

common stock they own (the “Merger Consideration”). The Proposed Transaction is valued at approximately \$13 billion, including the assumption of debt.

3. On August 26, 2020, Noble Energy filed a Schedule 14A Definitive Proxy Statement (the “Proxy”) with the SEC. The Proxy is materially deficient and misleading because, *inter alia*, it fails to disclose material information regarding: (i) Noble Energy’s and Chevron’s financial projections, including the financial projections relied upon by Noble Energy’s financial advisor J.P. Morgan Securities LLC (“J.P. Morgan”) in its financial analyses, as well as the financial valuation analyses that support the fairness opinion provided by J.P. Morgan; (ii) potential conflicts of interest faced by J.P. Morgan; and (iii) the background of the Proposed Transaction. Without additional information, the Proxy is materially misleading in violation of the federal securities laws.

4. By unanimously approving the Proposed Transaction and authorizing the issuance of the Proxy, the Individual Defendants participated in the solicitation even though they knew, or should have known, that the Proxy was materially false and/or misleading. The Proxy is an essential link in accomplishing and receiving stockholder approval for the Proposed Transaction. For these reasons and as set forth in detail herein, Plaintiff seeks to enjoin the stockholder vote on the Proposed Transaction unless and until such Exchange Act violations are cured.

JURISDICTION AND VENUE

5. This Court has jurisdiction over the claims asserted herein for violations of Sections 14(a) and 20(a) of the Exchange Act and SEC Rule 14a-9 promulgated thereunder pursuant to Section 27 of the Exchange Act, 15 U.S.C. § 78aa, and 28 U.S.C. § 1331 (federal question jurisdiction).

6. This Court has jurisdiction over the defendants because each defendant is either a corporation that conducts business in and maintains operations within this District, or is an

individual with sufficient minimum contacts with this District so as to make the exercise of jurisdiction by this Court permissible under traditional notions of fair play and substantial justice.

7. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because defendants are found or are inhabitants or transact business in this District. Noble Energy's common stock trades on the NASDAQ Global Select Market which is headquartered in this District, rendering venue in this District appropriate.

THE PARTIES

8. Plaintiff is, and has been at all times relevant hereto, a continuous stockholder of Noble Energy.

9. Defendant Noble Energy is a Delaware corporation with its principal executive offices located at 1001 Noble Energy Way, Houston, Texas 77070. Noble Energy's common stock trades on the NASDAQ Global Select Market under the ticker symbol "NBL."

10. Defendant Jeffrey L. Berenson has been a director of the Company since 2005.

11. Defendant James E. Craddock has been a director of the Company since 2015.

12. Defendant Barbara J. Duganier has been a director of the Company since 2018.

13. Defendant Thomas J. Edelman has been a director of the Company since 2005.

14. Defendant Holli C. Ladhani has been a director of the Company since 2017.

15. Defendant David L. Stover has been Chairman of the Board since 2015 and Chief Executive Officer and a director of the Company since 2014.

16. Defendant Scott D. Urban has been a director of the Company since 2007.

17. Defendant William T. Van Kleef has been a director of the Company since 2005.

18. Defendant Martha B. Wyrsh has been a director of the Company since 2019.

19. Defendants identified in paragraphs 10-18 are referred to herein as the "Board" or the "Individual Defendants."

20. Relevant non-party Chevron is a Delaware corporation with its principal executive offices located at 6001 Bollinger Canyon Road, San Ramon, California 94583. Chevron's common stock trades on the New York Stock Exchange under the ticker symbol "CVX."

SUBSTANTIVE ALLEGATIONS

Background of the Company and the Proposed Transaction

21. Founded in 1932, Noble Energy is an independent energy company engaged in the acquisition, exploration, development, and production of crude oil and natural gas worldwide. The Company also owns, operates, develops, and acquires domestic midstream infrastructure assets in the DJ and Delaware Basins. Noble Energy's assets are located in the US onshore unconventional basins and various global offshore conventional basins in the Eastern Mediterranean and off the west coast of Africa. As of December 31, 2019, the Company had 2,050 million barrels oil equivalent of total proved reserves.

