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, *et al.*, 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, *et al.*, 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, *et al.*, Defendants-Appellants.	No. 18-15503 No. 17-cv-4935-VC N.D. Cal., San Francisco Hon. Vince Chhabria presiding
COUNTY OF SANTA CRUZ; et al., Plaintiffs-Appellees v. CHEVRON CORPORATION; et al., Defendants-Appellants.	No. 18-16376 Nos. 18-cv-00450-VC; 18-cv-00458-VC; 18-cv-00732-VC N.D. Cal., San Francisco Hon. Vince Chhabria presiding

MOTION TO STAY THE MANDATE

Thomas G. Hungar
Joshua S. Lipshutz
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
Washington, DC 20036-5306
(202) 955-8500
thungar@gibsondunn.com
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-Appellants Chevron Corporation and Chevron U.S.A., Inc.
[*Additional counsel listed on signature page*]

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

TABLE OF AUTHORITIES
(continued)

INTRODUCTION

Pursuant to Federal Rule of Appellate Procedure 41(d)(1), Defendants-Appellants respectfully move this Court to stay issuance of the mandate pending the filing and disposition of a timely petition for a writ of certiorari with the Supreme Court of the United States. A stay is warranted because Defendants' petition for certiorari will raise a substantial question that has divided the circuits, namely, whether a court of appeals has jurisdiction under 28 U.S.C. § 1447(d) to review the entire remand order in a case removed in part under 28 U.S.C. §§ 1442 or 1443, or whether appellate jurisdiction is limited to those two grounds for removal. At least one such petition for certiorari is currently pending before the Supreme Court and 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).

Absent a stay, these six cases may be remanded to four different California state courts based on the Court's conclusion that removal was not proper under 28 U.S.C. § 1442, even though the Court has not considered whether removal was proper on any of the other grounds presented in Defendants' notice of removal. That potential harm amply justifies a stay of the mandate. Plaintiffs-Appellees oppose this motion.

BACKGROUND

Plaintiffs filed six separate actions against more than 30 energy companies in California state court, alleging that "the dominant cause of global warming and sea level rise" is worldwide "greenhouse gas pollution," ER216, and that "Defendants, through their extraction, promotion, marketing, and sale of their fossil fuel products, caused approximately 20% of global fossil fuel product-related CO_2 between 1965 and 2015, with contributions currently continuing unabated," ER247. Asserting numerous causes of action under California tort law, including for public and private nuisance, Plaintiffs demand compensatory and punitive damages, disgorgement of profits, abatement of the alleged nuisances, and other relief. ER292–312.

Defendants removed the actions to the Northern District of California. The notices of removal asserted seven independent grounds for federal jurisdiction, including the federal-officer removal statute, 28 U.S.C. § 1442. ER145–47. Plaintiffs filed a motion to remand, which the district court granted. ER5–6.

The panel dismissed Defendants' appeal in all but one respect. Citing this Court's decision in *Patel v. Del Taco, Inc.*, 446 F.3d 996 (9th Cir. 2006), the panel held that, under 28 U.S.C. § 1447(d), it "ha[d] jurisdiction to review [Defendants'] appeal to the extent the remand order addresses § 1442(a)(1), but [it] lack[ed] jurisdiction to review their appeal from the portions of the remand order considering the . . . other bases for subject-matter jurisdiction." Op. 19. The panel acknowledged

that the Seventh Circuit had reached the opposite conclusion in *Lu Junhong v. Boeing Co.*, 792 F.3d 805 (7th Cir. 2015)—and even stated that, "[w]ere [it] writing on a clean slate, [it] might conclude that *Lu Junhong* provides a more persuasive interpretation of § 1447(d) than *Patel*." Op. 23. But the panel found itself "bound by *Patel* until abrogated by intervening higher authority." *Id.*

Defendants filed a petition for rehearing en banc on July 9, 2020. Dkt. 170. On August 4, 2020, the Court denied Defendants' petition. Dkt. 235. Absent a stay, the mandate will issue on August 11, 2020. Fed. R. App. P. 41(b).

