

1 Theodore J. Boutrous, Jr. (SBN 132099)  
tboutrous@gibsondunn.com  
2 Andrea E. Neuman (SBN 149733)  
aneuman@gibsondunn.com  
3 William E. Thomson (SBN 187912)  
wthomson@gibsondunn.com  
4 Ethan D. Dettmer (SBN 196046)  
edettmer@gibsondunn.com  
5 Joshua S. Lipshutz (SBN 242557)  
jlipshutz@gibsondunn.com  
6 GIBSON, DUNN & CRUTCHER LLP  
333 South Grand Avenue  
7 Los Angeles, CA 90071  
Telephone: 213.229.7000  
8 Facsimile: 213.229.7520

Neal S. Manne (SBN 94101)  
nmanne@susmangodfrey.com  
Johnny W. Carter (*pro hac vice*)  
jcarter@susmangodfrey.com  
Erica Harris (*pro hac vice* pending)  
eharris@susmangodfrey.com  
Steven Shepard (*pro hac vice*)  
sshepard@susmangodfrey.com  
SUSMAN GODFREY LLP  
1000 Louisiana, Suite 5100  
Houston, TX 77002  
Telephone: 713.651.9366  
Facsimile: 713.654.6666

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

14 *Attorneys for Defendant Chevron Corporation*  
*and Chevron U.S.A., Inc.*  
15 [*Additional Counsel Listed on Signature Page*]

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

19 The COUNTY OF SAN MATEO, individually  
and on behalf of THE PEOPLE OF THE  
20 STATE OF CALIFORNIA,

21 Plaintiff,

22 v.

23 CHEVRON CORP., et al.,  
24 Defendants.

First Filed Case: No. 3:17-cv-4929-VC  
Related Case: No. 3:17-cv-4934-VC  
Related Case: No. 3:17-cv-4935-VC  
Related Case: No. 3:18-cv-450-VC  
Related Case: No. 3:18-cv-458-VC  
Related Case: No. 3:18-cv-732-VC

**DEFENDANTS' REPLY IN SUPPORT OF  
ADMINISTRATIVE MOTION TO  
CONFIRM STAY OF REMAND ORDER OR,  
IN THE ALTERNATIVE, TO DELAY  
REMAND**

Case No. 3:17-cv-4929-VC

The CITY OF IMPERIAL BEACH, a municipal corporation, individually and on behalf of THE PEOPLE OF THE STATE OF CALIFORNIA,

Case No. 3:17-cv-4934-VC

Plaintiff,

v.

CHEVRON CORP., et al.,

Defendants.

The COUNTY OF MARIN, individually and on behalf of THE PEOPLE OF THE STATE OF CALIFORNIA,

Case No. 3:17-cv-4935-VC

Plaintiff,

v.

CHEVRON CORP., et al.,

Defendants.

THE COUNTY OF SANTA CRUZ, individually and on behalf of THE PEOPLE OF THE STATE OF CALIFORNIA,

Case No. 3:18-cv-450-VC

Plaintiff,

v.

CHEVRON CORP., et al.,

Defendants.

THE CITY OF SANTA CRUZ, a municipal corporation, individually and on behalf of THE PEOPLE OF THE STATE OF CALIFORNIA,

Case No. 3:18-cv-458-VC

Plaintiff,

v.

CHEVRON CORP., et al.,  
Defendants.

THE CITY OF RICHMOND, a municipal corporation, individually and on behalf of THE PEOPLE OF THE STATE OF CALIFORNIA,

Case No. 3:18-cv-732-VC

Plaintiff,

v.

CHEVRON CORP., et al.,

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Defendants.

**REPLY IN SUPPORT OF ADMINISTRATIVE MOTION<sup>1</sup>**

This Court issued orders staying remand of these six actions “pending appeal.” *See* Nos. 17-cv-4929+, Dkt. 240; Nos. 18-cv-450+, Dkt. 142. Appeals have not yet concluded; on the contrary, Defendants intend to file a petition for a writ of certiorari in the U.S. Supreme Court. Out of an abundance of caution, however, Defendants filed an administrative motion seeking confirmation that this Court’s current stays remain in effect until the Supreme Court has ruled upon their forthcoming petition for certiorari or, in the alternative, requesting that the Court delay entering its remand orders following issuance of the Ninth Circuit’s mandate so that Defendants may file a proper motion with this Court for a further stay. Opposing this basic request, Plaintiffs make a number of legal and factual mischaracterizations, the most significant of which Defendants address below.

