

Nos. 18-15499, 18-15502, 18-15503, 18-16376

IN THE
United States Court of Appeals for the Ninth Circuit

COUNTY OF SAN MATEO, Plaintiff-Appellee, v. CHEVRON CORPORATION, <i>et al.</i> , Defendants-Appellants.	No. 18-15499 No. 17-cv-4929-VC N.D. Cal., San Francisco Hon. Vince Chhabria presiding
CITY OF IMPERIAL BEACH, Plaintiff-Appellee, v. CHEVRON CORPORATION, <i>et al.</i> , Defendants-Appellants.	No. 18-15502 No. 17-cv-4934-VC N.D. Cal., San Francisco Hon. Vince Chhabria presiding
COUNTY OF MARIN, Plaintiff-Appellee, v. CHEVRON CORPORATION, <i>et al.</i> , Defendants-Appellants.	No. 18-15503 No. 17-cv-4935-VC N.D. Cal., San Francisco Hon. Vince Chhabria presiding
COUNTY OF SANTA CRUZ, <i>et al.</i> , Plaintiff-Appellee, v. CHEVRON CORPORATION, <i>et al.</i> Defendants-Appellants	No. 18-16376 No. 18-cv-00450-VC No. 18-cv-00458-VC No. 18-cv-00732-VC N.D. Cal., San Francisco Hon. Vince Chhabria presiding

MOTION TO ASSIGN APPEALS TO A SINGLE PANEL

Joshua S. Lipshutz
GIBSON, DUNN & CRUTCHER LLP
555 Mission Street, Suite 3000
San Francisco, CA 94105-0921
(415) 393-8200
jlipshutz@gibsondunn.com

Theodore J. Boutrous, Jr.
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, California 90071-3197
(213) 229-7000
tboutrous@gibsondunn.com

*Counsel for Defendants Chevron Corporation and
Chevron U.S.A. Inc.
[Additional counsel listed on signature page]*

TABLE OF CONTENTS

INTRODUCTION	1
FACTUAL AND PROCEDURAL BACKGROUND	2
ARGUMENT	7
CONCLUSION.....	8

INTRODUCTION

Defendants in the above-captioned actions hereby move to assign the pending appeal in No. 18-16663 (the “Alsup Appeal”) to the same panel that will hear the consolidated appeals in Nos. 18-15499, 18-15502, 18-15503, and 18-16376 (the “Chhabria Appeals”).¹ Plaintiffs in the Chhabria Appeals oppose the motion. Plaintiffs in the Alsup Appeal do not.

These appeals arise out of remand and dismissal motions in actions filed by counties and municipalities in California against energy and mining companies seeking to impose tort liability for alleged climate-change related harms based on Defendants’ production and promotion of fossil fuels. The factual and legal theories in these cases are virtually identical, and the legal issues on appeal are also related. The overlap among the issues on appeal is highlighted by the fact the parties in the Alsup Appeal have incorporated by reference the briefs filed in the Chhabria Appeals. Moreover, all of the Defendants in the Alsup Appeal are also Defendants in the Chhabria Appeals.

Because these appeals address many of the same issues involving many of the same defendants, and because Plaintiffs in all eight cases are now represented

¹ Many of the Defendants intend to challenge personal jurisdiction in California, and this motion is submitted subject to and without waiver of any defense, affirmative defense, or objection, including personal jurisdiction, insufficient process, or insufficient service of process.

by the same private attorneys, assigning them to a single panel will promote judicial economy and serve the interest of justice. *United States v. Washington*, 573 F.2d 1121, 1123 (9th Cir. 1978).

FACTUAL AND PROCEDURAL BACKGROUND

1. Each of the underlying cases was brought by a city or county in California seeking redress for alleged global-warming related harms against Defendants based on their production, promotion, and sale of fossil fuels. Each action was originally filed in state court in California and removed by Defendants to federal court in the Northern District of California, asserting virtually identical grounds for removal as to each action. Six of these actions were assigned to Judge Chhabria.² Two were assigned to Judge Alsup.³

Plaintiffs moved to remand each action, again relying on almost identical arguments. Judge Chhabria and Judge Alsup reached divergent results on the remand motions. Judge Alsup, acting first, denied remand on February 27, 2018,

² *County of San Mateo v. Chevron Corp.*, et al., No. 3:17-cv-04929-VC; *City of Imperial Beach v. Chevron Corp.*, et al., No. 3:17-cv-04934-VC; *County of Marin v. Chevron Corp.*, et al., No. 3:17-cv-04935-VC; *County of Santa Cruz v. Chevron Corp.*, et al., No. 3:18-cv-00450-VC; *City of Santa Cruz v. Chevron Corp.*, et al., No. 3:18-cv-00458-VC; *City of Richmond v. Chevron Corp.*, et al., No. 3:18-cv-00732-VC (together the “Chhabria Actions”).

