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13 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **IN AND FOR THE COUNTY OF CONTRA COSTA**

15 **CITY OF RICHMOND,**

16
17 **Plaintiff,**

18 **vs.**

19 **CHEVRON CORPORATION, a**
20 **corporation; CHEVRON USA, INC.,**
a corporation, and DOES 1 through
21 **10, inclusive,**

22 **Defendants.**

CASE NO. C13-01654

**PLAINTIFF'S OPPOSITION TO
DEFENDANT'S MOTION TO
DESIGNATE CASE AS COMPLEX AND
TO STAY DISCOVERY**

Date: September 6, 2013
Time: 8:30 a.m.
Dept: 6

1 **I. INTRODUCTION**

2 The City of Richmond, the sole plaintiff in the present case, prudently waited a year to
3 file its lawsuit against Chevron while facts emerged concerning the August 6, 2012 refinery fire.
4 In that year, a number of regulatory agencies, as well as Chevron itself, thoroughly investigated
5 and reported on the facts surrounding the fire. The regulatory agencies' investigations that took
6 place all focused on the conduct of Chevron and its failures,¹ which led to criminal charges
7 against Chevron, jointly brought by the California Office of Attorney General and Contra Costa
8 County District Attorney's Office. Ultimately, on August 5, 2013, Chevron pled no contest to
9 six misdemeanor counts, including two counts of negligent emission of an air contaminant.
10 Thus, the significant facts and evidence extracted from the extensive investigation have been
11 harvested and Chevron's liability is well established.

12 Indeed, the focus of this case becomes merely the issues of 1) whether Chevron can be
13 held liable for its conduct under traditional tort theories; 2) whether Chevron can be found to
14 have acted in conscious/reckless disregard, and/or with oppression, fraud, and/or malice; and 3)
15 the extent of damages suffered by the City of Richmond – **not individual persons**. As a public
16 entity, with both public and private claims un-to-itself, the City's damages are clearly
17 distinguishable from claims by the individual residents bringing suit, and in fact, melding those
18 actions together would be improper, create confusion, and result in unwarranted delay.

19 **II. DEFENDANT SHOULD NOT BE ALLOWED TO DELAY JUSTICE AND THE EFFICIENT**
20 **RESOLUTION OF THE CASE**

21 A significant goal of each trial court is to manage civil cases such that the vast majority of
22 cases proceed to trial within twenty-four months of filing. California Rules of Court 3.714;
23 California Standards of Judicial Administration 2.2. The Trial Court Delay Reduction Act of
24

25 ¹ Testing commissioned by the U.S. Chemical Safety and Hazard Investigation Board
26 ("CSB") and the California Division of Occupational Safety and Health ("Cal/OSHA")
27 determined that the pipe failed due to thinning caused by sulfidation corrosion. The CSB
28 detailed the continued failure of Chevron to replace or repair the corroded pipe despite industry
studies, prior incidents at the Richmond Refinery, and Chevron's internal recommendations and
inspections. Cal/OSHA issued the refinery seventeen citations related to the incident and eight
additional citations.

1 1990 established California's sound policy of resolving litigation promptly and justly. Gov. Code
2 § 68600. It is the Court's responsibility to "compel attorneys and litigants to prepare and resolve
3 all litigation without delay from the filing of the first document invoking court jurisdiction to
4 final disposition of the case." Gov. Code § 68607(a). The Court must compel attorneys and
5 litigants to prepare and resolve litigation without delay "from the filing of the first document
6 invoking court jurisdiction to final disposition of the action." Gov. Code § 68607.

7 Pursuant to the Act, the Judicial Council established time standards for bringing cases to
8 trial, which allow for differences depending upon the complexity of the case. For general civil
9 cases, the Judicial Council sets the goal at twenty-four months. Rule 3.714(b). Exceptional civil
10 cases, are to be completed within three years, and involve "*exceptional circumstances* that will
11 prevent the court and the parties from *meeting the goals and deadlines imposed by the program*.
12 In making the determination, the court is guided by rules 3.715 and 3.400." Rule 3.714(c)(1)
13 (emphasis added).