*First*, Plaintiffs erroneously assert that “Defendants never asked this Court for a stay to remain in effect *post*-appeal if the Ninth Circuit *affirmed* this Court’s ruling that these cases belonged in state court.” *Opp.* at 1. In fact, Defendants’ stay motion unambiguously requested “an order staying these proceedings . . . until *final resolution* of Defendants’ appeal.” Nos. 17-cv-4929+, Dkt. 234 at 1 (emphasis added). Courts, including those within the Ninth Circuit, routinely recognize that an appeal is not finally resolved until the Supreme Court has decided (or declined to review) the matter. *See, e.g., Mamea v. United States*, 781 F. Supp. 2d 1025, 1055 (D. Haw. 2011) (“Defendant shall pay these amounts by no later than thirty days after the final resolution of this case on appeal, including any petitions for certiorari to the United States Supreme Court.”).<sup>2</sup> Moreover, Defendants’ stay motion expressly noted the potential of further proceedings in the Supreme Court, explaining that “the circuit split [in this case] makes the issue ripe for *en banc* or Supreme Court review.” Nos. 17-cv-

<sup>1</sup> This Reply is submitted subject to and without waiver of any defense, affirmative defense, or objection, including personal jurisdiction, insufficient process, or insufficient service of process.

<sup>2</sup> *See also Aguirre v. ISC Constructors, LLC*, 2014 WL 12776378, at \*2 (E.D. Tex. Sept. 10, 2014) (“The stay order contained a stipulation that the statute of limitations would be tolled for any unnamed collective action members until the stay was lifted after the final resolution of the *Griffin* appeals, which occurred when the United States Supreme Court denied certiorari on October 7, 2013.”); *Williamson v. City of New Madrid*, 2010 WL 546373, at \*2 (E.D. Mo. Feb. 5, 2010) (“If an appeal is filed, the stay will remain in effect until final resolution of the appeal process, including expiration of the time for filing a petition for writ of certiorari with the United States Supreme Court.”); *Tice v. Johnson*, 2009 WL 4035905, at \*1 (E.D. Va. Nov. 19, 2009) (granting writ of habeas corpus if retrial is not commenced “within 120 days after the final resolution of any appeal (including a petition for a writ of certiorari) if an appeal is taken”).

1 4929+, Dkt. 234 at 6 n.7. This Court granted the stay motion without further comment. *See* Nos. 17-  
2 cv-4929+, Dkt. 240 at 1 (“The motions to stay the remand orders in these three cases pending appeal  
3 are granted.”); Nos. 18-cv-450+, Dkt. 142 at 1–2 (“[T]he remand orders are stayed pending the out-  
4 come of the appeals in the County of San Mateo, City of Imperial Beach, and County of Marin  
5 cases.”).

6 *Second*, Plaintiffs contend that “the Court lacks jurisdiction” to grant a stay “because only the  
7 Ninth Circuit or the Supreme Court can issue a stay in this procedural posture” under 28 U.S.C.  
8 § 2101(f). *Opp.* at 2. It is unclear what Plaintiffs mean by this argument. Defendants are not asking  
9 this Court to grant a stay at this time; rather, they are asking this Court to confirm that it has *already*  
10 granted a stay pending the Supreme Court’s resolution of any petition for certiorari. Plaintiffs cannot  
11 credibly suggest that the Court lacked jurisdiction to issue such a stay in the first instance, especially  
12 given that Plaintiffs’ counsel *stipulated* to just such a stay in a substantially similar climate change  
13 action pending before this Court. *See Pacific Coast Federation of Fishermen’s Associations, Inc. v.*  
14 *Chevron Corp.*, No. 3:18-cv-7477-VC (N.D. Cal.), Dkt. 91 at 3 (“[T]he parties jointly request that the  
15 Court stay further proceedings in this action until both sets of appeals currently pending in the Ninth  
16 Circuit . . . are finally resolved, including resolution of any en banc proceedings in the Ninth Circuit  
17 *or proceedings in the United States Supreme Court.*”) (emphasis added).