³ *City of Oakland v. BP P.L.C. et al.*, No. 3:17-cv-06011-WHA, and *City and County of San Francisco v. BP P.L.C. et al.*, No. 3:17-cv-06012-WHA (together, the “Alsup Actions”).

holding that “Plaintiffs’ nuisance claims—which address the national and international geophysical phenomenon of global warming—are necessarily governed by federal common law.” Exhibit A at 3. Because Plaintiffs’ claims “depend on a global complex of geophysical cause and effect involving all nations of the planet (and the oceans and atmosphere),” and “necessarily involve[] the relationships between the United States and all other nations,” Judge Alsup held that the claims must “be governed by as universal a rule of apportioning responsibility as is available.” *Id.* at 8. He held that “[f]ederal jurisdiction is therefore proper.” *Id.*

Less than one month later, Judge Chhabria reached the opposite conclusion and *granted* motions to remand filed by the counties of Marin and San Mateo, and the City of Imperial Beach. Exhibit B. Judge Chhabria expressly “disagree[d]” with Judge Alsup’s decision and held that, because the otherwise applicable “federal common law is displaced by the Clean Air Act not only when plaintiffs seek injunctive relief to curb emissions but also when they seek damages for a defendant’s contribution to global warming,” “federal common law does *not* govern their claims.” *Id.* at 2.⁴ On July 10, 2018, Judge Chhabria applied the same remand order to the cases brought by the County and City of Santa Cruz, and the

⁴ Defendants appealed on March 26, 2018. See San Mateo, No. 17-cv-04929-VC, ECF No. 232. Those appeals were docketed as Nos. 18-15499, 18-15502, 18-15503.

City of Richmond. Exhibit C (granting remand “[f]or the reasons stated in th[e] Court’s prior order”).

Meanwhile, the parties briefed and argued motions to dismiss for failure to state a claim and for lack of personal jurisdiction in the Alsup Actions. On June 25, 2018, Judge Alsup dismissed plaintiffs’ complaints for failure to state a claim. *See, e.g., City of Oakland v. BP p.l.c. et al.*, 325 F. Supp. 3d 1017 (N.D. Cal. 2018). On July 27, 2018, Judge Alsup also dismissed for lack of personal jurisdiction as to certain defendants. *City of Oakland v. BP p.l.c.*, No. 3:17-cv-06011, ECF No. 287 at 5, 2018 WL 3609055.

2. Defendants appealed Judge Chhabria’s remand orders, and on August 20, 2018, this Court consolidated the Chhabria Appeals: Nos. 18-15499, 18-15502, 18-15503, 18-16376. Defendants filed their Opening Brief in the consolidated appeals on November 21, 2018. Defendants argued, *inter alia*, that Plaintiffs’ global warming claims are removable because they arise under federal common law. *See* No. 18-16376, ECF No. 27 at 29–38. Defendants also argued that the claims are removable regardless of the scope of displacement because displacement of federal common law does not eliminate federal jurisdiction over federal common law claims. *Id.* at 38–43. Defendants also contended that the claims were properly removed on the other grounds included in their notices of removal. *Id.* at 45–71.

Plaintiffs and Defendants both identified the San Francisco and Oakland actions as “related cases.” *See* No. 18-16376, ECF No. 27 at 83, ECF No. 38 at 64 (stating that Plaintiffs in the Chhabria appeals are “unaware of any related cases currently pending in this court *other than the case(s) identified in the initial briefs by [Defendants]*”) (emphasis added). Briefing was completed on March 14, 2019. *See* No. 18-16376, ECF No. 38; No. 18-16376, ECF No. 76. On June 11, 2019, this Court issued a notice that the Chhabria Appeals were being considered for an upcoming oral argument calendar in San Francisco and asked counsel for any conflicts with the October, November, or December sitting dates.