ARGUMENT

This Court may stay the mandate when a petition for certiorari "would present a substantial question and . . . there is good cause for a stay." Fed. R. App. P. 41(d)(1). "No exceptional circumstances need be shown to justify a stay." *Bryant v. Ford Motor Co.*, 886 F.2d 1526, 1528 (9th Cir. 1989).

I. Defendants' Petition Will Present A Substantial Question

Defendants' petition for a writ of certiorari will present the question whether 28 U.S.C. § 1447(d) permits a court of appeals to review any issue encompassed in a district court's order remanding a removed case to state court when the removing defendant premised removal in part on the federal-officer removal statute, 28 U.S.C. § 1442. As this Court and others have acknowledged, there is a conflict among the federal courts of appeals on this important question of appellate jurisdiction. *See*

Op. 19–23; *Board of County Commissioners of Boulder County v. Suncor Energy (U.S.A.) Inc.*, 965 F.3d 792 (10th Cir. 2020); *Mayor & City Council of Baltimore v. BP p.l.c.*, 952 F.3d 452, 460 (4th Cir. 2020), *petition for cert. filed*, No. 19-1189 (Mar. 31, 2020). The existence of this conflict alone indicates that there is a considerable likelihood that the Supreme Court will grant certiorari. *See* S. Ct. R. 10(a) ("the reasons the Court considers" in granting review include whether "a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals").

A stay is also warranted because this recurring and important issue has not been specifically addressed by the Supreme Court, and the approach adopted in *Patel* and followed by the panel is in clear tension with the Supreme Court's decision in a closely analogous jurisdictional context. *See* S. Ct. R. 10(c) (noting that review may be proper where "a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court").

In *Yamaha Motor Corp., U.S.A. v. Calhoun*, 516 U.S. 199 (1996), the Supreme Court held that 28 U.S.C. § 1292(b), which confers appellate jurisdiction over "order[s]" certified by the district court for interlocutory review, confers appellate jurisdiction to "address any issue fairly included within the certified order because

it is the *order* that is appealable, and not the controlling question identified by the district court.'" *Id.* at 205. Here, too, the statute in question confers appellate jurisdiction over "*an order* remanding a case to the State court from which it was removed." 28 U.S.C. § 1447(d) (emphasis added). Yet *Patel* held that jurisdiction does *not* extend to the order, but only to specific *issues* addressed *in* the order, contrary to the reasoning in *Yamaha*.

This question is recurring and important. It affects the congressionally conferred rights of litigants to a federal judicial forum, and it has arisen in multiple federal courts of appeals in this year alone. *See BP*, 952 F.3d at 458–61; *Suncor Energy (U.S.A.) Inc.*, 2020 WL 3777996, at *3–17; *see also Rhode Island v. Shell Oil Prods. Co., LLC, et al.*, No. 19-1818 (1st Cir. argument scheduled Sept. 11, 2020).

It is also potentially dispositive in this case. Defendants' lead argument in favor of removal is that Plaintiffs' claims "arise under" federal law because they are necessarily governed by federal common law as a matter of constitutional structure. This argument has substantial support in Supreme Court precedent. *See, e.g.*, *Illinois v. City of Milwaukee*, 406 U.S. 91, 103 (1972) ("When we deal with air and water in their ambient or interstate aspects, there is a federal common law."); *City of Milwaukee v. Illinois*, 451 U.S. 304, 313 n.7 (1981) ("[I]f federal common law exists, it is because state law cannot be used."); *Int'l Paper Co. v. Ouellette*, 479 U.S. 481, 488

(1987) ("[I]nterstate water pollution is a matter of federal, not state, law."); *American Electric Power Co. v. Connecticut*, 564 U.S. 410, 421 (2011) ("Environmental protection is undoubtedly an area 'within national legislative power,' one in which federal courts may fill in 'statutory interstices,' and, if necessary, even 'fashion federal law.'"). And the United States recently filed an amicus brief in support of a pending petition for rehearing and rehearing *en banc* in a closely related case making precisely this point, and emphasizing the importance of this jurisdictional issue. *See* Brief of the United States as *Amicus Curiae* in Support of the Petition for Rehearing, *City of Oakland v. B.P. p.l.c.*, No. 18-16663 (9th Cir.), Dkt. 198 at 4 ("Here, the interstate pollution claims asserted by the Cities arise under federal common law."); *id*. at 5 ("Such claims present important questions relating to constitutional structure, federal statutes, separation of powers, and federalism; it is essential that they be afforded a federal forum.").

