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PROTECTING PEOPLE AND THE PLANET

December 31, 2019

Via ECF

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

Re: *Mayor and City Council of Baltimore v. BP P.L.C., et al.*, No. 19-1644
Plaintiff-Appellee's Response to Defendants-Appellants' Rule 28(j) Letter

Dear Ms. Connor,

Appellants' December 19, 2019 letter inappropriately attempts to raise new arguments not timely submitted in their opening brief, reply, or at oral argument. The Court should disregard the letter.

In any event, *United States v. Swiss American Bank, Ltd.*, 191 F.3d 30 (1st Cir. 1999), is inapposite. There, the United States sued foreign banks in federal court to recover assets subject to a criminal forfeiture order. *Id.* at 34. The government argued personal jurisdiction existed over the banks under Fed. R. Civ. P. 4(k)(2), because its conversion claims against them were governed by federal common law. 191 F.3d at 38–39. The court narrowly held that “when the United States sues ... to recoup assets ... forfeited to it, the rights that it has acquired find their roots in, and must be adjudicated in accordance with, a federal source.” *Id.* at 44–45.

Defendants contend that Plaintiffs' claims “arise under” federal common law for purposes of removal jurisdiction for the same reason the United States' claim in *Swiss American Bank* arose under federal law for purposes of Rule 4(k)(2). But the controlling authority in the removal context is *Grable & Sons Metal Prods., Inc. v. Darue Engineering & Mfg.*, 545 U.S. 308 (2005), decided six years after *Swiss American Bank*, in which the Supreme Court sought to “bring some order to th[e] unruly doctrine” of when state law claims arise under federal law for removal purposes. *See Gunn v. Minton*, 568 U.S. 251, 258 (2013). The federal government brought its claims in *Swiss American Bank* in federal court to recoup funds pursuant to its “federal-law power to punish criminals, including its right to require forfeiture of racketeering proceeds,” over which “state law has no direct bearing.” *See* 191 F.3d at 45. The claims here were brought by a city in state court under well-established Maryland tort law.

No “substantial” federal question is “necessarily raised” and “actually disputed” by the allegations of Baltimore's complaint, and forcing Baltimore's state-law claims into federal court would disrupt the balance of federal-state responsibility. *Grable*, 545 U.S. at 314–15; Plaintiff-Appellee's Response Brief at 33–40.

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Respectfully submitted,

/s/ Victor M. Sher

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cc: All Counsel of Record (via ECF)