

FILED

MAR 22 2013

SAN LUIS OBISPO SUPERIOR COURT
BY [Signature] Deputy Clerk

1 DON A. ERNST (#65726)
2 CHRISTOPHER D. EDGINGTON (#169682)
3 TAYLOR ERNST (#277901)
4 **ERNST LAW GROUP**
5 1020 Palm Street
6 San Luis Obispo, CA 93401
7 Telephone: (805) 541-0300
8 Fax: (805) 541-5168

9 JOSEPH W. COTCHETT (#36324)
10 MATTHEW K. EDLING (#250940)
11 JOANNA W. LICALSÍ (#288771)
12 **COTCHETT, PITRE & McCARTHY, LLP**
13 840 Malcolm Road, Suite 200
14 Burlingame, CA 94010
15 Telephone: (650) 697-6000
16 Fax: (650) 697-0577

17 *Attorneys for the Melissa D. Duflock*
18 *Revocable Trust Individually and on*
19 *Behalf of All Others Similarly Situated*

14 **IN THE SUPERIOR COURT OF CALIFORNIA**

15 **IN AND FOR THE COUNTY OF SAN LUIS OBISPO**

16 CV 130147

17 THE MELISSA D. DUFLOCK REVOCABLE
18 TRUST, on behalf of itself and all others
19 similarly situated;

20 Plaintiffs,

21 vs.

22 CHEVRON CORPORATION, CHEVRON
23 U.S.A. INC., CHEVRON SAN ARDO
24 ENERGY COMPANY, and DOES 1 through
25 50.

26 Defendants.

CASE NO.:

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

TABLE OF CONTENTS

	<u>Page(s)</u>
1	
2	
3	I. INTRODUCTION..... 1
4	II. THE PARTIES..... 2
5	A. Plaintiff..... 2
6	B. Defendants 2
7	III. JURISDICTION AND VENUE..... 3
8	IV. COMMON FACTUAL ALLEGATIONS 4
9	A. Defendants Have Breached the Leases And Harmed Plaintiff and All
10	Members of the Class..... 5
11	B. Chevron Has Fraudulently Concealed the True Production and
12	Royalty Interests Owed To Plaintiff and All Members of the Class 7
13	V. CLASS ACTION ALLEGATIONS 8
14	VI. CAUSES OF ACTION 15
15	CAUSE OF ACTION I
16	(Breach of Contract) 15
17	CAUSE OF ACTION II
18	(Breach of Implied Covenant of Good Faith and Fair Dealing)..... 17
19	CAUSE OF ACTION III
20	(Fraud and Fraudulent Concealment) 18
21	CAUSE OF ACTION IV
22	(Breach of Fiduciary Duty) 18
23	CAUSE OF ACTION V
24	(Conversion) 19
25	CAUSE OF ACTION VI
26	(Unfair Competition in Violation of Cal. Bus. & Prof. Code 17200, et seq.) 20
27	CAUSE OF ACTION VII
28	(Unjust Enrichment)..... 22

1	CAUSE OF ACTION VIII	
2	(Accounting)	22
3	CAUSE OF ACTION IX	
4	(Declaratory Relief)	23
5	PRAYER FOR RELIEF	24
6	REQUEST FOR A JURY TRIAL	25
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

1 Plaintiff, the Melissa D. Duflock Revocable Trust, on behalf of itself and all others
2 similarly situated against Defendants Chevron Corporation, Chevron U.S.A. Inc., and Chevron
3 San Ardo Energy Company (collectively referred to herein as "Defendants" or "Chevron"),
4 alleges as follows:

5 **I.**

6 **INTRODUCTION**

7 1. Defendants operate and own working interests on numerous oil and gas leases
8 in California. According to the Department of Conservation/Division of Oil, Gas, and
9 Geothermal Resources ("DOGGR"), Defendants have leased and operated more than 55,000
10 wells in California, including more than 24,000 active wells, with the greatest numbers
11 concentrated in the following fields: (1) Coalinga (and extension) (5,500 wells); Cymric Field
12 (3,200 wells); (3) Huntington Beach (1,000 wells); Kern River, Kern Front and Kern Bluff fields
13 (19,000 wells); (4) Lost Hills Field (3,700 wells); (5) McKittrick Field (2,500 wells); (5)
14 Midway Sunset Field (11,000 wells); and (6) San Ardo Field (1,400 wells).

15 2. Defendants are solely responsible for the proper determination, calculation,
16 reporting, distribution, and payment of royalties attributable to production and sale of produced
17 hydrocarbons derived from these oil and gas leases.

18 3. Defendants have failed and continue to fail to pay the full royalties owed as
19 measured by the actual production of hydrocarbons and the uniform payment provisions of the
20 royalty agreements on leases whereby Defendants have leased the right to explore for, drill for,
21 produce, extract and take oil, gas and other hydrocarbons from the leased land in consideration
22 of payment of such royalties.

23 4. Plaintiff and all others similarly situated own royalty interests which entitle
24 them to royalty interest payments based upon the true and correct value and full quantity of
25 hydrocarbons produced and removed from their leased land, and the uniform payment provisions
26 of the royalty agreements.

1 5. Defendants, as operators and working interest owners of these oil and gas
2 leases, have secretly underpaid royalties based upon the true production of oil, gas and other
3 hydrocarbons, and concealed such underpayment from royalty interest owners.

4 6. Plaintiff brings this lawsuit as a class action pursuant to California Code of Civil
5 Procedure ("CCP") § 382 on behalf of itself and all others similarly situated (collectively
6 referred to herein as "Class Members") who have royalty interests in wells operated and owned
7 by Defendants, and have not received the full royalty interest payments they are owed.

8 **II.**

9 **THE PARTIES**

10 **A. Plaintiff**

11 7. Plaintiff, the Melissa D. Duflock Revocable Trust, through its trustee Melissa D.
12 Duflock, owns a royalty interest in all oil and gas produced on Tract 1 of the Rosenberg Lease in
13 the San Ardo Field in Monterey County. Ms. Duflock resides in San Luis Obispo, California.

