UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EXXON MOBIL CORPORATION,	:	
	:	No. 17-CV-2301 (VEC) (SN)
Plaintiff,	:	
	:	
-against-	:	ECF Case
	:	
ERIC TRADD SCHNEIDERMAN, Attorney General of New York, in his official capacity, and MAURA TRACY HEALEY, Attorney General of Massachusetts, in her official capacity,	:	**DECLARATION OF LESLIE B. DUBECK**
Defendants.	:	

Leslie B. Dubeck hereby declares under penalty of perjury, *see* 28 U.S.C. § 1746:

1. I am Counsel to Attorney General Eric T. Schneiderman, Attorney General of the State of New York.

2. I submit this declaration based on personal knowledge, for the limited purpose of providing the Court with the attached appendix of exhibits, cited in the Memorandum of Law in Support of the New York Attorney General's Motion to Dismiss the Action Based on Certain Threshold Defenses, that are incorporated in or integral to the First Amended Complaint of plaintiff ExxonMobil Corp. or that establish the fact of related litigation and filings made therein. *See, e.g.*, *Roth v. Jennings*, 489 F.3d 499, 509 (2d Cir. 2007); *Kramer v. Time Warner Inc.*, 937 F.2d 767, 774 (2d Cir. 1991).

3. Attached as Exhibit 1 is a true and correct copy of a document subpoena, dated November 4, 2015, issued by the New York Office of the Attorney General to ExxonMobil Corp., pursuant to sections 349 and 352 of New York's General Business Law and section 63(12) of New York's Executive Law. (App. 1–18.)

4. Attached as Exhibit 2 is a true and correct copy of a document subpoena, dated

August 19, 2016, issued by the New York Office of the Attorney General to PricewaterhouseCoopers LLP, pursuant to section 352 of New York's General Business Law and section 63(12) of New York's Executive Law. (App. 19–37.)

5. Attached as Exhibit 3 is a true and correct copy of a set of written discovery demands and deposition notices served in this lawsuit by ExxonMobil Corp. on the New York Office of the Attorney General on November 16, 2016, replacing a substantively similar set of discovery subpoenas previously served on November 4, 2016. (App. 38–90.)

6. Attached as Exhibit 4 is a true and correct copy of a Proposed Order to Show Cause, filed on October 14, 2016, in *People ex rel. Schneiderman v. PricewaterhouseCoopers LLP & Exxon Mobil Corp.*, Index No. 451962/2016 (Sup. Ct. N.Y. County) (*People v. PwC & Exxon*). (App. 91–93.)

7. Attached as Exhibit 5 is a true and correct copy of a letter from ExxonMobil Corp. to the Honorable Barry R. Ostrager, dated October 17, 2016, filed in *People v. PwC & Exxon.* (App. 94–95.)

8. Attached as Exhibit 6 is a true and correct copy of the so-ordered transcript of a hearing held on October 24, 2016, in *People v. PwC & Exxon*. (App. 96–162.)

9. Attached as Exhibit 7 is a true and correct copy of a Decision and Order, dated October 26, 2016, entered in *People v. PwC & Exxon.* (App. 163–167.)

10. Attached as Exhibit 8 is a true and correct copy of an Order to Show Cause, dated November 15, 2016, entered in *People v. PwC & Exxon.* (App. 168–170.)

11. Attached as Exhibit 9 is a true and correct copy of Exxon Mobil Corp.'s Corrected Memorandum of Law in Opposition to the Attorney General's Motion to Compel Compliance with an Investigative Subpoena, dated November 18, 2016, filed in *People v. PwC & Exxon.* (App. 171–195.)

12. Attached as Exhibit 10 is a true and correct copy of the so-ordered transcript of a hearing held on November 21, 2016, in *People v. PwC & Exxon*. (App. 196–221.)

13. Attached as Exhibit 11 is a true and correct copy of a letter from ExxonMobil Corp. to the Honorable Barry R. Ostrager, dated December 5, 2016, filed in *People v. PwC & Exxon.* (App. 222–229.)

14. Attached as Exhibit 12 is a true and correct copy of the so-ordered transcript of a hearing held on December 9, 2016, in *People v. PwC & Exxon*. (App. 230–257.)

15. Attached as Exhibit 13 is a true and correct copy of the so-ordered transcript of a hearing held on January 9, 2017, in *People v. PwC & Exxon*. (App. 258–276.)

16. Attached as Exhibit 14 is a true and correct copy of a letter from ExxonMobil Corp. to the Honorable Barry R. Ostrager, dated March 16, 2017, filed in *People v. PwC & Exxon.* (App. 277–281.)

17. Attached as Exhibit 15 is a true and correct copy of the transcript of a hearing held on March 22, 2017, in *People v. PwC & Exxon*. (App. 282–316.)

I declare that the foregoing is true and correct.

Dated: New York, New York
May 19, 2017

/s/ Leslie B. Dubeck
Leslie B. Dubeck

Exhibit 1

STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

SUBPOENA FOR PRODUCTION OF DOCUMENTS
THE PEOPLE OF THE STATE OF NEW YORK

TO: S. Jack Balagia, Jr.
Vice-President and General Counsel
Exxon Mobil Corporation
Corporate Headquarters
5959 Las Colinas Boulevard
Irving, Texas 75039-2298

WE HEREBY COMMAND YOU, pursuant to New York State Executive Law Section 63(12) and Section 2302(a) of the New York State Civil Practice Law and Rules, to deliver and turn over to Eric T. Schneiderman, the Attorney General of the State of New York, or a designated Assistant Attorney General, on the **4th day of December, 2015** by 10:00 a.m., or any agreed upon adjourned date or time, at the at the offices of the New York State Office of the Attorney General, 120 Broadway, 26th Floor, New York, New York 10271, all documents and information requested in the attached Schedule in accordance with the instructions and definitions contained therein in connection with an investigation to determine whether an action or proceeding should be instituted with respect to repeated fraud or illegality as set forth in the New York State Executive Law Article 5, Section 63(12), violations of the deceptive acts and practices law as set forth in New York State General Business Law Article 22-A, potential fraudulent practices in respect to stocks, bonds and other securities as set forth in New York State General Business Law Article 23-A, and any related violations, or any matter which the Attorney General deems pertinent thereto.

PLEASE TAKE NOTICE that under the provisions of Article 23 of the New York State Civil Practice Laws and Rules, you are bound by this subpoena to produce the documents requested on the date specified and any adjourned date. Pursuant to New York State Civil Practice Laws and Rules Section 2308(b)(1), your failure to do so subjects you to, in addition to any other lawful punishment, costs, penalties and damages sustained by the State of New York State as a result of your failure to so comply.

PLEASE TAKE NOTICE that the Attorney General deems the information and documents requested by this Subpoena to be relevant and material to an investigation and inquiry undertaken in the public interest.

WITNESS, Honorable Eric T. Schneiderman, Attorney General of the State of New York, this 4th day of November, 2015.

By: 

Lemuel M. Srolovic
Kevin G. W. Olson
Mandy DeRoche

Office of the Attorney General
Environmental Protection Bureau

120 Broadway, 26th Floor
New York, New York 10271
(212) 416-8448 (telephone)
(212) 416-6007 (facsimile)

SCHEDULE 1

A. General Definitions and Rules of Construction

1. "All" means each and every.

2. "Any" means any and all.

3. "And" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the Subpoena all information or Documents that might otherwise be construed to be outside of its scope.

4. "Communication" means any conversation, discussion, letter, email, memorandum, meeting, note or other transmittal of information or message, whether transmitted in writing, orally, electronically or by any other means, and shall include any Document that abstracts, digests, transcribes, records or reflects any of the foregoing. Except where otherwise stated, a request for "Communications" means a request for all such Communications.

5. "Concerning" means, directly or indirectly, in whole or in part, relating to, referring to, describing, evidencing or constituting.

6. "Custodian" means any Person or Entity that, as of the date of this Subpoena, maintained, possessed, or otherwise kept or controlled such Document.

7. "Document" is used herein in the broadest sense of the term and means all records and other tangible media of expression of whatever nature however and wherever created, produced or stored (manually, mechanically, electronically or otherwise), including without limitation all versions whether draft or final, all annotated or nonconforming or other copies, electronic mail ("e-mail"), instant messages, text messages, Blackberry or other wireless device messages, voicemail, calendars, date books, appointment books, diaries, books, papers, files, notes, confirmations, accounts statements, correspondence, memoranda, reports, records, journals, registers, analyses, plans, manuals, policies, telegrams, faxes, telexes, wires, telephone logs, telephone messages, message slips, minutes, notes or records or transcriptions of conversations or Communications or meetings, tape recordings, videotapes, disks, and other electronic media, microfilm, microfiche, storage devices, press releases, contracts, agreements, notices and summaries. Any non-identical version of a Document constitutes a separate Document within this definition, including without limitation drafts or copies bearing any notation, edit, comment, marginalia, underscoring, highlighting, marking, or any other alteration of any kind resulting in any difference between two or more otherwise identical Documents. In the case of Documents bearing any notation or other marking made by highlighting ink, the term Document means the original version bearing the highlighting ink, which original must be produced as opposed to any copy thereof. Except where otherwise stated, a request for "Documents" means a request for all such Documents.

8. "Entity" means without limitation any corporation, company, limited liability company or corporation, partnership, limited partnership, association, or other firm or similar body, or any unit, division, agency, department, or similar subdivision thereof.

9. "Identify" or "Identity," as applied to any Document means the provision in writing of information sufficiently particular to enable the Attorney General to request the Document's production through subpoena or otherwise, including but not limited to: (a) Document type (letter, memo, etc.); (b) Document subject matter; (c) Document date; and (d) Document author(s), addressee(s) and recipient(s). In lieu of identifying a Document, the Attorney General will accept production of the Document, together with designation of the Document's Custodian, and identification of each Person You believe to have received a copy of the Document.

10. "Identify" or "Identity," as applied to any Entity, means the provision in writing of such Entity's legal name, any d/b/a, former, or other names, any parent, subsidiary, officers, employees, or agents thereof, and any address(es) and any telephone number(s) thereof.

11. "Identify" or "Identity," as applied to any natural person, means and includes the provision in writing of the natural person's name, title(s), any aliases, place(s) of employment, telephone number(s), e-mail address(es), mailing addresses and physical address(es).

12. "Person" means any natural person, or any Entity.

13. "Sent" or "received" as used herein means, in addition to their usual meanings, the transmittal or reception of a Document by physical, electronic or other delivery, whether by direct or indirect means.

14. "Subpoena" means this subpoena and any schedules, appendices, or attachments thereto.

15. The use of the singular form of any word used herein shall include the plural and vice versa. The use of any tense of any verb includes all other tenses of the verb.

16. The references to Communications, Custodians, Documents, Persons, and Entities in this Subpoena encompass all such relevant ones worldwide.

B. Particular Definitions

1. "You" or "Your" means ExxonMobil Corporation, ExxonMobil Oil Corporation, any present or former parents, subsidiaries, affiliates, directors, officers, partners, employees, agents, representatives, attorneys or other Persons acting on its behalf, and including predecessors or successors or any affiliates of the foregoing.

2. "Climate Change" means global warming, Climate Change, the greenhouse effect, a change in global average temperatures, sea level rise, increased concentrations of carbon dioxide and other Greenhouse Gases and/or any other potential effect on the earth's physical and biological systems as a result of anthropogenic emissions of carbon dioxide

and other Greenhouse Gases, in any way the concept is described by or to You.

3. "Fossil Fuel" or "Fossil Fuels" means all energy sources formed from fossilized remains of dead organisms, including oil, gas, bitumen and natural gas, but excluding coal. For purposes of this subpoena, the definition includes also fossil fuels blended with biofuels, such as corn ethanol blends of gasoline. The definition excludes renewable sources of energy production, such as hydroelectric, geothermal, solar, tidal, wind, and wood.

4. "Greenhouse Gases" or "GHGs" meanscarbon dioxide, methane, nitrous oxide, hydroflurocarbons, perfluorocarbons and sulfur hexafloride.

5. "Renewable Energy" means renewable sources of energy production, such as hydroelectric, geothermal, solar, tidal, wind, and wood.

