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**UNITED STATES DISTRICT COURT**  
**FOR THE NORTHERN DISTRICT OF CALIFORNIA**

\_\_\_\_\_  
Gonzales, *et al.*, )  
 )  
Plaintiffs, )  
v. )  
 )  
Texaco Inc., *et al.* )  
 )  
 )  
Defendants. )  
\_\_\_\_\_ )

CASE NO.: C 06-02820 WHA  
**PLAINTIFFS' MEMORANDUM IN  
OPPOSITION TO DEFENDANTS' MOTION  
FOR SUMMARY JUDGMENT ON  
PLAINTIFFS' CLAIMS AGAINST CHEVRON  
CORPORATION**  
Hearing Date: November 15, 2007  
Time: 8:00 a.m.  
Courtroom: 9, 19<sup>th</sup> Floor  
Judge: Hon. William H. Alsup

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1 **I. INTRODUCTION**

2 Defendants' Motion for Summary Judgment on Plaintiffs' Claims Against Chevron  
3 Corporation based on the assertion that "Chevron was not and is not now Texaco or Texpet's  
4 alter ego, agent or successor in interest", *see* Motion at 3, is unsupported by the record in this  
5 case. Rather, as shown below, Chevron is the successor in interest to Texaco, Inc. based on a  
6 corporate merger in 2001 whereby it assumed all of Texaco, Inc.'s disabilities and duties. It is  
7 well recognized that where such a statutory merger occurs, the successor corporation can be held  
8 liable for the predecessor's tortious conduct, even where such conduct was unknown at the time  
9 of merger. At minimum, there exists a factual dispute with regards to the liabilities undertaken by  
10 such merger, which precludes summary judgment.

11 **II. PLAINTIFFS' STATEMENT OF MATERIAL FACTS**

12 1. Texaco, Inc. was incorporated under the laws of Delaware on August 26, 1926,  
13 and existed as such prior to October 9, 2001. [Exhibit ("Exh.") A].<sup>1</sup>

14 2. Chevron, originally Standard Oil of California, was incorporated under the  
15 laws of the State of Delaware on January 27, 1926, and existed as such prior to October 9, 2001.  
16 [Exh. B].

17 3. Texaco Petroleum Company (TexPet), as of December 23, 1993, was a fourth tier  
18 subsidiary of Texaco Inc. [Exh. C, Affidavit of Texpet].

19 4. Keepep Inc. is a corporation incorporated under the laws of the State of Delaware  
20 on October 10, 2000. [Exh. D.]

21 5. On October 15, 2000, Texaco Inc., Chevron Corporation and Keepep Inc.,  
22 announced an Agreement and Plan of Merger ("Merger Agreement"). [Exh. E]. The Certificate  
23 of Merger was subsequently filed with the State of Delaware as a statutory merger on October 9,  
24 2001. [Exh. F]

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27 <sup>1</sup> All Exhibits are attached to the Declaration of Terry Collingsworth in Support of Plaintiffs'  
28 Memorandum in Opposition to Defendants' Motion for Summary Judgment on Plaintiffs'  
Claims Against Chevron Corporation, filed concurrently herewith.



1 wholly owned subsidiary of Chevron, will merge into and with Texaco. Thereupon, the separate  
2 existence of Keepep will cease and Texaco will be the surviving corporation and become a  
3 wholly owned subsidiary of Chevron. On the date of the merger, Chevron Corporation will be re-  
4 named as ChevronTexaco Corporation. Therefore, the notified transaction is a full merger and a  
5 concentration within the meaning of Article 3(1)(a) of the Merger Regulation.” *Id.* at p. 2.

6 14. On September 7, 2001, the U.S. Federal Trade Commission issued a press release  
7 indicating approval of the merger of Chevron and Texaco, prompting ChevronTexaco  
8 Corporation to issue its own press release also publically acknowledging a merger. [Exhs. H and  
9 I, respectively].

10 15. On October 22, 2004, ChevronTexaco admitted that it has no parent corporations,  
11 and that there are no publicly held corporations that own ten percent or more of ChevronTexaco  
12 Corporation’s stock. [Exh. J].

13 16. On October 22, 2004, TexPet admitted that ChevronTexaco Global Energy, Inc. is  
14 the only Company that owns ten percent or more of its stock. [Exh. K].

15 17. On May 9, 2005, ChevronTexaco announced a change of name from  
16 ChevronTexaco to Chevron Corporation to indicate a more unified global image. [Exh. L].

### 17 **III. DISCUSSION**

18 The general rule is that a corporation which acquires the principal stock of another  
19 corporation can be held liable for the latter's liabilities where:

- 20 (1) there is an express or implied agreement of assumption;  
21 (2) the transaction amounts to a consolidation or merger of the two corporations;  
22 (3) the purchasing corporation is a mere continuation of the seller; or  
23 (4) the transfer of assets to the purchaser is for the fraudulent purpose of  
24 escaping liability for the seller's debts.

25 *Petrini v. Mohasco Corp.*, 71 Cal. Rptr.2d 910, 912 (1<sup>st</sup> Dist. 1998).