18 In any event, Plaintiffs’ reliance on Section 2101(f) is misplaced, because that provision has  
19 no application here. As an initial matter, Section 2101(f) applies only to the court of appeals’ “judg-  
20 ment.” But Defendants do not ask this Court to stay the Ninth Circuit’s judgment; rather, Defendants  
21 ask this Court merely to reaffirm its prior discretionary decision not to remand the cases before De-  
22 fendants’ appeals have been finally resolved. Moreover, Section 2101(f) applies only to stays of exe-  
23 cution and enforcement of a “final judgment or decree.” An order remanding a case to state court is  
24 not a “final judgment or decree.” 28 U.S.C. § 2101(f); *see also Ohio Citizens for Responsible En-*  
25 *ergy, Inc. v. Nuclear Regulatory Commission*, 479 U.S. 1312, 1312 (1986) (Scalia, J., in chambers)  
26 (“It is clear from this language that, even though certiorari review of interlocutory orders of federal  
27 courts is available, it is only the execution or enforcement of *final* orders that is stayable under  
28

1 § 2101(f).”); Wright & Miller, *Federal Practice & Procedure* § 3913.11 (2d ed.) (“[A]n order re-  
 2 manding an entire case is not final.”); *F & L Drug Corp. v. Am. Cent. Ins. Co.*, 200 F. Supp. 718,  
 3 723–24 (D. Conn. 1961) (“The remand is in no sense a final judgement on the merits.”); *Potris v.*  
 4 *Sec’y of Dep’t of Homeland Sec.*, 161 F. Supp. 3d 534, 539 (E.D. Mich. 2015) (same).

5 *Third*, Plaintiffs insist that if the Ninth Circuit denies Defendants’ pending motion to stay is-  
 6 suance of the mandate, “the ‘rule of mandate’ precludes this Court from subsequently granting [their]  
 7 requested relief.” Opp. at 3. But Defendants’ contention is that this Court has *already* stayed further  
 8 proceedings pending final resolution of their appeal—including any certiorari petition in the Supreme  
 9 Court. A stay order issued more than two years before the Ninth Circuit’s mandate clearly cannot vi-  
 10 olate the mandate rule. And in any event, a procedural order delaying entry of this Court’s *remand*  
 11 *orders* is hardly inconsistent with an order from the Ninth Circuit declining to stay issuance of *the*  
 12 *appellate mandate*. This Court’s order staying remand did not purport to stay issuance of the Ninth  
 13 Circuit’s mandate, nor are Defendants asking the Court to do so. Rather, Defendants are merely ask-  
 14 ing the Court to confirm its unquestionably valid exercise of its “broad discretion to stay proceedings  
 15 as an incident to its power to control its own docket.” *Clinton v. Jones*, 520 U.S. 681, 706 (1997).  
 16 That authority is derived not from any statute or rule, but from “the power inherent in every court to  
 17 control the disposition of the causes on its docket with economy of time and effort for itself, for coun-  
 18 sel, and for litigants.” *Landis v. North Am. Co.*, 299 U.S. 248, 254 (1936); *see also Dietz v. Bouldin*,  
 19 136 S. Ct. 1885, 1888–89 (2016) (noting court’s “inherent power . . . to manage its docket and court-  
 20 room with a view toward the efficient and expedient resolution of cases.”).

21 *Fourth*, and finally, Plaintiffs’ extensive discussion of the merits of a yet-to-be-filed stay mo-  
 22 tion is both inappropriate and inapposite. *See* Opp. at 3–5. Although Defendants have requested in  
 23 the alternative that the Court delay entering its remand orders to permit them to file a new stay mo-  
 24 tion, there is no basis for prejudging such a motion based on Plaintiffs’ responses to arguments that  
 25 have not yet been presented to the Court.