3. Meanwhile, San Francisco and Oakland appealed Judge Alsup’s orders (1) denying remand, (2) dismissing for failure to state a claim, and (3) dismissing certain Defendants for lack of personal jurisdiction, and those appeals were docketed as No. 18-16663. Plaintiffs requested a 77-day extension to file their Opening Brief. Because Defendants intended to seek coordination of the various appeals and assignment to the same panel, they were concerned that such a lengthy extension would put the Alsup Appeal far behind the Chhabria Appeals despite the similar timing of the district court dispositions on appeal. Accordingly, Defendants sought the Plaintiffs’ consent at that time to coordination of the two sets of appeals and Plaintiffs agreed. Defendants then consented to Plaintiffs’ extension request. *See* ECF No. 24.

Plaintiffs filed their Opening Brief on March 13, 2019. No. 18-16663, ECF No. 30. Plaintiffs argue, *inter alia*, that Judge Alsup erred in denying their motion to remand because their claims do not arise under federal common law. *Id.* at 9–18. Addressing Defendants’ other grounds for removal, Plaintiffs argue that, “for the reasons stated by the Plaintiffs-Appellants [sic] in [the Chhabria Appeals]—which arguments the People hereby incorporate by reference—none of those additional grounds permits the exercise of federal subject matter jurisdiction either.” *Id.* at 18–19. Plaintiffs also contend that Judge Alsup erred by dismissing their claims under Rule 12(b)(6), and that he erred by dismissing the claims against the four out-of-state Defendants for lack of personal jurisdiction.

Defendants filed their Answering Brief on May 10, 2019. No. 18-16663, ECF No. 78. Defendants also incorporated by reference the arguments made by the Defendants in the Chhabria Appeals. No. 18-16663, ECF No. 78 at 36 n.11. Plaintiffs their reply brief on July 1, 2019.

Plaintiffs and Defendants in the Alsup Appeal identified the Chhabria Appeals in their Statements of Related Cases. No. 18-16663, ECF No. 30 at 77, ECF No. 78 at 62.

4. Although Plaintiffs in the actions before Judge Chhabria and Judge Alsup were represented by separate counsel during all trial court proceedings, all

Plaintiffs are now represented by the same counsel, Sher Edling. *See* No. 18-16663, ECF No. 23-1; *see id.*, ECF No. 23-2 ¶ 6.

ARGUMENT

The Court has discretion to calendar together cases raising the “same issues” so that they “may be heard at the same time.” Ninth Cir. Gen. Order 3.3(c). Assigning these appeals to the same panel would promote judicial economy and serve the interests of justice for several reasons. First, as set forth above, the cases involve many of the same claims, factual allegations, events, and legal theories. Second, they involve an overlapping group of defendants. BP, Chevron, ConocoPhillips, Exxon Mobil, and Royal Dutch Shell—the only Defendants in the Alsup Appeal—are also Defendants in the Chhabria Appeals. Third, several of the issues presented in the Chhabria Appeals—including whether global warming claims are governed by federal common law, whether such federal common law claims are displaced by the Clean Air Act, whether displacement affects jurisdiction, and whether global warming claims are removable on any other ground—have also been raised by Plaintiffs in the Alsup Appeal. Indeed, both Plaintiffs and Defendants in the Alsup Appeal incorporated by reference the briefs filed in the Chhabria Appeals. And Plaintiffs in all eight appeals are now represented by the same counsel. Finally, because the briefing in the Alsup Appeal

is now complete, the argument could be set alongside the Chhabria Appeals later this year without prejudicing the Plaintiffs in the Chhabria Appeals.⁵

In short, assigning these appeals to the same panel would promote judicial efficiency and advance the interests of justice. *See Washington*, 573 F.2d at 1123.

CONCLUSION

For the reasons articulated above, Defendants respectfully request that this Court assign the appeal in No. 18-16663 to the same panel that will hear the appeals in Nos. 18-15499, 18-15502, 18-15503, and 18-16376.

Dated: July 1, 2019

Respectfully submitted,

⁵ Alternatively, the appeals could both be scheduled for argument before the same panel in early 2020.

