

1 Neal S. Manne (SBN 94101)
nmanne@susmangodfrey.com
2 Johnny W. Carter (*pro hac vice*)
jcarter@susmangodfrey.com
3 Erica Harris (*pro hac vice*)
eharris@susmangodfrey.com
4 SUSMAN GODFREY L.L.P.
5 1000 Louisiana, Suite 5100
Houston, TX 77002
6 Telephone: (713) 651-9366
7 Facsimile: (713) 654-6666

8 Steven Shepard (*Pro hac vice*)
sshepard@susmangodfrey.com
9 SUSMAN GODFREY L.L.P.
1301 Avenue of the Americas
10 32nd Floor
New York, NY 10019
11 Telephone: (212) 336-8330
12 Facsimile: (212) 336-8340

*Attorneys for Defendants Chevron Corporation and
Chevron U.S.A., Inc.*

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

16 The COUNTY OF SAN MATEO, individually
17 and on behalf of THE PEOPLE OF THE
STATE OF CALIFORNIA,

18 Plaintiff and Real Party in Interest,

19 vs.

20
21 CHEVRON CORP.; CHEVRON U.S.A.,
INC.; EXXONMOBIL CORP.; BP P.L.C.;
22 BP AMERICA, INC.; ROYAL DUTCH
SHELL PLC; SHELL OIL PRODUCTS
23 COMPANY LLC; CITGO PETROLEUM
CORP.; CONOCOPHILLIPS; CONO-
24 COPHILLIPS COMPANY; PHILLIPS 66;
25 PEABODY ENERGY CORP.; TOTAL E&P
USA INC.; TOTAL SPECIALTIES USA
26 INC.; ARCH COAL, INC.; ENI S.p.A.; ENI
OIL & GAS INC.; RIO TINTO PLC; RIO
27 TINTO LTD.; RIO TINTO ENERGY AMER-
ICA INC.; RIO TINTO MINERALS, INC.;
28 RIO TINTO SERVICES INC.; STATOIL

Herbert J. Stern (*pro hac vice*)
hstern@sgklaw.com
Joel M. Silverstein (*pro hac vice*)
jsilverstein@sgklaw.com
STERN & KILCULLEN, LLC
325 Columbia Turnpike, Suite 110
Florham Park, NJ 07932-0992
Telephone: 973.535.1900
Facsimile: 973.535.9664

Kalpana Srinivasan (237460)
ksrinivasan@SusmanGodfrey.com
SUSMAN GODFREY L.L.P.
1900 Avenue of the Stars
Suite 1400
Los Angeles, CA 90067
Telephone: (310) 789-3100
Facsimile: (310) 789-3150

Case No. 17-cv-4929-VC

**THIRD-PARTY COMPLAINT OF
DEFENDANTS CHEVRON
CORPORATION AND CHEVRON U.S.A.
INC. FOR INDEMNITY AND
CONTRIBUTION AGAINST THIRD-
PARTY DEFENDANT STATOIL ASA**

1 ASA; ANADARKO PETROLEUM CORP.;
2 OCCIDENTAL PETROLEUM CORP.; OC-
3 CIDENTAL CHEMICAL CORP.; REPSOL
4 S.A.; REPSOL ENERGY NORTH AMERICA
5 CORP.; REPSOL TRADING USA CORP.;
6 MARATHON OIL COMPANY; MARA-
7 THON OIL CORPORATION; MARATHON
8 PETROLEUM CORP.; HESS CORP.; DEV-
9 ON ENERGY CORP.; DEVON ENERGY
10 PRODUCTION COMPANY, L.P.; ENCANA
11 CORP.; APACHE CORP. and DOES 1
12 through 100, inclusive,

13 Defendants.

14 CHEVRON CORP. and CHEVRON U.S.A.,
15 INC.,

16 Third Party Plaintiffs,

17 v.

18 STATOIL ASA,

19 Third Party Defendant.

20 THE CITY OF IMPERIAL BEACH, a
21 municipal corporation, individually and on
22 behalf of THE PEOPLE OF THE STATE OF
23 CALIFORNIA,

24 Plaintiff,

25 v.