C. Instructions

1. Preservation of Relevant Documents and Information; Spoliation. You are reminded of your obligations under law to preserve Documents and information relevant or potentially relevant to this Subpoena from destruction or loss, and of the consequences of, and penalties available for, spoliation of evidence. No agreement, written or otherwise, purporting to modify, limit or otherwise vary the terms of this Subpoena, shall be construed in any way to narrow, qualify, eliminate or otherwise diminish your aforementioned preservation obligations. Nor shall you act, in reliance upon any such agreement or otherwise, in any manner inconsistent with your preservation obligations under law. No agreement purporting to modify, limit or otherwise vary your preservation obligations under law shall be construed as in any way narrowing, qualifying, eliminating or otherwise diminishing such aforementioned preservation obligations, nor shall you act in reliance upon any such agreement, unless an Assistant Attorney General confirms or acknowledges such agreement in writing, or makes such agreement a matter of record in open court.

2. Possession, Custody, and Control. The Subpoena calls for all responsive Documents or information in your possession, custody or control. This includes, without limitation, Documents or information possessed or held by any of your officers, directors, employees, agents, representatives, divisions, affiliates, subsidiaries or Persons from whom you could request Documents or information. If Documents or information responsive to a request in this Subpoena are in your control, but not in your possession or custody, you shall promptly Identify the Person with possession or custody.

3. Documents No Longer in Your Possession. If any Document requested herein was formerly in your possession, custody or control but is no longer available, or no longer exists, you shall submit a statement in writing under oath that: (a) describes in detail the nature of such Document and its contents; (b) Identifies the Person(s) who prepared such Document and its contents; (c) Identifies all Persons who have seen or had possession of such Document; (d) specifies the date(s) on which such Document was prepared, transmitted or received; (e) specifies the date(s) on which such Document became unavailable; (f) specifies the reason why such Document is unavailable, including

without limitation whether it was misplaced, lost, destroyed or transferred; and if such Document has been destroyed or transferred, the conditions of and reasons for such destruction or transfer and the Identity of the Person(s) requesting and performing such destruction or transfer; and (g) Identifies all Persons with knowledge of any portion of the contents of the Document.

4. No Documents Responsive to Subpoena Requests. If there are no Documents responsive to any particular Subpoena request, you shall so state in writing under oath in the Affidavit of Compliance attached hereto, identifying the paragraph number(s) of the Subpoena request concerned.

5. Format of Production. You shall produce Documents, Communications, and information responsive to this Subpoena in electronic format that meets the specifications set out in Attachments 1 and 2.

6. Existing Organization of Documents to be Preserved. Regardless of whether a production is in electronic or paper format, each Document shall be produced in the same form, sequence, organization or other order or layout in which it was maintained before production, including but not limited to production of any Document or other material indicating filing or other organization. Such production shall include without limitation any file folder, file jacket, cover or similar organizational material, as well as any folder bearing any title or legend that contains no Document. Documents that are physically attached to each other in your files shall be accompanied by a notation or information sufficient to indicate clearly such physical attachment.

7. Document Numbering. All Documents responsive to this Subpoena, regardless of whether produced or withheld on ground of privilege or other legal doctrine, and regardless of whether production is in electronic or paper format, shall be numbered in the lower right corner of each page of such Document, without disrupting or altering the form, sequence, organization or other order or layout in which such Documents were maintained before production. Such number shall comprise a prefix containing the producing Person's name or an abbreviation thereof, followed by a unique, sequential, identifying document control number.

8. Privilege Placeholders. For each Document withheld from production on ground of privilege or other legal doctrine, regardless of whether a production is electronic or in hard copy, you shall insert one or more placeholder page(s) in the production bearing the same document control number(s) borne by the Document withheld, in the sequential place(s) originally occupied by the Document before it was removed from the production.

9. Privilege. If You withhold or redact any Document responsive to this Subpoena on ground of privilege or other legal doctrine, you shall submit with the Documents produced a statement in writing under oath, stating: (a) the document control number(s) of the Document withheld or redacted; (b) the type of Document; (c) the date of the Document; (d) the author(s) and recipient(s) of the Document; (e) the general subject matter of the Document; and (f) the legal ground for withholding or redacting the Document. If the legal ground for withholding or redacting the Document is attorney-

client privilege, you shall indicate the name of the attorney(s) whose legal advice is sought or provided in the Document.

10. Your Production Instructions to be Produced. You shall produce a copy of all written or otherwise recorded instructions prepared by you concerning the steps taken to respond to this Subpoena. For any unrecorded instructions given, you shall provide a written statement under oath from the Person(s) who gave such instructions that details the specific content of the instructions and any Person(s) to whom the instructions were given.

11. Cover Letter. Accompanying any production(s) made pursuant to this Subpoena, You shall include a cover letter that shall at a minimum provide an index containing the following: (a) a description of the type and content of each Document produced therewith; (b) the paragraph number(s) of the Subpoena request to which each such Document is responsive; (c) the Identity of the Custodian(s) of each such Document; and (d) the document control number(s) of each such Document.

12. Affidavit of Compliance. A copy of the Affidavit of Compliance provided herewith shall be completed and executed by all natural persons supervising or participating in compliance with this Subpoena, and you shall submit such executed Affidavit(s) of Compliance with Your response to this Subpoena.

13. Identification of Persons Preparing Production. In a schedule attached to the Affidavit of Compliance provided herewith, you shall Identify the natural person(s) who prepared or assembled any productions or responses to this Subpoena. You shall further Identify the natural person(s) under whose personal supervision the preparation and assembly of productions and responses to this Subpoena occurred. You shall further Identify all other natural person(s) able competently to testify: (a) that such productions and responses are complete and correct to the best of such person's knowledge and belief; and (b) that any Documents produced are authentic, genuine and what they purport to be.

14. Continuing Obligation to Produce. This Subpoena imposes a continuing obligation to produce the Documents and information requested. Documents located, and information learned or acquired, at any time after your response is due shall be promptly produced at the place specified in this Subpoena.

15. No Oral Modifications. No agreement purporting to modify, limit or otherwise vary this Subpoena shall be valid or binding, and you shall not act in reliance upon any such agreement, unless an Assistant Attorney General confirms or acknowledges such agreement in writing, or makes such agreement a matter of record in open court.

16. Time Period. The term "Time Period 1" as used in this Subpoena shall be from January 1, 2005 through the date of the production. The term "Time Period 2" shall be from January 1, 1977 through the date of the production.

D. Documents to be Produced

1. All Documents and Communications, within Time Period 2, Concerning any research, analysis, assessment, evaluation, modeling or other consideration performed by You, on Your behalf, or with funding provided by You Concerning the causes of Climate Change.

2. All Documents and Communications, within Time Period 2, Concerning any research, analysis, assessment, evaluation, modeling (including the competency or accuracy of such models) or other consideration performed by You, on Your behalf, or with funding provided by You, Concerning the impacts of Climate Change, including but not limited to on air, water and land temperatures, sea-level rise, ocean acidification, extreme weather events, arctic ice, permafrost and shipping channels, precipitation, flooding, water supplies, desertification, agricultural and food supplies, built environments, migration, and security concerns, including the timing of such impacts.

3. All Documents and Communications, within Time Period 2, Concerning the integration of Climate Change-related issues (including but not limited to (a) future demand for Fossil Fuels, (b) future emissions of Greenhouse Gases from Fossil Fuel extraction, production and use, (c) future demand for Renewable Energy, (d) future emissions of Greenhouse Gases from Renewable Energy extraction, production and use, (e) Greenhouse Gas emissions reduction goals, (f) the physical risks and opportunities of Climate Change, and (g) impact on Fossil Fuel reserves into Your business decisions, including but not limited to financial projections and analyses, operations projections and analyses, and strategic planning performed by You, on Your behalf, or with funding provided by You.

4. All Documents and Communications, within Time Period 1, Concerning whether and how You disclose the impacts of Climate Change (including but not limited to regulatory risks and opportunities, physical risks and opportunities, Greenhouse Gas emissions and management, indirect risks and opportunities, International Energy Agency scenarios for energy consumption, and other carbon scenarios) in Your filings with the U.S. Securities and Exchange Commission and in Your public-facing and investor-facing reports including but not limited to Your *Outlook For Energy* reports, Your *Energy Trends, Greenhouse Gas Emissions, and Alternative Energy* reports, and Your *Energy and Carbon - Managing the Risks* Report.

5. All Documents and Communications, within Time Period 1, presented to Your board of directors Concerning Climate Change

6. All Documents and Communications Concerning Climate Change, within Time Period 1, prepared by or for trade associations or industry groups, or exchanged between You and trade associations or industry groups, or sent from or to trade associations or industry groups, including but not limited to the: (i) American Petroleum Institute; (ii) Petroleum Industry Environmental Conservation Association; (IPIECA); (iii) US Oil & Gas Association; (iv) Petroleum Marketers Association of America; and (v) Empire State Petroleum Association.

7. All Documents and Communications, within Time Period 1, related to Your support or funding for organizations relating to communications or research of Climate Change, including decisions to cease funding or supporting such organizations.

8. All Documents and Communications, within Time Period 1, created, recommended, sent, and/or distributed by You, on Your behalf, or with funding provided by You, Concerning marketing, advertising, and/or communication about Climate Change including but not limited to (a) policies, procedures, practices, memoranda and similar instructive or informational materials; (b) marketing or communication strategies or plans, (c) flyers, promotional materials, and informational materials; (d) scripts, Frequently Asked Questions, Q&As, and/or other guidance documents; (e) slide presentations, power points or videos; (f) written or printed notes from or video or audio recordings of speeches, seminars or conferences; (g) all Communications with and presentations to investors; and/or (h) press releases.

9. All Documents and Communications, within Time Period 1, that are exemplars of all advertisements, flyers, promotional materials, and informational materials of any type, (including but not limited to web-postings, blog-postings, social media-postings, print advertisements, radio and television advertisements, brochures, posters, billboards, flyers and disclosures) used, published, or distributed by You, on Your behalf, or with funding provided by You, Concerning Climate Change including but not limited to (a) a copy of each print advertisement placed in New York State; (b) a DVD format copy of each television advertisement that ran in New York State; (c) an audio recording of each radio advertisement that ran in New York State and the audio portion of each internet advertisement; and (d) a printout, screenshot or copy of each advertisement, information, or communication provided via the internet, email, Facebook, Twitter, You Tube, or other electronic communications system.

10. All Documents and Communications, within Time Period 1, substantiating or refuting the claims made in the materials identified in response to Demand Nos. 4, 8 and 9.

11. All Documents and Communications sufficient to identify any New York State consumer who has complained to You, or to any state, county or municipal consumer protection agency located in New York State, Concerning Your actions with respect to Climate Change; and for each New York State consumer identified: (i) each complaint or request made by or on behalf of a consumer, (ii) all correspondence between the consumer, his or her representative, and You, (iii) recordings and notes of all conversations between the consumer and You, and (iv) the resolution of each complaint, if any.

APPENDIX 1

Electronic Document Production Specifications

Unless otherwise specified and agreed to by the Office of Attorney General, all responsive documents must be produced in LexisNexis® Concordance® format in accordance with the following instructions. Any questions regarding electronic document production should be directed to the Assistant Attorney General whose telephone number appears on the subpoena.

1. Concordance Production Components. A Concordance production consists of the following component files, which must be produced in accordance with the specifications set forth below in Section 7.

   A. ***Metadata Load File.*** A delimited text file that lists in columnar format the required metadata for each produced document.

   B. ***Extracted or OCR Text Files.*** Document-level extracted text for each produced document or document-level optical character recognition ("OCR") text where extracted text is not available.

   C. ***Single-Page Image Files.*** Individual petrified page images of the produced documents in tagged image format ("TIF"), with page-level Bates number endorsements.

   D. ***Opticon Load File.*** A delimited text file that lists the single-page TIF files for each produced document and defines (i) the relative location of the TIF files on the production media and (ii) each document break.

   E. ***Native Files.*** Native format versions of non-printable or non–print friendly produced documents.

2. Production Folder Structure. The production must be organized according to the following standard folder structure:
   - data\ (contains production load files)
   - images\ (contains single-page TIF files, with subfolder organization)
     \0001, \0002, \0003…
   - native files\ (contains native files, with subfolder organization)
     \0001, \0002, \0003…
   - text\ (contains text files, with subfolder organization)
     \0001, \0002, \0003…

3. De-Duplication. You must perform global de-duplication of stand-alone documents and email families against any prior productions pursuant to this or previously related subpoenas.

4. Paper or Scanned Documents. Documents that exist only in paper format must be scanned to single-page TIF files and OCR'd. The resulting electronic files should be

pursued in Concordance format pursuant to these instructions. You must contact the Assistant Attorney General whose telephone number appears on the subpoena to discuss (i) any documents that cannot be scanned, and (ii) how information for scanned documents should be represented in the metadata load file.

