

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:18-cv-1672-WYD-MEH

BOARD OF COUNTY COMMISSIONERS OF BOULDER COUNTY;  
BOARD OF COUNTY COMMISSIONERS OF SAN MIGUEL COUNTY; and  
CITY OF BOULDER,

Plaintiffs,

v.

SUNCOR ENERGY (U.S.A.) INC.;  
SUNCOR ENERGY SALES INC.;  
SUNCOR ENERGY INC.; and  
EXXON MOBIL CORPORATION,

Defendants.

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**DEFENDANTS' DESIGNATION OF NON-PARTIES AT FAULT**

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Defendants Suncor Energy (U.S.A.) Inc., Suncor Energy Sales Inc., Suncor Energy Inc., and Exxon Mobil Corporation (“ExxonMobil”) (collectively “Defendants”), by and through their undersigned attorneys, hereby submit the following notice of designation of nonparties at fault pursuant to Colorado Revised Statute § 13-21-111.5(3)(b).<sup>1</sup>

As an initial matter, Defendants take the position that C.R.S. § 13-21-111.5(3)(b) is not applicable to this case. For the reasons stated in Defendants’ Notice of Removal, Plaintiffs’ claims are governed by federal law. (*See* Not. Of Removal, ECF No. 1.) Defendants further contest that they bear any fault for Plaintiffs’ alleged damages, which are the result of lawful, global conduct by innumerable parties. (*See* Am. Compl., ECF No. 1-18, at ¶¶ 123–135.)

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<sup>1</sup> By submitting this designation, Defendants do not waive or consent to personal jurisdiction. Defendants expressly preserve all objections to personal jurisdiction and intend to move for dismissal on this basis, among others, at the appropriate time.

Indeed, Plaintiffs Board of County Commissioners of Boulder County, Board of County Commissioners of San Miguel County, and City of Boulder combust fossil fuels—the alleged root cause of their injuries. Accordingly, albeit parties, Plaintiffs are by definition “at fault” for the alleged damages they claim to have sustained.

Notwithstanding the foregoing objections, and in an abundance of caution, Defendants designate the following nonparties as wholly or partially at fault for any and all alleged damages sustained by Plaintiffs:

Any and all nonparties that have emitted or currently emit greenhouse gases, and any and all nonparties that, through their acts or omissions, have contributed or currently contribute to greenhouse gas levels.<sup>2</sup> Plaintiffs contend that “[f]ossil fuel combustion is responsible for the majority of emissions that have caused GHG concentrations to reach hazardous and unprecedented levels.” (*Id.* at ¶ 128.) Plaintiffs’ alleged injuries therefore implicate not only themselves, but every single person or entity on the planet that has ever contributed to greenhouse gas emissions through activities such as the combustion of fossil fuels, deforestation, cement production, and agriculture. These entities include, but are by no means limited to, local, national, and international **(i)** emitters and consumers of fossil fuels, **(ii)** producers of electricity, **(iii)** governments and government entities, **(iv)** manufacturers, and **(v)** businesses (*e.g.*, farm and dairy, and transportation).

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<sup>2</sup> Unknown and unidentified parties may be designated as nonparties pursuant to C.R.S. § 13-21-111.5(3)(b) (providing identification of nonparties may be made according to “the best identification of such nonparty which is possible under the circumstances”); *Pedge v. RM Holdings Inc.*, 75 P.3d 1126, 1127–28 (Colo. App. 2002) (holding designation of “any or all customers or employees . . . who may be the person or persons responsible for striking [the plaintiff]” compliant with C.R.S. § 13-21-111.5(3)(b)).

Dated: September 10, 2018

Respectfully submitted,

*Below-signed counsel certifies that he is a member in good standing of the bar of this Court.*

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 10<sup>th</sup> day of September, 2018, a true and accurate copy of the foregoing was filed via ECF and served via electronic mail on the following:

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*s/Hugh Q. Gottschalk* \_\_\_\_\_