel is a ‘form of regulation that creates
16 hazards to protected freedoms markedly greater than those that attend reliance upon the criminal
17 law.’”) (citation omitted). Plaintiff's state-law tort claim is an end-run around a petition for a rule-
18 making regarding greenhouse gas emissions because it seek to regulate and declare unreasonable na-
19 tionwide emissions that conform to the EPA's emission standards. *See, e.g., San Diego Bldg. Trades*
20 *Council v. Garmon*, 359 U.S. 236, 247 (1959) (“[R]egulation can be as effectively exerted through an
21 award of damages as through some form of preventive relief.”); *Cipollone v. Liggett Grp., Inc.*, 505
22 U.S. 504, 539 (1992). The claim would require precisely the cost-benefit analysis of emissions that
23 the EPA is charged with undertaking and would directly interfere with the EPA's determinations.
24 *See supra* ¶ 26. Because Congress has established a clear and detailed process by which a party can
25 petition the EPA to establish stricter nationwide emissions standards, Plaintiff's claim is completely
26 preempted by the Clean Air Act.

27 47. Because Congress has provided an exclusive statutory remedy for the regulation of
28 greenhouse gas emissions which provides federal procedures and remedies for that cause of action,

1 and because Plaintiff's claim falls within the scope of the federal cause of action, Plaintiff's claim is
2 completely preempted by federal law and this Court has federal-question jurisdiction.

3 **VI. THE ACTION IS REMOVABLE UNDER THE OUTER CONTINENTAL SHELF**
4 **LANDS ACT**

5 48. This Court also has original jurisdiction pursuant to the Outer Continental Shelf Lands
6 Act ("OCSLA"). 43 U.S.C. § 1349(b); *see Tenn. Gas Pipeline*, 87 F.3d at 155. This action "aris[es]
7 out of, or in connection with (A) any operation conducted on the outer Continental Shelf which in-
8 volves exploration, development, or production of the minerals, or the subsoil or seabed of the outer
9 Continental Shelf, or which involves rights to such minerals." 43 U.S.C. § 1349(b); *In re Deepwater*
10 *Horizon*, 745 F.3d 157, 163 (5th Cir. 2014) ("th[e] language [of § 1349(b)(1)] [i]s straightforward
11 and broad"). The outer continental shelf ("OCS") includes all submerged lands that belong to the
12 United States but are not part of any State. 43 U.S.C. §§ 1301, 1331.

13 49. The breadth of federal jurisdiction granted by OCSLA reflects the Act's "expansive
14 substantive reach." *See EP Operating Ltd. P'ship v. Placid Oil Co.*, 26 F.3d 563, 569 (5th Cir. 1994).
15 "OCSLA was passed . . . to establish federal ownership and control over the mineral wealth of the
16 OCS and to provide for the development of those natural resources." *Id.* at 566. "[T]he efficient ex-
17 ploitation of the minerals of the OCS . . . was . . . a primary purpose for OCSLA." *Amoco Prod. Co.*
18 *v. Sea Robin Pipeline Co.*, 844 F.2d 1202, 1210 (5th Cir. 1988). Indeed, OCSLA declares it "to be
19 the policy of the United States that . . . the outer Continental Shelf . . . should be made available for
20 expeditious and orderly development." 43 U.S.C. § 1332(3). It further provides that "since explora-
21 tion, development, and production of the minerals of the outer Continental Shelf will have significant
22 impacts on coastal and non-coastal areas of the coastal States . . . such States, and through such States,
23 affected local governments are entitled to an opportunity to participate, *to the extent consistent with*
24 *the national interest*, in the policy and planning decisions made by the Federal Government relating
25 to exploration for, and development and production of, minerals of the outer Continental Shelf." *Id.*
26 § 1332(4) (emphasis added).

27 50. When enacting Section 1349(b)(1), "Congress intended for the judicial power of the
28 United States to be extended to the entire range of legal disputes that it knew would arise relating to

1 resource development on the [OCS].” *Laredo Offshore Constructors, Inc. v. Hunt Oil. Co.*, 754 F.2d
2 1223, 1228 (5th Cir. 1985). Consistent with Congress’ intent, courts repeatedly have found OCSLA
3 jurisdiction where resolution of the dispute foreseeably could affect the efficient exploitation of min-
4 erals from the OCS.² *See, e.g., EP Operating*, 26 F.3d at 569-70; *United Offshore v. S. Deepwater*
5 *Pipeline*, 899 F.2d 405, 407 (5th Cir. 1990).