22. Chevron, through its subsidiaries, engages in integrated energy, chemicals, and petroleum operations worldwide. Chevron operates in two segments, Upstream and Downstream. Its Upstream segment is involved in the exploration, development, and production of crude oil and natural gas; processing, liquefaction, transportation, and regasification associated with liquefied natural gas; transportation of crude oil through pipelines; and transportation, storage, and marketing of natural gas, as well as operates a gas-to-liquids plant. Its Downstream segment engages in refining crude oil into petroleum products; marketing crude oil and refined products; transporting crude oil and refined products through pipeline, marine vessel, motor equipment, and rail car; and manufacturing and marketing commodity petrochemicals, and fuel and lubricant additives, as well as plastics for industrial uses. Chevron is also involved in the cash management and debt financing activities; insurance operations; real estate activities; and technology businesses.

23. On July 20, 2020, Chevron issued a press release announcing the Proposed Transaction. The press release states, in relevant part:

SAN RAMON, Calif.--Chevron Corporation (NYSE: CVX) announced today that it has entered into a definitive agreement with Noble Energy, Inc. (NASDAQ: NBL) to acquire all of the outstanding shares of Noble Energy in an all-stock transaction valued at \$5 billion, or \$10.38 per share. Based on Chevron's closing price on July 17, 2020 and under the terms of the agreement, Noble Energy shareholders will receive 0.1191 shares of Chevron for each Noble Energy share. The total enterprise value, including debt, of the transaction is \$13 billion.

The acquisition of Noble Energy provides Chevron with low-cost, proved reserves and attractive undeveloped resources that will enhance an already advantaged upstream portfolio. Noble Energy brings low-capital, cash-generating offshore assets in Israel, strengthening Chevron's position in the Eastern Mediterranean. Noble Energy also enhances Chevron's leading U.S. unconventional position with de-risked acreage in the DJ Basin and 92,000 largely contiguous and adjacent acres in the Permian Basin.

"Our strong balance sheet and financial discipline gives us the flexibility to be a buyer of quality assets during these challenging times," said Chevron Chairman and CEO Michael Wirth. "This is a cost-effective opportunity for Chevron to acquire additional proved reserves and resources. Noble Energy's multi-asset, high-quality portfolio will enhance geographic diversity, increase capital flexibility, and improve our ability to generate strong cash flow. These assets play to Chevron's operational strengths, and the transaction underscores our commitment to capital discipline. We look forward to welcoming the Noble Energy team and shareholders to bring together the best of our organizations."

"This combination is expected to unlock value for shareholders, generating anticipated annual run-rate cost synergies of approximately \$300 million before tax, and it is expected to be accretive to free cash flow, earnings, and book returns one year after close," Wirth concluded.

"The combination with Chevron is a compelling opportunity to join an admired global, diversified energy leader with a top-tier balance sheet and strong shareholder returns," said David Stover, Noble Energy's Chairman and CEO. "Over the last few years, we have made significant progress executing our strategic objectives, including driving capital efficiency gains onshore, advancing our offshore conventional gas developments and significantly reducing our cost structure. As we looked to build on this positive momentum, the Noble Energy Board of Directors and management team conducted a thorough process and concluded that this transaction is the best way to maximize value for all Noble Energy shareholders. We look forward to bringing together our highly

complementary cultures and teams to realize the long-term value and benefits that this combination will deliver.”

* * *

Transaction Details

The acquisition consideration is structured with 100 percent stock utilizing Chevron’s attractive equity currency while maintaining a strong balance sheet. In aggregate, upon closing of the transaction, Chevron will issue approximately 58 million shares of stock. Total enterprise value of \$13 billion includes net debt and book value of non-controlling interest.

The transaction has been unanimously approved by the Boards of Directors of both companies and is expected to close in the fourth quarter of 2020. The acquisition is subject to Noble Energy shareholder approval. It is also subject to regulatory approvals and other customary closing conditions.