5. Structured Data. Before producing structured data, including but not limited to relational databases, transactional data, and xml pages, you must first speak to the Assistant Attorney General whose telephone number appears on the subpoena. Spreadsheets are not considered structured data.

6. Media and Encryption. All documents must be produced on CD, DVD, or hard-drive media. All production media must be encrypted with a strong password, which must be delivered independently from the production media.

7. Production File Requirements.

A. ***Metadata Load File***

- Required file format:
  - ASCII or UTF-8
  - Windows formatted CR + LF end of line characters, including full CR + LF on last record in file.
  - .dat file extension
  - Field delimiter: (ASCII decimal character 20)
  - Text Qualifier: þ (ASCII decimal character 254). Date and pure numeric value fields do not require qualifiers.
  - Multiple value field delimiter: ; (ASCII decimal character 59)
- The first line of the metadata load file must list all included fields. All required fields are listed in Attachment 2.
- Fields with no values must be represented by empty columns maintaining delimiters and qualifiers.
- ***Note:*** All documents must have page-level Bates numbering (except documents produced only in native format, which must be assigned a document-level Bates number). The metadata load file must list the beginning and ending Bates numbers (BEGDOC and ENDDOC) for each document. For document families, including but not limited to emails and attachments, compound documents, and uncompressed file containers, the metadata load file must also list the Bates range of the entire document family (ATTACHRANGE), beginning with the first Bates number (BEGDOC) of the "parent" document and ending with the last Bates number (ENDDOC) assigned to the last "child" in the document family.
- Date and Time metadata must be provided in separate columns.
- Accepted date formats:
  - mm/dd/yyyy
  - yyyy/mm/dd
  - yyyymmdd
- Accepted time formats:
  - hh:mm:ss (if not in 24-hour format, you must indicate am/pm)

- hh:mm:ss:mmm

B. ***Extracted or OCR Text Files***

- You must produce individual document-level text files containing the full extracted text for each produced document.
- When extracted text is not available (for instance, for image-only documents) you must provide individual document-level text files containing the document's full OCR text.
- The filename for each text file must match the document's beginning Bates number (BEGDOC) listed in the metadata load file.
- Text files must be divided into subfolders containing no more than 500 to 1000 files.

C. ***Single-Page Image Files (Petrified Page Images)***

- Where possible, all produced documents must be converted into single-page tagged image format ("TIF") files. See Section 7.E below for instructions on producing native versions of documents you are unable to convert.
- Image documents that exist only in non-TIF formats must be converted into TIF files. The original image format must be produced as a native file as described in Section 7.E below.
- For documents produced only in native format, you must provide a TIF placeholder that states "Document produced only in native format."
- Each single-page TIF file must be endorsed with a unique Bates number.
- The filename for each single-page TIF file must match the unique page-level Bates number (or document-level Bates number for documents produced only in native format).
- Required image file format:
  - CCITT Group 4 compression
  - 2-Bit black and white
  - 300 dpi
  - Either .tif or .tiff file extension.
- TIF files must be divided into subfolders containing no more than 500 to 1000 files. Where possible documents should not span multiple subfolders.

D. ***Opticon Load File***

- Required file format:
  - ASCII
  - Windows formatted CR + LF end of line characters
  - Field delimiter: , (ASCII decimal character 44)
  - No Text Qualifier
  - .opt file extension
- The comma-delimited Opticon load file must contain the following seven fields (as indicated below, values for certain fields may be left blank):
  - ALIAS or IMAGEKEY – the unique Bates number assigned to each page of the production.
  - VOLUME – this value is optional and may be left blank.

  - RELATIVE PATH – the filepath to each single-page image file on the production media.
  - DOCUMENT BREAK – defines the first page of a document. The only possible values for this field are "Y" or blank.
  - FOLDER BREAK – defines the first page of a folder. The only possible values for this field are "Y" or blank.
  - BOX BREAK – defines the first page of a box. The only possible values for this field are "Y" or blank.
  - PAGE COUNT – this value is optional and may be left blank.
- ***Example***:
  ABC00001,,IMAGES\0001\ABC00001.tif,Y,,,2
  ABC00002,,IMAGES\0001\ABC00002.tif,,,,
  ABC00003,,IMAGES\0002\ABC00003.tif,Y,,,1
  ABC00004,,IMAGES\0002\ABC00004.tif,Y,,,1

E. ***Native Files***

- Non-printable or non–print friendly documents (including but not limited to spreadsheets, audio files, video files and documents for which color has significance to document fidelity) must be produced in their native format.
- The filename of each native file must match the document's beginning Bates number (BEGDOC) in the metadata load file and retain the original file extension.
- For documents produced only in native format, you must assign a single document-level Bates number and provide an image file placeholder that states "Document produced only in native format."
- The relative paths to all native files on the production media must be listed in the NATIVEFILE field of the metadata load file.
- Native files that are password-protected must be decrypted prior to conversion and produced in decrypted form. In cases where this cannot be achieved the document's password must be listed in the metadata load file. The password should be placed in the COMMENTS field with the format Password: <PASSWORD>.
- You may be required to supply a software license for proprietary documents produced only in native format.

APPENDIX 2

Required Fields for Metadata Load File

FIELD NAME	FIELD DESCRIPTION	FIELD VALUE EXAMPLE[1]
DOCID	Unique document reference (can be used for de-duplication).	ABC0001 or ###.######.###
BEGDOC	Bates number assigned to the first page of the document.	ABC0001
ENDDOC	Bates number assigned to the last page of the document.	ABC0002
BEGATTACH	Bates number assigned to the first page of the parent document in a document family (*i.e.*, should be the same as BEGDOC of the parent document, or PARENTDOC).	ABC0001
ENDATTACH	Bates number assigned to the last page of the last child document in a family (*i.e.*, should be the same as ENDDOC of the last child document).	ABC0008
ATTACHRANGE	Bates range of entire document family.	ABC0001 - ABC0008
PARENTDOC	BEGDOC of parent document.	ABC0001
CHILDDOCS	List of BEGDOCs of all child documents, delimited by ";" when field has multiple values.	ABC0002; ABC0003; ABC0004…
COMMENTS	Additional document comments, such as passwords for encrypted files.	
NATIVEFILE	Relative file path of the native file on the production media.	.\Native_File\Folder\...\BEGDOC.ext
SOURCE	For scanned paper records this should be a description of the physical location of the original paper record. For loose electronic files this should be the name of the file server or workstation where the files were gathered.	Company Name, Department Name, Location, Box Number…
CUSTODIAN	Owner of the document or file.	Firstname Lastname, Lastname, Firstname, User Name; Company Name, Department Name...
FROM	Sender of the email.	Firstname Lastname < FLastname @domain >

[1] Examples represent possible values and not required format unless the field format is specified in Attachment 1.

FIELD NAME	FIELD DESCRIPTION	FIELD VALUE EXAMPLE[1]
TO	All to: members or recipients, delimited by ";" when field has multiple values.	Firstname Lastname < FLastname @domain >; Firstname Lastname < FLastname @domain >; …
CC	All cc: members, delimited by ";" when field has multiple values.	Firstname Lastname < FLastname @domain >; Firstname Lastname < FLastname @domain >; …
BCC	All bcc: members, delimited by ";" when field has multiple values	Firstname Lastname < FLastname @domain >; Firstname Lastname < FLastname @domain >; …
SUBJECT	Subject line of the email.	
DATERCVD	Date that an email was received.	mm/dd/yyyy, yyyy/mm/dd, or yyyymmdd
TIMERCVD	Time that an email was received.	hh:mm:ss AM/PM or hh:mm:ss
DATESENT	Date that an email was sent.	mm/dd/yyyy, yyyy/mm/dd, or yyyymmdd
TIMESENT	Time that an email was sent.	hh:mm:ss AM/PM or hh:mm:ss
CALBEGDATE	Date that a meeting begins.	mm/dd/yyyy, yyyy/mm/dd, or yyyymmdd
CALBEGTIME	Time that a meeting begins.	hh:mm:ss AM/PM or hh:mm:ss
CALENDDATE	Date that a meeting ends.	mm/dd/yyyy, yyyy/mm/dd, or yyyymmdd
CALENDTIME	Time that a meeting ends.	hh:mm:ss AM/PM or hh:mm:ss
CALENDARDUR	Duration of a meeting in hours.	0.75, 1.5…
ATTACHMENTS	List of filenames of all attachments, delimited by ";" when field has multiple values.	AttachmentFileName.; AttachmentFileName.docx; AttachmentFileName.pdf;…
NUMATTACH	Number of attachments.	1, 2, 3, 4….
RECORDTYPE	General type of record.	IMAGE; LOOSE E-MAIL; E-MAIL; E-DOC; IMAGE ATTACHMENT; LOOSE E-MAIL ATTACHMENT; E-MAIL ATTACHMENT; E-DOC ATTACHMENT
FOLDERLOC	Original folder path of the produced document.	Drive:\Folder\...\...\
FILENAME	Original filename of the produced document.	Filename.ext
DOCEXT	Original file extension.	html, xls, pdf

FIELD NAME	FIELD DESCRIPTION	FIELD VALUE EXAMPLE[1]
DOCTYPE	Name of the program that created the produced document.	Adobe Acrobat, Microsoft Word, Microsoft Excel, Corel WordPerfect…
TITLE	Document title (if entered).	
AUTHOR	Name of the document author.	Firstname Lastname; Lastname, First Name; FLastname
REVISION	Number of revisions to a document.	18
DATECREATED	Date that a document was created.	mm/dd/yyyy, yyyy/mm/dd, or yyyymmdd
TIMECREATED	Time that a document was created.	hh:mm:ss AM/PM or hh:mm:ss
DATEMOD	Date that a document was last modified.	mm/dd/yyyy, yyyy/mm/dd, or yyyymmdd
TIMEMOD	Time that a document was last modified.	hh:mm:ss AM/PM or hh:mm:ss
FILESIZE	Original file size in bytes.	128, 512, 1024…
PGCOUNT	Number of pages per document.	1, 2, 10, 100…
IMPORTANCE	Email priority level if set.	Low, Normal, High
TIFFSTATUS	Generated by the Law Pre-discovery production tool (leave blank if inapplicable).	Y, C, E, W, N, P
DUPSTATUS	Generated by the Law Pre-discovery production tool (leave blank if inapplicable).	P
MD5HASH	MD5 hash value computed from native file (a/k/a file fingerprint).	BC1C5CA6C1945179FEE144F25F51087B
SHA1HASH	SHA1 hash value	B68F4F57223CA7DA3584BAD7ECF111B8044F8631
MSGINDEX	Email message ID	

AFFIDAVIT OF COMPLIANCE WITH SUBPOENA

State of }

County of }

I, _____, being duly sworn, state as follows:

1. I am employed by _____ in the position of _____;

2. The enclosed production of documents and responses to the Subpoena of the Attorney General of the State of New York, dated November 4, 2015 (the "Subpoena") were prepared and assembled under my personal supervision;

3. I made or caused to be made a diligent, complete and comprehensive search for all Documents and information requested by the Subpoena, in full accordance with the instructions and definitions set forth in the Subpoena;

4. The enclosed production of documents and responses to the Subpoena are complete and correct to the best of my knowledge and belief;

5. No Documents or information responsive to the Subpoena have been withheld from this production and response, other than responsive Documents or information withheld on the basis of a legal privilege or doctrine;

6. All responsive Documents or information withheld on the basis of a legal privilege or doctrine have been identified on a privilege log composed and produced in accordance with the instructions in the Subpoena;

7. The Documents contained in these productions and responses to the Subpoena are authentic, genuine and what they purport to be;

8. Attached is a true and accurate record of all persons who prepared and assembled any productions and responses to the Subpoena, all persons under whose personal supervision the preparation and assembly of productions and responses to the Subpoena occurred, and all persons able competently to testify: (a) that such productions and responses are complete and correct to the best of such person's knowledge and belief; and (b) that any Documents produced are authentic, genuine and what they purport to be; and

9. Attached is a true and accurate statement of those requests under the Subpoena as to which no responsive Documents were located in the course of the aforementioned search.

_____ _____

Signature of Affiant Date

_____

Printed Name of Affiant

****

Subscribed and sworn to before me
this 4th day of December 2015.

