

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

_____)
In the matter of)
)
UNION OIL COMPANY OF CALIFORNIA,) Docket No. 9305
)
a corporation.)
_____)

DECLARATION OF THOMAS R. EIZEMBER IN SUPPORT OF
EXXONMOBIL’S MOTION FOR *IN CAMERA* TREATMENT

I, Thomas R. Eizember, declare as follows:

1. I am the Manager for Global Planning Support in the Planning and Project Execution organization of ExxonMobil Refining and Supply Company, an operating division of Exxon Mobil Corporation (“ExxonMobil”). In that capacity, I have responsibility for business planning support and oversight of all refineries worldwide that are operated by ExxonMobil or its affiliates, including ExxonMobil Oil Corporation’s refinery in Torrance, California. In earlier positions as strategic planning coordinator and senior planning associate at Exxon Corporation (“Exxon”), now ExxonMobil, I was involved in business planning activities relating to Exxon’s refinery in Benicia, California, which was sold to Valero Energy Corporation (“Valero”) in May 2000.

2. ExxonMobil is not a party to the captioned matter.

3. The documents for which ExxonMobil seeks *in camera* treatment, attached as Exhibits A-E hereto, are identified as:

EXHIBIT	RX	PRODUCTION BATES NUMBERS
A	517	EXMOUNO-0018040 to -56
B	571	EXMOUNO-0002897 to -2905
C	204	EXMOUNO-0002897 to -2905
D	977	EXMOUNO-0000100 to -141
E	1021	EXMOUNO-0021358 to -59

4. I have reviewed the documents for which ExxonMobil seeks *in camera* treatment. As Manager for Global Planning Support, Planning and Project Execution, I am familiar with the type of information contained in those documents. I am also

generally familiar with the confidentiality protection afforded this type of information by ExxonMobil. Based upon my review of these documents, my knowledge of ExxonMobil's business, and my familiarity with the confidentiality protection that ExxonMobil affords information of this type, it is my belief that disclosure of these documents to the public and to competitors of ExxonMobil could cause serious competitive injury to ExxonMobil.

Exhibits

5. Exhibit A (RX 517; EXMOUNO-0018040 to -56) is a draft Cross-Immunity Agreement between ExxonMobil and Chevron U.S.A., Inc., along with an e-mail message between corporate counsel for the parties to the proposed Agreement. This document was created for the exclusive use of ExxonMobil and Chevron U.S.A., Inc. Within ExxonMobil, the information contained in Exhibit A is known to only a small number of people, specifically those involved in developing and negotiating the Agreement. The e-mail message from counsel for ExxonMobil expressly requests that "the terms of this Agreement and our discussions on it be kept confidential between our companies." (See Exhibit A, RX 517 at EXMOUNO-0018040). I understand that Exhibit A was produced to Union Oil Company of California ("Unocal") with the designation "Confidential" pursuant to the Protective Order in this matter. Apart from that production, the proposed Agreement has not been distributed to anyone outside of ExxonMobil and Chevron U.S.A., Inc., to the best of my knowledge. ExxonMobil has devoted substantial business and legal resources to the development of Exhibit A, and to its efforts to negotiate the terms of the proposed Agreement with Chevron U.S.A., Inc.

6. Disclosure of the draft Cross-Immunity Agreement could result in serious competitive injury to ExxonMobil. Other parties with whom ExxonMobil is negotiating or is considering negotiating similar agreements could use the terms contained in Exhibit A to their advantage, and to the detriment of ExxonMobil, when negotiating the terms of their agreements with ExxonMobil. In addition, disclosure of Exhibit A could also interfere with the ongoing confidential discussions between ExxonMobil and Chevron U.S.A., Inc. on the terms of the proposed Agreement and could endanger the conclusion of the Agreement, thus causing ExxonMobil serious business injury.

