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UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION  
WASHINGTON, D.C.

In the Matter of

UNION OIL COMPANY OF CALIFORNIA,  
a corporation.

Docket No. 9305

**UNOCAL'S RESPONSE AND OPPOSITION TO COMPLAINT COUNSEL'S  
PETITION TO THE COMMISSION FOR EXPEDITED REVIEW OF  
ADMINISTRATIVE LAW JUDGE'S EXERCISE OF DELEGATED AUTHORITY  
PURSUANT TO 16 C.F.R. SECTION 0.7 AND REQUEST FOR SUPPLEMENTAL  
ORDER ON REMAND**

Union Oil Company of California (“Unocal”) responds to Complaint Counsel’s Petition to the Commission in order to correct and clarify certain statements made in Complaint Counsel’s Petition regarding both this proceeding and the matter of *Unocal v. Arco, et al.*, CV95-2359 CAS (C.D. Cal.). Unocal opposes the Petition to the extent that it seeks to involve the Commission in the specific dates or details for the setting of the trial date.

As a preliminary matter, Unocal has no interest in delaying this matter. That said, Complaint Counsel’s Petition to the Commission seems misplaced. Significantly, Complaint Counsel have not taken any steps since the Commission’s remand of this matter to address necessary preliminary matters. Complaint Counsel have not submitted a trial brief, proposed findings of fact, proposed stipulations of facts and law or any of the other required pre-trial submissions. Complaint Counsel have not responded to requests from Unocal for Complaint Counsel’s order of witnesses, reducing the list of its 60 supposed witnesses, or for a “48-hour rule” for identifying exhibits to be used with witnesses, all of which would expedite this proceeding.

Complaint Counsel's Petition appears to be a reaction to the August 23, 2004 status conference in the matter of *Unocal v. Arco*, which Complaint Counsel wrongly characterizes as Unocal "now restart[ing] its effort to collect additional royalty payments." Petition at 3. Unocal appeared in court on August 23, 2004 by order of the United States District Court for a status conference (set on the court's own motion) regarding the accounting for past damages (not "additional royalty payments") that has been pending in that matter since Judgment was entered for Unocal in August 1998. Addressing the court's concerns about these proceedings with the Commission and proceedings at the Patent and Trademark Office, Unocal cited case law confirming that a federal agency has no right to attempt to modify or alter a judgment or order of the federal judiciary (particularly where the agency had an opportunity to intervene in the action and chose not to do so). Complaint Counsel Mr. Park — who appeared at the conference uninvited and with no notice of appearance — had no response on the law. Complaint Counsel's Petition to the Commission followed two days later.

Unocal did not oppose Complaint Counsel's request to set a hearing date. Undersigned counsel simply declined Complaint Counsel's request for dictating a schedule to the Judge, who knows best his own schedule. In fact, undersigned counsel explained his belief that it was not appropriate to contact the Judge on this issue since the Judge was aware of the Commission order and the request filed by Complaint Counsel for an order setting trial. Now Unocal has learned that Complaint Counsel conducted an undisclosed *ex parte* contact with the Judge's Attorney Advisor to pursue the issue. As counsel for Unocal expressly told Complaint Counsel Mr. Park, Unocal does not believe that it is appropriate for the parties to attempt to dictate a schedule to the Administrative Law Judge, who undoubtedly is immersed in considering the various motions filed by Complaint

Counsel, Unocal and non-parties, all of which must be decided prior to trial, in addition to his other important matters.<sup>1</sup> Unocal continues to believe that the Administrative Law Judge will set the schedule as expeditiously as is practicable given the orderly process with which this matter should take place. Complaint Counsel have not proffered, much less shown, any reason to believe otherwise. Accordingly, Unocal opposes the Petition to the extent that Complaint Counsel seeks to have this Commission dictate specific dates or details for the setting of the trial date.

Dated: August 30, 2004.

Respectfully submitted,

ROBINS, KAPLAN, MILLER & CIRESI L.L.P.

By: Signature on File with Commission

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*and*

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<sup>1</sup> Unocal understands that Judge Chappell has also been handling the Arch Coal matter.

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*ATTORNEYS FOR UNION OIL COMPANY OF  
CALIFORNIA*

## CERTIFICATE OF SERVICE

I hereby certify that on August 27, 2004, I caused an original and twelve (12) paper copies (via Federal Express) and an electronic copy (via e-mail) of Unocal's Response and Opposition to Complaint Counsel's Petition to the Commission for Expedited Review of Administrative Law Judge's Exercise of Delegated Authority Pursuant to 16 C.F.R. Section 0.7 and Request for Supplemental Order on Remand to be filed with:

Donald S. Clark, Secretary  
Federal Trade Commission  
600 Pennsylvania Ave. NW, Rm. H-159  
Washington, DC 20580  
E-mail: *secretary@ftc.gov*

I hereby certify that on August 27, 2004, I also caused two paper copies of Unocal's Response and Opposition to Complaint Counsel's Petition to the Commission for Expedited Review of Administrative Law Judge's Exercise of Delegated Authority Pursuant to 16 C.F.R. Section 0.7 and Request for Supplemental Order on Remand to be delivered via Federal Express, and one paper copy via facsimile to:

The Honorable D. Michael Chappell  
Administrative Law Judge  
Federal Trade Commission  
600 Pennsylvania Ave. NW  
Washington, DC 20580

I hereby certify that on August 27, 2004, I also caused one paper copy via Federal Express and facsimile of Unocal's Response and Opposition to Complaint Counsel's Petition to the Commission for Expedited Review of Administrative Law Judge's Exercise of Delegated Authority Pursuant to 16 C.F.R. Section 0.7 and Request for Supplemental Order on Remand to be served upon each person listed below:

Chong S. Park, Esq.  
Bureau of Competition  
Federal Trade Commission  
601 New Jersey Avenue NW, Drop 6264  
Washington, DC 20001

Richard B. Dagen, Assistant Director  
through Chong S. Park, Esq.  
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601 New Jersey Avenue NW, Drop 6264  
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Signature on File with Commission  
Bethany D. Krueger