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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **IN AND FOR THE COUNTY OF SAN FRANCISCO**

13 PACIFIC COAST FEDERATION OF
14 FISHERMEN'S ASSOCIATIONS, INC.;

15 Plaintiff,

16 vs.

17 CHEVRON CORP.; CHEVRON U.S.A. INC.;
18 EXXON MOBIL CORP.; EXXONMOBIL OIL
19 CORP.; BP P.L.C.; BP AMERICA, INC.;
20 ROYAL DUTCH SHELL PLC; SHELL OIL
21 PRODUCTS CO. LLC; CITGO PETROLEUM
22 CORP.; CONOCOPHILLIPS;
23 CONOCOPHILLIPS CO.; PHILLIPS 66;
24 TOTAL E&P USA INC.; TOTAL
25 SPECIALTIES USA INC.; ENI S.P.A.; ENI OIL
26 & GAS INC.; ANADARKO PETROLEUM
27 CORP.; OCCIDENTAL PETROLEUM CORP.;
28 OCCIDENTAL CHEMICAL CORP.; REPSOL
S.A.; REPSOL ENERGY NORTH AMERICA
CORP.; REPSOL TRADING USA CORP.;
MARATHON OIL CO.; MARATHON OIL
CORP.; MARATHON PETROLEUM CORP.;
HESS CORP.; DEVON ENERGY CORP.;
DEVON ENERGY PRODUCTION CO., L.P.;
ENCANA CORP.; APACHE CORP.; and
DOES 1 through 100, inclusive,

Defendants.

ENDORSED
FILED
San Francisco County Superior Court
NOV 14 2018
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Deputy Clerk

Case No. **CGC-18-571285**

COMPLAINT FOR:

1. NUISANCE;
2. STRICT LIABILITY - FAILURE TO WARN;
3. STRICT LIABILITY - DESIGN DEFECT;
4. NEGLIGENCE; and
5. NEGLIGENCE - FAILURE TO WARN.

JURY TRIAL DEMANDED

COMPLAINT

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GLLP

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1 **I. INTRODUCTION**

2 1. The world’s oceans are changing, and commercial fishermen and -women, their
3 businesses, their communities, and their families are paying the price. Climate change is impacting
4 the oceans by increasing average sea temperatures, increasing the frequency and intensity of
5 marine heatwaves, destabilizing and disturbing marine wildlife populations, affecting ocean
6 circulation, and increasing the frequency and severity of harmful algal blooms. These changes
7 threaten both the productivity of commercial fisheries and safety of commercially harvested
8 seafood products. In so doing, they also threaten those that rely on ocean fisheries and ecosystems
9 for their livelihoods, by rendering it at times impossible to ply their trade. With this action, the
10 largest commercial fishing industry trade group on the west coast seeks to hold responsible parties
11 accountable for acute changes to the ocean off of California and Oregon that resulted, over the last
12 three years, in prolonged regulatory closures of the Dungeness crab fisheries—the most lucrative
13 and reliable fisheries on the west coast. Such closures will recur, as the conditions giving rise to
14 them increase in frequency and magnitude as the oceans continue to warm. Accordingly, the crab
15 fishing industry brings this action to force the parties responsible for this severe disruption to
16 fishing opportunity, and the consequent impacts on fishing families, to bear the costs of their
17 conduct.

18 2. Defendants, major corporate members of the fossil fuel industry, have known for
19 nearly a half century that unrestricted production and use of their fossil fuel products create
20 greenhouse gas pollution that warms the planet, changes our climate, and disrupts the oceans. They
21 have known for decades that those impacts could be catastrophic and that only a narrow window
22 existed to take action before the consequences would be irreversible. They have nevertheless
23 engaged in a coordinated, multi-front effort to conceal and deny their own knowledge of those
24 threats, discredit the growing body of publicly available scientific evidence, and persistently create
25 doubt in the minds of customers, consumers, regulators, the media, journalists, teachers, and the
26 public about the reality and consequences of the impacts of their fossil fuel pollution. At the same
27 time, Defendants have promoted and profited from a massive increase in the extraction and
28 consumption of oil, coal, and natural gas, which has in turn caused an enormous, foreseeable, and

1 avoidable increase in global greenhouse gas pollution and an accompanying increase in the
2 concentration of greenhouse gases,¹ particularly carbon dioxide (“CO₂”) and methane, in the
3 atmosphere. Those disruptions of Earth’s otherwise balanced carbon cycle have substantially
4 contributed to a wide range of dire climate-related effects, including global warming, rising
5 atmospheric and ocean temperatures, ocean acidification, melting polar ice caps and glaciers, more
6 extreme and volatile weather, sea level rise, and marine heatwaves with concomitant harmful algal
7 blooms. Families and businesses that depend on the health and productivity of the Dungeness crab
8 fishery to earn their livings suffer the consequences.