The Proxy Contains Numerous Material Misstatements or Omissions

24. On August 26, 2020, the Company filed the materially misleading and incomplete Proxy with the SEC. Designed to convince Noble Energy’s stockholders to vote in favor of the Proposed Transaction, the Proxy is rendered misleading by the omission of critical information concerning: (i) Noble Energy’s and Chevron’s financial projections, including the financial projections relied upon by Noble Energy’s financial advisor J.P. Morgan in its financial analyses, as well as the financial valuation analyses that support the fairness opinion provided by J.P. Morgan; (ii) potential conflicts of interest faced by J.P. Morgan; and (iii) the background of the Proposed Transaction. Accordingly, Noble Energy stockholders are being asked to make a voting decision in connection with the Proposed Transaction without all material information at their disposal.

Material Omissions Concerning the Financial Projections and J.P. Morgan’s Financial Analyses

25. The Proxy is materially deficient because it fails to disclose material information relating to Noble Energy’s and Chevron’s financial projections.

26. For example, the Proxy sets forth that in connection with its *Discounted Cash Flow Analysis*, J.P. Morgan “calculated the present value, as of June 30, 2020, of unlevered free cash flows that Noble Energy was forecasted to generate during fiscal years 2021 through 2029 based upon each of the Base case, the Strip+ case, the Strip+ Low case and the Upside case.” Proxy at 69. The Proxy fails, however, to disclose the unlevered free cash flows that Noble Energy was forecasted to generate during fiscal years 2021 through 2029 based upon each of the Base case, the Strip+ case, the Strip+ Low case and the Upside case as well as the line items used to calculate the unlevered free cash flows.

27. Additionally, the Proxy fails to disclose the net income that Noble Energy was forecasted to generate during fiscal years 2021 through 2029 based upon each of the Base case, the Strip+ case, the Strip+ Low case and the Upside case.

28. The Proxy also completely omits the financial projections for Chevron, whose currency Noble Energy stockholders will be receiving if the Proposed Transaction is consummated.

29. Without this information, Noble Energy stockholders are unable to evaluate the Merger Consideration, Noble Energy’s financial future as a standalone entity, the accuracy of J.P. Morgan’s financial analyses, or make an informed decision whether the Proposed Transaction serves their best interests.

30. The Proxy also fails to disclose material information concerning J.P. Morgan’s financial analyses.

31. The Proxy describes J.P. Morgan’s fairness opinion and various valuation analyses performed in support of its opinion. However, the description of J.P. Morgan’s fairness opinion and analyses fails to include certain analyses, as well as key inputs and assumptions underlying

the analyses. Without this information, as described below, Noble Energy's public stockholders are unable to determine what weight, if any, to place on J.P. Morgan's fairness opinion in determining whether to vote their shares in favor of the Proposed Transaction. This omitted information, if disclosed, would significantly alter the total mix of information available to Noble Energy's stockholders.

32. With respect to J.P. Morgan's *Selected Transaction Multiples Analysis*, the Proxy fails to disclose the individual multiples and financial metrics for each of the selected transactions analyzed by J.P. Morgan.

33. With respect to J.P. Morgan's *Discounted Cash Flow Analysis*, the Proxy fails to disclose: (i) the unlevered free cash flows that Noble Energy was forecasted to generate during fiscal years 2021 through 2029 for each of the Base case, the Strip+ case, the Strip+ Low case and the Upside case; (ii) quantification of the terminal values calculated by J.P. Morgan; (iii) quantification of the inputs and assumptions underlying the discount rate range of 10% to 12%; and (iv) the range of implied equity values for the Company resulting from the analysis without the assigned probability weightings.

34. With respect to J.P. Morgan's *Analyst Price Target* analysis, the Proxy fails to disclose: (i) the price targets observed by J.P. Morgan; and (ii) identification of the sources of the price targets.

35. The omission of this material information renders certain portions of the Proxy materially misleading, including, inter alia, the following sections of the Proxy: "Opinion of Noble Energy's Financial Advisor" and the "Noble Energy Unaudited Prospective Financial Information."

Material Omissions Concerning J.P. Morgan's Potential Conflicts of Interest

36. The Proxy fails to disclose material information concerning the potential conflicts of interest faced by J.P. Morgan.