14 **B. Defendants**

15 8. Defendant Chevron Corporation is a Delaware Corporation with its principal
16 place of business in San Ramon, California and it does business in San Luis Obispo County.

17 9. Chevron USA, Inc. is a Pennsylvania Corporation with its principal place of
18 business in San Ramon, California and it does business in San Luis Obispo County.

19 10. Chevron San Ardo Energy Company is a Delaware Corporation with its
20 principal place of business in San Ramon, California and it does business in San Luis Obispo
21 County.

22 11. "Chevron," as used hereafter, means collectively, Defendants, Chevron
23 Corporation, Chevron USA, Inc., Chevron San Ardo Energy Company, and each of them, their
24 subsidiaries, related entities, and affiliates, and their predecessors in interest with respect to the
25 Leases, including, but not limited to, ChevronTexaco Exploration and Production Company,
26 Texas Company, Texaco Inc., Union Oil Company of California, and Unocal Corporation.

27 12. Defendants Does 1-50 are fictitious names for individuals or entities that may
28 be responsible for the wrongful conduct and practices that caused harm to the Plaintiff and the

1 other Class Members, the true names and capacities of which are unknown to Plaintiff, but
2 Plaintiff will amend this Complaint when and if the true names of said Defendants become
3 known to it.

4 13. Plaintiff, upon information and belief, alleges that during the Class Period,
5 Defendants were each the agent and/or joint venturer of the other Defendants and in performing
6 the acts alleged in this Complaint were acting within the course and scope of that agency, and
7 any reference to "Defendant" or "Defendants" shall mean "Defendants and each of them."
8 Defendants are individually, jointly and severally liable as to Plaintiff and each Class Member
9 because directly or indirectly, or through an agent or any other person, they have underpaid
10 royalties to Plaintiff and the other Class Members.

11 14. All allegations in this complaint except as to the facts relating to Plaintiff that
12 are based upon its knowledge, are based upon information and belief, or are likely to have
13 evidentiary support after a reasonable opportunity for further investigation or discovery.
14 Whenever allegations in this complaint are contrary or inconsistent, such allegations shall be
15 deemed alternative.

16 **III.**

17 **JURISDICTION AND VENUE**

18 15. Each defendant has sufficient minimum contacts with California or otherwise
19 purposefully avails itself of the benefits from California or has property in California so as to
20 render the exercise of jurisdiction over it by the California Courts consistent with traditional
21 notions of fair play and substantial justice.

22 16. Jurisdiction and venue are proper in this Court because the amount in
23 controversy exceeds the minimum of this Court, and by virtue of the fact that the complained-of
24 acts and practices giving rise to this action took place, in whole or in part, in the State of
25 California and the County of San Luis Obispo; and Defendants' contractual obligations to
26 Plaintiff and other members of the proposed Class are to be performed in this County. Code Civ.
27 Proc. § 395(a).

1 IV.

2 **COMMON FACTUAL ALLEGATIONS**

3 17. **Leases** means all documents under which Defendants, or its predecessors, and
4 any Class Member have both owned interests in oil, gas or hydrocarbon wells located in
5 California, including leases, assignment of leases that convey or reserve royalty interests therein,
6 and other documents conveying or reserving royalty interests in such wells.

7 18. A **Royalty Interest** is a share of oil, gas, and other hydrocarbon production, or
8 its value, attributable to minerals subject to an oil and gas lease that is deliverable or payable to
9 the lessor by the lessee. A Royalty Interest is typically reserved to the owner of mineral property
10 upon leasing to a lessee-operator the right to explore and drill for and produce oil and gas. An
11 "overriding royalty" interest is a royalty carved out of a working interest created by an oil and
12 gas lease. All such interests are referred to herein as **Royalties**.

13 19. **Gas** means natural gas and/or associated liquid hydrocarbons, but does not
14 include oil, condensate or other liquid hydrocarbons recovered by mechanical separators at or
15 near the wellhead and before the natural gas and associated liquid hydrocarbons are both
16 measured for volume and sampled for Btu content.

17 20. Chevron has been and is now obligated to pay Royalties to Plaintiff and all Class
18 Members in accordance with the terms of oil and gas leases, assignment of leases reserving
19 overriding royalties, terms of certain amendments, conveyances, and assignments of oil and gas
20 lease sale agreements describing the Royalty Agreements or through corporate succession/
21 acquisition including, but not limited to, Defendants' predecessors-in-interest, including
22 ChevronTexaco Exploration and Production Company, Texas Company, Texaco Inc., Union Oil
23 Company of California, and Unocal Corporation.

24 20. Plaintiff and all Class Members are owed and have received Royalties from
25 Chevron or its predecessors-in-interest under Leases entered into in the State of California from
26 which oil, Gas, or other hydrocarbons have been produced by Chevron.
27
28

1 21. As lessee and/or operator, Chevron is responsible for the proper determination,
2 calculation, reporting, distribution, and payment of Royalties due and owing to Plaintiff and
3 Class Members on oil, Gas, and other hydrocarbons produced by Chevron.

4 **A. Defendants Have Breached the Leases And Harmed Plaintiff and All Members of**
5 **the Class**

6 22. Plaintiff and Class Members are entitled to Royalties by contract. However,
7 Chevron has breached its contractual obligations in a number of ways. These breaches include,
8 but are not limited to, the following:

- 9 a. Chevron has failed to record, report, calculate and pay Royalties based on the
10 actual gross production as it is required to do under the relevant governing Leases.
- 11 b. Chevron has failed to record, report, calculate and pay Royalties based upon daily
12 production volumes as it is required to do under the relevant governing Leases.
- 13 c. Chevron has incorrectly calculated and incorrectly applied the customary
14 adjustments for temperature, water, and basic sediment in violation of the relevant
15 governing Leases.
- 16 d. Chevron has impermissibly adjusted the production figures and, by extension, has
17 falsely reduced gross production volumes and reduced Royalties in violation of
18 the relevant governing Leases.
- 19 e. Chevron has failed to report, calculate, and pay Royalties based upon the posted
20 available market price at the well for oil of like gravity on the day the oil is
21 removed as it is required to do under the relevant governing Leases.
- 22 f. Chevron has impermissibly calculated and paid Royalties based on un-weighted
23 monthly average pricing and gravity reduction factor, in lieu of applying the
24 posted price and gravity reduction factor effective on the actual date of removal of
25 oil, as it is required to do under the relevant governing Leases.
- 26 g. Chevron has impermissibly calculated and paid Royalties based on an un-
27 weighted average of other oil companies' monthly average posted prices and
28 gravity reduction factors at other wells, in lieu of applying Chevron's actual

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

posted price and gravity reduction factor at the subject well, as it is required to do under the relevant governing Leases.