26 CHEVRON CORP.; CHEVRON U.S.A., INC.;
27 EXXONMOBIL CORP.; BP P.L.C.; BP
28 AMERICA, INC.; ROYAL DUTCH SHELL
PLC; SHELL OIL PRODUCTS COMPANY
LLC; CITGO PETROLEUM CORP.;
CONOCOPHILLIPS; CONOCOPHILLIPS
COMPANY; PHILLIPS 66; PEABODY
ENERGY CORP.; TOTAL E&P USA INC.;
TOTAL SPECIALTIES USA INC.; ARCH
COAL, INC.; ENI S.p.A.; ENI OIL & GAS
INC.; RIO TINTO PLC; RIO TINTO LTD.;
RIO TINTO ENERGY AMERICA INC.; RIO
TINTO MINERALS, INC.; RIO TINTO
SERVICES INC.; STATOIL ASA;
ANADARKO PETROLEUM CORP.;

CASE NO. 3:17-cv-04934-VC

**THIRD-PARTY COMPLAINT OF
DEFENDANTS CHEVRON CORPORATION
AND CHEVRON U.S.A. INC. FOR
INDEMNITY AND CONTRIBUTION
AGAINST THIRD-PARTY DEFENDANT
STATOIL ASA**

1 OCCIDENTAL PETROLEUM CORP.;
2 OCCIDENTAL CHEMICAL CORP.; REPSOL
3 S.A.; REPSOL ENERGY NORTH AMERICA
4 CORP.; REPSOL TRADING USA CORP.;
5 MARATHON OIL COMPANY; MARATHON
6 OIL CORPORATION; MARATHON
7 PETROLEUM CORP.; HESS CORP.; DEVON
8 ENERGY CORP.; DEVON ENERGY
9 PRODUCTION COMPANY, L.P.; ENCANA
10 CORP.; APACHE CORP.; and DOES 1
11 through 100, inclusive,

12 Defendants.

13 CHEVRON CORP. and CHEVRON U.S.A.,
14 INC.,

15 Third Party Plaintiffs,

16 v.

17 STATOIL ASA,

18 Third Party Defendant.

19 Pursuant to Rule 14 of the Federal Rules of Civil Procedure, Defendants and Third-Party
20 Plaintiffs Chevron Corporation and Chevron U.S.A., Inc. (collectively, “the Chevron Parties”), bring
21 this action against Third-Party Defendant Statoil ASA (“Statoil”), which is or may be liable to the
22 Chevron Parties for part of the claims asserted against them in the complaints filed by Plaintiffs
23 (“Plaintiffs”) in these two related actions (“these actions”). Subject to and without waiving their
24 rights, privileges and defenses to Plaintiffs’ claims, the Chevron Parties allege as follows:

25 Introduction

26 1. The benefits from fossil fuels to our society generally—and specifically to Norway,
27 the majority owner of Statoil, and the many other sovereigns who produce, promote or use fossil
28 fuels—have been tremendous.

29 2. In this case, Plaintiffs allege that use of fossil fuels is a “nuisance” causing global
30 warming. As the United States has previously explained, Plaintiffs’ boundless tort theory is baseless;
indeed, it “could provide virtually every person, organization, company, or government with a claim

1 against virtually every other person, organization, company or government, presenting unique and
2 difficult challenges for the federal courts.”¹

3 3. While the Chevron Parties agree that Plaintiffs’ claims are meritless, for the reasons
4 stated below, Statoil (an agency or instrumentality of Norway)—as well as potentially the many other
5 sovereign governments that use and promote fossil fuels—must be joined as third-party defendants in
6 this matter.

7 **The Parties**

8 4. Plaintiffs in these two related actions are a county (San Mateo) and a city (Imperial
9 Beach) located in California.

10 5. Defendant and third party plaintiff Chevron Corporation is a corporation organized
11 and existing under the laws of State of Delaware, with its principal place of business in San Ramon,
12 California.

