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FILED
LOS ANGELES SUPERIOR COURT

SEP 10 2001
JOHN A. CLARKE, CLERK
BY F. ROJAS, DEPUTY

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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

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15 JOHN ROE III, JOHN ROE VII, JOHN ROE)
16 VIII AND JOHN ROE X,)
17 Plaintiffs,)
18 vs.)
19 UNOCAL CORPORATION AND UNION)
20 OIL COMPANY OF CALIFORNIA, DOES)
21 1 through 50, inclusive,)
22 Defendants.)

Case No. BC 237679

**ANSWER OF UNOCAL CORPORATION
AND UNION OIL COMPANY OF
CALIFORNIA TO PLAINTIFFS'
COMPLAINT**

Complaint Filed: October 04, 2000
Discovery Cut-off: None Set
Trial Date: None Set

1 Defendants UNOCAL CORPORATION and UNION OIL COMPANY OF CALIFORNIA
2 (collectively "Unocal") answer the unverified Complaint ("Complaint") in the above-captioned
3 action as follows.

4 **I. GENERAL DENIAL**

5 Pursuant to California Code of Civil Procedure Section 431.30(d), Unocal denies generally
6 and specifically each and every material allegation of the Complaint.

7 **II. AFFIRMATIVE DEFENSES**

8 **FIRST AFFIRMATIVE DEFENSE**

9 **TO ALL CAUSES OF ACTION**

10 (Improper Party)

11 1. Unocal is not a proper party to this action. It is not a party to any relevant contract
12 involved in this action, nor is it even a direct investor in the corporate entity that is responsible for
13 constructing the pipeline involved in this action – i.e., the gas pipeline in the Tenasserim region of
14 Burma. The entity involved in constructing the pipeline, Moattama Gas Transportation Company
15 Limited, is a corporation, some of the shares of which are owned by a subsidiary of Unocal.
16 Accordingly, Unocal should not have been named as a party to this action.

17 **SECOND AFFIRMATIVE DEFENSE**

18 **TO ALL CAUSES OF ACTION**

19 (Failure to State a Cause of Action)

20 2. The Complaint and each of its causes of action fail to state a cause of action.

21 **THIRD AFFIRMATIVE DEFENSE**

22 **TO ALL CAUSES OF ACTION**

23 (Lack of Necessary or Indispensable Party)

24 3. The Complaint and each of its causes of action are barred because the Plaintiffs have
25 failed to join all persons necessary or indispensable for full and just adjudication of this action.
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1 **FOURTH AFFIRMATIVE DEFENSE**

2 **TO ALL CAUSES OF ACTION**

3 (Statutes of Limitations)

4 4. The Complaint and each of its causes of action are barred by the applicable statutes of
5 limitations, including, but not limited to, California Code of Civil Procedure Sections 338, 340, and
6 343, and California Business and Professions Code Section 17208, and any applicable state or
7 federal limitations period.

8 **FIFTH AFFIRMATIVE DEFENSE**

9 **TO ALL CAUSES OF ACTION**

10 (Mitigation)

11 5. Plaintiffs have failed to mitigate, reduce, or otherwise avoid their alleged damages.

12 **SIXTH AFFIRMATIVE DEFENSE**

13 **TO ALL CAUSES OF ACTION**

14 (Laches)

15 6. Plaintiffs are barred by the doctrine of laches from pursuing the claims for relief
16 asserted in the Complaint.

17 **SEVENTH AFFIRMATIVE DEFENSE**

18 **TO ALL CAUSES OF ACTION**

19 (Failure to Exhaust Statutory Remedies)

20 7. Plaintiffs have failed to exhaust remedies available in Burma as required under §2(b)
21 of the Torture Victim Protection Act, to the extent that adequate and available remedies exist within
22 the meaning of that provision.

23 **EIGHTH AFFIRMATIVE DEFENSE**

24 **TO ALL CAUSES OF ACTION**

25 (No Right to Equitable Relief)

26 8. Plaintiffs have a complete and adequate remedy at law for any injuries they may have
27 suffered, and therefore are not entitled to seek equitable relief.

1 **NINTH AFFIRMATIVE DEFENSE**

2 **TO ALL CAUSES OF ACTION**

3 (Attorneys' Fees)

4 9. Unocal alleges that Plaintiffs lack standing and otherwise are not entitled to seek
5 attorneys' fees.