7. Exhibit B (RX 571; EXMOUNO-0002897 to -2905) reflects a proposal by Exxon to the California Air Resources Board ("CARB") in connection with Exxon's request for on-line certification at its Benicia Refinery. This document was designated "Proprietary" by Exxon when it was presented to CARB. (See Exhibit B, RX 571 at EXMOUNO-0002897). I understand that Exhibit B was produced to Unocal with the designation "Confidential" pursuant to the Protective Order in this matter. Other than that production, the disclosure to CARB and possibly disclosure to Valero Energy Corporation in connection with Valero's acquisition of the Benicia refinery, this document has not been disclosed to anyone outside of ExxonMobil, to the best of my knowledge. Exxon devoted substantial business and technological resources to the

development of the proposal to CARB and to the testing and validation of on-line certification in support of the proposal.

8. ExxonMobil could suffer serious business injury if the contents of Exhibit B were to be disclosed publicly. This proposal discusses the internal production methods of Exxon when blending gasoline to comply with CARB specifications, and refers to methods of using on line-certification and business advantages that usage of on-line certification would confer. Such information could be used by competitors to improve the design of their own production methods with substantially lower commitment of resources than Exxon, to the detriment of ExxonMobil's competitive position.

9. Exhibit C (RX 204; EXMOUNO-0002897 to -2905) is identical to Exhibit B. It is my understanding that these documents have been designated by Unocal as separate trial exhibits (RX 204 and RX 571, respectively). The facts set forth in Paragraphs 7 and 8 above concerning Exhibit B apply with equal force to Exhibit C.

10. Exhibits D (RX 977; EXMOUNO-0000100 to -141) and E (RX 1021; EXMOUNO-0021358 to -59) are internal business planning documents relating to research, development and deployment of on-line certification technology at the Torrance or Benicia refineries. These documents were created by Exxon or Mobil personnel for internal use and limited distribution. It is my understanding that Exhibits D and E were produced to Unocal with the designation "Confidential" pursuant to the Protective Order in this matter. Apart from that production, these documents have not been disclosed to anyone outside of ExxonMobil, to the best of my knowledge. ExxonMobil's predecessors devoted substantial effort, time and financial resources to the development and usage of on-line analyzer technology and to obtaining CARB approval to employ this technology for on-line certification of gasoline blending operations.

11. In particular, Exhibit D discusses details of successful application of on-line analysis and certification and contains actual testing data from the use of on-line analyzer technology (See Exhibit D, RX 977 at EXMOUNO-0000120 to -131). This document also outlines where and how ExxonMobil employs this technology in its worldwide refinery blending operations (See Exhibit D, RX 977 at EXMOUNO-0000111 to -115). This information was developed by substantial investment of Exxon resources, and if this information were disclosed to a competitor, that competitor would be able to harm ExxonMobil in the marketplace because it would know the level of ExxonMobil's technological development in blending operations and could exploit any limitations in, for example, production capacities or blending techniques, and could deploy similar technology at lower cost. Currently, ExxonMobil is in the process of seeking to enhance the Torrance Refinery's on-line analysis and certification capabilities via use of the Exxon technology described in this document.

12. Exhibit E (RX 1021) contains confidential e-mail communications between Mobil research and refinery personnel concerning the advantages of using on-line analyzer technology at the Torrance Refinery. This document also discusses the

significant business and financial advantages from the use of on-line analyzer technology and CARB's certification to employ that technology. In particular, Exhibit E reveals certain blending limitations and methods at the Torrance Refinery. The Torrance facility currently utilizes the same on-line analysis and certification technology discussed in this document. Disclosure of this document to third parties or competitors of ExxonMobil could cause serious harm to ExxonMobil's business by exposing Torrance's current operating practices and economics.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this _____ day of October, 2003, in

_____.

Thomas R. Eizember

TABS A – E REDACTED

For reference purposes:

<u>Exhibit</u>	<u>RX</u>	<u>Production Bates Numbers</u>
A	517	EXMOUNO-0018040 to 0000056
B	571	EXMOUNO-0002897 to 0002905
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