9 3. Defendants are vertically integrated extractors, producers, refiners, manufacturers,
10 distributors, promoters, marketers, and sellers of fossil fuel products. Decades of scientific
11 research show that pollution from the production and use of Defendants’ fossil fuel products plays
12 a direct and substantial role in the unprecedented rise in emissions of greenhouse gas pollution and
13 increased atmospheric CO₂ concentrations since the mid-20th century. This dramatic increase in
14 atmospheric CO₂ and other greenhouse gases is the main driver of the gravely dangerous changes
15 occurring to the global climate.

16 4. Anthropogenic (human-caused) greenhouse gas pollution, primarily in the form of
17 CO₂, is far and away the dominant cause of global warming and the observed increase in ocean
18 temperatures,² including marine heatwaves.³ The primary source of this pollution is the extraction,
19 production and consumption of coal, oil, and natural gas, referred to collectively in this Complaint
20 as “fossil fuel products.”⁴

21
22 ¹ As used in this Complaint, “greenhouse gases” refers collectively to carbon dioxide, methane, and nitrous oxide.
23 Where a source refers to a specific gas or gases, or when a process relates only to a specific gas or gases, this Complaint
24 refers to them by name.

25 ² See IPCC, *Climate Change 2014: Synthesis Report*. Contribution of Working Groups I, II, and III to the Fifth
26 Assessment Report of the Intergovernmental Panel on Climate Change [Core Writing Team, R.K. Pachauri and L.A.
27 Meyer (eds.)]. IPCC, Geneva, Switzerland (2014), at 6, Figure SMP.3, <https://www.ipcc.ch/report/ar5/syr> (hereinafter,
28 “IPCC 2014 Synthesis Report”).

³ See, e.g., Emanuele Di Lorenzo & Nathan Mantua, *Multi-year persistence of the 2014/15 North Pacific marine
heatwave*, 6 NATURE CLIMATE CHANGE, 1 (July 11, 2016), <https://www.nature.com/articles/nclimate3082>; Eric C.J.
Oliver et al., *The unprecedented 2015/16 Tasman Sea marine heatwave*, NATURE COMMUNICATIONS 8:16101, 1 (July
14, 2017).

⁴ See C. Le Quéré et al., *Global Carbon Budget 2016*, EARTH SYST. SCI. DATA 8, 632 (2016), <http://www.earth-syst-sci-data.net/8/605/2016>. Cumulative emissions since the beginning of the industrial revolution to 2015 were 413 GtC
attributable to fossil fuels, and 190 GtC attributable to land use change. *Id.* Global CO₂ emissions from fossil fuels

1 5. The rate at which Defendants have extracted and sold fossil fuel products has
2 exploded since the Second World War, as have emissions from those products. The substantial
3 majority of all anthropogenic greenhouse gas emissions in history has occurred since the 1950s, a
4 period known as the “Great Acceleration.”⁵ About three quarters of all industrial CO₂ emissions
5 in history have occurred since the 1960s,⁶ and more than half have occurred since the late 1980s.⁷
6 The annual rate of carbon dioxide emissions from production, consumption, and use of fossil fuels
7 has increased by more than 60% since 1990.⁸

8 6. Defendants have known for nearly 50 years that greenhouse gas pollution from their
9 fossil fuel products has a significant impact on Earth’s climate, including a warming of the oceans.
10 Defendants’ awareness of the negative implications of their own behavior corresponds almost
11 exactly with the Great Acceleration, and with skyrocketing greenhouse gas emissions. With that
12 knowledge, Defendants took steps to protect their own assets from these threats through immense
13 internal investment in research, infrastructure improvements, and plans to exploit new
14 opportunities in a warming world.

15 7. Instead of working to reduce the use and combustion of fossil fuel products, lower
16 the rate of greenhouse gas emissions, minimize the damage associated with continued high use
17 and combustion of such products, and ease the transition to a lower carbon economy, Defendants
18 concealed the dangers, sought to undermine public support for greenhouse gas regulation, and
19 engaged in massive campaigns to promote the ever-increasing use of their products at ever greater
20 volumes. Thus, each Defendant’s conduct has contributed substantially to the buildup of CO₂ in
21 the environment that drives ocean warming.