26 This Court has already recognized that its remand orders in these six actions present “control-  
 27 ling questions of law as to which there is substantial ground for difference of opinion.” Nos. 17-cv-  
 28 4929+, Dkt. 240 at 1–2. And it has stayed entry of those remand orders “pending appeal” because

1 these questions’ “resolution . . . will materially advance the litigation.” *Id.* Far from resolving these  
2 controlling questions, however, the Ninth Circuit held that it lacked jurisdiction to do so—and in the  
3 process deepened a circuit conflict. *See County of San Mateo v. Chevron Corp.*, 960 F.3d 586, 597–  
4 98 (9th Cir. 2020). Those are precisely the issues that will be the subject of Defendants’ forthcoming  
5 petition for a writ of certiorari.<sup>3</sup> This Court should therefore confirm that its stays remain in effect  
6 until any proceedings in the Supreme Court have concluded or, in the alternative, delay entering its  
7 remand orders so that Defendants may file a new motion to stay, which they will do within seven  
8 days of when the Ninth Circuit’s mandate issues, or earlier if directed by the Court.

9  
10 August 17, 2020

Respectfully submitted,

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<sup>3</sup> Certain Defendants already have one such petition for certiorari pending before the Supreme Court, which will likely be acted upon at the beginning of the Court’s October Term. *See BP p.l.c. v. Mayor & City Council of Baltimore*, No. 19-1189 (distributed for Conference on Sept. 29, 2020).

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28

By: /s/ Jonathan W. Hughes

Jonathan W. Hughes (SBN 186829)  
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 (SBN 123516)  
John D. Lombardo (SBN 187142)  
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 (*pro hac vice*)  
Nancy Milburn (*pro hac vice*)  
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

Theodore J. Boutrous, Jr. (SBN 132099)  
Andrea E. Neuman (SBN 149733)  
William E. Thomson (SBN 187912)  
Ethan D. Dettmer (SBN 196046)  
Joshua S. Lipshutz (SBN 242557)  
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: edettmer@gibsondunn.com  
E-mail: jlipshutz@gibsondunn.com

Herbert J. Stern (*pro hac vice*)  
Joel M. Silverstein (*pro hac vice*)  
STERN KILCULLEN & RUFOLO 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 (SBN 94101)  
Johnny W. Carter (*pro hac vice*)  
Erica Harris (*pro hac vice*)  
Steven Shepard (*pro hac vice*)  
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: sshepard@susmangodfrey.com

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

\*\* Pursuant to Civ. L.R. 5-1(i)(3), the elec-  
tronic signatory has obtained approval from  
all other signatories



1 By: /s/ Carol M. Wood

2 Megan R. Nishikawa (SBN 271670)  
3 KING & SPALDING LLP  
4 101 Second Street, Suite 2300  
5 San Francisco, California 94105  
6 Telephone: (415) 318-1200  
7 Facsimile: (415) 318-1300  
8 Email: mnishikawa@kslaw.com

9 Tracie J. Renfroe (*pro hac vice*)  
10 Carol M. Wood (*pro hac vice*)  
11 KING & SPALDING LLP  
12 1100 Louisiana Street, Suite 4000  
13 Houston, Texas 77002  
14 Telephone: (713) 751-3200  
15 Facsimile: (713) 751-3290  
16 Email: trenfroe@kslaw.com  
17 Email: cwood@kslaw.com

18 *Attorneys for Defendants*  
19 *CONOCOPHILLIPS and CONOCOPHIL-*  
20 *LIPS COMPANY*

21 By: /s/ Ross M. Petty

22 Ross M. Petty (SBN 166366)  
23 NIXON PEABODY LLP  
24 One Embarcadero Center, 32<sup>nd</sup> Floor  
25 San Francisco, CA 94111  
26 Telephone: (415) 984-8200  
27 Facsimile: (866) 542-6538  
28 E-mail: rpetty@nixonpeabody.com

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

By: /s/ Dawn Sestito

M. Randall Oppenheimer (SBN 77649)  
Dawn Sestito (SBN 214011)  
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. (*pro hac vice*)  
Daniel J. Toal (*pro hac vice*)  
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

*Attorneys for Defendant*  
*EXXON MOBIL CORPORATION*

By: /s/ Kevin Orsini

Kevin Orsini (*pro hac vice*)  
Venessa A. Lavelly (*pro hac vice*)  
CRAVATH, SWAINE & MOORE LLP  
825 Eighth Avenue  
New York, NY 10019  
Tel: (212) 474-1000  
Fax: (212) 474-3700  
E-mail: korsini@cravath.com  
E-mail: vlavelly@cravath.com

