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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

CHEVRON ENVIRONMENTAL
MANAGEMENT COMPANY
AND CHEVRON USA,

Plaintiffs,

vs.

BKK CORPORATION, *et. al*,

Defendants.

CASE NO. 1:11-cv-1396 LJO-BAM

**FINDINGS AND RECOMMENDATIONS ON
MOTIONS FOR GOOD FAITH
SETTLEMENT**

(Docs. 57, 58, 59, 60, 61, 62, 64)

INTRODUCTION

Before the Court are Plaintiffs Chevron Environmental Management Company and Chevron USA's (collectively "Chevron") Motions for Good Settlement Determination. (Docs. 57, 58, 59, 60, 61, 62, 64). In six motions, Chevron requests approval of six individual settlement agreements reached with eight of the twenty-one named defendants: Marathon Oil, Husky Oil and Texas Oil & Gas Company (Doc. 57), Consolidated Fiber Glass Products (Doc. 58), Kern Backhoe Services, Inc., and KVS Transportation, Inc. (Doc. 59), Todd Shipyards Corporation and Todd Pacific Shipyards Corporation (Docs. 60, 64), Western Oilfields Supply Company (Doc. 61), and Valley Tree & Construction (Doc. 62) ("Settling Defendants").

On April 13, 2012, a hearing on the motion with all named defendants was held. Counsel Daniel Vineyard and Courtney Carlson appeared in person on behalf of Plaintiff Chevron. Counsel John Allen appeared in person on behalf of Defendants Burtch Trucking Inc., Crosby & Overton, Inc., L.W. Potter,

1 Inc., MP Vacuum Truck Service, Mosaic Global Holdings, Inc., and San Joaquin Refining Co.; Counsel
2 Eric Adair appeared in person on behalf of Defendants KVS Transportation, Inc., Kern Vacuum Service
3 Inc. and Kern Backhoe Service, Inc.; Counsel Don Fischbach appeared in person on behalf of
4 Defendants Western Oilfields Supply Company. Counsel Lauren Mishimura appeared by telephone on
5 behalf of Defendants BKK Corp.; Counsel Jeff McDonald appeared by telephone on behalf of
6 Consolidated Fiber Glass Products Co.; Counsel Rebecca Lloyd and Tuss Erickson appeared by
7 telephone on behalf of Ensign United States Drilling Inc.; Counsel Dennis O’Keefe appeared by
8 telephone on behalf of Golden Gate Petroleum Co.; Counsel Tramaine Singleton appeared by telephone
9 on behalf of Marathon Oil Co. and Texas Oil & Gas Corp.; Counsel Lee Smith appeared by telephone
10 on behalf of Ranchers Cotton Oil; Counsel Charles Blumenfeld appeared by telephone on behalf of
11 Todd Pacific Shipyards Corp.; Counsel Bernie Barmann appeared by telephone on behalf of Valley Tree
12 & Construction. Roger Draucker, appeared in person on behalf of Kern Front Se.-35 Partners in propria
13 persona. Representatives for Energy Production & Sales Co. and Petrominerals Corporation did not
14 appear.

15 For the reasons discussed below, this Court recommends that the Motions for Good Faith
16 Settlement Determination should be GRANTED.

17 **BACKGROUND**

18 Chevron is the owner of EPC Eastside Disposal Facility (the “Site”), which is located on Round
19 Mountain Road in Kern County, fifteen (15) miles northeast of Bakersfield, California. From
20 approximately 1971 to 1985, the Site was operated as a waste disposal facility. During this time, the Site
21 received millions of gallons of oil and non-oil waste that was later disposed of in unlined impoundments.
22 After site testing, the State of California determined that clean-up of the Site was necessary.

23 As an effort to coordinate clean-up efforts with responsible parties, Chevron executed an
24 Imminent and Substantial Endangerment Determination and Consent Order. The Remedial Action Plan
25 for the Site was approved on February 1, 2008 by the Department of Toxic Substances Control. The
26 Remedial Plan stemming from the Consent Order requires substantial remedial efforts, construction and
27 long-term monitoring of the site. Chevron has paid and is currently paying the response costs associated
28 with the investigation and cleanup of the EPC site.