_____
Notary Public

My commission expires:

_____

Exhibit 2

STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

SUBPOENA DUCES TECUM

THE PEOPLE OF THE STATE OF NEW YORK

GREETINGS

TO:

PricewaterhouseCoopers LLP
300 Madison Avenue
New York, New York 10017

YOU ARE HEREBY COMMANDED, pursuant General Business Law § 352, Executive Law § 63(12), and § 2302(a) of the New York Civil Practice Law and Rules, to deliver and turn over to Eric T. Schneiderman, the Attorney General of the State of New York, or a designated Assistant Attorney General, on ***the 2nd day of September, 2016, at 9:30 a.m.***, or any agreed upon adjourned date or time, at 120 Broadway, New York, New York 10271, all documents and information requested in the attached Schedule in accordance with the instructions and definitions contained therein.

TAKE NOTICE that the Attorney General deems the documents and information commanded by this Subpoena to be relevant and material to an investigation and inquiry undertaken in the public interest.

TAKE FURTHER NOTICE that Your disobedience of this Subpoena, by failing to produce documents and information on the date, time and place stated above or on any agreed upon adjourned date or time, ***may subject You to prosecution for a misdemeanor or penalties and other lawful punishment*** under General Business Law § 352 and § 2308 of the New York Civil Practice Law, and/or other statutes.

TAKE FURTHER NOTICE that You should not disclose the existence of this Subpoena, its contents, or any subsequent communications with the Office of the Attorney General while this investigation is pending. Disclosure of this Subpoena may impede a confidential investigation being conducted by the Attorney General. In the event You believe that You are required to disclose the existence of this Subpoena or any information related thereto, You shall notify the Assistant Attorney General listed below immediately and well in advance of Your disclosure of the same.

WITNESS, The Honorable Eric T. Schneiderman, Attorney General of the State of New York, this 19th day of August, 2016.

By: _____

Katherine Milgram
Deputy Bureau Chief
Investor Protection Bureau
120 Broadway, 23rd Floor
New York, New York 10271
(212) 416-8222

By: _____

Jonathan Zweig
Assistant Attorney General
Investor Protection Bureau
120 Broadway, 23rd Floor
New York, New York 10271
(212) 416-8954

SCHEDULE

A. General Definitions and Rules of Construction

1. "All" means each and every.

2. "Any" means any and all.

3. "And" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the Subpoena all information or Documents that might otherwise be construed to be outside of its scope.

4. "Communication" means any conversation, discussion, letter, email, memorandum, meeting, note or other transmittal of information or message, whether transmitted in writing, orally, electronically or by any other means, and shall include any Document that abstracts, digests, transcribes, records or reflects any of the foregoing.

5. "Concerning" means, directly or indirectly, in whole or in part, relating to, referring to, describing, evidencing or constituting.

6. "Custodian" means any Person or Entity that, as of the date of this Subpoena, maintained, possessed, or otherwise kept or controlled such Document.

7. "Document" is used herein in the broadest sense of the term and means all records and other tangible media of expression of whatever nature however and wherever created, produced or stored (manually, mechanically, electronically or otherwise), including without limitation all versions whether draft or final, all annotated or nonconforming or other copies, electronic mail ("e-mail"), instant messages, text messages, Blackberry or other wireless device messages, voicemail, calendars, date books, appointment books, diaries, books, papers, work papers, files, desk files, permanent files, temporary files, notes, confirmations, account statements, correspondence, memoranda, reports, records, journals, registers, analyses, plans, manuals, policies, telegrams, faxes, telexes, wires, telephone logs, telephone messages, message slips, minutes, notes or records or transcriptions of conversations or Communications or meetings, tape recordings, videotapes, disks, other electronic media, microfilm, microfiche, storage devices, press releases, contracts, agreements, notices and summaries. Any non-identical version of a Document constitutes a separate Document within this definition, including without limitation drafts or copies bearing any notation, edit, comment, marginalia, underscoring, highlighting, marking, or any other alteration of any kind resulting in any difference between two or more otherwise identical Documents. In the case of Documents bearing any notation or other marking made by highlighting ink, the term Document means the original version bearing the highlighting ink, which original must be produced as opposed to any copy thereof.

8. "Entity" means without limitation any corporation, company, limited liability company or corporation, partnership, limited partnership, association, or other firm or similar body, or any unit, division, agency, department, or similar subdivision thereof.

9. "Identify" or "Identity," as applied to any Document, means the provision in writing of information sufficiently particular to enable the Attorney General to request the Document's production through subpoena or otherwise, including but not limited to: (a) Document type (letter, memorandum, etc.); (b) Document subject matter; (c) Document date; and (d) Document author(s), addressee(s) and recipient(s). In lieu of identifying a Document, the Attorney General will accept production of the Document, together with designation of the Document's Custodian, and identification of each Person You believe to have received a copy of the Document.

10. "Identify" or "Identity," as applied to any Entity, means the provision in writing of such Entity's legal name, any d/b/a, former, or other names, any parent, subsidiary, officers, employees, or agents thereof, and any address(es) and any telephone number(s) thereof.

11. "Identify" or "Identity," as applied to any natural person, means and includes the provision in writing of the natural person's name, title(s), any aliases, place(s) of employment, telephone number(s), e-mail address(es), mailing addresses and physical address(es).

12. "Person" means any natural person, or any Entity.

13. "Sent" or "received" as used herein means, in addition to their usual meanings, the transmittal or reception of a Document by physical, electronic or other delivery, whether by direct or indirect means.

14. "Subpoena" means this subpoena and any schedules or attachments thereto.

15. The use of the singular form of any word used herein shall include the plural and vice versa. The use of any tense of any verb includes all other tenses of the verb.

16. The references to Communications, Custodians, Documents, Persons, and Entities in this Subpoena encompass all such relevant ones worldwide.

B. Particular Definitions

1. "You," "Your," or "PwC" means PricewaterhouseCoopers LLP and Any present or former parents, subsidiaries, affiliates, directors, officers, partners, employees, agents, representatives, attorneys or other Persons acting on its behalf, and including predecessors or successors or Any affiliates of the foregoing.

2. "Exxon" means ExxonMobil Corporation, ExxonMobil Oil Corporation, and Any present or former parents, subsidiaries, affiliates, directors, officers, partners, employees, agents, representatives, attorneys or other Persons acting on its behalf, and including predecessors or successors or Any affiliates of the foregoing.

3. "CDP" means the organization formerly called Carbon Disclosure Project and Any present or former parents, subsidiaries, affiliates, directors, officers, partners, employees, agents, representatives, attorneys or other Persons acting on its behalf, including

predecessors or successors or Any affiliates of the foregoing, and All associated reports, publications, and analysis.

4. "Climate Change" means climate and environmental system impacts, weather-related events, and Any other effect on the earth's physical, biological, and human systems (e.g., communities and built infrastructure) that may be related to anthropogenic emissions of carbon dioxide and other Greenhouse Gases, including but not limited to increasing air or water temperatures, global warming, rising sea levels, melting of sea ice and land-based ice including glaciers and ice sheets, ocean acidification, permafrost thawing, changes in precipitation patterns, intensity or frequency, droughts, coastal and riverine flooding, and extreme storms.

5. "E&P" means the exploration and production segment of the energy industry, including but not limited to discovering, augmenting, extracting, producing, recovering, and merchandising oil, gas, and other hydrocarbons, together with All other upstream activities and assets, and including but not limited to oil, gas, and other hydrocarbon reserves, resource base, and potential resource base.

6. "Fossil Fuel" means All energy sources formed from fossilized remains of dead organisms, including oil, gas, bitumen and natural gas. For purposes of this Subpoena, the definition includes also fossil fuels blended with biofuels, such as corn ethanol blends of gasoline. The definition excludes renewable sources of energy production, such as hydroelectric, geothermal, solar, tidal, wind, and biomass.

7. "Greenhouse Gases" means carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

8. "Renewable Energy" means renewable sources of energy production, such as hydroelectric, geothermal, solar, tidal, wind, and biomass.

C. Instructions

1. Preservation of Relevant Documents and Information; Spoliation. You are reminded of Your obligations under law to preserve Documents and information relevant or potentially relevant to this Subpoena from destruction or loss, and of the consequences of, and penalties available for, spoliation of evidence. No agreement, written or otherwise, purporting to modify, limit or otherwise vary the terms of this Subpoena, shall be construed in any way to narrow, qualify, eliminate or otherwise diminish Your aforementioned preservation obligations. Nor shall You act, in reliance upon any such agreement or otherwise, in any manner inconsistent with Your preservation obligations under law. No agreement purporting to modify, limit or otherwise vary Your preservation obligations under law shall be construed as in any way narrowing, qualifying, eliminating or otherwise diminishing such aforementioned preservation obligations, nor shall You act in reliance upon any such agreement, unless an Assistant Attorney General confirms or acknowledges such agreement in writing, or makes such agreement a matter of record in open court.

2. Possession, Custody, and Control. The Subpoena calls for all responsive Documents or information in Your possession, custody or control. This includes, without limitation, Documents or information possessed or held by any of Your officers, directors, employees, agents, representatives, divisions, affiliates, subsidiaries or Persons from whom You could request Documents or information. If Documents or information responsive to a request in this Subpoena are in Your control, but not in Your possession or custody, You shall promptly Identify the Person with possession or custody.

3. Documents No Longer in Your Possession. If any Document requested herein was formerly in Your possession, custody or control but is no longer available, or no longer exists, You shall submit a statement in writing under oath that: (a) describes in detail the nature of such Document and its contents; (b) Identifies the Person(s) who prepared such Document and its contents; (c) Identifies all Persons who have seen or had possession of such Document; (d) specifies the date(s) on which such Document was prepared, transmitted or received; (e) specifies the date(s) on which such Document became unavailable; (f) specifies the reason why such Document is unavailable, including without limitation whether it was misplaced, lost, destroyed or transferred; and if such Document has been destroyed or transferred, the conditions of and reasons for such destruction or transfer and the Identity of the Person(s) requesting and performing such destruction or transfer; and (g) Identifies all Persons with knowledge of any portion of the contents of the Document.

4. No Documents Responsive to Subpoena Requests. If there are no Documents responsive to any particular Subpoena request, You shall so state in writing under oath in the Affidavit of Compliance attached hereto, identifying the paragraph number(s) of the Subpoena request concerned.

5. Format of Production. You shall produce Documents and information responsive to this Subpoena in the format requested by the Office of the New York State Attorney General. Productions in electronic format shall meet the specifications set out in Attachments 1 and 2 hereof.

6. Existing Organization of Documents to be Preserved. Regardless of whether a production is in electronic or paper format, each Document shall be produced in the same form, sequence, organization or other order or layout in which it was maintained before production, including but not limited to production of any Document or other material indicating filing or other organization. Such production shall include without limitation any file folder, file jacket, cover or similar organizational material, as well as any folder bearing any title or legend that contains no Document. Likewise, all Documents that are physically attached to each other in Your files shall remain so attached in any production; or if such production is electronic, shall be accompanied by notation or information sufficient to indicate clearly such physical attachment.

7. Document Numbering. All Documents responsive to this Subpoena, regardless of whether produced or withheld on ground of privilege or other legal doctrine, and regardless of whether production is in electronic or paper format, shall be numbered in the lower right corner of each page of such Document, without disrupting or altering the

form, sequence, organization or other order or layout in which such Documents were maintained before production. Such number shall comprise a prefix containing the producing Person's name or an abbreviation thereof, followed by a unique, sequential, identifying document control number.

8. Privilege Placeholders. For each Document withheld from production on ground of privilege or other legal doctrine, regardless of whether a production is electronic or in hard copy, You shall insert one or more placeholder page(s) in the production bearing the same document control number(s) borne by the Document withheld, in the sequential place(s) originally occupied by the Document before it was removed from the production.

9. Privilege. If You withhold any Document responsive to this Subpoena on ground of privilege or other legal doctrine, You shall submit with the Documents produced a statement in writing under oath, stating: (a) the document control number(s) of the Document withheld; (b) the type of Document; (c) the date of the Document; (d) the author(s) and recipient(s) of the Document; (e) the general subject matter of the Document; and (f) the legal ground for withholding the Document. If the legal ground for withholding the Document is attorney-client privilege, You shall indicate the name of the attorney(s) whose legal advice is sought or provided in the Document.

10. Your Production Instructions to be Produced. You shall produce a copy of all written or otherwise recorded instructions prepared by You concerning the steps taken to respond to this Subpoena. For any unrecorded instructions given, You shall provide a written statement under oath from the Person(s) who gave such instructions that details the specific content of the instructions and any Person(s) to whom the instructions were given.

11. Cover Letter. Accompanying any production(s) made pursuant to this Subpoena, You shall include a cover letter that shall at a minimum provide an index containing the following: (a) a description of the type and content of each Document produced therewith; (b) the paragraph number(s) of the Subpoena request to which each such Document is responsive; (c) the Identity of the Custodian(s) of each such Document; and (d) the document control number(s) of each such Document.