6 51. OCSLA jurisdiction exists even if the Complaint pleads no substantive OCSLA
7 claims. *See, e.g., In re Deepwater Horizon*, 745 F.3d at 163. The Court, moreover, may look beyond
8 the facts alleged in the Complaint to determine that OCSLA jurisdiction exists. *See, e.g., Plains Gas*
9 *Solutions, LLC v. Tenn. Gas Pipeline Co., LLC*, 46 F. Supp. 3d 701, 703 (S.D. Tex. 2014); *St. Joe*
10 *Co. v. Transocean Offshore Deepwater Drilling Inc.*, 774 F. Supp. 2d 596, 2011 A.M.C. 2624, 2640
11 (D. Del. 2011) (citing *Amoco Prod. Co. v. Sea Robin Pipeline Co.*, 844 F.2d 1202, 1205 (5th Cir.
12 1998)).

13 52. Under OCSLA, the Department of Interior administers an extensive federal leasing
14 program aiming to develop and exploit the oil and gas resources of the federal Continental Shelf. 43
15 U.S.C. § 1334 *et seq.* Pursuant to this authority, the Interior Department “administers more than
16 5,000 active oil and gas leases on nearly 27 million OCS acres. In FY 2015, production from these
17 leases generated \$4.4 billion in leasing revenue . . . [and] provided more than 550 million barrels of
18 oil and 1.35 trillion cubic feet of natural gas, accounting for about sixteen percent of the Nation’s oil
19 production and about five percent of domestic natural gas production.” Statement of Abigail Ross
20 Hopper, Director, Bureau of Ocean Energy Management, Before the House Committee on Natural
21 Resources (Mar. 2, 2016), *available at* [https://www.boem.gov/FY2017-Budget-Testimony-03-01-](https://www.boem.gov/FY2017-Budget-Testimony-03-01-2016)
22 2016. Certain Defendants here, of course, participate very substantially in the federal OCS leasing
23 program. For example, from 1947 to 1995, a Chevron subsidiary produced 1.9 billion barrels of
24 crude oil and 11 billion barrels of natural gas from the federal outer continental shelf in the Gulf of
25

26 ² As stated in 43 U.S.C. § 1333(a)(1): “The Constitution and laws and civil and political jurisdic-
27 tion of the United States are extended to the subsoil and seabed of the outer Continental Shelf and
28 to all artificial islands, and all installations and other devices permanently or temporarily attached
to the seabed . . . for the purpose of exploring for, developing, or producing resources therefrom .
. . . to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdic-
tion located within a State”

1 Mexico alone. U.S. Dep’t of Int., Minerals Mgmt. Serv., Gulf of Mex. Region, Prod. by Operator
2 Ranked by Vol. (1947–1995), *available at* [https://www.data.boem.gov/Produc-](https://www.data.boem.gov/Production/Files/Rank%20File%20Gas%201947%-20-%201995.pdf)
3 [tion/Files/Rank%20File%20Gas%201947%-20-%201995.pdf](https://www.data.boem.gov/Production/Files/Rank%20File%20Gas%201947%-20-%201995.pdf). In 2016, that Chevron subsidiary pro-
4 duced over 49 million barrels of crude oil and 50 million barrels of natural gas from the outer conti-
5 nental shelf on the Gulf of Mexico. U.S. Dep’t of Int., Bureau of Safety & Envtl. Enf’t, Gulf of Mex.
6 Region, Prod. by Operator Ranked by Vol. (2016), *available at* [https://www.data.boem.gov/Produc-](https://www.data.boem.gov/Production/Files/Rank%20File%20Gas%202016.pdf)
7 [tion/Files/Rank%20File%20Gas%202016.pdf](https://www.data.boem.gov/Production/Files/Rank%20File%20Gas%202016.pdf). Defendants (and/or their affiliated companies, whose
8 activities Plaintiff improperly amalgamates in the Complaint) conduct, and have for decades con-
9 ducted, similar oil and gas operations on the federal OCS; indeed, Defendants and/or their affiliated
10 companies presently hold approximately 16% of all outer continental shelf leases. *See* Bureau of
11 Ocean Energy Management, Lease Owner Information, *available at*
12 <https://www.data.boem.gov/Leasing/LeaseOwner/Default.aspx>. For example, certain BP companies
13 and Exxon Mobil currently own lease interests in, and the BP companies operate, “one of the largest
14 deepwater producing fields in the Gulf of Mexico,” which is capable of producing up to 250,000 bar-
15 rels of oil per day. *See* Thunder Horse Field Fact Sheet (last visited Aug. 21, 2017), *available at*
16 http://www.bp.com/content/dam/bp-country/en_us/PDF/Thunder_Horse_Fact_Sheet_6_14_2013.pdf.
17 And as noted on the BP website, production from this and other OCS activities will continue into the
18 future. *Id.* (“BP intends to sustain its leading position as an active participant in all facets of the
19 Deepwater US Gulf of Mexico—as an explorer, developer, and operator.”). A substantial portion of
20 the national consumption of fossil fuel products stems from production on federal lands, as approved
21 by Congress and Executive Branch decision-makers.