1 On August 22, 2011, Chevron filed this cost recovery action under the Comprehensive
2 Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. §§ 9601-9675;
3 alleging CERCLA causes of action, as well as contribution and/or indemnity claims against a number
4 of defendants in response to releases or threatened release of hazardous substances at the Site. Chevron
5 Complaint, Doc. 1. In its Complaint, Chevron alleges that the total cost of clean-up exceeds
6 \$17,000,000 and that it is entitled to contribution and/or indemnity of the response costs from the named
7 Defendants, as each are strictly, jointly and severally liable for all past and future response costs
8 associated with the investigation and cleanup at the Site. Chevron Complaint at ¶ 41.

9 In October 2011, Chevron began settlement negotiations with the named Defendants in order to
10 reduce the significant defense costs involved with this litigation as well as costs related to each
11 Defendants' apportionment of joint and several liability. *See* Complaint at ¶¶ 31-42. The potential share
12 of liability for each Defendant, and Chevron, was calculated by Chris Wittenbrink, President of CR
13 Consulting, Inc., a management consulting firm that specializes in resolution of environmental disputes
14 and litigation. *See* Wittenbrink Decl. at ¶¶ 1-2, Ex. 2, Doc. 57. The basis for Mr. Wittenbrink's
15 calculations was the initial estimated amount of cleanup costs, \$16,380,000. *See Id.* at ¶3. Mr.
16 Wittenbrink subtracted the total amount of settlements received at the time of the calculation as well as
17 the financial contribution made by the owner. *Id.* at ¶3. Mr. Wittenbrink created a formula for liability
18 based on each transporters and each generator's relative share of oil and non-oil volumes, as shown in
19 operational records and manifests. *Id.* at ¶ 4. He then allocated 10% of the unrecovered costs to the
20 transporters and 90% to the generators and thereafter calculated the relative share according to the
21 enumerated formula, taking into account the oil and non-oil related volumes, the toxicity premium, and
22 a premium for avoidance costs and indemnity from Chevron. *Id.* at ¶¶3-6. Mr. Wittenbrink then
23 assigned an approximate cost of clean-up for each Defendant, which Chevron used in its settlement
24 negotiations.

25 Chevron has now reached settlement agreements with eight named defendants. The key terms
26 of the six settlement agreements are, without admitting liability and with no admission of wrongdoing:
27 (1) Chevron assumes any and all obligations that the Settling Defendants may have to conduct and pay
28 all costs related to clean-up at the Site; (2) Chevron and the Settling Defendants agree to mutually

1 release existing or future claims related to clean up actions at the Site and Chevron further agrees to
2 indemnify the Settling Defendants for costs incurred in connection to clean-up at the Site; and (3) the
3 Settling Defendants agree not to sue any other potentially responsible parties who enter into similar
4 settlement agreements with Chevron. EPC Eastside Disposal Settlement Agreement, Exh. 1, Doc. 64-1.

5 Chevron moves for an order approving that its settlement with the eight defendants is in good
6 faith pursuant to California Code of Civil Procedure § 877.6.

7 **LEGAL STANDARDS FOR GOOD FAITH SETTLEMENT**

8 A motion for good faith settlement arises under California Code of Civil Procedure § 877, which
9 applies to federal court actions and authorizes the Court to determine whether a settlement agreement
10 was entered into good faith. *See Slottow v. American Casualty Co. of Reading, Pennsylvania*, 10 F.3d
11 1355 (9th Cir. 1993) (en banc). In relevant part, the California law states,

12 Where a release, dismissal with or without prejudice, or covenant not to enforce
13 judgment is given in good faith before verdict or judgment to one or more of a number
14 of tortfeasors claimed to be liable for the same tort, or to one or more other co-obligors
mutually subject to contribution rights, it shall have the following effect:

15 (a) It shall not discharge any such party from liability unless its terms so provide, but
16 it shall reduce the claims against the others in the amount stipulated by the release, the
dismissal or the covenant, or in the amount of the consideration paid for it, whichever
is greater.