- h. Chevron has impermissibly calculated and paid Royalties based on a price substantially lower than the actual invoiced market prices charged to purchasers of the subject oil in breach of the relevant governing Leases.
- i. Chevron has impermissibly calculated and paid Royalties based on an adjusted price by applying an unspecified “surcharge” to reduce the purported posted price in breach of the relevant governing Leases.
- j. Chevron has incorrectly calculated and applied an adjustment to “posted available market price” for the weighted average specific gravity of the oil produced, by, among other ways, applying a multi-oil company, monthly average gravity reduction factor for a different well and field, in lieu of Chevron’s daily, posted gravity reduction factor for the subject well in breach of the relevant governing Leases.
- k. Chevron has applied an impermissible adjustment to reduce Royalties for taxes other than those assessed against the petroleum minerals and petroleum mineral rights on the property (or if not separately assessed, due to the discovery of oil or gas on the property) or severance taxes (or other tax based upon the value of oil produced) in breach of the governing Leases.
- l. Chevron has improperly calculated and applied these adjustment to reduce Royalty payments for taxes assessed against the petroleum minerals and petroleum mineral rights on the property (or if not separately assessed, due to the discovery of oil or gas on the property) or severance taxes (or other tax based upon the value of oil produced).
- m. Chevron has improperly calculated and applied cost adjustments to reduce Royalty payments for natural gas and electricity used in production in breach of the governing leases.

- 1 n. Chevron entered into non-arm's length transactions with itself, wholly-owned
2 subsidiaries, controlled affiliates, and other colluding entities for the purchase and
3 sale of oil, gas and other hydrocarbons from the subject wells and leases, thereby
4 falsely manipulating and concealing the true market price and impermissibly
5 reducing royalty payments, in breach of the governing leases.
- 6 o. Chevron entered into non-arm's length transactions with itself, wholly-owned
7 subsidiaries, controlled affiliates, and other colluding entities for the purchase of
8 energy, including oil, gas and other hydrocarbons, to be used in production at the
9 subject wells and leases, thereby falsely inflating and concealing the true market
10 price for said purchased production energy and impermissibly reducing royalty
11 payments, in breach of the governing leases.
- 12 p. Chevron has engaged in a fraudulent plan and scheme to conceal the true
13 methodology by which it determined and paid Royalties to Plaintiff and Class
14 Members (including in the foregoing manners), in part by providing false and
15 misleading monthly remittance statements, failing and refusing to comply with
16 the Leases' provision for audit by lessors, obstructing audit by lessors, and/or
17 preparing false and misleading audit documentation.

18 **B. Chevron Has Fraudulently Concealed the True Production and Royalty Interests**
19 **Owed To Plaintiff and All Members of the Class**

20 23. At all relevant times, Chevron has had actual knowledge of the total extracted
21 oil amounts, price, value, and proceeds enjoyed by it for the subject oil production. These
22 moneys have been greater than the corresponding amounts on which its Royalties have been
23 calculated and paid to the Plaintiff and other members of the Class.

24 24. Chevron has taken steps to conceal this information from Plaintiff and other
25 Class Members. In this regard, Chevron has, among other things, uniformly provided Plaintiff
26 and other members of the Class with uninformative, false, and misleading monthly remittance
27 statements that fail to disclose and/or conceal the breaches described above, including, but not
28 limited to, the reduction in the Royalties due to Chevron's retention of oil, the underreporting of

1 gross production volume and/or failure to calculate and pay royalties based on the actual gross
2 production volumes, and the failure to calculate and pay royalties based on agreed pricing terms,
3 all in violation of the governing lease agreements.

4 25. Chevron represents to Plaintiff and all Class Members, on a monthly basis, that
5 a proper accounting has been made, but through a series of common omissions and
6 misrepresentations, Plaintiff and Class Members do not receive a proper accounting.

7 26. This false reporting and fraudulent concealment has caused Plaintiff and all
8 Class Members to reasonably and actually believe that all Royalties have been properly paid and
9 that Chevron has properly accounted to Plaintiff and all Class Members the Royalties they were
10 owed.

11 27. Chevron conspired to deprive Plaintiff and the Class Members of production
12 proceeds through fraudulent schemes and has continuously, fraudulently and deceptively
13 concealed these schemes by falsely reporting information, concealing information, and/or failing
14 to report information to Plaintiff and the Class.

15 28. Chevron has actively misrepresented and fraudulently concealed data and
16 information exclusively within their possession, custody, or control from which Plaintiff and the
17 Class Members could have learned or advanced their claims to the ultimate detriment and
18 damage of Plaintiff and the Class. Plaintiff and the Class Members relied upon Chevron's
19 misrepresentations and have been and continue to be damaged as a result.

20 29. Chevron is and has always been fully aware of the duties and obligations
21 incumbent on them. Chevron is likewise fully aware of its breach of these duties and
22 obligations. Nevertheless, Chevron has taken no action to cure these violations of the law.

23 V.

24 **CLASS ACTION ALLEGATIONS**

25 30. Plaintiff brings this action on behalf of itself, and the other Class Members
26 pursuant to Code of Civ. Proc. § 382.

1 31. The requested class membership includes those individuals and entities who
2 previously owned the subject Royalties and those who presently own such interests and who
3 have been paid by Chevron subject to Leases described herein.