22 53. The Complaint itself makes clear that a substantial part of Plaintiff’s claim “arises out
23 of, or in connection with,” Defendants’ “operation[s] ‘conducted on the outer Continental Shelf’ that
24 involve “the exploration and production of minerals.” *In re Deepwater Horizon*, 745 F.3d at 163.
25 Plaintiff, in fact, challenges *all of* Defendants’ “cumulative production of fossil fuels over many
26 years,” Compl. ¶ 10, a substantial quantum of which arises from outer continental shelf operations,
27 *see* Ranking Operator by Oil, Bureau of Ocean Energy Mgmt., *available at*

28

1 <https://www.data.boem.gov/Main/HtmlPage.aspx?page=rankOil> (documenting Chevron’s oil and
2 natural gas production on the federal outer continental shelf from 1947 to 2017).

3 54. The relief sought also arises out of and impacts OCS extraction and development.
4 *See, e.g.,* Compl., Relief Requested (seeking payments into an abatement fund which would signifi-
5 cantly impact the energy industry and findings that would rein in extraction, including that on the
6 OCS). And “any dispute that alters the progress of production activities on the OCS threatens to im-
7 pair the total recovery of the federally-owned minerals from the reservoir or reservoirs underlying the
8 OCS. Congress intended such a dispute to be within the grant of federal jurisdiction contained in
9 § 1349.” *Amoco Prod. Co.*, 844 F.2d at 1211.

10 **VII. THE ACTION IS REMOVABLE UNDER THE FEDERAL OFFICER REMOVAL**
11 **STATUTE**

12 55. The Federal Officer Removal statute allows removal of an action against “any officer
13 (or any person acting under that officer) of the United States or of any agency thereof . . . for or relat-
14 ing to any act under color of such office.” 28 U.S.C. § 1442(a)(1). “A party seeking removal under
15 section 1442 must demonstrate that (a) it is a ‘person’ within the meaning of the statute; (b) there is a
16 causal nexus between its actions, taken pursuant to a federal officer’s directions, and plaintiff’s
17 claims; and (c) it can assert a ‘colorable federal defense.’” *Durham*, 445 F.3d at 1251 (citations omit-
18 ted). All three elements are satisfied here for Defendants (at least to the extent that Plaintiff improper-
19 ly amalgamates the activities of Defendants and their respective affiliates), which have engaged in
20 activities pursuant to the directions of federal officers that, assuming the truth of Plaintiff’s allega-
21 tions, have a causal nexus to Plaintiff’s claim, and which have colorable federal defenses to Plain-
22 tiff’s claim, including, for example, performing pursuant to government mandates and contracts, per-
23 forming functions for the U.S. military, and engaging in activities on federal lands pursuant to federal
24 leases.

25 56. First, Defendants are “persons” within the meaning of the statute. The Complaint al-
26 leges that Defendants are corporations (Compl. ¶¶ 15, 18, 21, 24, 27), which the Ninth Circuit has
27 held qualify as “person[s]” under the statute. *See Leite*, 749 F.3d at 1122 n.4.

1 57. Second, assuming the truth of Plaintiff’s allegations, there is a causal nexus between
2 Defendants’ alleged actions, taken pursuant to a federal officer’s direction, and Plaintiff’s claim. In
3 *Leite*, the Ninth Circuit held removal proper where a military contractor, which was sued for failing
4 to warn about asbestos in military equipment, showed extensive evidence of federal control over its
5 activities. This included “detailed specifications governing the form and content of all warnings that
6 equipment manufacturers were required to provide,” which the Navy was directly involved in prepar-
7 ing and which could not be altered. 749 F.3d at 1123. Here, Plaintiff’s causation and injury allega-
8 tions depend on the activities of Defendants over the past decades—many of which were undertaken
9 at the direction of, and under close supervision and control by, federal officials.