By: /s/ Jonathan W. Hughes

Jonathan W. Hughes
ARNOLD & PORTER KAYE
SCHOLER LLP
Three Embarcadero Center, 10th Floor
San Francisco, California 94111-4024
Telephone: (415) 471-3100
Facsimile: (415) 471-3400
E-mail: jonathan.hughes@apks.com

Matthew T. Heartney
John D. Lombardo
ARNOLD & PORTER KAYE
SCHOLER LLP
777 South Figueroa Street, 44th Floor
Los Angeles, California 90017-5844
Telephone: (213) 243-4000
Facsimile: (213) 243-4199
E-mail: matthew.heartney@apks.com
E-mail: john.lombardo@apks.com

Philip H. Curtis
Nancy Milburn
ARNOLD & PORTER KAYE
SCHOLER LLP
250 West 55th Street
New York, NY 10019-9710
Telephone: (212) 836-8383
Facsimile: (212) 715-1399
E-mail: philip.curtis@apks.com
E-mail: nancy.milburn@apks.com

*Attorneys for Defendants BP P.L.C.
and BP AMERICA, INC.*

By: **/s/ Theodore J. Boutrous, Jr.

Theodore J. Boutrous, Jr.
Andrea E. Neuman
William E. Thomson
Joshua S. Lipshutz
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071
Telephone: (213) 229-7000
Facsimile: (213) 229-7520
E-mail: tboutrous@gibsondunn.com
E-mail: aneuman@gibsondunn.com
E-mail: wthomson@gibsondunn.com
E-mail: jlipshutz@gibsondunn.com

Herbert J. Stern
Joel M. Silverstein
STERN & KILCULLEN, LLC
325 Columbia Turnpike, Suite 110
Florham Park, NJ 07932-0992
Telephone: (973) 535-1900
Facsimile: (973) 535-9664
E-mail: hstern@sgklaw.com
E-mail: jsilverstein@sgklaw.com

Neal S. Manne
Johnny W. Carter
Erica Harris
Steven Shepard
SUSMAN GODFREY LLP
1000 Louisiana, Suite 5100
Houston, TX 77002
Telephone: (713) 651-9366
Facsimile: (713) 654-6666
E-mail: nmanne@susmangodfrey.com
E-mail: jcarter@susmangodfrey.com
E-mail: eharris@susmangodfrey.com

E-mail: shepard@susmangodfrey.com

*Attorneys for Defendants CHEVRON
CORP. and CHEVRON U.S.A., INC.*

** Pursuant to Ninth Circuit L.R. 25-
5(e), counsel attests that all other
parties on whose behalf the filing is
submitted concur in the filing's
contents

By: /s/ Sean C. Grimsley

Sean C. Grimsley
Jameson R. Jones
BARTLIT BECK LLP
1801 Wewatta St., Suite 1200
Denver, Colorado 80202
Telephone: 303-592-3123
Facsimile: 303-592-3140
Email: sean.grimsley@bartlitbeck.com
Email: jameson.jones@bartlitbeck.com

Megan R. Nishikawa
Nicholas A. Miller-Stratton
KING & SPALDING LLP
101 Second Street, Suite 2300
San Francisco, California 94105
Telephone: (415) 318-1200
Facsimile: (415) 318-1300
Email: mnishikawa@kslaw.com
Email: nstratton@kslaw.com

Tracie J. Renfroe
Carol M. Wood
KING & SPALDING LLP
1100 Louisiana Street, Suite 4000
Houston, Texas 77002
Telephone: (713) 751-3200
Facsimile: (713) 751-3290
Email: trenfroe@kslaw.com
Email: cwood@kslaw.com

*Attorneys for Defendants
CONOCOPHILLIPS and
CONOCOPHILLIPS COMPANY*

By: /s/ Dawn Sestito

M. Randall Oppenheimer
Dawn Sestito
O'MELVENY & MYERS LLP
400 South Hope Street
Los Angeles, California 90071-2899
Telephone: (213) 430-6000
Facsimile: (213) 430-6407
E-Mail: roppenheimer@omm.com
E-Mail: dsestito@omm.com

Theodore V. Wells, Jr.
Daniel J. Toal
Jaren E. Janghorbani
PAUL, WEISS, RIFKIND,
WHARTON &
GARRISON LLP
1285 Avenue of the Americas
New York, New York 10019-6064
Telephone: (212) 373-3000
Facsimile: (212) 757-3990
E-Mail: twells@paulweiss.com
E-Mail: dtoal@paulweiss.com
E-Mail: jjanghorbani@paulweiss.com