4 32. The Class consists of:

5 All present and former owners of royalty interests which burden
6 oil and gas leases and wells in California now or formerly held
7 by Chevron Corporation, Chevron U.S.A. Inc., and/or Chevron
8 San Ardo Energy Company or their predecessors-in-interest, who
9 have been paid or are currently receiving compensation for those
royalty interests under Leases on Oil and Natural Gas and
Liquids from wells located in the State of California,

10 The Class excludes agencies, departments, or instrumentalities of
11 the State of California and the federal government, including the
12 federal government's proprietary status and as trustee for Native
13 American/Indian tribes or individual Native American/Indian
14 lessors, or any other person or entity from which the Bureau of
15 Ocean Energy Management, Regulation and Enforcement f/k/a
as the Minerals Management Service of the Department of the
Interior collects royalties. The Class also excludes the
Defendants and their predecessors and successors.

16 33. Plaintiff is informed and believes that there are hundreds of members of the
17 Class, if not over a thousand members of the Class, thus the numbers are so numerous that
18 joinder is impractical. Chevron owns or operates or has owned or operated oil and gas leases in
19 at least six California fields, each with multiple royalty owners, comprised of more than 55,000
20 wells. The disposition of the subject claims in a class action will provide substantial benefits
21 both to the parties and the court system.

22 34. The royalty payment provisions under the Class Members' royalty agreements
23 are uniform or substantially uniform in all respects relevant to this complaint, Further, for
24 purposes of computing and making monthly payment of Royalties to members of the Class,
25 Chevron makes no distinction based upon the particular phraseology of the royalty agreements,
26 but treats all Royalties owners the same for calculation and payment of monthly Royalties
27 remittances.

1 35. At all relevant times, Chevron has calculated and remitted Royalties to the
2 Plaintiff and the Class Members employing the same improper methods in violation of uniform,
3 governing Lease language described above, including, but not limited to: (a) the failure to record,
4 report, calculate and pay Royalties based on the actual gross production; (b) the failure to record,
5 report, calculate and pay royalties based upon daily production volumes; (c) the incorrect
6 calculation and application of the customary adjustments for temperature, water, and basic
7 sediment; (d) impermissible adjustments to falsely reduce gross production volumes and
8 Royalties payments; (e) the failure to report, calculate, and pay royalties based upon the posted
9 available market price at the well for oil of like gravity on the day the oil is so removed; (f)
10 impermissibly calculating and paying royalties based on un-weighted monthly average pricing
11 and gravity reduction factor, in lieu of applying the posted price and gravity reduction factor
12 effective on the actual date of removal of oil; (g) impermissibly calculating and paying royalties
13 based on an un-weighted average of other oil companies' monthly average posted prices and
14 gravity reduction factors at other wells, in lieu of applying Chevron's actual posted price and
15 gravity reduction factor at the subject well; (h) impermissibly calculating and paying royalties
16 based on a price substantially lower than the actual invoiced market prices charged to purchasers
17 of the subject oil; (i) impermissibly calculating and paying royalties based on an adjusted price
18 by applying an unspecified "surcharge" to reduce the purported posted price; (j) incorrectly
19 calculating and applying an adjustment to "posted available market price" for the weighted
20 average specific gravity of the oil produced by, among other ways, applying a multi-oil
21 company, monthly average gravity reduction factor for a different well and field, in lieu of
22 Chevron's daily, posted gravity reduction factor for the subject well; (k) applying an
23 impermissible adjustment to reduce royalty payments for taxes other than those assessed against
24 the petroleum minerals and petroleum mineral rights on the property (or if not separately
25 assessed, due to the discovery of oil or gas on the property) or severance taxes (or other tax
26 based upon the value of oil produced); (l) improperly calculating and applying the adjustment to
27 reduce royalty payments for taxes assessed against the petroleum minerals and petroleum
28 mineral rights on the property (or if not separately assessed, due to the discovery of oil or gas on

1 the property) and severance taxes (or other tax based upon the value of oil produced); (m)
2 improperly calculating and applying cost adjustments to reduce royalty payments for natural gas
3 and electricity used in production; (n) entering non-arm's length transactions for the purchase
4 and sale of oil, gas, and other hydrocarbons from the subject wells and leases, thereby falsely
5 manipulating and concealing the true market price and improperly reducing royalty payments;
6 (o) entering non-arm's length transactions for the purchase of energy, including oil, gas, and/or
7 other hydrocarbons, used in production at the subject wells and leases, thereby falsely
8 manipulating and concealing the true cost of such production energy and improperly reducing
9 royalty payments; and (p) engaging in a fraudulent plan and scheme to conceal the true
10 methodology for determination and payment of royalty payments (including in the foregoing
11 manners), by providing false and misleading monthly remittance statements, failing to permit
12 audit by lessors, obstructing audit by lessors, and/or preparing and providing false and
13 misleading audit documentation.

14 36. Plaintiff's claims are typical of the claims of the Class. Plaintiff is a member of
15 the Class it seeks to represent. Members of the Class are ascertainable from Plaintiff's
16 description of the Class and/or Defendants' records and the Class is sufficiently numerous.

17 37. Plaintiff will fairly and adequately represent the members of the Class and has
18 no interests that are antagonistic to the claims of the Class. Plaintiff's interests in this action are
19 antagonistic to the interests of Defendants, and Plaintiff will vigorously pursue the claims of the
20 Class. Plaintiff is a member of the Class, and similarly situated to the other members of the
21 Class and is an adequate representative of the Class.

22 38. The representative Plaintiff has retained competent and experienced class action
23 litigation counsel who have successfully represented classes in other complex class actions.

24 39. Common questions of law and fact impact the rights of each member of the
25 Class and a common remedy, by way of permissible damages, injunctive relief, and/or
26 declaratory relief and accounting, is sought for the Class.