22 8. As an actual and proximate consequence of Defendants’ conduct, the crab fishing
23 industry has been deprived of valuable fishing opportunities, and consequently suffered severe

24
25 and industry remained nearly constant at 9.9 GtC in 2015, distributed among coal (41%), oil (34%), gas (19%), cement (5.6%), and gas flaring (0.7%). *Id.* at 629.

26 ⁵ Will Steffen et al., *The Trajectory of the Anthropocene: The Great Acceleration*, 2 THE ANTHROPOCENE REVIEW 81, 81 (2015).

27 ⁶ R.J. Andres et al., *A synthesis of carbon dioxide emissions from fossil-fuel combustion*, 9 BIOGEOSCIENCES, 1845, 1851 (2012).

28 ⁷ *Id.*

⁸ *Global Carbon Budget 2016*, *supra* note 4, at 630.

1 financial hardships. These injuries derive from rising ocean temperatures in the eastern Pacific
2 Ocean generally and periodic extreme marine heatwaves—the results of anthropogenic ocean
3 warming caused by the foreseeable and intended use of Defendants’ products. Recent marine
4 heatwaves along the United States’ west coast created the ideal conditions for the toxic algal group
5 *Pseudo-nitzschia* to increase in abundance and invade the marine regions that correspond with
6 some of the most productive Dungeness crab fishery grounds. The massive *Pseudo-nitzschia*
7 bloom generated unprecedented concentrations of the neurotoxin domoic acid, a compound which,
8 when ingested by humans, causes “amnesic shellfish poisoning” which induces symptoms
9 including vomiting, diarrhea, cramps, and other gastrointestinal upset, permanent short-term
10 memory loss, and, in severe cases, death.

11 9. Rising ocean temperatures and the resultant *Pseudo-nitzschia* blooms allow domoic
12 acid to enter the marine food web and accumulate in crab flesh, rendering it at times dangerous
13 and unfit for human consumption.

14 10. In response to this public health crisis, the California Department of Fish and
15 Wildlife (“CDFW”), in coordination with the California Department of Public Health (“CDPH”),
16 closed—for the first time ever—significant portions of the California coast to commercial
17 Dungeness crab fishing in the 2015–16 fishing season, and again in 2016–17. The Oregon
18 Department of Fish and Wildlife (“ODFW”) and the Oregon Department of Agriculture (“ODA”)
19 similarly closed large areas of the Oregon coast to commercial crabbing during the 2015–16, 2016–
20 17, and 2017–18 commercial crab seasons because of domoic acid toxicity. Because of those
21 closures, hundreds of commercial fishermen and -women holding Dungeness crab permits could
22 not untie their boats or deploy their crab traps until crabs became safe to consume. Additional
23 precautionary measures and stigma from negative publicity related to domoic acid contamination
24 have deprived the crab industry of the full value of its harvests these last three seasons by
25 depressing the market demand for crab products.

26 11. Plaintiff represents commercial Dungeness crab harvesters and onshore crab
27 processors and wholesalers that have suffered, and continue to suffer, substantial economic losses
28 due to those lost fishing opportunities. The severe curtailment of the crab fishery, which is among

1 the most productive, lucrative, and reliable fisheries on the west coast, had damaging ripple effects
2 throughout California's and Oregon's fishing families and communities, creating severe hardships
3 that many fishermen and fishing businesses, including Plaintiff's members, have struggled to
4 overcome. The severity of the economic loss endured by the crabbing community prompted the
5 federal government to declare the 2015–16 California crab season a federal fishery disaster under
6 the Magnuson–Stevens Fishery Management and Conservation Act.

7 12. Domoic acid incidents on the west coast, and consequent injuries to the fishing
8 industry and west coast fishing communities generally, are the new normal. These phenomena will
9 increase in severity and frequency as the oceans continue to change with anthropogenic global
10 warming. Indeed, California's 2018–19 crab season—set to begin on November 15, 2018—will
11 be delayed in parts of the fishery because of domoic acid toxicity.

12 13. Additional crab fishery closures will occur in the future, with increasing frequency
13 and severity, with concomitant impacts on the fishing families, fishing communities, and the west
14 coast fishing industry at large.

15 14. Defendants are directly responsible for a large and substantial portion of total CO₂
16 emissions between 1965 and 2015. For example, based on Defendants' direct extractions of fossil
17 fuels, they are responsible for more than two hundred gigatons of emissions representing over 15%
18 of total emissions of that potent greenhouse gas during that period. Defendants are responsible for
19 significantly larger shares of emissions based on their production, wholesale and retail sales of
20 their products. Accordingly, Defendants are directly responsible for a substantial portion of
21 elevated ocean temperatures that caused the domoic acid contamination on the west coast, which
22 in turn caused the substantial and material economic injuries described herein.