Kannon K. Shanmugam
PAUL, WEISS, RIFKIND,
WHARTON & GARRISON LLP
2001 K Street NW
Washington, DC 20006-1047
Telephone: (202) 223-7325
E-Mail: kshanmugam@paulweiss.com

*Attorneys for Defendant
EXXON MOBIL CORPORATION*

By: /s/ Daniel B. Levin

Daniel B. Levin
MUNGER, TOLLES & OLSON LLP
350 South Grand Avenue
Fiftieth Floor
Los Angeles, California 90071-3426
Telephone: (213) 683-9100
Facsimile: (213) 687-3702
E-mail: daniel.levin@mto.com

Jerome C. Roth
Elizabeth A. Kim
MUNGER, TOLLES & OLSON LLP
560 Mission Street
Twenty-Seventh Floor
San Francisco, California 94105-2907
Telephone: (415) 512-4000
Facsimile: (415) 512-4077
E-mail: jerome.roth@mto.com
E-mail: elizabeth.kim@mto.com

David C. Frederick
Brendan J. Crimmins
KELLOGG, HANSEN, TODD, FIGEL
& FREDERICK, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
Telephone: (202) 326-7900
Facsimile: (202) 326-7999
E-mail: frederick@kellogghansen.com
E-mail: crimmins@kellogghansen.com

*Attorneys for Defendants ROYAL
DUTCH SHELL PLC and SHELL OIL
PRODUCTS COMPANY LLC*

By: /s/ Bryan M. Killian

Bryan M. Killian
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Ave NW
Washington, DC 20004
Telephone: (202) 373-6191
E-mail:
bryan.killian@morganlewis.com

James J. Dragna
Yardena R. Zwang-Weissman
MORGAN, LEWIS & BOCKIUS LLP
300 South Grand Ave., 22nd Floor
Los Angeles, CA 90071-3132
Telephone: (213) 680-6436
E-Mail:
jim.dragna@morganlewis.com
E-mail: yardena.zwang-
weissman@morganlewis.com

*Attorneys for Defendant
ANADARKO PETROLEUM
CORPORATION*

By: /s/ Thomas F. Koegel

Thomas F. Koegel
CROWELL & MORING LLP
Three Embarcadero Center, 26th Floor
San Francisco, CA 94111
Telephone: (415) 986-2800
Facsimile: (415) 986-2827
E-mail: tkoegel@crowell.com

Kathleen Taylor Sooy
Tracy A. Roman
CROWELL & MORING LLP
1001 Pennsylvania Avenue, NW
Washington, DC 20004
Telephone: (202) 624-2500
Facsimile: (202) 628-5116
E-mail: ksooy@crowell.com
E-mail: troman@crowell.com

*Attorneys for Defendant
ARCH COAL, INC.*

By: /s/ Patrick W. Mizell

Mortimer Hartwell
VINSON & ELKINS LLP
555 Mission Street Suite 2000
San Francisco, CA 94105
Telephone: (415) 979-6930
E-mail: mhartwell@velaw.com

Patrick W. Mizell
Deborah C. Milner
VINSON & ELKINS LLP
1001 Fannin Suite 2300
Houston, TX 77002
Telephone: (713) 758-2932
E-mail: pmizell@velaw.com
E-mail: cmilner@velaw.com

*Attorneys for Defendant
APACHE CORPORATION*

By: /s/ William M. Sloan

William M. Sloan
Jessica L. Grant
VENABLE LLP
101 California Street, Suite 3800
San Francisco, CA 94111
Telephone: (415) 343-4490
Facsimile: (415) 653-3755
E-mail: WMSloan@venable.com
Email: JGrant@venable.com

Attorneys for Defendant
PEABODY ENERGY CORPORATION

By: /s/ Andrew A. Kassof

Mark McKane, P.C.
KIRKLAND & ELLIS LLP
555 California Street
San Francisco, California 94104
Telephone: (415) 439-1400
Facsimile: (415) 439-1500
E-mail: mark.mckane@kirkland.com

Andrew A. Kassof, P.C.
Brenton Rogers
KIRKLAND & ELLIS LLP
300 North LaSalle
Chicago, Illinois 60654
Telephone: (312) 862-2000
Facsimile: (312) 862-2200
E-mail: andrew.kassof@kirkland.com
E-mail: brenton.rogers@kirkland.com

Attorneys for Defendants
RIO TINTO ENERGY AMERICA INC.,
RIO TINTO MINERALS, INC., and
RIO TINTO SERVICES INC.