6 **TENTH AFFIRMATIVE DEFENSE**

7 **TO ALL CAUSES OF ACTION**

8 (Privilege)

9 10. The Complaint and each of its causes of action are barred because Unocal was
10 privileged by federal law, including federal statutes and executive orders, to engage in the business
11 transactions that Plaintiffs allege were wrongful.

12 **ELEVENTH AFFIRMATIVE DEFENSE**

13 **TO ALL CAUSES OF ACTION**

14 (Collateral Estoppel and/or Res Judicata)

15 11. The Complaint and each of its causes of action are barred by the doctrine of collateral
16 estoppel and/or Res Judicata.

17 **TWELFTH AFFIRMATIVE DEFENSE**

18 **TO ALL CAUSES OF ACTION**

19 (Due Care)

20 12. The Complaint and each of its causes of action are barred because Unocal has acted at
21 all times with due care.

22 **THIRTEENTH AFFIRMATIVE DEFENSE**

23 **TO ALL CAUSES OF ACTION**

24 (Other Persons as Sole Cause)

25 13. To the extent that Plaintiffs suffered the harms alleged in the Complaint, persons or
26 entities other than Unocal caused those harms.

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2 **FOURTEENTH AFFIRMATIVE DEFENSE**
3 **TO ALL CAUSES OF ACTION**

4 (Comparative Fault/Contributory Negligence)

5 14. Persons other than Unocal, by their negligent acts and omissions, have contributed to
6 and proximately caused the injuries, harm, losses, costs, and expenses alleged in the Complaint and
7 for which Plaintiffs seek recovery. As such, the Complaint and each of its causes of action are
8 barred and limited by the contributory or comparative negligence of persons other than Unocal.

9 **FIFTEENTH AFFIRMATIVE DEFENSE**
10 **TO ALL CAUSES OF ACTION**

11 (No Duty to Control Acts of Sovereign Government)

12 15. Neither Unocal nor its operating subsidiaries owe a duty, by virtue of their business
13 relationships related to this action, to control the actions of the Government of Myanmar with
14 regard to its own citizens.

15 **SIXTEENTH AFFIRMATIVE DEFENSE**
16 **TO ALL CAUSES OF ACTION**

17 (Superseding Intervening Negligence)

18 16. The Complaint and each of its causes of action are barred or limited by the
19 superseding and intervening negligence, or other acts or omissions, by persons other than Unocal,
20 and over which Unocal had no control, and if Unocal acted wrongfully or in any negligent manner,
21 which Unocal expressly denies, the negligence, other acts or omissions by persons other than
22 Unocal, constituted an intervening and superseding cause of all injuries, harm, losses, costs, and
23 expenses alleged in the Complaint, and for which Plaintiffs seek recovery.

1 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

2 **TO ALL CAUSES OF ACTION**

3 (Civil Code Section 3294)

4 21. Plaintiffs are precluded from recovering punitive damages from Unocal, either in
5 whole or in part, under the applicable provision of California Civil Code Section 3294, or such
6 other statute with similar effect as may be applicable. Unocal did not engage in, approve, or ratify
7 conduct within the scope of that provision or provisions.

8 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

9 **TO ALL CAUSES OF ACTION**

10 (Punitive Damages a Denial of Due Process)

11 22. To the extent that Plaintiffs seek punitive or exemplary damages against Unocal, it
12 violates Unocal's rights to procedural due process under the Fourteenth Amendment of the United
13 States Constitution and under the Constitution of the State of California and, therefore, fails to state
14 a cause of action upon which either punitive or exemplary damages may be awarded.

15 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

16 **TO THE TWELFTH CAUSE OF ACTION**

17 (Business Practices Not Illegal)

18 23. Unocal's alleged business practices were not and are not "illegal," within the meaning
19 of California Business and Professions Code Sections 17200, *et seq.*

20 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

21 **TO THE TWELFTH CAUSE OF ACTION**

22 (Business Practices Not Unfair)

23 24. Unocal's alleged business practices were not and are not "unfair," within the meaning
24 of California Business and Professions Code Sections 17200, *et seq.*

1 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

2 **TO THE TWELFTH CAUSE OF ACTION**

3 (Business Practices Not Fraudulent, Deceptive, Intended to Conceal or Likely to Mislead)

4 25. Unocal's alleged business practices were not and are not fraudulent, deceptive,
5 intended to conceal, or likely to mislead Plaintiffs or any other persons.

