

James E. Torgerson (Bar No. 8509120)
 Jeffrey W. Leppo (Bar No. 0001003)
 Ryan P. Steen (Bar No. 0912084)
 STOEL RIVES LLP
 510 L Street, Suite 500
 Anchorage, AK 99501
 Telephone: (907) 277-1900
 Facsimile: (907) 277-1920
 jetorgerson@stoel.com
 jwleppo@stoel.com
 rpsteen@stoel.com

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF ALASKA

SHELL OIL COMPANY,

Plaintiff,

v.

GREENPEACE, INC., and JOHN and JANE
DOES 1-20,

Defendants.

Case No.: 3:12-cv-00042-SLG

MEMORANDUM IN SUPPORT OF
 MOTION FOR TEMPORARY
 RESTRAINING ORDER AND
 PRELIMINARY INJUNCTION
 (RULE 65)

STOEL RIVES LLP
 510 L Street, Suite 500, Anchorage, AK 99501
 Main (907) 277-1900 Fax (907) 277-1920

I. INTRODUCTION

Plaintiff Shell Oil Company (“Shell”) respectfully requests that this Court issue a temporary restraining order and preliminary injunction enjoining Greenpeace¹ from taking dangerous, tortious and unlawful actions that will cause substantial harm to Shell’s interests and jeopardize property, the environment, and human life. This action pits Shell’s lawful interest in carrying out its 2012 Arctic oil and gas exploration program, as authorized and encouraged by

¹ “Greenpeace” refers to Greenpeace, Inc. and its agents, servants, employees, and all others acting in concert with Greenpeace, Inc.

U.S. law and policy,² against Greenpeace's unlawful interest in stopping, blockading, delaying, harassing, boarding or otherwise impeding or interfering with Shell's operations through the use of tactics and actions that are tortious and that violate criminal and civil laws.

As set forth below and in the accompanying declarations, Greenpeace is engaged in, and presently executing upon, a comprehensive and coordinated world-wide campaign to do whatever it takes to stop Shell's 2012 Arctic Ocean exploration program. The imminent harm presented by Greenpeace's actions warrants a Court order (i) enjoining Greenpeace from engaging in tortious and illegal activities against Shell and its assets and (ii) creating a "safety zone" around Shell's assets so that Shell may continue to carry out its operations in a manner that is safe and responsible. This requested order is squarely in the public's best interest and presents no harm whatsoever to Greenpeace's *lawful* interests.

II. BACKGROUND³

Shell owns interests in certain OCS oil and gas leases, including leases for offshore lands located in Alaska's Chukchi and Beaufort Seas and the Gulf of Mexico. After obtaining multiple approvals from various federal agencies, and after completing preparations that have been years and billions of dollars in the making, Shell intends to lawfully, safely, and responsibly carry out an exploration drilling program on its leases in the Chukchi Sea and Beaufort Sea in the summer of 2012. Greenpeace intends to prevent Shell from doing so, and has initiated tortious and illegal actions to accomplish this publically-stated intent. Greenpeace's past and present actions

² In the Outer Continental Shelf Lands Act, 43 U.S.C. § 1331 *et seq.*, Congress expressly directed the Secretary of Interior to oversee the "expeditious and orderly development" of Outer Continental Shelf ("OCS") resources subject to "environmental safeguards." 43 U.S.C. §§ 1332(3), (6) and 1334(a)(7).

³ The factual background is set forth in detail in the accompanying Declarations of Peter Scott, Joseph Leone, and Mark Duplantis.

establish that Greenpeace can and will engage in dangerous and illegal activities that place human life, property, and the environment at risk, all in an effort to impose its will and to capitalize on publicity generated by its antics.

Greenpeace is an international environmental advocacy organization that is committed to opposing and preventing continued and expanded oil and gas activities in U.S. waters through confrontational, unsafe, and illegal blockade and trespass tactics. Greenpeace has launched an aggressive campaign specifically aimed at preventing Shell from carrying out its exploration drilling program in the U.S. waters off the coast of Alaska in 2012. This campaign is part of Greenpeace's broader global campaign to attempt to stop or prevent all oil and gas exploration and development in the Arctic. The campaign is being pursued by various methods, including intentional, planned, and staged trespass and tortious interference.

Very recent events, including the unlawful boarding and occupation of Shell's contracted exploration drilling vessel (the *Noble Discoverer*) in New Zealand only a few days ago, demonstrate that Greenpeace is intent on carrying out all actions within its capabilities to impede Shell's ability to complete its Arctic exploration program this summer. Greenpeace's illegal act in New Zealand is being used by Greenpeace as a massive publicity stunt. Indeed, in conjunction with this event, Greenpeace has openly stated to Shell through the public media that "the Arctic is off-limits to your oil rigs" and "we can't let this drill ship get to the Arctic." Declaration of Peter Scott ("Scott Decl.") ¶¶ 12-17 (and associated exhibits). Other recent and past actions also confirm Greenpeace's intent to do what it takes to prevent Shell from carrying out its Arctic exploration drilling program and, more broadly, to "kick the oil companies out of the Arctic." *Id.* ¶¶ 5-11, 18-21 (and associated exhibits).