*Attorneys for Defendant*  
*ANADARKO PETROLEUM CORPORATION*

1 By: /s/ Patrick W. Mizell

By: /s/ Gregory Evans

2 Mortimer Hartwell (SBN 154556)  
3 VINSON & ELKINS LLP  
4 555 Mission Street Suite 2000  
5 San Francisco, CA 94105  
6 Telephone: (415) 979-6930  
7 E-mail: mhartwell@velaw.com

Gregory Evans (SBN 147623)  
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

Patrick W. Mizell (*pro hac vice*)  
VINSON & ELKINS LLP  
1001 Fannin Suite 2300  
Houston, TX 77002  
Telephone: (713) 758-2932  
E-mail: pmizell@velaw.com

Steven R. Williams (*pro hac vice*)  
Joy C. Fuhr (*pro hac vice*)  
Brian D. Schmalzbach (*pro hac vice*)  
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@mcquirewoods.com  
E-mail: bschmalzbach@mcguirewoods.com

9 *Attorneys for Defendant*  
10 *APACHE CORPORATION*

*Attorneys for Defendants*  
*DEVON ENERGY CORPORATION and*  
*DEVON ENERGY PRODUCTION COM-*  
*PANY, L.P.*

1 By: /s/ Andrew A. Kassof

By: /s/ Andrew McGaan

2 Mark McKane, P.C. (SBN 230552)  
3 KIRKLAND & ELLIS LLP  
4 555 California Street  
5 San Francisco, California 94104  
6 Telephone: (415) 439-1400  
7 Facsimile: (415) 439-1500  
8 E-mail: mark.mckane@kirkland.com

Christopher W. Keegan (SBN 232045)  
KIRKLAND & ELLIS LLP  
555 California Street  
San Francisco, California 94104  
Telephone: (415) 439-1400  
Facsimile: (415) 439-1500  
E-mail: chris.keegan@kirkland.com

6 Andrew A. Kassof, P.C. (*pro hac vice*)  
7 Brenton Rogers (*pro hac vice*)  
8 KIRKLAND & ELLIS LLP  
9 300 North LaSalle  
10 Chicago, Illinois 60654  
11 Telephone: (312) 862-2000  
12 Facsimile: (312) 862-2200  
13 E-mail: andrew.kassof@kirkland.com  
14 E-mail: brenton.rogers@kirkland.com

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

11 *Attorneys for Defendants*  
12 *RIO TINTO ENERGY AMERICA INC., RIO*  
13 *TINTO MINERALS, INC., and RIO TINTO*  
14 *SERVICES INC.*

Anna G. Rotman, P.C. (*pro hac vice*)  
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 (*pro hac vice*)  
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 SPE-*  
*CIALTIES USA INC.*

1 By: /s/ Michael F. Healy  
Michael F. Healy (SBN 95098)  
2 SHOOK HARDY & BACON LLP  
One Montgomery St., Suite 2600  
3 San Francisco, CA 94104  
Telephone: (415) 544-1942  
4 E-mail: mfhealy@shb.com

5 Michael L. Fox (SBN 173355)  
DUANE MORRIS LLP  
6 Spear Tower  
One Market Plaza, Suite 2200  
7 San Francisco, CA 94105-1127  
Telephone: (415) 781-7900  
8 E-mail: MLFox@duanemorris.com

9 *Attorneys for Defendant*  
OVINTIV CANADA ULC  
10 ENCANA CORPORATION

By: /s/ Peter Duchesneau  
Craig A. Moyer (SBN 094187)  
Peter Duchesneau (SBN 168917)  
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 (SBN 306343)  
MANATT, PHELPS & PHILLIPS, LLP  
One Embarcadero Center, 30<sup>th</sup> Floor  
San Francisco, CA 94111  
Telephone: (415) 291-7400  
Facsimile: (415) 291-7474  
E-mail: sroeser@manatt.com

Robert E. Dunn (SBN 275600)  
EIMER STAHL LLP  
99 South Almaden Boulevard, Suite 662  
San Jose, CA 95113  
Telephone: (669) 231-8755  
Email: rdunn@eimerstahl.com