17 (b) It shall discharge the party to whom it is given from all liability for any
18 contribution to any other parties.

19 Cal. Civ. Proc. Code § 877; *see also Rutgard v. Haynes*, 61 F.Supp.2d 1082, 1085 (S.D. Cal. 1999). The
20 objectives of this legislation were “equitable sharing of costs among the parties at fault, and . . .
21 encouragement of settlements.” *River Garden Farms, Inc. v. Superior Court*, 26 Cal.App.3d 986, 993
22 (1972). However, “equitable sharing” does not require equal sharing. *Id.*

23 The California Supreme Court stated, “the good faith provision of section 877 mandates that the
24 courts review agreements purportedly made under its aegis to insure that such settlements appropriately
25 balance the contribution statute’s dual objectives.” *Tech-Bilt, Inc. v. Woodward-Clyde & Assocs.*, 38
26 Cal. 3d 488 (Cal. 1985). In the determination of good faith, factors to be considered include:

27 (1) a rough approximation of plaintiff’s total recovery and the settler’s proportionate
28 liability; (2) the amount paid in settlement; (3) a recognition that a settler should pay less
in settlement than if found liable after trial; (4) the allocation of the settlement proceeds;
(5) the settling party’s financial condition and the availability of insurance; and (6)

1 evidence of any collusion, fraud or tortious conduct between the settler and the plaintiff
2 aimed at requiring the non-settling parties to pay more than their fair share.
3 *Id.* at 166. The burden of proof lies on a party opposing a motion for good faith settlement to establish
4 a lack of good faith. *Id.* at 167; *see also* Cal. Civ. Proc. Code §877.6(d). An opposing party “must
5 demonstrate . . . that the settlement is so far ‘out of the ballpark’ in relation to these factors as to be
6 inconsistent with the equitable objectives of the statute.” *Id.* at 499-500. The determination as to whether
7 a settlement is made in good faith is a matter of the Court’s discretion. *Id.* at 502.

8 TERMS OF THE SIX SETTLEMENTS

9 **1. Marathon Oil, Husky Oil, and Texas Oil & Gas Corporation Settlement (Doc. 57)**

10 Marathon Oil, Husky Oil, and Texas Oil & Gas Corporation (collectively “Marathon”) have
11 agreed to pay a total of \$494,616.14 to settle Chevron’s claims. This represents approximately 2.9% of
12 the \$16,830,000 in total clean-up costs. Wittenbrink Decl. at ¶ 3. As calculated by Mr. Wittenbrink,
13 Marathon is likely responsible for at least \$596,907.76 in estimated clean-up costs. Wittenbrink Decl.
14 at 6. Thus, the settlement amount is within the ballpark of Marathon’s alleged proportionate liability.
15 The proposed settlements with Marathon were reached after extensive settlement negotiations. Chevron
16 and Marathon negotiated the settlement for approximately three months. During the negotiation period,
17 Chevron communicated with Marathon’s counsel no less than threes (3) times via telephone and
18 exchanged no less than six (6) emails and one (1) letter regarding settlement. Marathon represents that
19 it does not oppose the motion for good faith settlement. Carlson Decl. at ¶ 5, Doc. 57-3.

20 **2. Consolidated Fiber Glass Products Company (“CONGLAS”) (Doc. 58)**

21 Consolidated Fiber Glass Products Company (“CONGLAS”) has agreed to pay \$64,678.96 to
22 settle all of Chevron’s claims as to CONGLAS. This represents approximately 0.4% of the estimated
23 \$16,830,000 in total clean up costs. Wittenbrink Decl. at 3, Doc. 58 at 11. As calculated by Mr.
24 Wittenbrink, CONGLAS is likely responsible for at least \$64,678.96 in estimated clean-up costs.
25 Wittenbrink Decl. at 6. Thus, the settlement amount is proportionate to CONGLAS’ alleged liability.
26 The proposed settlement with CONGLAS was reached after extensive settlement negotiations. Chevron
27 and CONGLAS negotiated the settlement for approximately one (1) month. During that time period,
28 the parties communicated no less than two (2) times via telephone and exchanged no less than three (3)
emails and two (2) letters regarding settlement. CONGLAS represents that it does not oppose the