37. The Proxy sets forth:

For services rendered in connection with the merger and the delivery of its opinion, Noble Energy has agreed to pay J.P. Morgan a transaction fee of \$30 million, of which \$4 million was payable by Noble Energy to J.P. Morgan in connection with J.P. Morgan's delivery of its opinion and the balance of which becomes payable upon the closing of the merger. In addition, Noble Energy has agreed to pay J.P. Morgan an additional discretionary fee of up to \$5 million upon the closing of the merger, with the amount to be determined in the sole discretion of Noble Energy.

Id. at 71. The Proxy, however, fails to disclose the agreed parameters for such additional discretionary fee, the criteria J.P. Morgan needs to satisfy to receive the additional fee, and whether the Company anticipates paying J.P. Morgan the additional fee.

38. Full disclosure of investment banker compensation and all potential conflicts is required due to the central role played by investment banks in the evaluation, exploration, selection, and implementation of strategic alternatives.

39. The omission of this material information renders certain portions of the Proxy materially misleading, including, inter alia, the following section of the Proxy: "Opinion of Noble Energy's Financial Advisor."

Material Omissions Concerning the Background of the Proposed Transaction

40. The Proxy fails to disclose material information concerning the background of the Proposed Transaction.

41. The Proxy sets forth:

With respect to its Eastern Mediterranean assets, Noble Energy management concluded that the optimal time to consider selling a portion of its interest would be after the Leviathan field in Israel commenced natural gas production, which was expected on or about December 31, 2019. To explore such a possibility, Noble Energy contacted eight infrastructure-focused entities to measure third-party interest in acquiring a portion of Noble Energy's interests in the region. Noble

Energy entered into confidentiality agreements with several potential counterparties, provided due diligence materials and engaged in discussions over several months. These efforts did not result in any offers that were projected to increase value.

Id. at 44. The Proxy fails, however, to disclose the terms of the confidentiality agreements Noble Energy entered into with several potential counterparties, including whether the confidentiality agreements contained “don’t ask, don’t waive” standstill provisions that are currently precluding these parties from making a topping bid for the Company.

42. Additionally, the Proxy fails to disclose the terms of any offers the Company received from potential counterparties who entered into confidentiality agreements.

43. Moreover, the Proxy sets forth that:

[b]ased on financial analyses conducted at the request of the Noble Energy Board, the Noble Energy Board believes that Chevron has significant financial flexibility to continue its current dividend payments, even assuming another two years of low commodity prices. . . .

Id. at 58. The Proxy fails, however, to disclose the financial analyses conducted by J.P. Morgan at the request of the Board, supporting the Board’s belief that Chevron has significant financial flexibility to continue its current dividend payments, even assuming another two years of low commodity prices.

44. The omission of this material information renders certain portions of the Proxy materially misleading, including, inter alia, the following sections of the Proxy: “Background of the Merger” and “Noble Energy Board’s Recommendations and Its Reasons for the Transaction.”

45. Accordingly, Plaintiff seeks injunctive and other equitable relief to prevent the irreparable injury that Company stockholders will continue to suffer absent judicial intervention.

CLAIMS FOR RELIEF

COUNT I

Claims Against All Defendants for Violations of Section 14(a) of the Exchange Act and Rule 14a-9 Promulgated Thereunder

46. Plaintiff repeats all previous allegations as if set forth in full.

47. During the relevant period, defendants disseminated the false and misleading Proxy specified above, which failed to disclose material facts necessary to make the statements, in light of the circumstances under which they were made, not misleading in violation of Section 14(a) of the Exchange Act and SEC Rule 14a-9 promulgated thereunder.

48. By virtue of their positions within the Company, the defendants were aware of this information and of their duty to disclose this information in the Proxy. The Proxy was prepared, reviewed, and/or disseminated by the defendants. It misrepresented and/or omitted material facts, including material information about Noble Energy's and Chevron's financial projections, the data and inputs underlying the valuation analyses performed by J.P. Morgan, J.P. Morgan's potential conflicts of interest and the background of the Proposed Transaction. The defendants were at least negligent in filing the Proxy with these materially false and misleading statements.