12. Affidavit of Compliance. A copy of the Affidavit of Compliance provided herewith shall be completed and executed by all natural persons supervising or participating in compliance with this Subpoena, and You shall submit such executed Affidavit(s) of Compliance with Your response to this Subpoena.

13. Identification of Persons Preparing Production. In a schedule attached to the Affidavit of Compliance provided herewith, You shall Identify the natural person(s) who prepared or assembled any productions or responses to this Subpoena. You shall further Identify the natural person(s) under whose personal supervision the preparation and assembly of productions and responses to this Subpoena occurred. You shall further Identify all other natural person(s) able competently to testify: (a) that such productions and responses are complete and correct to the best of such person's knowledge and belief; and (b) that any Documents produced are authentic, genuine and what they purport to be.

14. Continuing Obligation to Produce. This Subpoena imposes a continuing obligation to produce the Documents and information requested. Documents located, and information learned or acquired, at any time after Your response is due shall be promptly produced at the place specified in this Subpoena.

15. No Oral Modifications. No agreement purporting to modify, limit or otherwise vary this Subpoena shall be valid or binding, and You shall not act in reliance upon any such agreement, unless an Assistant Attorney General confirms or acknowledges such agreement in writing, or makes such agreement a matter of record in open court.

16. Time Period. Unless otherwise specified, the time period for information, Documents, and Communications requested by this Subpoena is from January 1, 2010 (i.e. PwC's audits of financial statements for 2010) through the date of the production.

D. Requests for Information

1. Identify All individuals and business groups or divisions at PwC that were involved in PwC's reviews and audits of Exxon's financial statements.

2. Identify All individuals and business groups or divisions at PwC that were involved in PwC's review of Exxon's decisions Concerning its oil, gas, and other hydrocarbon reserves, resource base, and potential resource base.

3. Identify All individuals and business groups or divisions at PwC that were involved in PwC's review of Exxon's decisions Concerning actual or potential E&P-related write-downs, impairment charges, impairment testing or analysis, or triggers for impairment testing or analysis.

4. Identify All individuals and business groups or divisions at PwC that were involved in PwC's review of Exxon's capital allocation and expenditure decisions based on actual or potential impacts of Climate Change or policies or regulations Concerning Climate Change.

5. Identify All individuals and business groups or divisions at Exxon with which PwC communicated Concerning Exxon's oil, gas, and other hydrocarbon reserves, resource base, and potential resource base.

6. Identify All individuals and business groups or divisions at Exxon with which PwC communicated Concerning actual or potential E&P-related write-downs, impairment charges, impairment testing or analysis, and triggers for impairment testing or analysis.

7. Identify All individuals and business groups or divisions at Exxon with which PwC communicated concerning Exxon's capital allocation and expenditure decisions based on actual or potential impacts of Climate Change or policies or regulations Concerning Climate Change.

E. Documents to be Produced

1. All Documents and Communications Concerning the valuation, accounting, booking, de-booking, and reporting of Exxon's oil, gas, and other hydrocarbon reserves, resource base, and potential resource base, and the time period within which Exxon expects to produce its reserves, resource base, and potential resource base.

2. All Documents and Communications Concerning the preparation or completion, or the potential preparation or completion, of Any audit of Exxon's oil, gas, and other hydrocarbon reserves, resource base, and potential resource base.

3. All Documents and Communications Concerning (a) Exxon's internal auditing of its database or system containing its estimates of oil, gas, and other hydrocarbon reserves, resource base, and potential resource base; (b) the processes and controls used by Exxon in the preparation of its estimates of such reserves, resource base, and potential resource base; and (c) the qualifications of the technical personnel responsible for overseeing the preparation of such estimates.

4. All Documents and Communications Concerning E&P-related write-downs, impairment charges, impairment testing or analysis, and triggers for impairment testing or analysis, actual or potential, with respect to Exxon, including but not limited to Exxon's late 2015 effort to assess its major long-lived assets most at risk for potential impairment.

5. All Documents and Communications Concerning Exxon's outlook or projections of oil, gas, and other hydrocarbon prices, including but not limited to Any outlook or projections Concerning the duration of Any price changes (such as Any classification of price changes as short-term, temporary, or long-term).

6. All Documents and Communications Concerning Exxon's consideration, analysis, determination, or application of a carbon price, shadow price of carbon, or proxy cost of carbon.

7. All Documents and Communications Concerning the impact or potential impact of Any of the following factors on Exxon's financial statements or its business generally, including operations and capital allocation and expenditures:

    a. changes or potential changes in the cost or price of carbon, including but not limited to Any proxy or shadow cost of carbon;

    b. actual or potential policies or regulations limiting or discouraging the emission of Greenhouse Gases;

    c. actual or potential policies or regulations limiting or discouraging the use or development of Fossil Fuels;

    d. actual or potential policies or regulations promoting or incentivizing the use or development of Renewable Energy;

e. actual or potential policies or regulations Concerning Climate Change;

f. actual or potential effects of Climate Change; and/or

g. changes or potential changes in the price of oil, gas, and other hydrocarbons.

8. All Documents and Communications from PwC's audit files for Exxon Concerning Exxon's oil, gas, and other hydrocarbon reserves, resource base, and potential resource base; E&P-related write-downs, impairment charges, impairment testing or analysis, and triggers for impairment testing or analysis, actual or potential; and capital expenditures or allocation based on actual or potential impacts of Climate Change or policies or regulations Concerning Climate Change.

9. Indices of PwC's work papers, permanent files, and desk files Concerning PwC's audits of Exxon's financial statements.

10. All engagement letters Concerning Exxon's retention of PwC.

11. All management representation letters Concerning PwC's audits of Exxon's financial statements.

12. All Documents and Communications Concerning Exxon's CDP submissions and PwC's analysis of Exxon's CDP submissions.

ATTACHMENT 1
Electronic Document Production Specifications

Unless otherwise specified and agreed to by the Office of the Attorney General, all responsive documents must be produced in LexisNexis® Concordance® format in accordance with the following instructions. Any questions regarding electronic document production should be directed to the Assistant Attorney General whose telephone number appears on the subpoena.

1. Concordance Production Components. A Concordance production consists of the following component files, which must be produced in accordance with the specifications set forth below in Section 7.

   A. ***Native Files.*** Native format versions of produced documents that are not redacted, named by their first Bates number.

   B. ***Single-Page Image Files.*** Individual petrified page images of the produced documents in tagged image format ("TIF"), with page-level Bates number endorsements.

   C. ***Extracted or OCR Text Files.*** Document-level extracted text for each produced document or document-level optical character recognition ("OCR") text where extracted text is not available.

   D. ***Metadata Load File.*** A delimited text file that lists in columnar format the required metadata for each produced document.

   E. ***Opticon Load File.*** A delimited text file that lists the single-page TIF files for each produced document and defines (i) the relative location of the TIF files on the production media and (ii) each document break.

2. Production Folder Structure. The production must be organized according to the following standard folder structure:
   - data\ (contains production load files)
   - images\ (contains single-page TIF files, with subfolder organization)
     \0001, \0002, \0003…
   - natives\ (contains native files, with subfolder organization)
     \0001, \0002, \0003…
   - text\ (contains text files, with subfolder organization)
     \0001, \0002, \0003…

3. De-Duplication. You must perform global de-duplication of stand-alone documents and email families against any prior productions pursuant to this or previously related subpoenas.

4. Paper or Scanned Documents. Documents that exist only in paper format must be scanned to single-page TIF files and OCR'd. The resulting electronic files should be pursued in Concordance format pursuant to these instructions. You must contact the

Assistant Attorney General whose telephone number appears on the subpoena to discuss (i) any documents that cannot be scanned, and (ii) how information for scanned documents should be represented in the metadata load file.

5. Structured Data. Structured data includes but is not limited to relational databases, transactional data, and xml pages. Spreadsheets are not considered structured data. You must first speak to the Assistant Attorney General whose telephone number appears on the subpoena.

A. Relational Databases

1. Database tables should be provided in comma-separated or other machine-readable, non-proprietary format, with each table in a separate data file. Each data file must have an accompanying data dictionary that explains the meaning of each column name and explains the values of any codes used.

2. Dates and numbers must be clearly and consistently formatted and, where relevant, units of measure should be explained in the data dictionary.

3. Records must contain clear, unique identifiers, and the data dictionary must include explanations of how the files and records relate to one another.

6. Media and Encryption. All document sets over 2 GB must be produced on CD, DVD, or hard-drive media. All production media must be encrypted with a strong password, which must be delivered independently from the production media. Document sets under 2 GB may be delivered electronically. The OAG offers a secure cloud storage option that can be set up to receive media on a one-time basis, or the OAG will download media from the providing party's server.

7. Production File Requirements.

A. ***Native Files***

- Documents that do not contain redacted information must be produced in their native format.
- The filename of each native file must match the document's beginning Bates number (BEGDOC) in the metadata load file and retain the original file extension.
- For documents produced only in native format, and not additionally as single-page image files, you must assign a single document-level Bates number and optionally provide an image file placeholder that states "Document produced only in native format."
- The relative paths to all native files on the production media must be listed in the NATIVEFILE field of the metadata load file.
- Native files that are password-protected must be decrypted prior to conversion and produced in decrypted form.
- You may be required to supply a software license for proprietary documents

produced only in native format.

B. ***Single-Page Image Files (Petrified Page Images)***

- Where possible, all produced documents must be converted into single-page tagged image format ("TIF") files.
- Image documents that exist only in non-TIF formats must be converted into TIF files.
- For documents produced only in native format, you may provide a single, TIF placeholder that states "Document produced only in native format."
- Each single-page TIF file must be endorsed with a unique Bates number.
- The filename for each single-page TIF file must match the unique page-level Bates number (or document-level Bates number for documents produced only in native format).
- Required image file format:
  - CCITT Group 4 compression
  - 2-Bit black and white
  - 300 dpi
  - Either .tif or .tiff file extension.
- TIF files must be divided into subfolders containing no more than 5000 files. Documents should not span multiple subfolders, a document with more than 5000 pages should be kept in a single folder.

C. ***Extracted or OCR Text Files***

- You must produce individual document-level text files containing the full extracted text for each produced document.
- When extracted text is not available (for instance, for image-only documents) you must provide individual document-level text files containing the document's full OCR text.
- The filename for each text file must match the document's beginning Bates number (BEGDOC) listed in the metadata load file.
- Text files must be divided into subfolders containing no more than 5000 files.

D. ***Metadata Load File***

- Required file format:
  - UTF-8
  - .dat file extension
  - Field delimiter: (ASCII decimal character 20)
  - Text Qualifier: þ (ASCII decimal character 254). Multiple value field delimiter: ; (ASCII decimal character 59)
- The first line of the metadata load file must list all included fields. All required fields are listed in Attachment 2.
- Fields with no values must be represented by empty columns maintaining delimiters and qualifiers.
- ***Note:*** All documents must have page-level Bates numbering (except documents produced only in native format, which must be assigned a document-level Bates number). The metadata load file must list the beginning and ending Bates numbers (BEGDOC and ENDDOC) for each document.
- Accepted date formats:

- mm/dd/yyyy
- yyyy/mm/dd
- yyyymmdd

- Accepted time formats:
  - hh:mm:ss (if not in 24-hour format, you must indicate am/pm)
  - hh:mm:ss:mmm

E. ***Opticon Load File***

- Required file format:
  - Field delimiter: , (ASCII decimal character 44)
  - No Text Qualifier
  - .opt file extension
- The comma-delimited Opticon load file must contain the following seven fields (as indicated below, values for certain fields may be left blank):
  - ALIAS or IMAGEKEY – the unique Bates number assigned to each page of the production.
  - VOLUME – this value is optional and may be left blank.
  - RELATIVE PATH – the file path to each single-page image file on the production media.
  - DOCUMENT BREAK – defines the first page of a document. The only possible values for this field are "Y" or blank.
  - FOLDER BREAK – defines the first page of a folder. The only possible values for this field are "Y" or blank.
  - BOX BREAK – defines the first page of a box. The only possible values for this field are "Y" or blank.
  - PAGE COUNT – this value is optional and may be left blank.
- ***Example***:

ABC00001,,IMAGES\0001\ABC00001.tif,Y,,,2
ABC00002,,IMAGES\0001\ABC00002.tif,,,,
ABC00003,,IMAGES\0002\ABC00003.tif,Y,,,1
ABC00004,,IMAGES\0002\ABC00004.tif,Y,,,1

ATTACHMENT 2
Required Fields for Metadata Load File

FIELD NAME	FIELD DESCRIPTION	FIELD VALUE EXAMPLE[1]
BEGDOC	Bates number assigned to the first page of the document.	ABC0001
ENDDOC	Bates number assigned to the last page of the document.	ABC0002
BEGATTACH	Bates number assigned to the first page of the parent document in a document family (*i.e.*, should be the same as BEGDOC of the parent document, or PARENTDOC).	ABC0001
ENDATTACH	Bates number assigned to the last page of the last child document in a family (*i.e.*, should be the same as ENDDOC of the last child document).	ABC0008
PARENTDOC	BEGDOC of parent document.	ABC0001
CHILDDOCS	List of BEGDOCs of all child documents, delimited by ";" when field has multiple values.	ABC0002; ABC0003; ABC0004…
COMMENTS	Additional document comments, such as passwords for encrypted files.	
NATIVEFILE	Relative file path of the native file on the production media.	.\Native_File\Folder\...\BEGDOC.ext
TEXTFILE	Relative file path of the plain text file on the production media.	.\Text_Folder\Folder\...\BEGDOC.txt
SOURCE	For scanned paper records this should be a description of the physical location of the original paper record. For loose electronic files this should be the name of the file server or workstation where the files were gathered.	Company Name, Department Name, Location, Box Number…
CUSTODIAN	Owner of the document or file.	Firstname Lastname, Lastname, Firstname, User Name; Company Name, Department Name...
FROM	Sender of the email.	Firstname Lastname < FLastname @domain >
TO	All to: members or recipients, delimited by ";" when field has multiple values.	Firstname Lastname < FLastname @domain >; Firstname Lastname < FLastname @domain >; …

[1] Examples represent possible values and not required format unless the field format is specified in Attachment 1.