By: /s/ Gregory Evans

Gregory Evans
MCGUIREWOODS LLP
Wells Fargo Center
South Tower
355 S. Grand Avenue, Suite 4200
Los Angeles, CA 90071-3103
Telephone: (213) 457-9844
Facsimile: (213) 457-9888
E-mail: gevans@mcguirewoods.com

Steven R. Williams
Joy C. Fuhr
Brian D. Schmalzbach
MCGUIREWOODS LLP
800 East Canal Street
Richmond, VA 23219-3916
Telephone: (804) 775-1141
Facsimile: (804) 698-2208
E-mail: srwilliams@mcguirewoods.com
E-mail: jfuhr@mcguirewoods.com
E-mail:
bschmalzbach@mcguirewoods.com

Attorneys for Defendants
DEVON ENERGY CORPORATION
and DEVON ENERGY PRODUCTION
COMPANY, L.P.

By: /s/ Andrew McGaan

Christopher W. Keegan
KIRKLAND & ELLIS LLP
555 California Street
San Francisco, California 94104
Telephone: (415) 439-1400
Facsimile: (415) 439-1500
E-mail: chris.keegan@kirkland.com

Andrew R. McGaan, P.C.
KIRKLAND & ELLIS LLP
300 North LaSalle
Chicago, Illinois 60654
Telephone: (312) 862-2000
Facsimile: (312) 862-2200
E-mail: andrew.mcgaan@kirkland.com

Anna G. Rotman, P.C.
KIRKLAND & ELLIS LLP
609 Main Street
Houston, Texas 77002
Telephone: (713) 836-3600
Facsimile: (713) 836-3601
E-mail: anna.rotman@kirkland.com

Bryan D. Rohm
TOTAL E&P USA, INC.
1201 Louisiana Street, Suite 1800
Houston, TX 77002
Telephone: (713) 647-3420
E-mail: bryan.rohm@total.com

Attorneys for Defendants
TOTAL E&P USA INC. and TOTAL
SPECIALTIES USA INC.

By: /s/ Michael F. Healy

Michael F. Healy
SHOOK HARDY & BACON LLP
One Montgomery St., Suite 2600
San Francisco, CA 94104
Telephone: (415) 544-1942
E-mail: mfhealy@shb.com

Michael L. Fox
DUANE MORRIS LLP
Spear Tower
One Market Plaza, Suite 2200
San Francisco, CA 94105-1127
Telephone: (415) 957-3092
E-mail: MLFox@duanemorris.com

*Attorneys for Defendant
ENCANA CORPORATION*

By: /s/ Peter Duchesneau

Craig A. Moyer
Peter Duchesneau
MANATT, PHELPS & PHILLIPS, LLP
11355 West Olympic Boulevard
Los Angeles, CA 90064-1614
Telephone: (310) 312-4000
Facsimile: (310) 312-4224
E-mail: cmoyer@manatt.com
E-mail: pduchesneau@manatt.com

Stephanie A. Roeser
MANATT, PHELPS & PHILLIPS, LLP
One Embarcadero Center, 30th Floor
San Francisco, CA 94111
Telephone: (415) 291-7400
Facsimile: (415) 291-7474
E-mail: sroeser@manatt.com

Nathan P. Eimer
Lisa S. Meyer
Pamela R. Hanebutt
Raphael Janove
EIMER STAHL LLP
224 South Michigan Avenue, Suite 1100
Chicago, IL 60604
Telephone: (312) 660-7605
Facsimile: (312) 961-3204
Email: neimer@EimerStahl.com
Email: lmeyer@EimerStahl.com
Email: phanebutt@EimerStahl.com
Email: rjanove@EimerStahl.com

*Attorneys for Defendant
CITGO PETROLEUM CORPORATION*

By: /s/ J. Scott Janoe

Christopher J. Carr
Jonathan A. Shapiro
BAKER BOTTS L.L.P.
101 California Street
36th Floor, Suite 3600
San Francisco, California 94111
Telephone: (415) 291-6200
Facsimile: (415) 291-6300
Email: chris.carr@bakerbotts.com
jonathan.shapiro@bakerbotts.com