27
28

1 40. There are numerous and substantial questions of law and fact common to all
2 members of the Class which will predominate over any individual issues. These common
3 questions of law and fact include, without limitation:

- 4 a. The methodology and underlying records used by Chevron to calculate Royalties
5 due to Royalty Owners;
- 6 b. The types of fees, costs, and expenses charged by Chevron to Royalty Owners;
- 7 c. The methodology underlying records used by Chevron to calculate the fees, costs,
8 and expenses charged by Chevron to Royalty Owners;
- 9 d. Whether the fees, costs, and expenses charged by Chevron to Royalty Owners are
10 improper and/or excessive as a matter of law and/or fact;
- 11 e. Whether Chevron failed to pay Royalties based on the actual gross production;
- 12 f. Whether Chevron failed to record, report, calculate and pay Royalties based upon
13 daily production volumes;
- 14 g. Whether Chevron incorrectly calculated and/or incorrectly applied customary
15 adjustments for temperature, water, and basic sediment;
- 16 h. Whether Chevron falsely reduced gross production volumes and Royalties
17 payments;
- 18 i. Whether Chevron failed to report, calculate, and pay Royalties based upon the
19 posted available market price at the well for oil of like gravity on the day the oil is
20 so removed;
- 21 j. Whether Chevron impermissibly calculated and impermissibly paid Royalties
22 based on un-weighted monthly average pricing and gravity reduction factor, in
23 lieu of applying the posted price and gravity reduction factor effective on the
24 actual date of removal of oil;
- 25 k. Whether Chevron impermissibly calculated and paid Royalties based on an un-
26 weighted average of other oil companies' monthly average posted prices and
27 gravity reduction factors at other wells, in lieu of applying Chevron's actual
28 posted price and gravity reduction factor at the subject well;

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

- l. Whether Chevron impermissibly calculated and paid Royalties based on a price substantially lower than the actual invoiced market prices charged to purchasers of the subject oil;
- m. Whether Chevron impermissibly calculated and paid Royalties based on an adjusted price by applying an unspecified “surcharge” to reduce the purported posted price;
- n. Whether Chevron incorrectly calculated and applied an adjustment to the “posted available market price” for the weighted average specific gravity of the oil produced;
- o. Whether Chevron impermissibly applied a multi-oil company, monthly average gravity reduction factor for a different well and field, in lieu of Chevron’s daily, posted gravity reduction factor for the subject well;
- p. Whether Chevron applied an impermissible adjustment to reduce Royalty payments for taxes other than those assessed against the petroleum minerals and petroleum mineral rights on the property (or if not separately assessed, due to the discovery of oil or gas on the property) or severance taxes (or other tax based upon the value of oil produced);
- q. Whether Chevron improperly calculated and applied an adjustment to reduce Royalty payments for taxes assessed against the petroleum minerals and petroleum mineral rights on the property (or if not separately assessed, due to the discovery of oil or gas on the property) or severance taxes (or other tax based upon the value of oil produced);
- r. Whether Chevron improperly calculated and applied cost adjustments to reduce Royalty payments for natural gas and electricity used in production;
- s. Whether Chevron falsely manipulated market prices for the sale of the subject oil, gas, and other hydrocarbons and/or falsely inflated production energy costs, through non-arm’s length transactions, thereby falsely reducing royalty payments;

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

- t. Whether Chevron concealed the impermissible reduction of royalty payments from the Class Members through false and misleading statements and refusal to permit or obstruction of audits; and
- u. Whether Chevron violated their duty to properly account and pay Royalties to Royalty Owners on Oil, Gas or other hydrocarbons.

41. Plaintiff and Class Members have suffered damages as a result of Chevron's wrongful conduct. Because the size of the claims of the individual Class Members are relatively small, few, if any, Class Members can afford to seek legal redress for the wrongs complained of herein. Moreover, Chevron has fraudulently concealed their actions which give rise to Plaintiff and the Class Members' causes of action. Many of the Class Members may never discover the wrongful acts of Chevron. A class action is, therefore, superior to other available methods for the fair and efficient adjudication of this controversy. Trial of Plaintiff's and the Class Members' claims is easily manageable.

42. The persons in the Class are so numerous that disposition of their claims in this case and as part of a single class action lawsuit, rather than numerous individual lawsuits, will benefit the parties and greatly reduce the aggregate judicial resources that would be spent.

43. Plaintiff knows of no difficulty that will be encountered in the management of this litigation, which would preclude its maintenance as a class action.

44. Chevron has acted on grounds generally applicable to the entire Class, thereby making final injunctive relief or corresponding declaratory relief appropriate with respect to the Class as a whole. Prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications with respect to individual members of the Class that would establish incompatible standards of conduct for the Defendants.

45. Without a class action, Defendants will likely retain the benefit of their wrongdoing and will continue a course of action, which will result in further damages to Plaintiff and the Class.

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

VI.

CAUSES OF ACTION

CAUSE OF ACTION I

(Breach of Contract)

46. Plaintiff re-alleges and incorporates by reference the allegations contained in the preceding paragraphs of this complaint, as though fully set forth herein.

47. Defendants are responsible for payment of Royalties to Plaintiff and the other members of the proposed Class attributable to production and sale of Oil, Gas and other hydrocarbons produced from individual wells on the relevant Leases and sold by Chevron.

48. Defendants have failed, and continue to fail, to pay the full Royalties owed as measured by the actual production of oil, gas and hydrocarbons on Leases whereby Chevron has leased the right to explore for, drill for, produce, extract and take oil, gas and other hydrocarbons from the leased land.

49. The royalty payment provisions under the Class Members' royalty agreements are uniform or substantially uniform in all respects relevant to this complaint. Further, Chevron pays and has paid all California leaseholders Royalties in the same standard method without regard to the particular terms in the royalty agreements.

50. Chevron's payment practices ignore the terms of the royalty agreements. Therefore, Defendants have waived and are estopped from asserting that distinctions in the agreements, including but not limited to any Royalty clauses, vary Defendants' obligations to pay the subject Royalties.