6 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

7 **TO THE FIRST AND TWELFTH CAUSE OF ACTION**

8 (Standing)

9 26. Plaintiffs lack standing to assert the first and twelfth causes of action.

10 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

11 **TO ALL CAUSES OF ACTION**

12 (Sovereign Immunity)

13 27. Unocal cannot be derivatively liable for the alleged actions of agencies or
14 representatives of the Myanmar government, because the Myanmar government is subject to the
15 doctrine of sovereign immunity.

1 **III. PRAYER**

2 WHEREFORE, Unocal prays for judgment as follows:

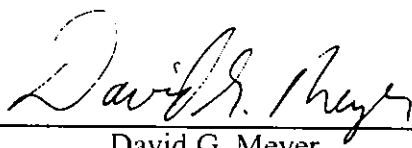
- 3 1. That this action be dismissed with prejudice;
- 4 2. That Plaintiffs be awarded nothing by means of its Complaint;
- 5 3. That Unocal recover costs of suit and attorneys fees reasonably incurred; and
- 6 4. For such other relief as the court may deem just and proper.
- 7

8 Dated: September 10, 2001

Respectfully submitted,

9 HOWREY SIMON ARNOLD & WHITE, LLP

10 Edwin V. Woodsome, Jr.
11 D. Barclay Edmundson
12 David G. Meyer
13 Scott G. Garner
14 T. Jason White

15 By: 
16 David G. Meyer

17 Attorneys for Defendants UNOCAL
18 CORPORATION, UNION OIL COMPANY OF
19 CALIFORNIA, JOHN IMLE and ROGER C.
20 BEACH

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PROOF OF SERVICE

1 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES


2 I, the undersigned, declare: that I am employed in the aforesaid County; I am over the age
3 of 18 and not a party to the within entitled action; my business address is 550 South Hope Street,
Suite 1400, Los Angeles, California 90071.

4 On September 10, 2001, I served upon the interested parties in this action the foregoing
5 document described as:

6 **ANSWER OF UNOCAL CORPORATION AND UNION OIL COMPANY OF
CALIFORNIA TO PLAINTIFFS' COMPLAINT**

- 7
- 8 By placing ___ the original X true copy(ies) thereof enclosed in sealed envelope(s)
addressed as stated on the attached mailing list.
- 9 **BY MAIL** I caused such envelope(s) to be placed for U.S. Mail collection and delivery
10 at Los Angeles, California. I am "readily familiar" with the firm's practice of collecting
and processing correspondence for mailing. Under the practice it would be deposited
11 with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los
Angeles, California in the ordinary course of business. I am aware that on motion of the
12 party served, service is presumed invalid if postal cancellation date or postage meter date
is more than one day after date of deposit for mailing, pursuant to this affidavit.
- 13 **BY FEDERAL EXPRESS** I caused such envelope(s) to be placed for Federal Express
14 collection and delivery at Los Angeles, California. I am "readily familiar" with the firm's
practice of collection and processing correspondence for Federal Express mailing. Under
15 that practice it would be deposited with the Federal Express office on that same day with
instructions for overnight delivery, fully prepaid, at Los Angeles, California in the
16 ordinary course of business. I am aware that on motion of the party served, service is
presumed invalid if the Federal Express delivery date is more than one day after date of
17 deposit with the local Federal Express office, pursuant to this affidavit.
- 18 **BY PERSONAL SERVICE** I caused such document to be delivered by hand, pursuant
to CCP § 1011 to the offices of: SEE ATTACHED SERVICE LIST.
- 19 **BY FACSIMILE** By sending a copy of said document by facsimile machine for
20 instantaneous transmittal via telephone line to the offices of the addressee(s) listed on the
attached service list using the following facsimile numbers:
- 21 **(STATE)** I declare under penalty of perjury under the laws of the State of California that
22 the above is true and correct.

23 Executed on **September 10, 2001** at Los Angeles, California.

24 
25 Marta Martin
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SERVICE LIST
JOHN DOE I, ET AL., v. UNOCAL CORPORATION, ET AL.,
LASC Case No. BC 237980

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SERVICE LIST
JOHN ROE III, ET AL., v. UNOCAL CORPORATION, ET AL.
LASC Case No. BC 237679

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