14 For the reasons stated below, Chevron does not set forth valid reasons why this Court
15 should deviate from California law. Defendant's Motion to Designate Case as Complex and Stay
16 Discovery attempts to unnecessarily delay the case and to stay discovery for almost four months.
17 Defendant has failed to demonstrate that this action involves exceptional circumstances that
18 would require such a delay in discovery.

19 **III. THIS CASE DOES NOT WARRANT A COMPLEX DESIGNATION**

20 California Rule of Court 3.400(a) defines a complex case as "an action that requires
21 exceptional judicial management to avoid placing unnecessary burdens on the court or the
22 litigants and to *expedite the case, keep costs reasonable, and promote effective decision making*
23 by the court, the parties, and counsel." (Emphasis added). This case can be efficiently and
24 effectively managed without resorting to "exceptional judicial management." In addition, the
25 factors for complex designation do not apply to the present case.

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1 Instead, an action is *provisionally* complex under Rule 3.400© if it involves one or more
2 of the following types of claims:

- 3 (1) Antitrust or trade regulation claims;
- 4 (2) Construction defect claims involving many parties or structures;
- 5 (3) Securities claims or investment losses involving many parties;
- 6 (4) Environmental or toxic tort claims **involving many parties**;
- 7 (5) Claims involving **mass torts**;
- 8 (6) Claims involving class actions; or
- 9 (7) Insurance coverage claims arising out of any of the claims listed in (c)(1)
10 through (c)(6).

11 (emphasis added)

12 First, Chevron over-reaches by claiming this case even meets the standards set forth under
13 Rule 3.400(c). **This case involves one single harmed plaintiff and one single wrongdoer.**

14 **The harm of the City of Richmond is unique to itself—clearly distinguished from individual**
15 **citizens** living in and outside its boundaries. **This case is not a mass tort action**, and thus, a
16 “provisional” designation of complexity puts the cart ahead of the horse.

17 Second, even if the Court were to find that there is merit to a “provisional” designation,
18 the correct reading of California Rules of Court 3.400 requires this Court to determine whether a
19 case necessitates exceptional involvement and complex treatment pursuant to the guidelines
20 listed in California Rules of Court, rule 3.400(b) regardless of whether it is “provisionally”
21 deemed complex. The actions that are deemed provisionally complex should only be treated as
22 complex “until a judge has the opportunity to decide whether the action meets the definition in
23 [Rule 3.400(a)].” *Deskbook on the Management of Complex Civil Litigation* (“*Deskbook*”)
24 (2009), § 1.02.

25 Rule 4.400 recognizes that a complex designation is a case-by-case analysis. Court
26 experience and sound discretion overcomes any provisional complex designation based on a
27 case-by-case basis:

28 Notwithstanding (c), an action is not provisionally complex if the court has significant
experience in resolving like claims involving similar facts and the management of those

1 claims has become routine. A court may declare by local rule that certain types of cases
2 are or are not provisionally complex under this subdivision.

3 Rule 4.400(d). The Judicial Council of California illustrates this point by stating, “courts around
4 the country have now had substantial experience with such cases, and certain management
5 techniques are now relatively well settled. What at one time seemed innovative is now, in the
6 context of mass torts, relatively commonplace.” *Deskbook* § 3.50. Even though **the case at bar**
7 **is not a mass tort**, a complex designation is not appropriate for most mass torts, economic and
8 toxic torts since courts have become well adapted to managing those types of cases.

9 **C. The Present Action Is Not Complex Under the Rule 3.400(b) Factors**

10 Rule 3.400(b) delineates the five factors a court must consider in deeming a case
11 complex: (1) numerous pretrial motions raising difficult or novel legal issues that will be time
12 consuming to resolve; (2) management of a large number of witnesses or a substantial amount of
13 documentary evidence; (3) management of a large number of separately represented parties; (4)
14 coordination with related actions pending in one or more courts in other counties, states, or
15 countries, or in a federal court; or (5) substantial post-judgment judicial supervision. Defendant
16 incorrectly claims that a complex designation is appropriate because there will be numerous
17 pretrial motions raising difficult or novel issues, the discovery will be monumental, and that this
18 case will need to be coordinated with the related individual suits. A closer look at the facts
19 reveal that none of these factors apply in the present case.