51. Chevron's persistent and regular practices alleged herein constitute material breaches of the Royalty Agreements to which Chevron is bound. Chevron's breaches of contract include, but are not limited to: (a) the failure to record, report, calculate and pay Royalties based on the actual gross production; (b) the failure to record, report, calculate and pay royalties based upon daily production volumes; (c) the incorrect calculation and application of the customary adjustments for temperature, water, and basic sediment; (d) impermissible adjustments to falsely reduce gross production volumes and Royalties payments; (e) the failure to report, calculate, and

1 pay royalties based upon the posted available market price at the well for oil of like gravity on
2 the day the oil is so removed; (f) impermissibly calculating and paying royalties based on un-
3 weighted monthly average pricing and gravity reduction factor, in lieu of applying the posted
4 price and gravity reduction factor effective on the actual date of removal of oil; (g)
5 impermissibly calculating and paying royalties based on an un-weighted average of other oil
6 companies' monthly average posted prices and gravity reduction factors at other wells, in lieu of
7 applying Chevron's actual posted price and gravity reduction factor at the subject well; (h)
8 impermissibly calculating and paying royalties based on a price substantially lower than the
9 actual invoiced market prices charged to purchasers of the subject oil; (i) impermissibly
10 calculating and paying royalties based on an adjusted price by applying an unspecified
11 "surcharge" to reduce the purported posted price; (j) incorrectly calculating and applying an
12 adjustment to "posted available market price" for the weighted average specific gravity of the oil
13 produced by, among other ways, applying a multi-oil company, monthly average gravity
14 reduction factor for a different well and field, in lieu of Chevron's daily, posted gravity reduction
15 factor for the subject well; (k) applying an impermissible adjustment to reduce royalty payments
16 for taxes other than those assessed against the petroleum minerals and petroleum mineral rights
17 on the property (or if not separately assessed, due to the discovery of oil or gas on the property)
18 or severance taxes (or other tax based upon the value of oil produced); (l) improperly calculating
19 and applying the adjustment to reduce royalty payments for taxes assessed against the petroleum
20 minerals and petroleum mineral rights on the property (or if not separately assessed, due to the
21 discovery of oil or gas on the property) and severance taxes (or other tax based upon the value of
22 oil produced); (m) improperly calculating and applying cost adjustments to reduce royalty
23 payments for natural gas and electricity used in production; (n) entering non-arm's length
24 transactions for the purchase and sale of oil, gas, and other hydrocarbons from the subject wells
25 and leases, thereby falsely manipulating and concealing the true market price and improperly
26 reducing royalty payments; (o) entering non-arm's length transactions for the purchase of
27 energy, including oil, Gas, and/or other hydrocarbons used in production at the subject wells and
28 leases, thereby falsely manipulating and concealing the true cost of such production energy and

1 improperly reducing royalty payments; and (p) engaging in a fraudulent plan and scheme to
2 conceal the true methodology for determination and payment of royalty payments by providing
3 false and misleading monthly remittance statements, failing to permit audit by lessors,
4 obstructing audit by lessors, and/or preparing and providing false and misleading audit
5 documentation.

6 52. The above-described conduct constitutes violations and breaches of the
7 obligations which Defendants owe to Plaintiff and all Class Members under their Leases.

8 53. The breaches were done intentionally to increase profits for Chevron and reduce
9 the economic cost of the Royalties, thereby proximately and directly causing Plaintiff and all
10 Class Members to incur actual damages.

11 54. Chevron's breaches of its contractual obligations were carried out secretly.
12 Chevron has had actual knowledge of its contractual obligations and breaches, but has taken
13 steps to conceal those breaches from Plaintiff and other Class Members. In this regard, Chevron
14 has, among other things, uniformly provided Plaintiff and other members of the Class with
15 uninformative, false, and misleading monthly remittance statements that fail to disclose any
16 information about, among other things, the reduction in the royalties due to its retention of oil or
17 the underreporting of gross production volume and failure to calculate and pay royalties based on
18 the actual gross production volumes, and the failure to calculate and pay royalties based on
19 agreed pricing terms, in violation of the governing Leases.

20 55. Plaintiff and each member of the Class are entitled to recover damages and
21 other appropriate relief for the foregoing contractual breaches.

22 **CAUSE OF ACTION II**

23 **(Breach of Implied Covenant of Good Faith and Fair Dealing)**

24 56. Plaintiff re-alleges and incorporates by reference the allegations contained in the
25 preceding paragraphs of this complaint, as though fully set forth herein.

26 57. The Plaintiff and Class Members, on the one hand, and Defendants, on the
27 other, are in contract with one another concerning the obligation for payment of Royalties.

28

1 Every contract imposes the duty of good faith and fair dealing upon the parties in performance
2 and enforcement of the contract.

3 58. Chevron has acted in bad faith by not giving equal consideration to the interests
4 of the Plaintiff and Class Members as they have their own interests. Chevron has wrongfully and
5 intentionally breached the duty of good faith by denying Plaintiff and Class Members the
6 benefits to which they are entitled under the Leases.

7 59. Chevron's breaches of the covenant of good faith and fair dealing have
8 proximately and directly caused damages to Plaintiff and the Class Members.

9 **CAUSE OF ACTION III**

10 **(Fraud and Fraudulent Concealment)**

11 60. Plaintiff re-alleges and incorporates by reference the allegations contained in the
12 preceding paragraphs of this complaint, as though fully set forth herein.

13 61. Chevron's acts and omissions set forth constitute fraudulent misrepresentations,
14 self-dealing and the purposeful and fraudulent concealment of material information to the
15 ultimate detriment of Plaintiff and the Class Members, who relied upon Defendants' fraudulent
16 statements and omissions.

17 62. As a result of Chevron's conduct set forth herein, Plaintiff has suffered and will
18 continue to suffer economic loss in an amount to be proven at trial.

19 63. Chevron's acts were done maliciously, oppressively, and with intent to defraud,
20 and Plaintiff is entitled to punitive and exemplary damages in an amount to be proven at trial.
21 Chevron's officers, directors, and managing agents were personally guilty of malice, fraud, and
22 oppression and/or had advance knowledge and consciously disregarded, authorized, and/or
23 ratified the wrongful acts of malice, fraud, and oppression by their agents and employees.