1 motion for good faith settlement. Carlson Decl. at ¶ 5, Doc. 58-3

2 **3. Kern Backhoe Service, Inc. and KVS Transportation, Inc. Settlement (Doc. 59)**

3 Kern Backhoe Service, Inc. and KVS Transportation, Inc. (collectively “KERN”) have agreed
4 to pay \$208,592.71 to settle all of Chevron’s claims as to each party. This represents approximately
5 1.2% of the estimated \$16,830,000 in total clean up costs. Wittenbrink Decl. at 3, Doc. 59 at 11. As
6 calculated by Mr. Wittenbrink, KERN is likely responsible for at least \$209,236.22 in estimated clean-up
7 costs. Wittenbrink Decl. at 8. Thus, the settlement amount is within the ballpark of Kern’s alleged
8 proportionate liability. The proposed settlement with KERN was reached after extensive settlement
9 negotiations. Chevron and KERN negotiated the settlement for approximately four (4) months. During
10 that time period, the parties communicated no less than five (5) times via telephone and exchanged no
11 less than twenty (20) emails, and three (3) letters regarding settlement. KERN represents that it does
12 not oppose the motion for good faith settlement. Carlson Decl. at ¶ 5, Doc. 59-3.

13 **4. Todd Shipyards Corporation and Todd Pacific Shipyards Corporation Settlement (Doc.**
14 **60, 64).**

15 Todd Shipyards Corporation and Todd Pacific Shipyards Corporation (collectively “TODD”)
16 have agreed to pay \$185,000.00 to settle all of Chevron’s claims as to TODD. This represents
17 approximately 1.1% of the \$16,830,000 in total clean up costs. Wittenbrink Decl. at 3 Doc. 60 at 11.
18 As calculated by Mr. Wittenbrink, TODD is likely responsible for at least \$205,602.88 in estimated
19 clean-up costs. Wittenbrink Decl. at 8. Thus, the settlement amount is within the ballpark of TODD’s
20 alleged proportionate liability. The proposed settlement with TODD was reached after extensive
21 settlement negotiations. Chevron and TODD negotiated the settlement for approximately two (2)
22 months. During that time period, the parties communicated no less than two (2) times via telephone and
23 exchanged no less than four (4) emails, and two (2) letters regarding settlement. TODD represents that
24 it does not oppose the motion. Carlson Decl. at ¶ 5, Doc. 60-3, 64-3.

25 **5. Western Oilfields Supply Company Settlement (Doc. 61).**

26 Western Oilfields Supply Company (“WESCO”) has agreed to pay \$21,495.06 to settle all of
27 Chevron’s claims as to WESCO. Wittenbrink Decl. at 3, Doc. 61 at 11. As calculated by Mr.
28 Wittenbrink, WESCO is likely responsible for at least \$21,495.06 in estimated clean-up costs.

1 Wittenbrink Decl. at 8. Thus, the settlement amount is within the ballpark of WESCO's alleged
2 proportionate liability. The proposed settlement with WESCO was reached after extensive settlement
3 negotiations. Chevron and WESCO negotiated the settlement for approximately three (3) months.
4 During that time period, the parties communicated no less than two (2) times via telephone and
5 exchanged no less than three (3) emails and four (4) letters regarding settlement. WESCO represents
6 that it does not oppose the motion. Carlson Decl. at ¶ 5, Doc. 58-3.

7 **6. Valley Tree & Construction Settlement (Doc. 62).**

8 Valley Tree & Construction ("Valley Tree") has agreed to pay \$20,000.00 to settle all of
9 Chevron's claims as to Valley Tree. This represents approximately 0.1% of the \$16,830,000 in total
10 clean up costs. Wittenbrink Decl. at 3, Doc. 62 at 11. As calculated by Mr. Wittenbrink, Valley Tree
11 is likely responsible for at least \$26,794.89 in estimated clean-up costs. Wittenbrink Decl. at 8. Thus,
12 the settlement amount is within the ballpark of Valley Tree's alleged proportionate liability. The
13 proposed settlement with Valley Tree was reached after extensive settlement negotiations. Chevron and
14 Valley Tree negotiated the settlement for approximately three (3) months. During that time period, the
15 parties communicated no less than three (3) times via telephone and exchanged no less than ten (10)
16 emails and two (2) letters regarding settlement. Chevron forwarded the instant motion to Valley Tree,
17 but Valley Tree did not state whether it opposes the motion, and the time to do so has expired. Carlson
18 Decl. at ¶ 5, Doc. 58-3.