26 In *Petrini*, the widow and children of a decedent who died from exposure to asbestos in  
27 floor tiles sued the successor corporation who acquired the supplier tile company. *Id.* at 911. The  
28 court held that the successor corporation into which the tile supplier was merged could be held

1 liable for the decedent's asbestos related death although liability for such was unknown at the  
2 time of merger. *Id.* In doing so, the Court recognized the ““general rule that a corporation formed  
3 by consolidation or merger is answerable for the debts and liabilities of the constituent  
4 corporations.”” *Id.* at 915 (quoting *Moe v. Transamerica Title Insurance Company*, 98 Cal. Rptr.  
5 547 (1971)). “A merger is the absorption of one corporation by another which survives, retains  
6 its name and corporate identity together with the added capital, franchises and powers of the  
7 merged corporation and continues the combined business.” *Heating Equipment Manufacturing*  
8 *Co. v. Franchise Tax Board*, 39 Cal. Rptr. 453, 460 (1<sup>st</sup> Dist 1964)(citing 15 Fletcher Cyclopedia  
9 Law of Private Corporations § 7041 (1961)).

10 Here, there was precisely such a merger between Texaco, Inc. and Chevron Corporation,  
11 which is uncontroverted by Chevron, and well documented by both U.S. and European public  
12 agencies. *See, e.g.*, Exh. E, Article 1, Section 1.1(a)(describing a statutory merger pursuant to the  
13 laws of Delaware); Exh G, pp.1, 2 (European Commission acknowledging full merger between  
14 Chevron and Texaco, Inc. via Chevron's subsidiary, Keeper, Inc); Exh. H (Federal Trade  
15 Commission press release indicating its consent to the proposed merger by Chevron and Texaco);  
16 Exh. I (Joint Chevron and Texaco press release announcing that the Federal Trade Commission  
17 approves the merger of Chevron and Texaco, and stating “our integration planning since  
18 announcing the merger last October has gone exceptionally well. Upon receiving stockholder  
19 approval, we will be ready to start operating effectively as one company”). Accordingly,  
20 following this merger, Chevron assumed the name ChevronTexaco to reflect successful  
21 completion of the merger, and Texaco was permitted to keep its name merely as a trade mark.  
22 *See* Exh. E, Article 2, Sections 2.1 (a) and 2.1(b). The recent change back to Chevron  
23 Corporation is further indicative that Texaco has been fully absorbed as a merged entity. *See* Exh  
24 L (stating “a move to present a clear, strong and unified presence in the global marketplace,  
25 ChevronTexaco Corporation is changing its name to Chevron Corporation, [sic] effective  
26 immediately”).

1 In such a statutory merger, meaning a formal legal merger pursuant to state and/or federal  
2 law as opposed to a *de facto* merger, “the surviving corporation shall be subject to all the debts  
3 and liabilities of each constituent corporation, in the same manner as if the surviving corporation  
4 had itself incurred them”. *Treadway v. Camellia Convalescent Hospitals, Inc.* 118 Cal. Rptr. 341,  
5 347 (3<sup>rd</sup> Dist. 1974)(citations omitted). *See e.g.*, 8 Delaware Code § 259(a)(“When any merger or  
6 consolidation shall have become effective under this chapter, for all purposes of the laws of this  
7 State the separate existence of all the constituent corporations, or of all such constituent  
8 corporations except the one into which the other or others of such constituent corporations have  
9 been merged, as the case may be, shall cease and the constituent corporations shall become a new  
10 corporation, or be merged into 1 of such corporations, as the case may be, possessing all the  
11 rights, privileges, powers and franchises as well of a public as of a private nature, and being  
12 subject to all the restrictions, disabilities and duties of each of such corporations so merged or  
13 consolidated.”); California Corp. Code § 1107(a)(“Upon merger pursuant to this chapter the  
14 separate existence of the disappearing corporations ceases and the surviving corporation shall  
15 succeed, without other transfer, to all the rights and property of each of the disappearing  
16 corporations and shall be subject to all the debts and liabilities of each in the same manner as if  
17 the surviving corporation had itself incurred them.”).

18 Indeed, here the liability of Chevron as a successor corporation is particularly appropriate  
19 because it held itself out as the sole successor in interest of Texaco, Inc. and as a single merged  
20 entity, per the terms of the Merger Agreement. *See, e.g., Moe*, 98 Cal. Rptr. at 556. In *Moe*, the  
21 court held a successor corporation liable for the fraudulent conduct of an employee of the  
22 predecessor corporation. There, the record showed that:

23 Appellant Transamerica designated itself as "Transamerica Title  
24 Insurance Company, a corporation, formerly known as City Title  
25 Insurance Company. Clearly, appellant Transamerica made no  
26 attempt in the trial court to contend that it was a corporation  
27 separate and distinct from City Title or that it was subject to  
28 a different standard of liability. To the contrary, the above-quoted  
portions of the answer are, in effect, admissions that the two

1 corporations are one and the same.

2 *Id.* As in *Moe*, Defendant Chevron cannot now simply disavow the merger with Texaco simply  
3 because it occurred in 2001, and the possibility of Plaintiffs' claims were allegedly unknown. *See*  
4 *Petrini*, 71 Cal. Rptr.2d at 915 ("The surviving corporation under a statutory merger is responsible  
5 for the liabilities of the merged corporation under both common law and statute. No authority has  
6 been cited or found indicating that such liabilities would be limited only to known ones"). Rather,  
7 its own admission that a full merger occurred coupled with the actual Merger Agreement indicating  
8 such a statutory merger is conclusive on Chevron's liability as a successor to Texaco, Inc.  
9 Accordingly, Chevron can be held liable for punitive and compensatory damages as a result of  
10 Plaintiffs' injuries.

11 **IV. CONCLUSION**

12 WHEREFORE, all the reasons stated herein, Defendants' Motion for Summary Judgment  
13 on Plaintiffs' Claims Against Chevron Corporation should be denied.

14 Respectfully submitted on this 25<sup>th</sup> day of October, 2007 by:

15  
16 /s/Terry Collingsworth

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Terry Collingsworth,  
18 *On Behalf of Counsel for Plaintiffs*  
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