24 **CAUSE OF ACTION IV**

25 **(Breach of Fiduciary Duty)**

26 64. Plaintiff re-alleges and incorporates by reference the allegations contained in the
27 preceding paragraphs of this complaint, as though fully set forth herein.

28

1 65. As the operator of the units in which the Leases are included, as the lessee under
2 the Leases, based on the undertakings to provide continuing operational, accounting and
3 reporting services to Plaintiff and the Class Members, Defendants occupy the position of a
4 fiduciary for Plaintiff and the Class and owe fiduciary obligations to Plaintiff and the Class
5 Members. The acts and omissions of Chevron described herein violate such fiduciary
6 obligations to Plaintiff and the Class Members.

7 66. As a result of Chevron's conduct set forth herein, Plaintiff has suffered and will
8 continue to suffer economic loss in an amount to be proven at trial.

9 67. Chevron's acts were done maliciously, oppressively, and with intent to defraud,
10 and Plaintiff is entitled to punitive and exemplary damages in an amount to be proven at trial.
11 Chevron's officers, directors, and managing agents were personally guilty of malice, fraud, and
12 oppression and/or had advance knowledge and consciously disregarded, authorized, and/or
13 ratified the wrongful acts of malice, fraud, and oppression by their agents and employees.

14 **CAUSE OF ACTION V**

15 **(Conversion)**

16 68. Plaintiff re-alleges and incorporates by reference the allegations contained in the
17 preceding paragraphs of this complaint, as though fully set forth herein.

18 69. Under the Leases with Plaintiff and Class Members, and pursuant to the
19 undertakings of Chevron to provide information and properly calculate, account for and pay
20 Royalties on Oil, Gas and other hydrocarbons produced and sold pursuant to the Leases, Chevron
21 was obligated to properly sell and account for all Oil, Gas, and other hydrocarbon proceeds
22 attributable to the interests of Plaintiff and Class Members. Chevron, however, failed to meet its
23 obligations, and instead took wrongful possession of, sold and used the Oil, Gas and other
24 hydrocarbons for their own account, and wrongfully received and retained monies that were
25 owed to and owned by Plaintiff and the Class Members.

26 70. Chevron's conduct constitutes an unlawful conversion of the production that is
27 attributable to Plaintiff's and the Class Members' ownership interests and the sales proceeds
28 derived from said production attributable to Plaintiff's and the Class Members' interests. Plaintiff

1 and the Class Members are entitled to receive from Defendants an amount of money equal to the
2 true and proper Royalties they should have received for the sale of the Oil, Gas and
3 hydrocarbons but for the acts and omissions of Chevron.

4 71. As a result of Chevron's conduct set forth herein, Plaintiff has suffered and will
5 continue to suffer economic loss in an amount to be proven at trial.

6 72. Chevron's acts were done maliciously, oppressively, and with intent to defraud,
7 and Plaintiff is entitled to punitive and exemplary damages in an amount to be proven at trial.
8 Chevron's officers, directors, and managing agents were personally guilty of malice, fraud, and
9 oppression and/or had advance knowledge and consciously disregarded, authorized, and/or
10 ratified the wrongful acts of malice, fraud, and oppression by their agents and employees.

11 **CAUSE OF ACTION VI**

12 **(Unfair Competition in Violation of Cal. Bus. & Prof. Code 17200, et seq.)**

13 73. Plaintiff re-alleges and incorporates by reference the allegations contained in the
14 preceding paragraphs of this complaint, as though fully set forth herein.

15 74. Chevron has engaged in a pattern and practice of acts of unfair competition in
16 violation of the UCL, including the practices alleged herein.

17 75. Cal. Bus. & Prof. Code § 17200 provides:

18 As used in this chapter, unfair competition shall mean and include any unlawful
19 or fraudulent business act or practice and unfair, deceptive, untrue or misleading
20 advertising and any act prohibited by Chapter 1 (commencing with section 17500)
of Part 3 of Division 7 of the Business and Professions Code.

21 76. Cal. Bus. & Prof. Code § 17204 provides that an action for violation of
22 California's Unfair Competition Law may be brought by persons who have suffered injury in
23 fact and have lost money or property as a result of such unfair competition and Cal. Bus. & Prof.
24 Code § 17203 provides that a court may grant injunctive and equitable relief to such persons.

25 77. The unlawful conduct of Chevron alleged herein, are acts of unfair competition
26 under Business & Professions Code §§ 17200, *et seq.*, for which Defendants are liable and for
27 which this Court should issue equitable and injunctive relief, including restitution, pursuant to
28 Cal. Bus. & Prof. Code § 17203.

1 78. Through its conduct, Chevron has engaged in unfair business practices in California
2 by employing and utilizing the practices complained of herein. Chevron's use of such unfair
3 business practices constitutes unfair competition that has provided and continues to provide Chevron
4 with an unfair advantage over its competitors.

5 79. Chevron's practices as described herein are unlawful, unfair and fraudulent.

6 80. Chevron's conduct as alleged herein is "unlawful" in that it violates the
7 contractual obligations it owes to the Plaintiff and all Class Members.

8 81. Chevron's conduct as alleged herein is also "unfair" because, among other
9 things, it seeks to nullify the policies underlying every contract, including the duty to act in good
10 faith.

11 82. Chevron's scheme, as alleged herein, is also "fraudulent," in that it is knowingly
12 calculated and likely to mislead. Chevron had actual knowledge of their contractual obligations
13 and breaches but has taken steps and continues to take steps to conceal that information from
14 Plaintiff and other Class members. In this regard, Chevron has, among other things, uniformly
15 provided Plaintiff and other members of the Class with uninformative monthly remittance
16 statements that fail to disclose any information about, among other things, the reduction in the
17 royalties due to its retention of oil or the underreporting of gross production volume and failure
18 to calculate and pay royalties based on the actual gross production volumes, and the failure to
19 calculate and pay royalties based on agreed pricing terms, in violation of the governing lease
20 agreements. This corporate policy and pattern of conduct was accomplished with the advance
21 knowledge and designed intent by Chevron to save millions of dollars and cause harm to all Class
22 Members.