10 58. To take only one example, Defendants have long explored for and produced oil and
11 gas on federal lands pursuant to leases governed by the Outer Continental Shelf Lands Act as de-
12 scribed above. *E.g.*, Exs. F, G. In doing so, those Defendants were “‘acting under’ a federal ‘offi-
13 cial’” within the meaning of Section 1442(a)(1). *Watson v. Philip Morris Cos., Inc.*, 551 U.S. 142,
14 153 (2007). Under OCSLA, the Interior Department is charged with “manag[ing] access to,
15 and . . . receiv[ing] a fair return for, the energy and mineral resources of the Outer Continental Shelf.”
16 Statement of Walter Cruickshank, Deputy Director, Bureau of Ocean Energy Management, Before
17 The Committee On Natural Resources, July, 6, 2016, *available at* [https://www.boem.gov/Congres-](https://www.boem.gov/Congressional-Testimony-Cruickshank-07062016/)
18 [sional-Testimony-Cruickshank-07062016/](https://www.boem.gov/Congressional-Testimony-Cruickshank-07062016/). To fulfill this statutory obligation, the Interior officials
19 maintain and administer the OCS leasing program, under which parties such as Defendants are re-
20 quired to conduct exploration, development and production activities that, “in the absence of a con-
21 tract with a private firm, the Government itself would have had to perform.” *Watson*, 551 U.S. at
22 154.

23 59. OCS leases obligate lessees like Defendants to “develop[] . . . the leased area” dili-
24 gently, including carrying out exploration, development and production activities approved by Inte-
25 rior Department officials for the express purpose of “maximiz[ing] the ultimate recovery of hydrocar-
26 bons from the leased area.” Ex. G § 10. Indeed, for decades Defendants’ OCSLA leases have in-
27 structed that “[t]he Lessee *shall comply* with all applicable regulations, orders, written instructions,
28 and the terms and conditions set forth in this lease” and that “[a]fter due notice in writing, the Lessee

1 shall conduct such OCS mining activities at such rates as the Lessor may require in order that the
2 Leased Area or any part thereof may be properly and timely developed and produced in accordance
3 with sound operating principles.” Ex. F § 10 (emphasis added). All drilling takes place “in accord-
4 ance with an approved exploration plan (EP), development and production plan (DPP) or develop-
5 ment operations coordination document (DOCD) [as well as] approval conditions”—all of which
6 must undergo extensive review and approval by federal authorities, and all of which further had to
7 conform to “diligence” and “sound conservation practices.” Ex. G §§ 9, 10. Federal officers further
8 have reserved the rights to control the rates of mining (Ex. F § 10) and to obtain “prompt access” to
9 facilities and records (Ex. F § 11, Ex. G § 12). The government also maintains certain controls over
10 how the leased oil and gas is disposed of once it is removed from the ground, as by preconditioning
11 the lease on a right of first refusal to purchase all materials “[i]n time of war or when the President of
12 the United States shall so prescribe” (Ex. F § 14, Ex. G § 15(d)), and mandating that 20% of all crude
13 and natural gas produced pursuant to drilling leases be offered “to small or independent refiners” (Ex.
14 G § 15(c)). The Federal Treasury has reaped enormous financial benefits from those policy decisions
15 in the form of statutory and regulatory royalty regimes that have resulted in billions of dollars of rev-
16 enue to the Federal Government.

17 60. Certain Defendants have also engaged in the exploration and production of fossil fuels
18 pursuant to agreements with federal agencies. For example, in June 1944, the Standard Oil Company
19 (a Chevron predecessor) and the U.S. Navy entered into a contract “to govern the joint operation and
20 production of the oil and gas deposits . . . of the Elk Hills Reserve,” a strategic petroleum reserve
21 maintained by the Navy. *Chevron U.S.A., Inc. v. United States*, 116 Fed. Cl. 202, 205 (Fed. Cl.
22 2014). “The Elk Hills Naval Petroleum Reserve (NPR-1) . . . was originally established in 1912 to
23 provide a source of liquid fuels for the armed forces during national emergencies.” GAO Fact Sheet,
24 Naval Petroleum Reserves – Oil Sales Procedures and Prices at Elk Hills, April Through December
25 1986 (Jan. 1987) (“GAO Fact Sheet”), available at <http://www.gao.gov/assets/90/87497.pdf>. In re-
26 sponse to the OPEC oil embargo in 1973-74, the Naval Petroleum Reserves Production Act of 1976
27 (Public Law 94-258, April 5, 1976) was enacted, which “authorized and directed that NPR-1 be pro-
28