CC	All cc: members, delimited by ";" when field has multiple values.	Firstname Lastname < FLastname @domain >; Firstname Lastname < FLastname @domain >; …
BCC	All bcc: members, delimited by ";" when field has multiple values	Firstname Lastname < FLastname @domain >; Firstname Lastname < FLastname @domain >; …
SUBJECT	Subject line of the email.	
DATERCVD	Date and time that an email was received.	mm/dd/yyyy, yyyy/mm/dd, or yyyymmdd; hh:mm:ss AM/PM or hh:mm:ss
DATESENT	Date and time that an email was sent.	mm/dd/yyyy, yyyy/mm/dd, or yyyymmdd; hh:mm:ss AM/PM or hh:mm:ss
CALBEGDATE	Date that a meeting begins.	mm/dd/yyyy, yyyy/mm/dd, or yyyymmdd; hh:mm:ss AM/PM or hh:mm:ss
CALENDDATE	Date that a meeting ends.	mm/dd/yyyy, yyyy/mm/dd, or yyyymmdd; hh:mm:ss AM/PM or hh:mm:ss
ATTACHMENTS	List of filenames of all attachments, delimited by ";" when field has multiple values.	AttachmentFileName.; AttachmentFileName.docx; AttachmentFileName.pdf;…
NUMATTACH	Number of attachments.	
RECORDTYPE	General type of record.	IMAGE; LOOSE E-MAIL; E-MAIL; E-DOC; IMAGE ATTACHMENT; LOOSE E-MAIL ATTACHMENT; E-MAIL ATTACHMENT; E-DOC ATTACHMENT
FOLDERLOC	Original folder path of the produced document.	Drive:\Folder\...\...\
FILENAME	Original filename of the produced document.	Filename.ext
DOCEXT	Original file extension.	html, xls, pdf
DOCTYPE	Name of the program that created the produced document.	Adobe Acrobat, Microsoft Word, Microsoft Excel, Corel WordPerfect…
TITLE	Document title (if entered).	
AUTHOR	Name of the document author.	
REVISION	Number of revisions to a document.	18
DATECREATED	Date and time that a document was created.	mm/dd/yyyy, yyyy/mm/dd, or yyyymmdd; hh:mm:ss AM/PM or hh:mm:ss

DATEMOD	Date and time that a document was last modified.	mm/dd/yyyy, yyyy/mm/dd, or yyyymmdd; hh:mm:ss AM/PM or hh:mm:ss
FILESIZE	Original file size in bytes.	
PGCOUNT	Number of pages per document.	
IMPORTANCE	Email priority level if set.	Low, Normal, High
MD5HASH	MD5 hash value computed from native file (a/k/a file fingerprint).	
SHA1HASH	SHA1 hash value	
MSGINDEX	Email message ID	
CONVERSATIONINDEX	Email Conversation Index	

AFFIDAVIT OF COMPLIANCE WITH SUBPOENA

State of _____}

County of _____}

I, _____, being duly sworn, state as follows:

1. I am employed by Respondent in the position of _____;

2. Respondent's productions and responses to the Subpoena of the Attorney General of the State of New York, dated _____, 20____ (the "Subpoena") were prepared and assembled under my personal supervision;

3. I made or caused to be made a diligent, complete and comprehensive search for all Documents and information requested by the Subpoena, in full accordance with the instructions and definitions set forth in the Subpoena;

4. Respondent's productions and responses to the Subpoena are complete and correct to the best of my knowledge and belief;

5. No Documents or information responsive to the Subpoena have been withheld from Respondent's production and response, other than responsive Documents or information withheld on the basis of a legal privilege or doctrine;

6. All responsive Documents or information withheld on the basis of a legal privilege or doctrine have been identified on a privilege log;

7. The Documents contained in Respondent's productions and responses to the Subpoena are authentic, genuine and what they purport to be;

8. Attached is a true and accurate record of all persons who prepared and assembled any productions and responses to the Subpoena, all persons under whose personal supervision the preparation and assembly of productions and responses to the Subpoena occurred, and all persons able competently to testify: (a) that such productions and responses are complete and correct to the best of such person's knowledge and belief; and (b) that any Documents produced are authentic, genuine and what they purport to be; and

9. Attached is a true and accurate statement of those requests under the Subpoena as to which no responsive Documents were located in the course of the aforementioned search.

_____ _____
Signature of Affiant Date

_____
Printed Name of Affiant

* * *

Subscribed and sworn to before me this _____ day of _____, 20____.

_____, Notary Public

My commission expires: _____

Exhibit 3

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP

2001 K STREET, NW
WASHINGTON, DC 20006-1047
TELEPHONE (202) 223-7300

LLOYD K. GARRISON (1946-1991)
RANDOLPH E. PAUL (1946-1956)
SIMON H. RIFKIND (1950-1995)
LOUIS S. WEISS (1927-1950)
JOHN F. WHARTON (1927-1977)

1285 AVENUE OF THE AMERICAS
NEW YORK, NY 10019-6064
TELEPHONE (212) 373-3000

UNIT 3601, OFFICE TOWER A, BEIJING FORTUNE PLAZA
NO. 7 DONGSANHUAN ZHONGLU, CHAOYANG DISTRICT
BEIJING 100020, PEOPLE'S REPUBLIC OF CHINA
TELEPHONE (86-10) 5828-6300

12TH FLOOR, HONG KONG CLUB BUILDING
3A CHATER ROAD, CENTRAL
HONG KONG
TELEPHONE (852) 2846-0300

ALDER CASTLE
10 NOBLE STREET
LONDON EC2V 7JU, U.K.
TELEPHONE (44 20) 7367 1600

FUKOKU SEIMEI BUILDING
2-2 UCHISAIWAICHO 2-CHOME
CHIYODA-KU, TOKYO 100-0011, JAPAN
TELEPHONE (81-3) 3597-8101

TORONTO-DOMINION CENTRE
77 KING STREET WEST, SUITE 3100
P.O. BOX 226
TORONTO, ONTARIO M5K 1J3
TELEPHONE (416) 504-0520

500 DELAWARE AVENUE, SUITE 200
POST OFFICE BOX 32
WILMINGTON, DE 19899-0032
TELEPHONE (302) 655-4410

WRITER'S DIRECT DIAL NUMBER

(202) 223-7321

WRITER'S DIRECT FACSIMILE

(202) 223-7420

WRITER'S DIRECT E-MAIL ADDRESS

janderson@paulweiss.com

November 16, 2016

BY EMAIL

Pete Marketos
Reese Gordon Marketos LLP
750 N. Saint Paul Street, Suite 610
Dallas, Texas 75201

Jeffrey M. Tillotson
Tillotson Law
750 N. Saint Paul Street, Suite 610
Dallas, Texas 75201

Re: Exxon Mobil Corporation v. *Eric Schneiderman* and *Maura Healey*, No. 4:16-CV-469-K

Dear Messrs. Marketos and Tillotson:

I am writing on behalf of Plaintiff Exxon Mobil Corporation ("ExxonMobil") in reference to the above-captioned matter. In light of the order entered by the Honorable Ed Kinkeade, of the United States District Court for the Northern District of Texas on November 10, 2016, joining Attorney General Eric Schneiderman as a Defendant in this action (Docket No. 99), ExxonMobil hereby withdraws the following subpoenas issued pursuant to Rule 45 of the Federal Rules of Civil Procedure:

1. Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action, served upon New York Attorney General Eric Schneiderman on November 4, 2016;

2. Subpoena to Testify at a Deposition in a Civil Action, served upon Monica Wagner on November 4, 2016;

3. Subpoena to Testify at a Deposition in a Civil Action, served upon Lemuel Srolovic on November 4, 2016; and

4. Subpoena to Testify at a Deposition in a Civil Action, served upon New York Attorney General Eric Schneiderman on November 4, 2016.

In lieu of the subpoenas enumerated above, please find enclosed the following discovery requests:

1. Plaintiff Exxon Mobil Corporation's First Request to Defendant Eric Schneiderman for the Production of Documents;

2. Plaintiff Exxon Mobil Corporation's First Set of Requests for Admission to Defendant Eric Schneiderman;

3. Plaintiff Exxon Mobil Corporation's First Set of Interrogatories to Defendant Eric Schneiderman;

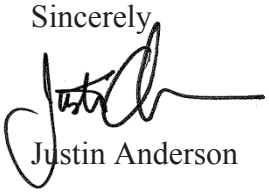
4. Plaintiff Exxon Mobil Corporation's Notice of Deposition of Monica Wagner, Deputy Chief of the Environmental Protection Bureau of the Office of the Attorney General of New York at 10:00 am on November 21, 2016;

5. Plaintiff Exxon Mobil Corporation's Notice of Deposition of Lemuel Srolovic at 10:00 am on November 28, 2016; and

6. Plaintiff Exxon Mobil Corporation's Notice of Deposition of Eric Schneiderman, Attorney General of the New York, at 10:00 am on December 5, 2016.

I am available to discuss at your convenience. Thank you for your anticipated response.

Sincerely,



Justin Anderson

Enclosures

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

EXXON MOBIL CORPORATION, Plaintiff, v. ERIC TRADD SCHNEIDERMAN, Attorney General of New York, in his official capacity, and MAURA TRACY HEALEY, Attorney General of Massachusetts, in her official capacity, Defendants.	§ § § § § § § § § § § § § § §	CIVIL ACTION NO. 4:16-CV-469-K

PLAINTIFF EXXON MOBIL CORPORATION'S FIRST REQUEST TO DEFENDANT ERIC SCHNEIDERMAN FOR THE PRODUCTION OF DOCUMENTS

PLEASE TAKE NOTICE that pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure and the orders entered by the United States District Court for the Northern District of Texas in the above-captioned action, (i) on October 13, 2016, ordering the parties to engage in jurisdictional discovery (Docket No. 73), and (ii) on November 10, 2016, granting Plaintiff's Motion for Leave to File a First Amended Complaint, joining Attorney General Eric Schneiderman as a Defendant (Docket No. 99), Plaintiff ExxonMobil Corporation ("ExxonMobil"), by its attorneys, Paul, Weiss, Rifkind, Wharton & Garrison LLP, hereby demands that Defendant Massachusetts Attorney General Eric Schneiderman produce for inspection and copying the documents designated below at the offices of Paul, Weiss, Rifkind, Wharton & Garrison, LLP, 1285 Avenue of the Americas, New York, New York 10019-6064, no later than thirty (30) days after service of this request.

DEFINITIONS

1. "And" and "or" shall be construed either disjunctively or conjunctively as to bring within the scope of the request all information or documents that might otherwise be construed to be outside of its scope.

2. "All" shall be construed to include "any" and "each," "any" shall be construed to include "all" and "each," and "each" shall be construed to include "all" and "any," in each case as is necessary to bring within the scope of these requests documents that might otherwise be construed as outside their scope.