*Attorneys for Defendant*  
CITGO PETROLEUM CORPORATION

1 By: /s/ J. Scott Janoe

By: /s/ Steven M. Bauer

2 Christopher J. Carr (SBN 184076)  
Jonathan A. Shapiro (SBN 257199)  
3 BAKER BOTTS L.L.P.  
101 California Street  
4 36th Floor, Suite 3600  
San Francisco, California 94111  
5 Telephone: (415) 291-6200  
Facsimile: (415) 291-6300  
6 Email: chris.carr@bakerbotts.com  
Email: jonathan.shapiro@bakerbotts.com

Steven M. Bauer (SBN 135067)  
Margaret A. Tough (SBN 218056)  
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

7 Scott Janoe (*pro hac vice*)  
8 BAKER BOTTS L.L.P.  
910 Louisiana Street  
9 Houston, Texas 77002  
10 Telephone: (713) 229-1553  
Facsimile: (713) 229 7953  
11 Email: scott.janoe@bakerbotts.com

*Attorneys for Defendant  
PHILLIPS 66*

12 Evan Young (*pro hac vice*)  
13 BAKER BOTTS L.L.P.  
98 San Jacinto Boulevard  
14 Austin, Texas 78701  
Telephone: (512) 322-2506  
Facsimile: (512) 322-8306  
15 Email: evan.young@bakerbotts.com

16 Megan Berge (*pro hac vice*)  
17 BAKER BOTTS L.L.P.  
701 K Street, NW  
18 Washington, D.C. 20004  
Telephone: (202) 639-1308  
Facsimile: (202) 639-1171  
19 Email: megan.berge@bakerbotts.com

20 *Attorneys for Defendants*  
*HESS CORPORATION, REPSOL ENERGY*  
*NORTH AMERICA CORP., and REPSOL*  
21 *TRADING USA CORP.*

1 By: /s/ Kevin Orsini

By: /s/ David E. Cranston

2 Kevin Orsini (*pro hac vice*)  
3 Vanessa A. Lavelly (*pro hac vice*)  
4 CRAVATH, SWAINE & MOORE  
5 LLP  
6 825 Eighth Avenue  
7 New York, NY 10019  
8 Tel: (212) 474-1000  
9 Fax: (212) 474-3700  
10 E-mail: korsini@cravath.com  
11 E-mail: vlavelly@cravath.com

David E. Cranston (SBN 122558)  
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.*

12 Stephen C. Lewis (SBN 66590)  
13 R. Morgan Gilhuly (SBN 133659)  
14 BARG COFFIN LEWIS & TRAPP, LLP  
15 350 California Street, 22nd Floor  
16 San Francisco, California 94104-1435  
17 Telephone: (415) 228-5400  
18 Facsimile: (415) 228-5450  
19 E-mail: slewis@bargcoffin.com  
20 E-mail: mgilhuly@bargcoffin.com

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

21 By: /s/ Shannon S. Broome

By: /s/ Donald W. Carlson

22 Shannon S. Broome (SBN 150119)  
23 Ann Marie Mortimer (SBN 169077)  
24 HUNTON ANDREWS KURTH LLP  
25 50 California Street, Suite 1700  
26 San Francisco, CA 94111  
27 Telephone: (415) 975-3700  
28 Facsimile: (415).975-3701  
E-mail: sbroome@hunton.com  
E-mail: amortimer@hunton.com

Donald W. Carlson (SBN 79258)  
A. David Bona (SBN 209605)  
CARLSON, CALLADINE &  
PETERSON LLP  
353 Sacramento Street, 16th Floor  
San Francisco, CA 94111  
Tel: (415) 391-3911  
Fax: (415) 391-3898  
E-mail: dcarlson@ccplaw.com  
E-mail: dbona@ccplaw.com

Shawn Patrick Regan (*pro hac vice*)  
HUNTON ANDREWS KURTH LLP  
200 Park Avenue  
New York, NY 10166-0136  
Telephone: (212) 309-1000  
Facsimile: (212) 309-1100  
E-mail: sregan@hunton.com

*Attorneys for Defendants  
MARATHON OIL CORPORATION and  
MARATHON OIL COMPANY*

*Attorneys for Defendant  
MARATHON PETROLEUM CORPORATION*