It is undisputed that Greenpeace has knowingly and unlawfully interfered with, and intends to continue to interfere with, Shell's ability to safely transport the *Noble Discoverer* from New Zealand to the Chukchi Sea. Given the maneuverability and navigation constraints inherently faced by the *Noble Discoverer*, which will be under tow assist due to its size, sea ice and meteorological conditions, efforts by Greenpeace to blockade the rig with smaller vessels (including zodiacs or kayaks) or human divers, or to block the path of the tow, or to board and scale the vessel (as they have already done in New Zealand) are extremely dangerous and possibly life-threatening. Moreover, Greenpeace's past and present actions show that it can and likely will attempt to take actions against any of Shell's assets, whether located in New Zealand, the Arctic, the Gulf of Mexico, any other waters or ports of the U.S., or on the high seas, to further its unlawful campaign.

III. ARGUMENT

To obtain a temporary restraining order or a preliminary injunction, the moving party must establish that: (1) it is likely to succeed on the merits; (2) it is likely to suffer irreparable harm in the absence of preliminary relief; (3) the balance of equities tips in its favor; and (4) a temporary restraining order or preliminary injunction is in the public interest. *Sierra Forest Legacy v. Mark Rey*, 577 F.3d 1015, 1021 (9th Cir. 2009), citing *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 20 (2008); see also *Toyo Tire Holdings of Americas Inc. v. Continental Tire North America, Inc.*, 609 F.3d 975, 982 (2010); Fed. R. Civ. P. 65(b)(1). This four-part "traditional test" generally applies whenever preliminary injunctive relief is sought. *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. at 1021; see also *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1127 (9th Cir. 2009).

The Ninth Circuit also has used an alternative test known as the “sliding scale.” The “sliding scale” test provides that a party is entitled to injunctive relief upon a showing of either: (1) a combination of probable success on the merits and the possibility of irreparable injury if injunctive relief is denied, or (2) the likelihood of success was such that “serious questions going to the merits were raised and the balance of hardships tipped sharply in the plaintiff’s favor.” *See Alliance for Wild Rockies v. Cottrell*, 632 F.3d 1127 (9th Cir. 2011). This test has been praised for its flexibility in that it allows the trial court to “balance” the traditional requirements for a preliminary injunction (i.e., a stronger showing of one factor may offset a weaker showing of another factor). *See id.* at 1134-35 (sliding scale test may be used in conjunction with traditional test); *see also, e.g., Hoosier Energy Rural Elec. Co-op., Inc. v. John Hancock Life Ins. Co.*, 582 F.3d 721, 725 (7th Cir. 2009) (finding that weaker claim on the merits can be offset by “net harm an injunction can prevent”).

As set forth below, Shell satisfies the traditional four-factor test, with or without consideration of the Ninth Circuit’s “sliding scale,” and therefore is entitled to injunctive relief.

A. Shell Is Likely to Succeed on the Merits

Shell must show that it is “likely” to prevail on the merits of its claims. *Winter*, 555 U.S. at 20. Shell’s various claims, as set forth in the Amended Complaint, essentially boil down to this:

- Greenpeace has violated numerous laws of the United States.
- Greenpeace intends to continue to violate numerous laws of the United States, and has so stated.
- Greenpeace’s violations have materially harmed, and will continue to – *and are intended to* – materially harm, Shell.

- Greenpeace has no cognizable defense to these violations on the merits.

In short, Greenpeace has taken, and will continue to take, unlawful actions, and they have no legitimate dispute with the illegality of their actions. Greenpeace cannot and will not deny its actions because the illegal tactics it employs are a matter of public record, well-established, and fundamental components of the overarching strategy used by Greenpeace to further its policy objectives through media-grabbing publicity stunts. Shell is not only “likely” to succeed on the merits of its claims; it will succeed on the merits.

B. Shell Will Suffer Irreparable Harm

Greenpeace has engaged in a pattern of unlawful activities that has harmed and continues to harm Shell. *See generally* Scott Decl. These activities are part of Greenpeace’s well-coordinated global strategy to employ numerous and various tactics in an effort to stop, delay or otherwise interfere with Shell’s 2012 Arctic exploration drilling program. The most recent manifestation of Greenpeace’s intent is the incident in New Zealand in which Greenpeace activists, led by actress Lucy Lawless (“Xena: Warrior Princess”), dangerously and unlawfully boarded and occupied the Shell-contracted exploration drilling ship, the *Noble Discoverer*, bound for the Chukchi Sea. Scott Decl. ¶¶ 12-17 and Exs. K, L, M, and N. Greenpeace has stated in no uncertain terms that it will continue to take actions to prevent the *Noble Discoverer* from reaching the Chukchi Sea and, more broadly, to stop Shell from engaging in oil and gas activities in the Arctic. *Id.* Moreover, Greenpeace’s past and present actions show that it may further its goal of preventing Arctic oil and gas exploration by taking action against other Shell assets, such as those located in the Gulf of Mexico. *Id.* at ¶¶ 10, 20-21 and Exs. H and P. In 2012, Greenpeace has publically initiated a training program in St. Petersburg, Florida, for the specific purpose of providing training in how to board and barricade vessels and facilities located