3. The terms "all" and "each" shall be construed as all and each.

4. "Any" is used in its inclusive sense. For example, if a Request calls for "any communication that you had with the plaintiff," you should produce each and every communication with the plaintiff.

5. "Communication" means any conversation, discussion, letter, electronic mail ("email"), memorandum, meeting, note, or other transmittal of information or message, whether transmitted in writing, orally, electronically or by any other means, and shall include any document that abstracts, digests, transcribes, records, or reflects any of the foregoing. Except where otherwise stated, a request for "Communications" means a request for all communications.

6. "Concerning" means referring or relating to and includes without limitation analyzing, commenting on, comprising, connected with, constituting, containing, contradicting, describing, embodying, establishing, evidencing, memorializing, mentioning, pertaining to, recording, regarding, reflecting, responding to, setting forth, showing, or supporting, directly or indirectly.

7. "Custodian" means any person or entity that, as of the date of this Request for Production, maintained, possessed, or otherwise kept or controlled such document.

8. "Date" shall mean the exact date, month and year, if ascertainable or, if not, the best approximation of the date (based upon relationship with other events).

9. "Document" is used herein in the broadest sense of the term and means all records and other tangible media of expression of whatever nature however and wherever created, produced, or stored (manually, mechanically, electronically, or otherwise), including without limitation all versions whether draft or final, all annotated or nonconforming or other copies, email, instant messages, text messages, personal digital assistant or other wireless device messages, voicemail, calendars, date books, appointment books, diaries, books, papers, files, notes, confirmations, accounts statements, correspondence, memoranda, reports, records, journals, registers, analyses, plans, manuals, policies, telegrams, faxes, telexes, wires, telephone logs, telephone messages, message slips, minutes, notes, or records or transcriptions of conversations or communications or meetings, tape recordings, videotapes, disks, and other electronic media, microfilm, microfiche, storage devices, press releases, contracts, agreements, notices, and summaries. Any non-identical version of a document constitutes a separate document within this definition, including without limitation drafts or copies bearing any notation, edit, comment, marginalia, underscoring, highlighting, marking, or any other alteration of any kind resulting in any difference between two or more otherwise identical documents. In the case of documents bearing any notation or other marking made by highlighting ink, the term document means the original version bearing the highlighting ink, which original must be produced as opposed to any copy thereof. Except where otherwise stated, a request for "documents" means a request for all such documents.

10. "Entity" means without limitation any corporation, company, limited liability company or corporation, partnership, limited partnership, association, or other firm or similar body, or any unit, division, agency, department, or similar subdivision thereof.

11. "Identify" means: (a) when referring to a person or persons, to state the name and present address or, if unknown, the last known address, telephone number, e-mail address, title and employer of such person or persons; (b) when referring to a firm, partnership, corporation, association or other entity, to state the full name, address and telephone number or, if unknown, the last known address and telephone number; (c) when referring to documents, to state, to the extent known, the (i) type of document; (ii) general subject matter; (iii) date of the document; and (iv) author(s), addressee(s) and recipient(s); (d) when referring to communications, to state, to the extent known, the (i) date of the communication; (ii) identity of the parties to the communication; (iii) means of transmission of the communication; and (iv) identity of all documents memorializing all or part of the communication. To the extent any responsive communication is memorialized in a document, please produce a copy of the document for inspection and copying.

12. "Including" means "including without limitation."

13. "Information" shall be construed expansively and shall include, but not be limited to, facts, data, opinions, documents, communications, images, impressions, concepts and formulae.

14. "Person" includes any natural person, firm, partnership, joint venture, corporation, sole proprietorship, trust, union, association, federation, labor organizations, legal representatives, trustees, trustees in bankruptcy, receivers, business entities, any other form of business, governmental, public, charitable entity, or group of natural persons or such entities.

15. "Refer" means embody, refer or relate, in any manner, to the subject of the document request.

16. "Civil Investigative Demand" or "CID" means the civil investigative demand issued by the office of Defendant Attorney General Maura Healey to ExxonMobil on or about April 19, 2016.

17. "Common Interest Agreement" means the Climate Change Coalition Common Interest Agreement signed by individuals from the offices of the attorneys general for California, Connecticut, Illinois, Maine, Maryland, Massachusetts, Minnesota, New Hampshire, New Mexico, New York, Oregon, Rhode Island, Virginia, U.S. Virgin Islands, Vermont, Washington, and Washington, D.C., in April and May of 2016.

18. "Green 20" means the attorneys general for the States, Commonwealths, or Territories of California, Connecticut, Delaware, Hawaii, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, New Hampshire, New Mexico, New York, Oregon, Rhode Island, the U.S. Virgin Islands, Vermont, Virginia, Washington, and Washington, D.C.; the Offices of these attorneys general; their directors, officers, employees, agents, representatives or other persons acting, or purporting to act, on their behalf, including, but not limited to, Assistant Attorneys General.

19. "Green 20 Press Conference" or "AGs United for Clean Power Press Conference" means the Press Conference attended by Defendant Attorney General Maura Healey and other members of the Green 20 on March 29, 2016.

20. "Investigation" means an actual or contemplated issuance of a subpoena, Civil Investigative Demand, or any other investigative process concerning purported violations of law related to climate change.

21. "You," "Yours," and/or "Yourself" mean Eric Schneiderman, as well as the Office of the New York State Attorney General, and its directors, officers, employees, agents, representatives or other persons acting, or purporting to act, on its behalf, including, but not limited to, Assistant Attorneys General in the Office of the New York State Attorney General.

INSTRUCTIONS

22. Any ambiguity as to any Request shall be construed so as to require the production of the greater number of documents.

23. These Requests are continuing in nature under Federal Rule of Civil Procedure 26(e). Any document created or identified after service of any response to these Requests that would have been produced in response had the document then existed or been identified shall promptly be produced whenever you find, locate, acquire, create, or become aware of such documents, up until the resolution of this lawsuit.

24. Each Request shall be responded to fully, unless it is in good faith objected to, in which event the reasons for the objection shall be stated with specificity. If an objection pertains only to a portion of a Request, or to a word, phrase, or clause contained in a Request, you shall state your objection to that portion only and respond to the remainder of the request.

25. Documents that are produced should be identified according to which request they are responsive to, or in the order in which they are kept in the ordinary course of business. All documents that are physically attached to each other when located for production shall be left so attached. Documents that are segregated or separated from other Documents,

whether by inclusion of binders, files, subfiles, or by use of dividers, tabs, clips, or any other method, shall be left so segregated or separated.

26. Where any copy of any document, the production of which is requested, is not identical to any other copy thereof, by reason of any alterations, marginal notes, comments, metadata, omissions, or material contained therein or attached thereto, or otherwise, all such non-identical copies shall be produced separately.

27. If any document responsive to these Requests has been destroyed, discarded, or lost, or is otherwise not capable of being produced, identify each such document and set forth the following information: (a) the date of the document; (b) a description of the subject matter of the document; (c) the name and address of each person who prepared, received, viewed, or had possession, custody, or control of the document; (d) the date when the document was destroyed, discarded, or lost; (e) the identity of the person who directed that the document be destroyed, who directed that the document be discarded, or who lost the document; and (f) a statement of the reasons for and circumstances under which the document was destroyed, discarded, or lost.

28. If any document responsive to these Requests is withheld under a claim of privilege or other legal doctrine (including the work-product doctrine), You shall promptly submit a document stating: (a) the document control number(s) of the document withheld or redacted; (b) the type of document; (c) the date of the document; (d) the author(s) and recipient(s) of the document, and any recipients copied as cc's or bcc's; (e) the general subject matter of the document; and (f) the legal ground for withholding or redacting the document. If the legal ground for withholding or redacting the document is attorney-client privilege, You shall indicate the name of the attorney(s) whose legal advice is sought or provided in the document.

29. You shall further certify that the document production is complete and correct in accordance with specifications of the attached Certification that Response is Complete and Correct form provided as Exhibit A.

30. Pursuant to Fed. R. Civ. P. 34(b)(1)(c), Plaintiff requests that all electronically stored information be produced in accordance with the "Requested Production Format" provided as Exhibit B.

31. Each request shall be deemed to include a request for all transmittal sheets, cover letters, exhibits, enclosures, and attachments to a document in addition to the Document itself, without abbreviation or expurgation.

32. If no documents or things exist that are responsive to a particular paragraph of these requests, so state in writing.

33. Unless otherwise stated in a specific request, these requests seek responsive information and documents authored, generated, disseminated, drafted, produced, reproduced, or otherwise created or distributed, concerning the period of January 1, 2011, through the date of production.

34. These requests call for the production of responsive documents within Your possession, custody, or control (including those on non-government email servers), regardless of whether those documents were generated and/or are maintained by the Office of the New York State Attorney General.

35. The foregoing Definitions and Instructions also apply to the Definitions and Instructions themselves.

DOCUMENTS AND THINGS TO BE PRODUCED BY
DEFENDANT ATTORNEY GENERAL ERIC TRADD SCHNEIDERMAN

1. Any and all documents, including, but not limited to, electronically maintained or paper visitor logs or sign-in sheets, sufficient to identify attendees at any meetings concerning the Green 20 Press Conference, including any meetings with and/or presentations from Peter Frumhoff and/or Matthew Pawa.

2. Any and all documents, recordings, and/or other materials discussed or presented during any meeting concerning the Green 20 Press Conference, including any meetings with and/or presentations from Peter Frumhoff and/or Matthew Pawa.

3. Any and all documents and communications concerning the following statements made by You, Attorney General Eric Schneiderman, at the Green 20 Press Conference, including any and all documents that You believe support or otherwise form the basis for, these statements:

(a) There is a "relentless assault from well-funded highly aggressive and morally vacant forces that are trying to block every step by the federal government to take meaningful action" regarding climate change.

(b) "[T]here are companies using the best climate science. They're using the best climate models so that when they spend shareholder dollars to raise their oil rigs, which they are doing, they know how fast the sea level is rising, then they are drilling in places in the Arctic where they couldn't drill 20 years ago because of the ice sheets. They know how fast the ice sheets are receding."

(c) "[W]e know that they paid millions of dollars to support organizations that put up propaganda denying that we can predict or measure the

effects of fossil fuel on our climate or even denying that climate change was happening."

4. Any and all documents sufficient to show and identify any fees or expenses paid to former Vice President Al Gore in connection with his participation in or attendance at the Green 20 Press Conference.

5. Any and all documents concerning the Common Interest Agreement, including any documents concerning the purpose of the Common Interest Agreement, the decision to enter into the Common Interest Agreement, efforts to recruit or obtain signatories to the Common Interest Agreement, and the preparation, drafting and finalizing of the text of the Common Interest Agreement.

6. Any and all documents sufficient to show and identify any communications concerning any investigation of ExxonMobil related to climate change between You, Your agents, representatives, or employees and any other member of the Green 20, including any Attorney General from another state, territory, or municipality, or his/her directors, officers, employees, agents, representatives or other persons acting, or purporting to act, on his/her behalf, including, but not limited to, Assistant Attorneys General.

7. Any and all documents, recordings, or other materials discussed or presented during any meetings regarding any investigation of ExxonMobil that You attended at which any person not employed or retained by Your Office was present or participating. This request includes, without limitation, video recordings, audio recordings, photographs, attendance logs, notes, and meeting minutes.

8. Any and all documents or communications that mention ExxonMobil and any of the following persons or organizations (a) Peter Frumhoff, (b) Matthew Pawa and/or the

Pawa Law Group, (c) the Union of Concerned Scientists, (d) Sharon Eubanks, (e) former Vice President Al Gore, and/or (f) Bill McKibben.

9. Any and all documents, including but not limited to email correspondence and visitor logs, sufficient to show and identify any communications concerning ExxonMobil between any member of the Green 20 and (a) Peter Frumhoff, (b) Matthew Pawa and/or the Pawa Law Group, (c) the Union of Concerned Scientists, (d) Sharon Eubanks, (e) former Vice President Al Gore, and/or (f) Bill McKibben.

