

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KING COUNTY,
Plaintiff,

v.

BP P.L.C., a public limited company of
England and Wales, CHEVRON
CORPORATION, a Delaware corporation,
CONOCOPHILLIPS, a Delaware
corporation, EXXON MOBIL
CORPORATION, a New Jersey corporation,
ROYAL DUTCH SHELL PLC, a public
limited company of England and Wales, and
DOES 1 through 10,
Defendants.

Case No. 2:18-cv-00758RSL

**OPPOSITION OF DEFENDANTS
CHEVRON CORPORATION AND BP
P.L.C. TO PLAINTIFF’S MOTION
TO STAY PROCEEDINGS**

NOTED: September 21, 2018

1 **INTRODUCTION**

2 Defendants Chevron Corporation (“Chevron”) and BP p.l.c. (“BP”) oppose Plaintiff
3 King County’s motion to stay proceedings in this case at this juncture of the litigation. This
4 Court’s broad discretion in setting its docket is best exercised in allowing this case to proceed
5 on the pending motions to dismiss.¹

6 Any stay of the proceedings in this case, if necessary at all, should be considered only
7 after full briefing on the motions to dismiss (and actual briefing in the Ninth Circuit appeals
8 brought by the cities of San Francisco and Oakland that form the basis for the stay motion).
9 Moreover, the Court need not hold its pen merely because this case was second-filed. While
10 this case may benefit from the guidance of the Ninth Circuit in the appeals, the inverse is also
11 true: further analysis of the legal issues by this Court would be beneficial to the Ninth Circuit.
12 Thus, the Court could issue a ruling on the motions to dismiss and, if the motions are denied,
13 stay proceedings and certify that denial for interlocutory appeal of the threshold legal issues
14 before proceeding to more resource-intensive aspects of litigation such as discovery and trial.

15 **BACKGROUND**

16 King County haled Chevron and BP into this Court over *four months ago* asserting
17 “imminent” harm from the “impacts of climate change.” Compl. 1-2. King County alleged that
18 “this threat to human safety and to public and private property is becoming more urgent every
19 day as global warming reaches ever more dangerous levels.” *Id.* 1. Apparently, these claims
20 were not true, or at least significantly overstated. King County now seeks a complete stay of all
21 proceedings due to appeals in cases brought by different cities that will not be resolved for at
22 least a year. Abandoning its earlier allegations of imminent and real harm, it appears King
23 County now has no urgency to prosecute its lawsuit at all.

24
25
26 ¹ This Opposition is not intended to operate as an admission of any factual allegation or
27 legal conclusion and is submitted subject to and without waiver of any right, defense,
28 affirmative defense, or objection, including lack of subject matter jurisdiction, lack of
personal jurisdiction, insufficient process, and insufficient service of process. In opposing
a stay of proceedings, Chevron and BP seek to avoid delay in resolving all of their motions
to dismiss, including those brought under Fed. R. Civ. P. 12(b)(2).

1 King County filed its lawsuit *eight months after* San Francisco and Oakland and when
2 motion to dismiss briefing in those cases was almost complete. If King County—which is
3 represented on a contingent fee basis by the same plaintiffs’ law firm as San Francisco and
4 Oakland—believed that those cases should be adjudicated all the way through appeals before its
5 own case proceeds, it should have waited to bring its lawsuit. It did not. Instead, it initiated this
6 action and has accused Chevron and BP of engaging in substantial misconduct and wrongdoing.
7 Moreover, King County has waited too long to seek a stay. If it thought a stay was appropriate
8 then it should have sought one soon after Judge Alsup dismissed the Oakland and San Francisco
9 cases. It did not. Instead, it doubled down and filed an amended complaint asserting a host of
10 new and additional allegations. And, in doing so, it forced Chevron, BP, and the other
11 defendants to prepare another set of motions to dismiss. Now, faced with the prospect of
12 responding to those motions, King County seeks a stay.

13 Chevron and BP respectfully submit that it would be more efficient to finish what King
14 County has started. A stay is not appropriate at this threshold stage of the litigation.

15 ARGUMENT

16 A district court may, in its discretion, stay litigation where the resolution of separate
17 proceedings will affect the outcome of the case. *Leyva v. Certified Grocers of Cal., Ltd.*, 593
18 F.2d 857, 863 (9th Cir. 1979). “Where it is proposed that a pending proceeding be stayed, the
19 competing interests which will be affected by the granting or refusal to grant a stay must be
20 weighed.” *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir. 1962). The relevant interests include
21 (1) “the possible damage which may result from the granting of a stay;” (2) “the hardship or
22 inequity which a party may suffer in being required to go forward;” and (3) “the orderly course
23 of justice measured in terms of the simplifying or complicating of issues, proof, and questions
24 of law which could be expected to result from a stay.” *Id.* King County’s request for a stay fails
25 on all three factors.

26 **First**, “if there is even a fair possibility that the stay will work damage to some one else,
27 the party seeking the stay must make out a clear case of hardship or inequity.” *Lockyer v. Mirant*
28 *Corp.*, 398 F.3d 1098, 1112 (9th Cir. 2005) (vacating stay). Chevron and BP will be harmed by

1 stalling these proceedings pending an appeal to the Ninth Circuit, prolonging litigation that could
2 be resolved on legal motions, adding additional costs of the pending suit and keeping open
3 claims which attack their business as a nuisance and vilify the men and women who work to
4 provide affordable, reliable energy.