As a result, Defendants' petition will present a substantial question, and will not be "filed merely for delay." 9th Cir. R. 41-1.

II. There Is Good Cause To Stay The Mandate

Absent a stay of the mandate, this action may be remanded to state court for further proceedings while the Supreme Court considers whether to grant Defendants'

petition for a writ of certiorari.[*] If a remand occurs and the panel's decision is ultimately reversed, not only will Defendants have been denied (for months, if not years) the federal forum to which they are entitled, but this Court will have forsworn its "virtually unflagging obligation . . . to exercise the jurisdiction given [it]." *Colorado River Water Conservation District v. United States*, 424 U.S. 800, 817 (1976); *see, e.g.*, *Mata v. Lynch*, 576 U.S. 143, 150 (2015).

Moreover, Defendants could be forced to incur substantial burden and expense litigating these six cases in four different state courts, which could entail briefing and resolution of various threshold and dispositive motions as well as potentially extensive discovery. Those harms will be irremediable if the remand is ultimately determined to be improper and further proceedings in federal court are required. The interests of judicial economy would also be served by a stay, as there is no need to recommence proceedings in state court while the question of federal jurisdiction has not yet been finally resolved.

---

[*] In the proceedings below, the district court stayed issuance of the remand orders pending appeal. *See* Nos. 17-cv-4929+ (N.D. Cal.), Dkt. 240; Nos. 18-cv-450+ (N.D. Cal.), Dkt. 142. In Defendants' view, those stays extend through the disposition of a petition for a writ of certiorari by the Supreme Court. Out of an abundance of caution, Defendants are seeking clarification from the district court regarding the scope of the stay orders.

CONCLUSION

This Court should stay issuance of the mandate pending the filing and disposition of a timely petition for writ of certiorari.

Dated: August 10, 2020

Respectfully submitted,

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.
Thomas G. Hungar
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@bartlit-beck.com

Megan R. Nishikawa
KING & SPALDING LLP
101 Second Street, Suite 2300
San Francisco, California 94105
Telephone: (415) 318-1200
Facsimile: (415) 318-1300
Email: mnishikawa@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 CONO-COPHILLIPS 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, WHAR-TON &
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

Attorneys for Defendant
EXXON MOBIL CORPORATION

By: */s/ David C. Frederick*

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

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

By: */s/ Kevin Orsini*

Kevin Orsini
Vanessa A. Lavely
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: vlavely@cravath.com

Attorneys for Defendant ANADARKO PETROLEUM CORPORATION

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/ 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
VINSON & ELKINS LLP
1001 Fannin Suite 2300
Houston, TX 77002
Telephone: (713) 758-2932
E-mail: pmizell@velaw.com

Attorneys for Defendant APACHE CORPORATION

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@green-bergglusker.com

Attorneys for Defendant
ENI OIL & GAS INC.

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@mcguire-woods.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@kirk-land.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 2700
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) 957-3902
E-mail: MLFox@duanemorris.com

Attorneys for Defendant
OVINTIV CANADA ULC
(fka "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
EIMER STAHL LLP
224 South Michigan Avenue, Ste. 1100
Chicago, IL 60604
Telephone: (312) 660-7605
Facsimile: (312) 961-3204
Email: neimer@EimerStahl.com
Email: lmeyer@EimerStahl.com
Email: phanebutt@EimerStahl.com

Robert E. Dunn
EIMER STAHL LLP
99 S. Almaden Blvd., Suite 662
San Jose, CA 95113
Telephone: (669) 231-8755
Email: rdunn@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
Email: jonathan.shapiro@baker-botts.com

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.
701 K Street, NW
Washington, DC 20004
Telephone: (202) 639-1308
Facsimile: (202) 639-1171
Email: megan.berge@bakerbotts.com

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

By: */s/ Kevin Orsini*

Kevin Orsini
Vanessa A. Lavely
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: vlavely@cravath.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/ *Donald W. Carlson*

Donald W. Carlson
A. David Bona
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

Attorneys for Defendants
MARATHON OIL CORPORATION and MARATHON OIL COMPANY