1 duced at the maximum efficient rate for 6 years.” *Id.* In 1977, Congress “transferred the Navy’s in-
2 terests and management obligations” to the Department of Energy, and Chevron continued its interest
3 in the joint operation until 1997. *Id.* That contract governing Standard’s rights in the reserve granted
4 the Navy authority over how much would be produced from the joint operating area, and when it
5 would be produced. Indeed, the contract “afford[ed] Navy a means of acquiring complete control
6 over the development of the entire Reserve and the production of oil therefrom” (Ex. H at Recital
7 6(d)(ii)), as well as “exclusive control over the exploration, prospecting, development, and operation
8 of the Reserve” (*id.* § 3(a)). One of the goals of the contract was to “place the Reserve in a condition
9 of readiness whereby it will be able promptly to produce oil in substantial quantities whenever the
10 strategic situation of the United States in the future may so require.” *Id.* at Recital 6(d)(iii). Finally,
11 the contract was meant to “result in securing the maximum ultimate recovery of oil, gas, natural gaso-
12 line and associated hydrocarbons from the Reserve.” *Id.* at Recital 6(d)(vi). “In accordance with the
13 [Naval Petroleum Reserves Production] [A]ct, the president . . . certifi[ed] that it [was] in the national
14 interest to continue production of NPR-1 at the maximum efficient rate through a second 3-year pe-
15 riod ending on April 5, 1988.” GAO Fact Sheet at 3.

16 61. These and other federal activities are encompassed in Plaintiff’s Complaint. *See supra*
17 ¶¶ 48-60. Plaintiff alleges that the drilling and production operations Defendants performed led to
18 the sale of fossil fuels—including to the Federal Government—which led to the release of green-
19 house gases by end-users. Furthermore, the oil and gas Defendants extracted—which the Federal
20 Government (i) reserved the right to buy in total in the event of a time of war or whenever the Presi-
21 dent so prescribed and (ii) has purchased from Defendants to fuel its military operations—is the very
22 same oil and gas that Plaintiff alleges creates a nuisance condition. Accordingly, Plaintiff seeks to
23 hold Defendants liable for the very activities Defendants performed under the control of a federal of-
24 ficial, and thus the nexus element has been satisfied.

25 62. Third, Defendants intend to raise numerous meritorious federal defenses, including
26 preemption, *see Goncalves By & Through Goncalves v. Rady Children’s Hosp. San Diego*, No. 15-
27 55010, --- F.3d ---, 2017 WL 3273868, at *8 (9th Cir. Aug. 2, 2017), the government contractor de-
28 fense, *see Boyle v. United Techs. Corp.*, 487 U.S. 500 (1988); *Gertz v. Boeing*, 654 F.3d 852 (9th Cir.

2011), and others. In addition, Plaintiff's claim is barred by the United States Constitution, including the Commerce and Due Process clauses, as well as the First Amendment and the foreign affairs doctrine. These and other federal defenses are more than colorable. *See Willingham v. Morgan*, 395 U.S. 402, 407 (1969) (a defendant invoking section 1442(a)(1) "need not win his case before he can have it removed"). Accordingly, removal under Section 1442 is proper.