13 6. Defendant and third party plaintiff Chevron U.S.A., Inc. is a corporation organized
14 and existing under the laws of Pennsylvania with its principal place of business located in San Ra-
15 mon, California. Chevron U.S.A., Inc. is a wholly owned subsidiary of Chevron Corporation.

16 7. Third-party defendant Statoil is an international, vertically integrated energy company
17 incorporated in the Kingdom of Norway and headquartered in Stavanger, Norway. The Norwegian
18 State is the majority shareholder in Statoil. Statoil’s operations consist of multiple segments, includ-

19 _____
20 ¹ Brief for the Tennessee Valley Authority as Respondents Supporting Petitioners at 37, *American*
21 *Electric Power Co. Inc. v. State of Connecticut*, No. 10-74 (Jan. 2011); *id.* at 17, 37 (citing the ex-
22 traordinary “breadth” of potential defendants in common-law suits aimed at global climate change as
23 one of many reasons why such suits should be rejected). A finding that Plaintiffs’ allegations against
24 Chevron and the other named Defendants in these actions are true and sufficient would implicate a
25 multitude of domestic and international actors as parties allegedly responsible for a portion of the in-
26 juries and damages Plaintiffs claim, either on the same basis as they would implicate the Chevron
27 Parties, or, in the case of users and emitters of greenhouse gases, a more direct basis. These include
28 other fossil fuel *producers* (e.g., the numerous unnamed fossil fuel companies (including others that
are agencies or instrumentalities of sovereign foreign states), the United States, and numerous states,
including California, *see* California Public Resources Code § 3106(d)); *promoters* (e.g., the unnamed
manufacturers of automobiles, aircraft, heavy machinery, farm equipment, home and commercial
heating equipment, etc.); and *emitters* (e.g., Plaintiffs themselves, private entities, and individuals
around the world who actually consume and burn the fossil fuels that Plaintiffs allege give rise to
global warming and the sea-level rise of which Plaintiffs complain). Accordingly, this third-party
complaint is one of many the Chevron Parties expect to file should this case proceed past motions to
dismiss.

1 ing exploration, production, extraction, marketing, processing, and technology support of its fossil
2 fuel products, which include both petroleum and natural gas products.

3 8. Statoil is a “foreign state” as defined in 28 U.S.C. § 1603(a) because it is an “agency
4 or instrumentality of a foreign state” as defined in 28 U.S.C. § 1603(b).

5 **Jurisdiction and Venue**

6 9. This Court has subject matter jurisdiction over the related underlying actions pursuant
7 to 28 U.S.C. § 1331. This Court has subject matter jurisdiction over this third party action pursuant
8 to 28 U.S.C. § 1330.

9 10. Because, as further alleged within, the acts for which Statoil is or may be liable to the
10 Chevron Parties for part of the claims asserted against them by Plaintiffs in these actions consist of
11 “commercial activity” described in 28 U.S.C. § 1605(a)(2), Statoil is not immune from the jurisdic-
12 tion of this Court.

13 11. Venue is proper in this District to the extent venue is proper for the original claims
14 against the Chevron Parties. Venue also is proper in this District pursuant to 28 U.S.C. § 1391(f)(1)
15 because a substantial part of the events or omissions giving rise to Plaintiffs’ claims against the Chev-
16 ron Parties for which Statoil is or may be liable allegedly occurred here, and a substantial part of the
17 property that is the subject of the action is situated here.

18 **Plaintiffs’ Allegations and Claims Against the Chevron Parties**

19 12. The Chevron Parties do not by pleading these third-party claims admit any allegation
20 of fact or law in Plaintiffs’ complaints in these actions.

21 13. In their complaints, Plaintiffs allege that they have already incurred, and will foresee-
22 ably continue to incur, injuries and damages because of sea level rise they say has been caused by the
23 extraction, production, marketing and sale of fossil fuels by the Chevron Parties and several other
24 “major corporate members of the fossil fuel industry” named as Defendants in these actions. Based
25 on those allegations, Plaintiffs assert eight causes of action: public nuisance on behalf of the People
26 of the State of California, public nuisance on behalf of Plaintiffs, private nuisance, trespass, negli-
27 gence, negligence for failure to warn, strict liability for failure to warn, and strict liability for design
28 defect. The Chevron Parties deny that Plaintiffs are entitled to any relief on their complaints. How-

1 ever, in the event that the Chevron Parties are held liable to Plaintiffs, the Chevron Parties are entitled
2 to indemnity and/or contribution from Statoil.