J. Scott Janoe
BAKER BOTTS L.L.P.
910 Louisiana Street
Houston, Texas 77002
Telephone: (713) 229-1553
Facsimile: (713) 229 7953
Email: scott.janoe@bakerbotts.com

Evan Young
BAKER BOTTS L.L.P.
98 San Jacinto Boulevard
Austin, Texas 78701
Telephone: (512) 322-2506
Facsimile: (512) 322-8306
Email: evan.young@bakerbotts.com

Megan Berge
BAKER BOTTS L.L.P.
1299 Pennsylvania Ave, NW
Washington, D.C. 20004
Telephone: (202) 639-7700
Facsimile: (202) 639-1171
Email: megan.berge@bakerbotts.com

Attorneys for Defendants
HESS CORPORATION, REPSOL

By: /s/ Steven M. Bauer

Steven M. Bauer
Margaret A. Tough
LATHAM & WATKINS LLP
505 Montgomery Street, Suite 2000
San Francisco, California 94111-6538
Telephone: (415) 391-0600
Facsimile: (415) 395-8095
E-mail: steven.bauer@lw.com
E-mail: margaret.tough@lw.com

Attorneys for Defendant
PHILLIPS 66

By: /s/ David E. Cranston

David E. Cranston
GREENBERG GLUSKER FIELDS
CLAMAN & MACHTINGER LLP
1900 Avenue of the Stars, 21st Floor,
Los Angeles, CA 90067
Telephone: (310) 785-6897
Facsimile: (310) 201-2361
E-mail:
DCranston@greenbergglusker.com

Attorneys for Defendant
ENI OIL & GAS INC.

*ENERGY NORTH AMERICA CORP.,
and REPSOL TRADING USA CORP.*

By: /s/ Marc A. Fuller

Marc A. Fuller
Matthew R. Stammel
VINSON & ELKINS L.L.P.
2001 Ross Avenue, Suite 3700
Dallas, TX 75201-2975
Telephone: (214) 220-7881
Facsimile: (214) 999-7881
E-mail: mfuller@velaw.com
E-mail: mstammel@velaw.com

Stephen C. Lewis
R. Morgan Gilhuly
BARG COFFIN LEWIS & TRAPP,
LLP
350 California Street, 22nd Floor
San Francisco, California 94104-1435
Telephone: (415) 228-5400
Facsimile: (415) 228-5450
E-mail: slewis@bargcoffin.com
E-mail: mgilhuly@bargcoffin.com

*Attorneys for Defendants
OCCIDENTAL PETROLEUM CORP.
and OCCIDENTAL CHEMICAL
CORP.*

By: /s/ Shannon S. Broome
Shannon S. Broome
Ann Marie Mortimer
HUNTON ANDREWS KURTH LLP
50 California Street, Suite 1700
San Francisco, CA 94111
Telephone: (415) 975-3700
Facsimile: (415) 975-3701
E-mail: SBroome@HuntonAK.com
E-mail: AMortimer@HuntonAK.com

Shawn Patrick Regan
HUNTON ANDREWS KURTH LLP
200 Park Avenue
New York, NY 10166-0136
Telephone: (212) 309-1000
Facsimile: (212) 309-1100
E-mail: SRegan@HuntonAK.com

*Attorneys for Defendant
MARATHON PETROLEUM
CORPORATION*

CERTIFICATE OF COMPLIANCE

I certify that:

This motion complies with the type-volume limitation of Circuit Rules 27-1(1)(d) and 32-3(2) because the motion contains 1,711 words, excluding the parts of the brief exempted by Fed. R. App. P. 27(a)(2)(B) and 32(f).

This motion complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionately spaced typeface using Microsoft Word 2016, Times New Roman 14-point font.

/s/ Theodore J. Boutrous, Jr.
Theodore J. Boutrous, Jr.

CERTIFICATE OF SERVICE

I hereby certify that on July 1, 2019, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

Dated: July 1, 2019

/s/ Theodore J. Boutrous, Jr.
Theodore J. Boutrous, Jr.

GIBSON, DUNN & CRUTCHER LLP

*Attorneys for Defendants Chevron
Corp. and Chevron U.S.A. Inc.*