

IN THE UNITED STATES DISTRICT COURT FOR  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

JUAN CARLOS CISNEROS GUERRERO, §  
WILSON FERNANDO ACHACHI §  
SEILEMAN, MIGUEL ANGEL ROMERO §  
GALLARDO, ESBAR ESTALIN PAZ, §  
NORMA GESEL PROAÑO PAREDES, §  
ROBERTO CARLO CASTRO ERAZO, §  
JHONNY MIGUEL LOMAS AYALA, §  
ROLANDO XAVIER MARIÑO SALAN, §  
GONZALO IVÁN VICENTE HIDROVO §  
MINCHONG, JUAN FERNANDO §  
MAFLA HIDALGO, VICTOR HUGO §  
PAGUAY MELENA, FRANCISCO §  
EDWARD MIRANDA SANTAMARÍA, §  
CARLOS ALBERTO REVELO VILLON, §  
PEDRO RAMIRO OLMEDO CABRERA, §  
GERMANIO XAVIER MONTESDEOCA §  
VILLA, CÉSAR AUGUSTO VEGA §  
MONTÚFAR, EDGAR RAMIRO ARMAS §  
GALARZA, EDUARDO MAURICIO §  
GONZÁLES RIVADENEIRA, CÉSAR §  
GEOVANNY MONTOYA PALLO, §  
NELSON DARÍO CAICEDO LARA, §  
AND BISMARCK GONZALO ALBAN §  
CORNEJO, §

*Plaintiffs,*

-versus-

OCCIDENTAL PETROLEUM  
CORPORATION  
AND  
OCCIDENTAL EXPLORATION AND  
PRODUCTION COMPANY,

*Defendants.*

CASE NO. \_\_\_\_\_

CLASS ACTION COMPLAINT  
JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

NOW COME Plaintiffs, JUAN CARLOS CISNEROS GUERRERO, WILSON  
FERNANDO ACHACHI SEILEMAN, MIGUEL ANGEL ROMERO GALLARDO, ESBAR

ESTALIN PAZ, NORMA GESEL PROAÑO PAREDES, ROBERTO CARLO CASTRO ERAZO, JHONNY MIGUEL LOMAS AYALA, ROLANDO XAVIER MARIÑO SALAN, GONZALO IVÁN VICENTE HIDROVO MINCHONG, JUAN FERNANDO MAFLA HIDALGO, VICTOR HUGO PAGUAY MELENA, FRANCISCO EDWARD MIRANDA SANTAMARÍA, CARLOS ALBERTO REVELO VILLON, PEDRO RAMIRO OLMEDO CABRERA, GERMANIO XAVIER MONTESDEOCA VILLA, CÉSAR AUGUSTO VEGA MONTÚFAR, EDGAR RAMIRO ARMAS GALARZA, EDUARDO MAURICIO GONZÁLES RIVADENEIRA, CÉSAR GEOVANNY MONTOYA PALLO, NELSON DARÍO CAICEDO LARA, AND BISMARCK GONZALO ALBAN CORNEJO on behalf of themselves and others similarly situated and for their complaint state as follows:

**PARTIES**

1. Plaintiffs and Class Representatives, JUAN CARLOS CISNEROS GUERRERO, WILSON FERNANDO ACHACHI SEILEMAN, MIGUEL ANGEL ROMERO GALLARDO, ESBAR ESTALIN PAZ, NORMA GESEL PROAÑO PAREDES, ROBERTO CARLO CASTRO ERAZO, JHONNY MIGUEL LOMAS AYALA, ROLANDO XAVIER MARIÑO SALAN, GONZALO IVÁN VICENTE HIDROVO MINCHONG, JUAN FERNANDO MAFLA HIDALGO, VICTOR HUGO PAGUAY MELENA, FRANCISCO EDWARD MIRANDA SANTAMARÍA, CARLOS ALBERTO REVELO VILLON, PEDRO RAMIRO OLMEDO CABRERA, GERMANIO XAVIER MONTESDEOCA VILLA, CÉSAR AUGUSTO VEGA MONTÚFAR, EDGAR RAMIRO ARMAS GALARZA, EDUARDO MAURICIO GONZÁLES RIVADENEIRA, CÉSAR GEOVANNY MONTOYA PALLO, NELSON DARÍO CAICEDO LARA, AND BISMARCK GONZALO ALBAN CORNEJO are citizens and residents of the Republic of Ecuador and each of them is a member of the class.

2. Defendant OCCIDENTAL PETROLEUM CORPORATION is a Delaware corporation that maintains its principal executive office at 5 Greenway Plaza, Suite 100, Houston, Texas and can be served through its registered agent, The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801.

3. Defendant OCCIDENTAL EXPLORATION AND PRODUCTION COMPANY is a California corporation, a wholly owned subsidiary of OCCIDENTAL PETROLEUM CORPORATION, and can be served through its registered agent, CT Corporation System, 818 West Seventh Street, Suite 930, Los Angeles, California 90017.