5 **Second**, because Chevron and BP will be harmed by a stay, King County must make a
6 “clear case of hardship or inequity” in allowing the case go forward. *Lockyer*, 398 F.3d at 1112.
7 It has not even come close. King County complains that, without a stay, it will be forced to
8 respond to multiple dispositive motions and attend a hearing, while its outside firm
9 simultaneously drafts briefs in the Ninth Circuit appeal. Mot. 7. But routine burdens of litigation
10 are *not* significant “hardship[s]” favoring a stay. *Lockyer*, 398 F.3d at 1112; *see also Mix v.*
11 *Ocwen Loan Servicing, LLC*, No. C17-0699JLR, 2017 WL 5549795, at *8 (W.D. Wash. Nov.
12 17, 2017) (“Ocwen’s burden of producing discovery and preparing for trial does not demonstrate
13 a clear case of hardship or inequity.”) (citation omitted). Not only are these supposed burdens
14 “routine,” they are burdens of King County’s own making. As noted, rather than seek a stay
15 shortly after the Oakland and San Francisco cases were dismissed, King County put Defendants
16 here in the position of filing two rounds of motion to dismiss briefing—before and after it filed
17 an amended complaint. And it is hard to believe that responding to motions to dismiss and
18 appearing for a hearing would impose a significant burden on King County when it is
19 represented on a contingency-fee basis by a national plaintiffs’ law firm that also represents the
20 Appellants in the San Francisco and Oakland appeals (and New York City in the case it filed).
21 Indeed, public resources are saved by not dragging out litigation like this when threshold legal
22 issues would be dispositive. In short, far from supporting a stay, the equities in this case strongly
23 favor allowing Chevron and BP to resolve this pending litigation. *See id.*

24 **Finally**, the “orderly course of justice” does not support a stay. Under this factor “[a]
25 stay should not be granted unless it appears likely the other proceedings will be concluded within
26 a reasonable time in relation to the urgency of the claims presented to the court.” *Leyva*, 593
27 F.2d at 864; *see also Dependable Highway Exp., Inc. v. Navigators Ins. Co.*, 498 F.3d 1059,
28 1067 (9th Cir. 2007) (“[T]he district court erred by issuing a stay without any indication that it

1 would last only for a reasonable time.”). Here, briefing in the Ninth Circuit appeal is currently
2 scheduled to continue through January 2019, and oral argument has not yet been calendared.
3 King County’s requested stay could delay the instant proceedings for a year or more. At that
4 point, the parties would need to once again brief issues that Defendants have now briefed twice
5 already. There is no reason to delay resolution of this action.

6 Chevron and BP acknowledge the Court’s broad discretion in setting its own docket, and
7 respectfully submit that such discretion is best exercised by allowing this case to proceed now.
8 At the least, Chevron and BP request that the Court allow briefing and a hearing on Defendants’
9 motions to dismiss. Such an approach would avoid wasting the efforts that have already gone
10 into the current round of briefing. If, however, the Court determines that judicial economy
11 supports a stay or a partial stay now, Chevron and BP will, of course, respect the Court’s
12 judgment and follow its guidance.

13 **CONCLUSION**

14 Chevron and BP respectfully request that the Court deny King County’s motion to stay
15 these proceedings at this early stage of the litigation.

1 DATED this 14th day of September, 2018

2 By: /s/ Jonathan W. Hughes
3 /s/ Matthew T. Heartney
4 /s/ John D. Lombardo
5 /s/ Phillip H. Curtis
6 /s/ Nancy Milburn

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

15 Matthew T. Heartney
16 John D. Lombardo
17 ARNOLD & PORTER KAYE SCHOLER
18 LLP
19 777 South Figueroa Street, 44th Floor
20 Los Angeles, California 90017-5844
21 Telephone: (213) 243-4000
22 Facsimile: (213) 243-4199
23 E-mail: matthew.heartney@apks.com
24 E-mail: john.lombardo@apks.com

25 Philip H. Curtis
26 Nancy Milburn
27 ARNOLD & PORTER KAYE SCHOLER
28 LLP
29 250 West 55th Street
30 New York, NY 10019-9710
31 Telephone: (212) 836-8383
32 Facsimile: (212) 715-1399
33 E-mail: philip.curtis@apks.com
34 E-mail: nancy.milburn@apks.com

35 Attorneys for Defendant BP P.L.C.

By: **/s/ Theodore J. Boutrous, Jr.
/s/ Joshua S. Lipshutz
/s/ Robert M. McKenna
/s/ Adam Nolan Tabor
/s/ Herbert J. Stern
/s/ Joel M. Silverstein
/s/ Neal S. Manne
/s/ Erica Harris

Theodore J. Boutrous, Jr. (*pro hac vice*)
Joshua S. Lipshutz (*pro hac vice*)
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: jlipshutz@gibsondunn.com

Robert M. McKenna (WSBA No. 18327)
Adam Nolan Tabor (WSBA No. 50912)
ORRICK, HERRINGTON & SUTCLIFFE
LLP
701 Fifth Ave., Suite 5600
Seattle, WA 98104
Telephone: +1 206 839 4300
Facsimile: +1 206 839 4301
E-mail: rmckenna@orrick.com
E-mail: atabor@orrick.com

Herbert J. Stern (*pro hac vice*)
Joel M. Silverstein (*pro hac vice*)
STERN & KILCULLEN, LLC
325 Columbia Turnpike, Suite 110
P.O. Box 992
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 (*pro hac vice*)
Erica Harris (*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: eharris@susmangodfrey.com

36 ** Pursuant to this Court's Electronic Filing
37 Procedure III.L, the electronic signatory has
38 obtained approval from all other signatories

Attorneys for Defendant CHEVRON
CORPORATION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28