19 **DISCUSSION**

20 The Court has reviewed the motions for good faith settlement with their supporting declarations,
21 the *Tech-Bilt* factors, and the lack of opposition. The Court concludes that the individual settlement
22 agreements qualify as good faith settlements under Cal. Civ. Proc. Code § 877.6. All of the motions,
23 the accompanying settlement amounts, and the supporting declarations were served on all named
24 Defendants. All parties, settling or otherwise, have now had an adequate opportunity to perform a
25 complete analysis of the settlement agreements and express any objections or opposition. At the hearing
26 on the motions for good faith settlement, no party objected to any of the settlements. Significantly, the
27 motions are unopposed, and no party has demonstrated the settlement agreements are unreasonable or
28 inconsistent with the equitable objectives of Cal. Civ. Proc. Code §877.6. Further, no party has objected

1 3. Chevron’s settlement with Kern Backhoe Service, Inc. and KVS Transportation, Inc. (Doc. 59)
2 should be **GRANTED** as entered into in good faith within the meaning of California Code of
3 Civil Procedure section 877.6 and therefore any and all claims for equitable comparative
4 contribution, and partial and complete comparative indemnity, based on comparative negligence
5 or comparative fault, against Kern Backhoe Service, Inc. and KVS Transportation, Inc. be
6 forever barred pursuant to California Code of Civil Procedure §877.6(c).

7 4. Chevron’s settlement with Todd Shipyards Corporation and Todd Pacific Shipyards Corporation
8 (Doc. 60, 64) should be **GRANTED** as entered into in good faith within the meaning of
9 California Code of Civil Procedure section 877.6 and therefore any and all claims for equitable
10 comparative contribution, and partial and complete comparative indemnity, based on
11 comparative negligence or comparative fault, against Todd Shipyards Corporation and Todd
12 Pacific Shipyards Corporation be forever barred pursuant to California Code of Civil Procedure
13 §877.6(c).

14 5. Chevron’s settlement with Western Oilfields Supply Company (Doc. 61) should be **GRANTED**
15 as entered into in good faith within the meaning of California Code of Civil Procedure section
16 877.6 and therefore any and all claims for equitable comparative contribution, and partial and
17 complete comparative indemnity, based on comparative negligence or comparative fault, against
18 Western Oilfields Supply Company be forever barred pursuant to California Code of Civil
19 Procedure §877.6(c).

20 6. Chevron’s settlement with Valley Tree & Construction (Doc. 62) should be **GRANTED** as
21 entered into in good faith within the meaning of California Code of Civil Procedure section
22 877.6 and therefore any and all claims for equitable comparative contribution, and partial and
23 complete comparative indemnity, based on comparative negligence or comparative fault, against
24 Valley Tree & Construction be forever barred pursuant to California Code of Civil Procedure
25 §877.6(c).

26 7. Counsel for Chevron is **DIRECTED** to serve a copy of this Order on all named defendants.
27 These Findings and Recommendations are submitted to the United States District Judge assigned
28 to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and Rule 304 of the Local Rules of

1 Practice for the United States District Court, Eastern District of California. Within fifteen (15) days after
2 being served with these Findings and Recommendations, any party may file written objections with the
3 court. Such a document should be captioned "Objections to Magistrate Judge's Findings and
4 Recommendations." The parties are advised that failure to file objections within the specified time may
5 waive the right to appeal the District Court's order. *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

6 IT IS SO ORDERED.

7 **Dated: April 16, 2012**

8 /s/ **Barbara A. McAuliffe**
9 UNITED STATES MAGISTRATE JUDGE

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