23 15. Defendants' production, promotion, marketing, and use of fossil fuel products,
24 simultaneous concealment of the known hazards of those products, and their championing of anti-
25 regulation and anti-science campaigns, actually and proximately caused Plaintiff's injuries.

26 16. Accordingly, Plaintiff in its own name, in a representative capacity on behalf of its
27 members and the west coast fishing community, and as the assignee of claims arising from domoic
28

1 acid impacts on the crab fishery, brings this action against Defendants for Nuisance, Strict Liability
2 for Failure to Warn, Strict Liability for Design Defect, Negligence, and Negligent Failure to Warn.

3 17. By this action, the Plaintiff seeks to ensure that the parties responsible for the
4 fishery closures bear the costs of its impacts, rather than Plaintiff and the men, women, families
5 and businesses of the west coast crab industry.

6 **II. PARTIES**

7 **A. Plaintiff**

8 18. Plaintiff the **Pacific Coast Federation of Fishermen’s Associations, Inc.**
9 (“PCFFA”) is the largest trade association of commercial fishermen on the West Coast. PCFFA
10 has led the fishing industry in protecting the rights of west coast fishermen and fishing
11 communities since 1976. PCFFA fights for the long-term survival of commercial fishing—
12 including commercial Dungeness crab fishing—as a productive livelihood and way of life. PCFFA
13 is a 501(c)(5) not-for-profit trade organization incorporated in California and headquartered in the
14 city and county of San Francisco, California. PCFFA represents, *inter alia*, crab fishermen and
15 local fishermen’s marketing associations.

16 19. PCFFA brings these claims in its own name; as a representative of its members that
17 are and will continue to be injured financially and otherwise by Defendants’ conduct and
18 consequent domoic acid incidents and domoic acid-induced crab fishery closures; and as assignee
19 of claims assigned to it by individuals and businesses that derive income from the California and
20 Oregon Dungeness crab fisheries that have suffered and will continue to suffer financial and other
21 injuries because of Defendants’ conduct and consequent domoic acid blooms and domoic acid-
22 induced crab fishery closures. As used hereinafter, the term “Plaintiff” refers to PCFFA, its
23 members, and businesses that have assigned PCFFA claims arising from the facts described herein.

24 20. PCFFA has diverted resources to addressing domoic acid impacts on the
25 commercial crab fishery, including by dedicating staff time and energy to address these outbreaks
26 in the media, working with state agencies to determine crab fishery closure and reopening
27 procedures, sharing information on domoic acid and closures with its members, and appealing to
28 state and federal entities for fishery disaster relief, among other activities. Domoic acid outbreaks

1 and resultant fishery closures have frustrated and will continue to frustrate PCFFA's mission of
2 ensuring that commercial fishing remains a sustainable livelihood, by damaging markets and
3 preventing trade in crab harvested on the west coast.

4 **B. Defendants**

5 21. Defendants are responsible for a substantial portion of the total greenhouse gases
6 emitted since 1965. Defendants, individually and collectively, are responsible for extracting,
7 refining, processing, producing, promoting, and marketing fossil fuel products, the normal and
8 intended use of which has led to the emission of a substantial percentage of the total volume of
9 greenhouse gases released into the atmosphere since 1965. Indeed, between 1965 and 2015, the
10 named Defendants extracted enough fossil fuel materials (i.e. crude oil, coal, and natural gas) to
11 account for more than one in every five tons of carbon dioxide and methane emitted worldwide.
12 Accounting in addition for their wholesale and retail sales of products, as well as their wrongful
13 promotion and marketing activities, Defendants bear a dominant responsibility for global warming
14 generally and for Plaintiff's injuries in particular.

15 22. When reference in this complaint is made to an act or omission of the Defendants,
16 unless specifically attributed or otherwise stated, such references should be interpreted to mean
17 that the officers, directors, agents, employees, or representatives of the Defendants committed or
18 authorized such an act or omission, or failed to adequately supervise or properly control or direct
19 their employees while engaged in the management, direction, operation or control of the affairs of
20 Defendants, and did so while acting within the scope of their employment or agency.

21 23. **Chevron Entities**

22 a. Chevron Corporation is a multinational, vertically integrated energy and
23 chemicals company incorporated in the State of Delaware, with its global headquarters and
24 principal place of business in San Ramon, California.

25 b. Chevron Corporation controls and has controlled companywide decisions
26 about the quantity and extent of fossil fuel production and sales, including those of its subsidiaries.
27
28