3 14. In the complaints in these actions, Plaintiffs named Statoil as one of the Defendants,
4 that is, one of the “major corporate members of the fossil fuel industry” against which Plaintiffs as-
5 serted the same allegations and claims Plaintiffs continue to assert against the Chevron Parties and
6 other Defendants. Without explanation, however, on July 24, 2017, one week after filing the com-
7 plaints, Plaintiffs sought and obtained “Dismissal of Complaint *without prejudice* solely as to De-
8 fendant Statoil ASA” (emphasis added).

9 15. Plaintiffs’ complaints in these actions all include the following allegations:

- 10 a. “While it is possible to distinguish CO2 derived from fossil fuels from other sources,
11 it is not possible to determine the source of any particular individual molecule of CO2
12 in the atmosphere attributable to anthropogenic sources because such greenhouse gas
13 molecules do not bear markers that permit tracing them to their source, and because
14 greenhouse gasses quickly diffuse and comingle in the atmosphere. However, cumula-
15 tive carbon analysis allows an accurate calculation of net annual CO2 and methane
16 emissions attributable to each Defendant by quantifying the amount and type of fossil
17 fuels products each Defendant extracted and placed into the stream of commerce, and
18 multiplying those quantities by each fossil fuel product’s carbon factor.” Complaints ¶¶
19 74.
- 20 b. “Defendants’ acts and omissions as alleged herein are indivisible causes of Plaintiff
21 San Mateo County’s injuries and damage as alleged herein.” San Mateo Complaint ¶¶
22 190, 201, 214, 226, 237, 246, 256, 265; Imperial Beach Complaint ¶¶ 187, 198, 211,
23 223, 234, 243, 253, 262.

24 **Statoil Is or May Be Liable to the Chevron Parties for**
25 **Part of the Claims Asserted Against Them in these Actions**

26 16. The claims set forth in this Third-Party Complaint arise out of the same transactions,
27 occurrences and set of circumstances as set forth in Plaintiffs’ complaints in these actions.
28

1 17. The thrust of Plaintiffs’ complaints is a misguided attempt to blame the Chevron Par-
2 ties’ extraction, production, marketing, and sale of fossil fuels for global climate change, even though
3 Plaintiffs concede that the Chevron Parties did not violate any law, rule, statute, or regulation and that
4 it is not the extraction, production, marketing, and sale of fossil fuels, but rather the burning or use of
5 these fossil fuels by end-users that causes the release of greenhouse gases into the atmosphere.

6 18. The Chevron Parties are primarily *producers* of fossil fuels, not consumers. Green-
7 house gases generally are not released from fossil fuels until the fuels are burned or otherwise con-
8 sumed; as Plaintiffs themselves allege, “Greenhouse gases are largely byproducts of humans’ burning
9 fossil fuels to produce energy, and using fossil fuels to create petrochemical products.” Plaintiffs’
10 complaints repeatedly reference “the production, *use and combustion*” of fossil fuels as forming the
11 basis for their claims.

12 19. For these and other reasons the Chevron Parties deny that Plaintiffs are entitled to any
13 relief on any of their claims.

14 20. In the event that the Chevron Parties are held liable to Plaintiffs, however, the Chev-
15 ron Parties are entitled to partial indemnity and/or contribution from Statoil.

16 21. As previously noted, each of the complaints in these actions named Statoil as one of
17 the Defendants and asserted against Statoil (i) each of the eight claims asserted against the Chevron
18 Parties, and (ii) each of the allegations directed to the “Defendants” collectively.