20 **1. Numerous pretrial motions raising difficult or novel legal issues that**
21 **will be time consuming to resolve;**

22 Defendant notes that it plans to file a demurrer and motion to strike the complaint. The
23 issue of whether a cause of action should survive the test of a demurrer and/or motion to strike is
24 far from raising a difficult or novel issue. Indeed, neither motion will do anything to change the
25 issue of complexity in this litigation and should hold little weight regarding the outcome of this
26 motion. Simply, whether a cause of action survives in a complaint will be based on a party’s
27 legal entitlement to bring such a claim, not determined by some complex or novel legal issue

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1 drawn out in motion practice. Defendant employs this argument as a smoke screen to distract
2 from the underlying issues – which, as discussed herein, are neither difficult nor novel.

3 Notably, there is ample case law of municipalities suing for toxic torts; therefore,
4 Chevron’s purported motions will not raise difficult or novel legal issues during pretrial motions.
5 *City of Sanger v. Superior Court* (1992) 8 Cal.App.4th 444 (allowing punitive damages for
6 City’s claims of negligence, nuisance, trespass, and product defect because oil and chemical
7 companies contaminated the City’s drinking water with toxins that are dangerous to humans and
8 contaminate or destroy the City’s property); *City of Portland v. Boeing Co.* (D. Or. 2001) 179 F.
9 Supp. 2d 1190 (awarding the City of Portland damages for a public nuisance claim because an
10 industrial solvent used by the defendants contaminated the groundwater and posed a threat to the
11 City’s water supply); *Westlands Water Dist. v. Amoco Chem. Co.* (9th Cir. 1991) 953 F.2d 1109
12 (allowing the water district to bring a punitive damages claim for in a case where the water
13 district sued defendant for strict product liability, negligence, breach of expressed and implied
14 warranty, and fraud claims because a defective pipe caused physical damage to the plaintiff’s
15 water distribution system).

16 Lastly, any attempt for Chevron to claim other motions will be brought based on the
17 claims of this case can only be made on speculation and conjecture. It is telling that Chevron
18 only focuses this Court on the potentiality for a demurrer and/or motion to strike, which, for the
19 reasons stated above, should not be a persuasive in designating this case as complex.

20 **2. Management of a large number of witnesses or a substantial amount**
21 **of documentary evidence;**

22 Plaintiff’s counsel is familiar with similar legal actions that have completed discovery
23 and resolution of numerous motions within short and efficient time periods. The PG&E “San
24 Bruno Fire” coordinated case (San Mateo County Superior Court, JCCP No: 4648), involved 171
25 separate households, 200 individual plaintiffs, and varying degrees of damages, fact and expert
26 discovery, and pretrial motions. As discussed below, all of these processes were completed in
27 approximately fifteen months. See Pitre Decl. ¶ 6. Discovery in the present case will be
28 manageable because of the experience of Plaintiff’s counsel in the San Bruno Fire case, the

1 guidance provided by the investigations, reports, findings, and citations of regulatory agencies,
2 and the responsibility already accepted by Chevron in the criminal case. The parties will not be
3 starting from anew in the discovery process, and the discovery that is conducted can be narrowly
4 tailored to establish Chevron's degree of liability and damages to the City of Richmond.

5 **3. Coordination with related actions pending in one or more courts in**
6 **other counties, states, or countries, or in a federal court.**

7 Defendant Chevron has filed a notice of related cases with the individual cases brought by
8 surrounding residents that claim damage from smoke inhalation and other damages. **Defendant**
9 **has yet to consolidate these cases** or consolidate those cases with this action brought by the
10 City. Indeed many of the "related cases" have been pending more than **one year** without
11 mention of any significant discovery being done.