49. The omissions and false and misleading statements in the Proxy are material in that a reasonable stockholder would consider them important in deciding how to vote on the Proposed Transaction.

50. By reason of the foregoing, the defendants have violated Section 14(a) of the Exchange Act and SEC Rule 14a-9(a) promulgated thereunder.

51. Because of the false and misleading statements in the Proxy, Plaintiff is threatened with irreparable harm, rendering money damages inadequate. Therefore, injunctive relief is appropriate to ensure defendants' misconduct is corrected.

COUNT II

**Claims Against the Individual Defendants for Violations of
Section 20(a) of the Exchange Act**

52. Plaintiff repeats all previous allegations as if set forth in full.

53. The Individual Defendants acted as controlling persons of Noble Energy within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their positions as officers and/or directors of Noble Energy, and participation in and/or awareness of the Company's operations and/or intimate knowledge of the false statements contained in the Proxy filed with the SEC, they had the power to influence and control and did influence and control, directly or indirectly, the decision-making of the Company, including the content and dissemination of the various statements which Plaintiff contends are false and misleading.

54. Each of the Individual Defendants was provided with or had unlimited access to copies of the Proxy and other statements alleged by Plaintiff to be misleading prior to and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause the statements to be corrected.

55. In particular, each of the Individual Defendants had direct and supervisory involvement in the day-to-day operations of the Company, and, therefore, is presumed to have had the power to control or influence the particular transactions giving rise to the securities violations as alleged herein, and exercised the same. The Proxy at issue contains the unanimous recommendation of each of the Individual Defendants to approve the Proposed Transaction. They were, thus, directly involved in the making of the Proxy.

56. In addition, as the Proxy sets forth at length, and as described herein, the Individual Defendants were each involved in negotiating, reviewing, and approving the Proposed Transaction. The Proxy purports to describe the various issues and information that they reviewed

and considered—descriptions the Company directors had input into.

57. By virtue of the foregoing, the Individual Defendants have violated Section 20(a) of the Exchange Act.

58. As set forth above, the Individual Defendants had the ability to exercise control over and did control a person or persons who have each violated Section 14(a) and SEC Rule 14a-9, promulgated thereunder, by their acts and omissions as alleged herein. By virtue of their positions as controlling persons, these defendants are liable pursuant to Section 20(a) of the Exchange Act. As a direct and proximate result of defendants' conduct, Noble Energy's stockholders will be irreparably harmed.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment and preliminary and permanent relief, including injunctive relief, in his favor on behalf of Noble Energy, and against defendants, as follows:

- A. Preliminarily and permanently enjoining defendants and all persons acting in concert with them from proceeding with, consummating, or closing the Proposed Transaction and any vote on the Proposed Transaction, unless and until defendants disclose and disseminate the material information identified above to Noble Energy stockholders;
- B. In the event defendants consummate the Proposed Transaction, rescinding it and setting it aside or awarding rescissory damages to Plaintiff;
- C. Directing the Individual Defendants to disseminate a Proxy that does not contain any untrue statements of material fact and that states all material facts required in it or necessary to make the statements contained therein not misleading;

- D. Declaring that defendants violated Sections 14(a) and/or 20(a) of the Exchange Act, as well as SEC Rule 14a-9 promulgated thereunder;
- E. Awarding Plaintiff the costs of this action, including reasonable allowance for Plaintiff's attorneys' and experts' fees; and
- F. Granting such other and further relief as this Court may deem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury.

Dated: September 23, 2020

WEISSLAW LLP

By 

Richard A. Acocelli
1500 Broadway, 16th Floor
New York, New York 10036
Telephone: (212) 682-3025
Facsimile: (212) 682-3010
Email: racocelli@weisslawllp.com

Attorneys for Plaintiff

OF COUNSEL:

BRAGAR EAGEL & SQUIRE, P.C.

Melissa Fortunato
885 Third Avenue, Suite 3040
New York, New York 10022
Tel: (212) 308-1869
Fax: (212) 214-0506
Email: fortunato@bespc.com

Attorneys for Plaintiff