VIII. THE ACTION IS REMOVABLE BECAUSE THIS CASE ARISES FROM ACTS ARISING FROM MULTIPLE FEDERAL ENCLAVES

63. This Court also has original jurisdiction under the federal enclave doctrine. The Constitution authorizes Congress to "exercise exclusive legislation in all cases whatsoever" over all places purchased with the consent of a state "for the erection of forts, magazines, arsenals, dockyards, and other needful buildings." U.S. Const., art. I, § 8, cl. 17. "Federal courts have federal question jurisdiction over tort claims that arise on 'federal enclaves.'" *Durham*, 445 F.3d at 1250; *see also Totah v. Bies*, No. C 10-05956 CW, 2011 WL 1324471, at *2 (N.D. Cal. Apr. 6, 2011) (denying motion to remand where defamation claim arose in the Presidio in San Francisco, a federal enclave). The "key factor" in determining whether a federal court has federal enclave jurisdiction "is the location of the plaintiff's injury or where the specific cause of action arose." *Sparling v. Doyle*, 2014 WL 2448926, at *3 (W.D. Tex. May 30, 2014); *see also Fung v. Abex Corp.*, 816 F. Supp. 569, 571 (N.D. Cal. 1992) ("Failure to indicate the federal enclave status and location of the exposure will not shield plaintiffs from the consequences of this federal enclave status."); *Bd. of Comm'rs of Se. La. Flood Protection Auth.-E. v. Tenn. Gas Pipeline Co., LLC*, 29 F. Supp. 3d 808, 831 (E.D. La. 2014) (noting that defendants' "conduct" or "the damage complained of" must occur on a federal enclave). Federal jurisdiction is available if some of the events or damages alleged in the complaint occurred on a federal enclave. *See Durham*, 445 F.3d at 1250; *Bell v. Arvin Meritor, Inc.*, No. 12-00131-SC, 2012 WL 1110001, at *2 (N.D. Cal. Apr. 2, 2012) (finding federal enclave jurisdiction where "some of the[] locations ... are federal enclaves"); *Totah*, 2011 WL 1324471, at *2 (holding that court can "exercise supplemental jurisdiction over related claims" that did not arise on federal enclave).

64. Three requirements exist for land to be a federal enclave: (1) the United States must have acquired the land from a state; (2) the state legislature must have consented to the jurisdiction of

1 the Federal Government; and (3) the United States must have accepted jurisdiction. *Wood v. Am.*
 2 *Crescent Elevator Corp.*, No. 11-397, 2011 WL 1870218, at *2 (E.D. La. May 16, 2011).

3 65. Upon information and belief, the federal government owns federal enclaves in the area
 4 where Plaintiff’s “damage complained of” allegedly occurs. *Tenn. Gas Pipeline*, 29 F. Supp. 3d at
 5 831. Indeed, Plaintiff broadly alleges injuries to huge swaths of San Francisco, *see* Compl. ¶¶ 85-92,
 6 and “[f]ailure to indicate the federal enclave status and location of the exposure will not shield plain-
 7 tiffs from the consequences of this federal enclave status,” *Fung*, 816 F. Supp. at 571. Additionally,
 8 it is well established that San Francisco contains federal enclaves, such as the Presidio, federal facili-
 9 ties, and national park areas.³ *See, e.g., Totah v. Bies*, 2011 WL 1324471, at *2 (N.D. Cal. 2011)
 10 (denying motion to remand where claim arose in the Presidio in San Francisco, a federal enclave);
 11 *Azhocar v. Coastal Marine Servs., Inc.*, No. 13-cv-155, 2013 WL 2177784, at *1 (S.D. Cal. May 20,
 12 2013) (“Federal enclaves include ‘numerous military bases, federal facilities, and even some national
 13 forests and parks.’”) (quoting *Allison v. Boeing Laser Tech. Servs.*, 689 F.3d 1234, 1235 (10th Cir.
 14 2012)). As such, federal jurisdiction exists over Plaintiff’s claim.

15 66. On information and belief, Defendants (and/or their affiliates, whose activities Plain-
 16 tiff improperly amalgamates in the Complaint) maintain or maintained oil and gas operations on mili-
 17 tary bases or other federal enclaves such that the Complaint, which bases the claim on the “cumula-
 18 tive production of fossil fuels over many years” and the “commercial promotion[] of fossil fuels”
 19 (Compl. ¶ 10), arises under federal law. *See, e.g., Humble Pipe Line Co. v. Waggoner*, 376 U.S. 369,
 20 372 (1964) (noting that the United States exercises exclusive jurisdiction over oil and gas rights
 21 within Barksdale Air Force Base in Louisiana); *see also Mississippi River Fuel Corp. v. Cocreham*,
 22 390 F.2d 34, 35 (5th Cir. 1968) (on Barksdale AFB, “the reduction of fugitive oil and gas to posses-
 23 sion and ownership[] takes place within the exclusive jurisdiction of the United States”). Indeed, as
 24 of 2000, approximately 14% of the National Wildlife Refuge System “had oil or gas activities on
 25
 26

27 ³ Plaintiff’s assertion that it does not “seek abatement with respect to any federal land,” Compl. at
 28 39 n.108, is irrelevant. For purposes of removal, the relevant inquiry is whether the events or
 damages complained of occurred on a federal enclave. *See, e.g., Durham*, 445 F.3d at 1250. The
 answer to that question can only be in the affirmative for the reasons stated above.