12 As discussed herein, the actions brought by individual residents are separate and distinct
13 from the claims brought by the City of Richmond – a public entity that has both public and
14 private claims against Chevron. As described above, the liability issue has been streamlined by
15 the completed investigations and reports, the focus of the case will be on the damages incurred
16 by the City. The facts relating to the City's damages will be separate and apart from those
17 brought by individuals. Chevron attempts to conflate the distinct and distinguishable individual
18 person cases, which will unnecessarily complicate the issues and ultimately delay resolution.

19 Even if the individual cases are considered related, all are pending in the Superior Court
20 for Contra Costa County or are in the process of being transferred to Contra Costa County from
21 Alameda County and are not "pending in one or more courts in other counties, states, or
22 countries, or in a federal court." Rule 3.400(b)(4). Therefore, this factor is not applicable to the
23 present action. In addition, the related individual cases are not similar enough to this present
24 case to blend them into one complex action.

25 **D. Plaintiff's Counsel Is Proficient in Streamlining and Quickly Completing**
26 **Similar Cases**

27 Plaintiff's counsel is familiar with similar actions that have completed discovery and
28 resolution of many complicated motions within short time periods. In the PG&E "San Bruno

1 Fire” coordinated case, which involved 171 separate households, approximately 200 individual
2 plaintiffs, and varying degrees of damages, fact and expert discovery and pretrial motions were
3 completed in approximately fifteen months. See Pitre Decl. ¶ 4.

4 During those fifteen months, Plaintiffs served PG&E with ninety-five (95) Requests for
5 Admission, one hundred seven Requests for Production of Documents, fifty-seven Special
6 Interrogatories, five sets of Form Interrogatories, and one inspection demand all dealing with
7 common liability. *Id.* In response, PG&E provided plaintiffs with well over 2 million
8 documents between September 2011 and approximately May 2012. *Id.* In addition, PG&E
9 propounded, and Plaintiffs responded to, hundreds of discovery requests for each individual
10 Plaintiff. Plaintiffs also responded to PG&E's 432 special interrogatories with a 656-page
11 response in March 6, 2012 after receiving the interrogatory requests on January 31, 2012. *Id.*
12 Both sides also issued numerous subpoenas to third-party witnesses and plaintiffs' employers and
13 medical providers. *Id.*

14 In addition, during those fifteen months, parties to the San Bruno Fire case took the
15 depositions of forty-three common liability witnesses and PG&E's persons most qualified, of
16 numerous plaintiffs, of twelve retained experts, and numerous non-retained experts, including
17 doctors, surgeons, and therapists. *Id.*

18 The San Bruno Fire case also involved investigations and reports by the National
19 Transportation Safety Board (“NTSB”) and California Public Utilities Commission (“CPUC”)
20 which provided the litigating parties with guidance and structure. Although the discovery in the
21 coordinated San Bruno Fire case was extensive and thorough, discovery was easily managed by
22 the Parties and the Court in a short time period.

23 Finally, the San Bruno Fire case involved extensive motion writing practice that was
24 completed within the fifteen months. PG&E filed motions for summary adjudication for punitive
25 damages, negligent infliction of emotional distress, and intentional infliction of emotional
26 distress and battery which plaintiffs opposed. *Id.* The parties also filed one hundred and sixteen
27 motions *in limine* during that time frame. *Id.*

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1 Using the experience of Plaintiff's counsel in similar types of cases, Plaintiff is confident
2 that the present case can be resolved quickly and efficiently, including all discovery and pretrial
3 motions, within the twenty-four months allotted to general civil cases. Since pretrial motions and
4 discovery can be completed in an efficient and effective manner well within the twenty-four
5 months, Defendant's motion to stay discovery would run counter to the Court's goal to prepare
6 and resolve all litigation without delay.

7 **IV. CONCLUSION:**

8 For the Foregoing reasons, the Court is respectfully requested to deny Defendant
9 Chevron's request to designate this case as complex and stay discovery.

10 Dated: August 27, 2013

COTCHETT PITRE & McCARTHY, LLP

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13 By:



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Attorneys for Plaintiff

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