offshore. Scott Decl. ¶ 20. According to Greenpeace’s website, in the last few days, Greenpeace moved another of its large vessels, the *Rainbow Warrior*, into the Gulf of Mexico.

There is every reason to take Greenpeace at its word. Unless enjoined by this Court, Greenpeace will execute on its threats. Shell will be irreparably harmed by these acts, as a result of delays or stoppage of its Chukchi exploration program, and by the high likelihood that Greenpeace’s threatened activities will be extremely dangerous and possibly life-threatening. By definition, Greenpeace’s stated goal – the prevention of Shell’s Arctic exploration drilling program through dangerous and unlawful means – is intended to, and will, irreparably harm Shell. *See* Declaration of Mark W. Duplantis.

C. The Equities Strongly Favor the Shell

Among many other facts, Greenpeace’s willfulness and scienter, both present here, conclusively establish that the equities wholly favor Shell. Indeed, there is no need for the Court to balance equities where the defendant has willfully violated the law. *United States v. Marine Shale Processors*, 81 F.3d 1329, 1358-59 (5th Cir. 1996) (“a court need not balance the hardship when a defendant’s conduct has been willful”); *see also Aaron v. SEC*, 446 U.S. 680, 701 (1980) (court should consider scienter as aggravating or mitigating factor when deciding whether or not to grant injunctive relief). In addition, the equities strongly favor the establishment of Court-ordered “safety zones” around Shell’s assets because such zones will allow Shell to continue to carry out its operations in a safe and responsible manner. The requested safety zones are set forth in detail in the proposed Order accompanying Shell’s motion.

There is literally no harm that Greenpeace will suffer as a result of the injunction requested by Shell. First, the injunction only prohibits Greenpeace from undertaking tortious and illegal activity. Clearly, this presents no cognizable harm to Greenpeace. Second, the

injunction would order Greenpeace to refrain from entering modest pre-established “safety zones” around Shell’s assets. Greenpeace has no lawful interest in entering within the requested safety zones, and can fully and capably carry out its lawful interest in demonstrating and expressing its opinions in a manner that does not interfere with Shell’s operations in adjacent areas of the OCS. *See, e.g.,* Scott Decl, Ex. E (District of Alaska court order in *ARCO Alaska, Inc. v. Greenpeace, U.S.A.*, Case No. A97-0315-CV).

D. An Injunction is in the Public Interest

There is a strong public interest in preventing systematic, willful violations of law that may inflict irreparable harm on persons or property. *Compare Securitron Magnalock Corp. v. Schnabolk*, 65 F.3d 256, 264 (2d Cir. 1995) (giving false information to a regulatory agency responsible for public safety affected the public interest because “harm to the public was manifest”). Moreover, there is a strong public interest in allowing Shell to carry out its operations in a safe and responsible manner. *See Amoco Prod. Co. v. Village of Gambell, AK*, 480 U.S. 531 (“the public interest favor[s] continued oil exploration” in the OCS). The requested injunction is, therefore, squarely in the public interest.

IV. CONCLUSION

For the foregoing reasons, Shell has established that: (1) it is likely to succeed on the merits against Greenpeace; (2) it is likely to suffer irreparable harm in the absence of the injunctive relief requested; (3) the balance of equities tips conclusively in Shell’s favor; and (4) a temporary restraining order and preliminary injunction are in the public interest. Accordingly, Shell respectfully requests that this Court enter a temporary restraining order, as set forth in the Proposed Order accompanying Shell’s motion, and a preliminary injunction.

DATED: February 27, 2012

STOEL RIVES LLP

By: s/ Jeffrey W. Leppo

James E. Torgerson

(Bar No. 8509120)

Jeffrey W. Leppo

(Bar No. 0001003)

Ryan P. Steen

(Bar No. 0912084)

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on the 27th of February, a copy of the foregoing MEMORANDUM IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION (RULE 65) was served on the following parties via hand-delivery and regular U.S. mail:

Greenpeace, Inc.
125 Christensen Drive, Ste. 2
Anchorage, AK 99501

Greenpeace, Inc.
475 Katlian Street
Sitka, AK 99835

Greenpeace, Inc.
75 Arkansas Street, Ste. 1
San Francisco, CA 94107

s/ Jeffrey W. Leppo

Jeffrey W. Leppo

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