1 their land,” and these activities were spread across 22 different states. *See* GAO, *U.S. Fish and Wild-*
2 *life Service: Information on Oil and Gas Activities in the National Wildlife Refuge* (Oct. 30, 2001),
3 *available at* <http://www.gao.gov/new.items/d0264r.pdf>. Furthermore, Chevron and its predecessor
4 companies for many years engaged in production activities on the Elk Hills Reserve—a strategic oil
5 reserve maintained by the Naval Department—pursuant to a joint operating agreement with the Navy.
6 *See Chevron U.S.A.*, 116 Fed. Cl. at 205. Pursuant to that agreement, Standard Oil “operat[ed] the
7 lands of Navy and Standard in the Reserve.” Ex. H at 4.

8 **IX. THE ACTION IS REMOVABLE UNDER THE BANKRUPTCY REMOVAL STAT-**
9 **UTE**

10 67. The Bankruptcy Removal Statute allows removal of “any claim or cause of action in a
11 civil action other than a proceeding before the United States Tax Court or a civil action by a govern-
12 mental unit to enforce such governmental unit’s police or regulatory power, to the district court for
13 the district where such civil action is pending, if such district court has jurisdiction of such claim or
14 cause of action under section 1334 of this title.” 28 U.S.C. § 1452(a). Section 1334, in turn, provides
15 that “the district courts shall have original but not exclusive jurisdiction of all civil proceedings, aris-
16 ing under Title 11, or arising in or related to cases under title 11” of the United States Code. 28
17 U.S.C. § 1334(b). The Ninth Circuit has emphasized that “‘related to’ jurisdiction is very broad, in-
18 cluding nearly every matter directly or indirectly related to the bankruptcy.” *Sasson v. Sokoloff (In re*
19 *Sasson)*, 424 F.3d 864, 868 (9th Cir. 2005). An action is thus “related to” a bankruptcy case if it
20 “could conceivably have any effect on the estate being administered in bankruptcy.” *PDG Arcos,*
21 *LLC*, 436 F. App’x at 742 (quoting *In re Feitz*, 852 F.2d 455, 457 (9th Cir. 1988)). Where a Chapter
22 11 plan has been confirmed, there must be a “close nexus” between the post-confirmation case and
23 the bankruptcy plan for related-to jurisdiction to exist. *In re Pegasus Gold Corp.*, 394 F.3d 1189,
24 1194 (9th Cir. 2005) (citing *In re Resorts Int’l, Inc.*, 372 F.3d 154, 166-67 (3d Cir. 2004)). “[A] close
25 nexus exists between a post-confirmation matter and a closed bankruptcy proceeding sufficient to
26 support jurisdiction when the matter ‘affect[s] the interpretation, implementation, consummation, ex-
27 ecution, or administration of the confirmed plan.’” *In re Wilshire Courtyard*, 729 F.3d 1279, 1289
28 (9th Cir. 2013) (quoting *Pegasus Gold*, 394 F.3d at 1194).

1 68. Plaintiff’s claim is purportedly predicated on historical activities of Defendants, in-
 2 cluding predecessor companies, subsidiaries, and companies that Defendants may have acquired or
 3 with which they may have merged, as well as numerous unnamed but now bankrupt entities. Indeed,
 4 Plaintiff explicitly alleges that “[e]ach Defendant, directly *and through its subsidiaries*, substantially
 5 participates in the process by which raw crude oil is extracted from the ground, refined into fossil fuel
 6 products and delivered, marketed, and sold to California residents for use.” Compl. ¶ 32 (emphasis
 7 added); *see also id.* ¶¶ 17, 20, 23, 26, 29 (alleging that Defendants are “responsible for [their] subsidi-
 8 aries’ past and current production and promotion of fossil fuel products”).⁴ Because there are hun-
 9 dreds of non-joined necessary and indispensable parties, there are many other Title 11 cases that may
 10 be related. Accordingly, Plaintiff’s broad claim has the required “close nexus” with Chapter 11 plans
 11 to support federal jurisdiction. *Wilshire Courtyard*, 729 F.3d at 1289; *see also In re Dow Corning*
 12 *Corp.*, 86 F.3d 482, 493-94 (6th Cir. 1996).