19 22. The allegations of Plaintiffs’ complaints directed specifically to Statoil include the
20 following:

- 21 a. “Statoil’s operations consist of multiple segments, including exploration, production,
22 extraction, marketing, processing, and technology support of its fossil fuel products,
23 which include both petroleum and natural gas products” (Complaints ¶ 27(a));
- 24 b. “Statoil has substantial contacts with California arising out of the production, market-
25 ing, and promotion of its fossil fuel products” (Complaints ¶ 27(b)); and
- 26 c. Identifying Statoil as among the “Defendants and/or their predecessors in interest
27 [who] are and/or have been ... members at times relevant to this litigation” of API
28 [The American Petroleum Institute], which the complaints allege is “a national trade

1 association representing the oil and gas industry, formed in 1919.” (Complaints ¶
2 39(a)).

3 23. According to Statoil’s website, <https://www.statoil.com/>, Statoil, like the Chevron Par-
4 ties and each of the other Defendants in these actions, has engaged, and continues to engage, directly
5 and through its agents in the United States, in the production and promotion of “massive quantities of
6 fossil fuels.” Notably, Statoil:

- 7 a. In 2015 alone, produced 2,004 MBOE/D (millions of barrels of oil per day) and 51.2
8 BCM (billion cubic metres) of natural gas, and had total global revenues of 465.3 bil-
9 lion NOK (\$52.5 billion);
- 10 b. Is “an international energy company present in more than 30 countries around the world,
11 including several of the world’s most important oil and gas provinces... operat[ing] in
12 North and South America, Africa, Asia, Europe and Oceania—as well as Norway”;
- 13 c. Has “positioned [itself] as a significant player in the exploration and development of
14 oil and gas in the Gulf of Mexico, as well as in the exploration and production from
15 shale and tight rock formations in the US,” with “development and production activi-
16 ties in the United States includ[ing] interests and operations in the US Gulf of Mexico,
17 the Appalachian region, south-west Texas, and the Williston Basin”;
- 18 d. In its US business alone, “currently handles a production of about 251,000 boe/day
19 (2015)” and has “a trading office in Stamford, Connecticut which plays an important
20 role in [its] global network for trading crude oil and refined products, and from which
21 [Statoil] deliver[s] about 600,000 barrels of crude oil, petrol, propane and butane into
22 the North American market every day;” and
- 23 e. Is a member of the American Petroleum Institute.

24 24. Regardless of Plaintiffs’ dismissal without prejudice of Statoil as a Defendant in these
25 actions, Plaintiffs’ allegations, if found to be true and sufficient, would implicate Statoil as a party
26 responsible for a portion of the injuries and damages Plaintiffs claim on the same basis as they would
27 implicate the Chevron Parties and the other named Defendants.

1 **Count Two: Contribution**

2 30. The Chevron Parties incorporate by reference each of the allegations in paragraphs 1
3 through 29 above.

4 31. Should the Chevron Parties be held liable to Plaintiffs in these actions for any damag-
5 es and/or other monetary relief the amount of which exceeds the Chevron Parties' proportionate share
6 of the common liability, the Chevron Parties are entitled to contribution from Statoil for Statoil's
7 proportionate share of such excess.

8
9 **PRAYER FOR RELIEF**

10 WHEREFORE, the Chevron Parties pray for judgment against the Statoil as follows:

- 11 a. That, in the event judgment is entered against the Chevron Parties in the underlying
12 actions, the Chevron Parties are entitled to indemnity from Statoil in an amount to be
13 determined at trial;
- 14 b. That, in the event judgment is entered against the Chevron Parties in the underlying
15 actions, the Chevron Parties are entitled to contribution from Statoil in an amount to
16 be determined at trial;
- 17 c. For such other and/or further relief as this Court may deem just and proper.

18 Respectfully submitted,

19 Dated: December 15, 2017

20 SUSMAN GODFREY LLP

STERN & KILCULLEN, LLC

21 By: /s/ Neal S. Manne

By: /s/ Herbert J. Stern

22 Neal S. Manne (SBN 94101)

Herbert J. Stern (*pro hac vice*)

23 *Attorneys for Defendants Chevron Corporation and*
24 *Chevron U.S.A., Inc.*