4. The Defendants are referred to collectively as “OXY.”

#### **JURISDICTION AND VENUE**

5. This Court has subject matter jurisdiction under 28 U.S.C. § 1332(a)(2) because the suit is between citizens of a U.S. state and citizens of a foreign state that are not lawfully admitted permanent U.S. residents domiciled in the same U.S. state, and the amount in controversy exceeds \$75,000, excluding interest and costs.

6. Venue is proper in the Southern District of Texas under 28 U.S.C. § 1391(b)(3) because the Defendants are subject to the Court’s personal jurisdiction with respect to this action and there is no other district where the suit may be brought.

#### **CONDITIONS PRECEDENT**

7. All conditions precedent have been performed or have occurred.

#### **CLAIMS FOR RELIEF**

8. Each individual Plaintiff and Class Representative, and each member of the proposed class, is a citizen and resident of the Republic of Ecuador and a former employee of OXY.

9. The laws of the Republic of Ecuador applicable to OXY, specifically Labor Code article 97 et seq., require OXY to pay 15% of its profits each year to the class as a statutory profit sharing plan. Further, or in the alternative, OXY promised and agreed to pay 15% of its profits to the class as a bonus, or in acknowledgment of its statutory obligation to make such payment.

10. In or about 2006, the government of the Republic of Ecuador terminated the OXY's oil concessions in that country because OXY made an assignment of a part of its interest in those concessions which the government contended was illegal or not permitted under the terms of the concession.

11. OXY then terminated the class members without paying the 15% bonus, contending that it had lost money due to the government's termination of its concessions.

12. OXY then commenced an arbitration proceeding before the International Center for Settlement of Investment Disputes (ICSID) pursuant to the provisions of the United States-Ecuador Bilateral Investment Treaty signed by the two countries on August 27, 1993 and effective as of May 11, 1997.

13. On October 5, 2012 the ICSID panel issued its final decision. The panel awarded OXY \$1,769,625,000, which was found to be the discounted value of the cash flows OXY would have realized had the concessions not been terminated, plus interest at the rate of 4.5%.

14. All possible appeals from the ICSID award have now expired or have been exhausted and the award is final.

15. Because OXY incurred no operating expense or overhead, the sum awarded by the panel is profit, and the statutory profit sharing of 15% is due on that sum.

16. OXY has not paid the required 15% to the Plaintiffs.

17. OXY's failure to pay has caused Plaintiffs and the class members damages exceeding \$265 million in damages.

### **CLASS ACTION ALLEGATIONS**

18. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Plaintiffs bring this class action individually and on behalf of all other similarly-situated persons who were or are employees of OXY in Ecuador and who were or are entitled to a portion of the arbitration award. There are more than 300 class members, and all are entitled to share in the statutory payment that this action seeks to enforce.

19. All issues of law and fact are common to the entire class. The controlling legal questions are: (1) whether the Defendants are required by law to pay 15% of their profits to the class; and (2) whether the award of the ICSID award is *res judicata* on the amount of profit to be used to calculate the damages.

20. The controlling fact questions are: (1) whether OXY was required by Ecuadorian law to pay the Plaintiffs and all members of the class 15% of its profits; (2) whether the Defendants entered into an agreement with the class to pay 15% of its profits to them; and (3) what is the amount of profit upon which the statutory or agreed amount is to be calculated.

21. The named Plaintiffs are typical of the class, and are capable of vigorously representing the interests of the class. They understand the issues and have engaged counsel that has previously dealt with U.S. energy companies that have failed to pay the statutory bonuses required by the laws of Ecuador.

22. A class action is superior to all other available methods for the fair and efficient adjudication of the Plaintiffs' and the class members' claims because Plaintiffs and the class

members have suffered similar harm as a result of OXY's conduct. Certification of a class action to resolve these disputes will reduce the possibility of repetitious litigation.

23. This action, and the named Plaintiffs, therefore satisfy all of the requirements of Rule 23 of the Federal Rules of Civil Procedure for certification as a class action.

**PRAYER FOR RELIEF**

24. Plaintiffs, individually and on behalf of all others similarly situated, therefore request that the Court enter an Order: (1) certifying the proposed class under Federal Rule of Civil Procedure 23; (2) appointing Plaintiffs and Plaintiffs' counsel to represent the Class; (3) awarding damages to Plaintiffs in the amount of \$265,443,750; (4) awarding pre- and post-judgment interest; (5) awarding attorneys' fees and litigation costs; and (6) awarding any other relief as may be available under law and as justice requires.

Respectfully submitted,

**THE SYDOW FIRM**

/s/ Michael D. Sydow \_\_\_\_\_  
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***ATTORNEY IN CHARGE FOR  
PLAINTIFFS.***