13 69. As just one example, one of Chevron’s current subsidiaries, Texaco Inc., filed for
 14 bankruptcy in 1987. *In re Texaco Inc.*, 87 B 20142 (Bankr. S.D.N.Y. 1987). The Chapter 11 plan,
 15 which was confirmed in 1988, bars certain claims against Texaco arising prior to March 15, 1988. *Id.*
 16 Dkt. 1743.⁵ Plaintiff’s Complaint alleges that Texaco, as well as unnamed Chevron “predecessors”
 17 and “subsidiaries,” engaged in culpable conduct prior to March 15, 1988, and it attributes this con-
 18 duct to defendant “Chevron.” *See* Compl. ¶ 20 (“Defendant Chevron is responsible for its subsidiar-
 19 ies’ past and current production and promotion of fossil fuel products.”); *id.* ¶ 58 (alleging that “[a]t
 20 all relevant times, Defendants, their corporate predecessors and/or their operating subsidiaries over
 21 which they exercise substantial control, have been members of the API”); *id.* ¶ 60(a) (“In
 22 1980, . . . scientists and executives from Texaco (a predecessor to Chevron)” attended an API meet-
 23 ing). Plaintiff’s claim against Chevron thus is at least partially barred by Texaco’s confirmed Chap-
 24 ter 11 plan to the extent that the claims relate to Texaco’s conduct prior to 1988. Accordingly, even

25 _____
 26 ⁴ To the extent Plaintiff seeks to hold Defendants liable for the conduct of their subsidiaries, affili-
 27 ates or other related entities, such attempts are improper. *See, e.g., Gustavson v. Wrigley Sales*
 28 *Co.*, 961 F. Supp. 2d 1100, 1132 (N.D. Cal. 2013) (holding that “parent-subsidiary relation-
 ship . . . is an insufficient basis, standing alone, for holding [parent] liable for [subsidiary’s] con-
 duct”).

⁵ There are pending motions to reopen Texaco’s bankruptcy case, which motions are being actively
 litigated in the Bankruptcy Court. *See id.* Dkt. 3923.

1 though Texaco’s Chapter 11 plan has been confirmed and consummated, Plaintiff’s claim has a
2 “close nexus” to the plan to support federal jurisdiction. *See Wilshire Courtyard*, 729 F.3d at 1292-
3 93 (federal court had “‘related to’ subject matter jurisdiction under the *Pegasus Gold* test despite the
4 fact that the Plan transactions have been long since consummated”).

5 **X. THIS COURT HAS JURISDICTION AND REMOVAL IS PROPER**

6 70. Based on the foregoing allegations from the Complaint, this Court has original juris-
7 diction over this action under 28 U.S.C. § 1331. Accordingly, removal of this action is proper under
8 28 U.S.C. §§ 1334, 1441, 1442, 1452, and 1446, as well as 43 U.S.C. § 1349(b).

9 71. The United States District Court for the Northern District of California is the appropri-
10 ate venue for removal pursuant to 28 U.S.C. § 1441(a) because it embraces the place where Plaintiff
11 originally filed this case, in the Superior Court of California for the County of San Francisco. *See*
12 28 U.S.C. § 84(a); 28 U.S.C. § 1441(a). Pursuant to Local Rule 3-2(d), the action should be assigned
13 to either the San Francisco or Oakland divisions of this Court.

14 72. All defendants that have been properly joined and served (or purported to be served)
15 join in the removal of the action. 28 U.S.C. § 1446(b)(2)(A). Pursuant to 28 U.S.C. § 1446(a), a
16 copy of all process, pleadings, and orders served (or purported to be served) on Defendants is at-
17 tached as Exhibits A-E to the Thomson Declaration.

18 73. Upon filing this Notice of Removal, Defendants will furnish written notice to Plain-
19 tiff’s counsel, and will file and serve a copy of this Notice with the Clerk of the Superior Court of
20 California for the County of San Francisco, pursuant to 28 U.S.C. § 1446(d).

21 Accordingly, Defendants remove to this Court the above action pending against them in the
22 Superior Court of California for the County of San Francisco.

23 Respectfully submitted,

24 Dated: October 20, 2017

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26 By: /s/ Theodore J. Boutrous, Jr.
27 Theodore J. Boutrous, Jr.

28 GIBSON, DUNN & CRUTCHER LLP

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21 *ROYAL DUTCH SHELL PLC*

22 ** Pursuant to Civ. L.R. 5-1(i)(3), the elec-
23 tronic signatory has obtained approval from
24 this signatory
25
26
27
28