23 83. Unless enjoined, Defendants will continue to harm Plaintiff and all Class
24 Members.

25 84. Plaintiff and all Class Members have suffered injuries in fact and lost money as
26 a result of Defendants' conduct as more specifically alleged above.

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

CAUSE OF ACTION VII

(Unjust Enrichment)

85. Plaintiff re-alleges and incorporates by reference the allegations contained in the preceding paragraphs of this complaint, as though fully set forth herein.

86. Defendants have been unjustly enriched as a result of Chevron’s withholding Royalties owed to Plaintiff and Class Members. Consequently, Chevron has unfairly, improperly and unreasonably received a benefit to the detriment and expense of Plaintiff and Class Members.

87. As a result, Plaintiff and Class Members are entitled to recover the value of the benefit conferred as damages.

CAUSE OF ACTION VIII

(Accounting)

88. Plaintiff re-alleges and incorporates by reference the allegations contained in the preceding paragraphs of this complaint, as though fully set forth herein.

89. Chevron and Plaintiff and Class Members are in a relationship where Chevron pays Plaintiff and Class Members their Royalties based on the proceeds of production from wells on land which is leased from Plaintiff and Class Members.

90. Chevron has a duty to properly report, account for and distribute Plaintiff and Class Members' Royalties.

91. Defendants have almost exclusive control over and access to the information related to Plaintiff and Class Members' Royalty Interests. Thus, Defendants are in a position to know whether the amounts they have paid to Plaintiff and Class Members are appropriate. To the extent that Plaintiff and the Class Members have any information or right of access to any information related to the determination of the subject royalty payments, Chevron has engaged in a fraudulent plan and scheme to conceal the true methodology for determination and payment of royalty payments by providing false and misleading monthly remittance statements, failing to permit audit by lessors, obstructing any audit by lessors, and/or preparing and providing false and misleading audit documentation.

1 92. As alleged above, a dispute exists between Plaintiff and Defendants respecting
2 Chevron's performance of its obligations under the Leases between the parties and the manner
3 and method by which Defendants are entitled to calculate Royalties paid and payable to Plaintiff
4 and Class Members.

5 93. Defendants have failed to provide access to the books kept by Defendants in
6 relation to the amount and character of the production from the leased land and disposition
7 thereof as well as copies of logs of all wells drilled by Defendants on Plaintiff's leased land.
8 Accordingly, it is necessary and appropriate for this Court to order an accounting of the current
9 and historic method by which Defendants calculate and pay royalties, in whole or in part, to
10 Plaintiff and members of the Class.

11 94. Accordingly, Plaintiff demands an accounting regarding the amount of Oil, Gas
12 and other Hydrocarbons produced from individual wells on the relevant Leases, as well as the
13 gathering systems and comparing said amount of Oil, Gas and other hydrocarbons to the
14 amounts sold by Defendants.

15 95. Plaintiff further demands an accounting regarding other matters necessary to
16 determine whether Royalties been fully and fairly paid. These other matters include but are not
17 limited to, the methodology by which Defendants determine pricing and calculate the Royalties.

18 **CAUSE OF ACTION IX**

19 **(Declaratory Relief)**

20 96. Plaintiff re-alleges and incorporates by reference the allegations contained in the
21 preceding paragraphs of this complaint, as though fully set forth herein.

22 97. As alleged above, an actual controversy exists between the parties regarding
23 their respective rights and obligations with respect to the calculation, payment, and reporting of
24 royalties under the law and the Leases.

25 98. Plaintiff requests a declaration of the parties' respective rights and obligations
26 with respect to the foregoing.

27 99. The Court has equitable jurisdiction, co-extensive with its authority to render a
28 declaratory judgment, to issue an injunction to enforce that declaratory judgment. Plaintiff

1 requests that the Court issue an appropriate injunction, compelling defendants, and each of
2 them, to implement appropriate policies and procedures to prevent further violation of the law
3 and Leases with respect to the calculation, payment, and reporting of royalties.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

- 6
- 7 1. Certification of the proposed Class and notice thereto to be paid by Defendants;
 - 8 2. For damages, restitution, and all other appropriate legal and equitable relief;
 - 9 3. For pre-judgment and post-judgment interest;
 - 10 4. For an accounting and declaratory relief, as requested herein;
 - 11 5. For punitive and exemplary damages, as requested herein;
 - 12 6. For reasonable attorneys' fees and litigation expenses;
 - 13 7. For appropriate injunctive relief;
 - 14 8. For costs of suit herein; and
 - 15 9. For such further relief as this Court may deem just and proper.
- 16
17
18
19
20
21
22
23
24
25
26
27
28

///

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

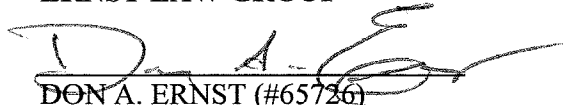
REQUEST FOR A JURY TRIAL

Plaintiff hereby demands a trial by jury on all cause of action so triable.

Dated: March 22, 2012

Respectfully submitted,

ERNST LAW GROUP



DON A. ERNST (#65726)
CHRISTOPHER D. EDGINGTON (#169682)
TAYLOR ERNST (#277901)

1020 Palm Street
San Luis Obispo, CA 93401
Telephone: (805) 541-0300
Fax: (805) 541-5168

COTCHETT, PITRE & McCARTHY, LLP

JOSEPH W. COTCHETT (#36324)
MATTHEW K. EDLING (#250940)
JOANNA W. LICALSI (#288771)

840 Malcolm Road, Suite 200
Burlingame, CA 94010
Telephone: (650) 697-6000
Facsimile: (650) 697-0577

*Attorneys for Plaintiff Melissa D. Duflock
Revocable Trust Individually and on Behalf of All
Others Similarly Situated*