10. Any and all documents, including, but not limited to electronically maintained or paper visitor logs or sign-in sheets, sufficient to show and identify any communications concerning ExxonMobil between any member of the Green 20 and the following persons and/or email addresses:

- Dave Johnson and/or dcjohnson@ourfuture.org;
- John Passacantando and/or j.passacantando@gmail.com;
- Kert Davis and/or kertmail@gmail.com;
- Kenny Bruno and/or Kenny.bruno@verizon.net;
- Lee Wasserman and/or lwasserman@rfffund.org;
- Dan Cantor and/or dcantor@workingfamilies.org;
- Bill Lipton and/or blipton@workingfamilies.org;

11. Any and all documents, including, but not limited to electronically maintained or paper visitor logs or sign-in sheets, sufficient to show and identify any communications concerning ExxonMobil between any member of the Green 20 and the following persons and/or email addresses:

- Jamie Henn and/or jamie@350.org;
- Robert Weissman and/or rweissman@citizen.org;
- Won Ha and/or won@ef.org;
- Irene Krarup and/or ikrarup@vkrf.org;
- Bradley Campbell and/or bcampbell@clf.org;
- Stephen Kretzman and/or steve@priceofoil.org;
- Carroll Muffett and/or cmuffett@ciel.org;
- Naomi Ages and/or Naomi.ages@greenpeace.org;

- Naomi Klein;
- Clayton Thomas-Muller;
- Peter Sarsgaard;
- Milan Loeak;
- Kathy Jetnil-Kijiner;
- Joydeep Gupta;
- Antonia Juhasz;
- Cindy Baxter;
- Jason Box;
- Bryan Parras;
- Jannie Staffansson;
- Sandra Steingraber;
- Ken Henshaw;
- Cherri Foytlin;
- Faith Gemmill.

12. Any and all documents, including but not limited to email correspondence, sufficient to show and identify any communications concerning ExxonMobil and climate change between any member of the Green 20 and third parties whose email addresses include any of the following domain names:

@350.org;
@algore.com;
@ciel.org;
@climatetruth.org;
@cohenmilstein.com;
@desmogblog.com;
@ef.org;
@greenpeace.org;
@insideclimatenews.org;
@nextgenclimate.org
@ourfuture.org;
@pawalaw.com;
@pellislaw.com;
@rbf.org;
@rffund.org;
@tellusmater.org.uk; or
@ucsusa.org.

13. Any and all documents sufficient to show and identify any communications between any member of the Green 20 and any director, officer, employee,

agent, or representative of the Conservation Law Foundation concerning ExxonMobil, including but not limited to any actual or contemplated legal action concerning ExxonMobil and the Conservation Law Foundation.

14. For the period January 1, 2012 through the present, any and all documents and communications concerning the conference entitled "Establishing Accountability for Climate Change Damages: Lessons from Tobacco Control" held in La Jolla, California from on or about June 14, 2012 to on or about June 15, 2012.

15. For the period January 1, 2007 through the present, any and all documents and communications concerning the 2007 report issued by the Union of Concerned Scientists, titled "Smoke, Mirrors, and Hot Air: How ExxonMobil Uses Big Tobacco's Tactics to Manufacture Uncertainty on Climate Science."

16. Any and all documents concerning the actual or anticipated participation of ExxonMobil or other fossil fuel companies or trade associations in the international Paris Climate Change Conference of December 2015.

17. Any and all documents concerning any shareholder resolution relating to climate change made at ExxonMobil's annual shareholder meeting in either 2015 or 2016.

18. Any and all documents and communications concerning fundraising for candidates for political office, including fundraising for any member of the Green 20, and also concerning ExxonMobil.

19. Any and all documents and communications sufficient to show and identify any communications between any member of the Green 20 and any director, officer, employee, agent, or representative of any political party concerning ExxonMobil.

20. Any and all documents sufficient to show and identify any communications concerning ExxonMobil between any member of the Green 20 and Thomas Fahr Steyer, or any of his agents, employees, or representatives, NextGen Climate, or any other person or entity whose email address includes the domain name @nextgenclimate.org.

21. Any and all documents sufficient to show and identify any funding or fundraising provided to You or any member of the Green 20 by Thomas Fahr Steyer or NextGen Climate.

22. Any and all documents, communications, recordings, or materials of any kind concerning the "Exxon: Revelations & Opportunities" meeting held on or about January 8, 2016 at 475 Riverside Drive, New York, New York.

23. Any and all documents and communications concerning the mock trial referred to as "Exxon vs. The People," held in or around Montreuil, France on or about December 5, 2015.

24. Any and all documents and communications concerning climate change and ExxonMobil that discuss, mention, or reference the following organizations listed in the CID issued by Attorney General Healey:

- Acton Institute;
- American Enterprise Institute (AEI);
- Americans for Prosperity;
- American Legislative Exchange Council (ALEC);
- American Petroleum Institute (API);
- Beacon Hill Institute at Suffolk University;
- Competitive Enterprise Institute (CEI);
- Center for Industrial Progress (CIP);
- George C. Marshall Institute;
- Heartland Institute;
- Heritage Foundation; and
- Mercatus Center at George Mason University.

25. Any and all communications between You and any person not employed or retained by the New York Attorney General's Office concerning climate change and ExxonMobil that discuss, mention, or reference any of the following organizations listed in Request 6 of the New York CID:

- American Petroleum Institute (API);
- International Petroleum Industry Environmental Conservation Association (IPIECA);
- U.S. Oil & Gas Association;
- Petroleum Marketers Association of America; and
- Empire State Petroleum Association.

26. Any and all documents and communications sufficient to show and identify any requests received pursuant to the New York Freedom of Information Law, N.Y. Pub. Officers Law Article 6, Section 87, related to (a) ExxonMobil, (b) the Green 20 Press Conference, (c) any coalition of attorneys general comprised in whole or in part of members of the Green 20, (d) communications among or between any members of the Green 20, (e) the Common Interest Agreement, (f) climate deniers, and/or (g) climate change.

27. Any and all documents and communications sufficient to show and identify any responses to requests received pursuant to the New York Freedom of Information Law, N.Y. Pub. Officers Law Article 6, Section 87, related to ExxonMobil, the Green 20 Press Conference, any coalition of attorneys general comprised in whole or in part of members of the Green 20, communications among or between any members of the Green 20, the Common Interest Agreement, climate deniers, and/or climate change.

28. Any and all documents and communications sufficient to show and identify any communications concerning requests received pursuant to the New York Freedom of Information Law, N.Y. Pub. Officers Law Article 6, Section 87, related to ExxonMobil, the Green 20 Press Conference, any coalition of attorneys general comprised in whole or in part of

members of the Green 20, communications among or between any members of the Green 20, the Common Interest Agreement, climate deniers, and/or climate change.

29. Documents and records sufficient to identify Your document retention policy.

30. Documents and records sufficient to identify any and all documents or communications within the scope of these requests that were disposed of or destroyed since April 13, 2016.

Dated: November 16, 2016

EXXON MOBIL CORPORATION

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Counsel for Exxon Mobil Corporation

EXHIBIT A

CERTIFICATION THAT RESPONSE IS CORRECT AND COMPLETE

I, _____, certify as follows:

1. I am employed by _____ in the position of _____;

2. The enclosed production of documents and responses were prepared and assembled under my personal supervision;

3. I made or caused to be made a diligent, complete and comprehensive search for all Documents and information requested by the Subpoena, in full accordance with the instructions and definitions set forth in the Subpoena;

4. The enclosed production of Documents and information requested by the Subpoena are complete and correct to the best of my knowledge and belief;

5. No Documents or information responsive to the Subpoena have been withheld from this production and response, other than responsive Documents or information withheld on the basis of a legal privilege or doctrine;

6. All responsive Documents or information withheld on the basis of a legal privilege or doctrine have been identified on a privilege log composed and produced in accordance with the instructions in the Subpoena;

7. The Documents contained in these productions and responses to the Subpoena are authentic, genuine and what they purport to be;

8. Attached is a true and accurate record of all persons who prepared and assembled any productions and responses to the Subpoena, all persons under whose personal supervision the preparation and assembly of productions and responses to the Subpoena occurred, and all persons able competently to testify: (a) that such productions and responses are complete and correct to the best of such person's knowledge and belief; and (b) that any Documents produced are authentic, genuine and what they purport to be; and

9. Attached is a true and accurate statement of those requests under the Subpoena as to which no responsive Documents were located in the course of the aforementioned search.

Signature: _____ Date: _____

Printed Name: _____

Address, e-mail and telephone number: _____

_____

_____

EXHIBIT B

REQUESTED PRODUCTION FORMAT

I. Overview

A. All documents should be produced as Bates-stamped tagged image file format ("TIFF") images along with an image load/cross reference file, a data load file with fielded metadata, and document-level extracted text for electronically stored information or optical character recognition ("OCR") text for scanned hard copy documents. Details regarding requirements, including files to be delivered in native format, are below.

II. TIFF Image Requirements

A. All documents should be produced as TIFF images in 300x300 dpi Group IV single-page monochrome format.

B. All such images should be sequentially Bates-stamped.

C. Images should include the following content where present:

1. For word processing files (*e.g.*, Microsoft Word) – Comments and "track changes" (and similar in-line editing).
2. For spreadsheet files (*e.g.*, Microsoft Excel) – Hidden columns, rows, and sheets; comments; and "track changes" (and similar in-line editing).
3. For presentation files (*e.g.*, Microsoft PowerPoint) – Speaker notes and comments.

III. Native Format Requirements

A. Spreadsheet files

1. Spreadsheet files (*e.g.*, Microsoft Excel) should be provided in native format.
2. In lieu of a TIFF image version of each spreadsheet file, a Bates-stamped single-page TIFF placeholder file should be produced along with the native format version of each file.
3. When redaction is necessary, a redacted TIFF version may be produced; Paul Weiss reserves the right to request access to the native format versions of such files.

B. Multimedia files

1. Multimedia files (*e.g.*, Audio or video files) should be provided in native format.
2. In lieu of a TIFF image version of each multimedia file, a Bates-stamped single-page TIFF placeholder file should be produced along with the native format version of each file.

C. Other files

1. In limited circumstances, it may be necessary to obtain or view the native format versions of files, including color documents/images and dynamic files such as databases. Paul, Weiss reserves the right to request access to the native format versions of such files.

IV. Image Load/Cross Reference File Requirements

A. A single-page image load/cross reference file should be provided with each production.

B. The file may be in either IPRO (.lfp) or Opticon (.opt) format as in the samples below (note that volume label information – "@MSC001" in the sample IPRO file and "MSC001" in the sample Opticon file – is optional):

Sample IPRO .lfp file
IM,MSC00000014,D,0,@MSC001;MSC\0000;00000014.TIF;2
IM,MSC00000015,,0,@MSC001; MSC\0000;00000015.TIF;2
IM,MSC00000016,D,0,@MSC001; MSC\0000;00000016.TIF;2
IM,MSC00000017,,0,@MSC001; MSC\0000;00000017.TIF;2

Sample Opticon .opt file
MSC000001,MSC001,MSC\0000\00000001.TIF,Y,,,3
MSC000002,MSC001,MSC\0000\00000002.TIF,,,,
MSC000003,MSC001,MSC\0000\00000003.TIF,,,,
MSC000004,MSC001,MSC\0000\00000004.TIF,Y,,,2
MSC000005,MSC001,MSC\0000\00000005.TIF,,,,

V. Data Load File and Extracted Text/OCR Requirements

A. A data load file should be provided with each production.

B. The file should be a Concordance-loadable data file, also known as a "DAT" file, and should contain Bates-stamp and metadata information as detailed below.

C. Extracted text and/or OCR text should not be embedded in the DAT file but should rather be provided as separate, document-level text files. Document-level text file names should contain the beginning Bates number information of the document. If a document is provided in native format with a placeholder tiff, (*e.g.*, spreadsheet files) the text file should contain the extracted text of the native file. OCR text should be included for redacted documents.

D. The requested delimiters and qualifiers to be used in the DAT file are:

Record delimiter: Windows newline/Hard return (ASCII 10 followed by ASCII 13)
Field delimiter: ▯ (ASCII 20)
Multi-value delimiter: Semicolon ; (ASCII 59)
Text qualifier: Small thorn þ (ASCII 254)

E. The DAT file should have a header line with field names and include the following fields:

Field	Comments
BegBates	Beginning Bates number
EndBates	Ending Bates number
BegRange	Bates number of first page of family range, *e.g.*, first page of an email.
EndRange	Bates number of last page of family range, *e.g.*, last page of last attachment to an email.
PageCount	Number of pages in document.
FileExtension	Loose files, attachments and email.
FileSize	Loose files, attachments and email (in bytes).
Title	Loose files and attachments only.
Custodian	Include field only if production is de-duped by custodian. Loose files, attachments, and email. Custodian full name formatted: LASTNAME, FIRSTNAME.
AllCustodian	Include field only if production is de-duped globally. Loose files, attachments, and emails. Full name of all custodians for whom the document is being produced formatted: LASTNAME, FIRSTNAME; LASTNAME, FIRSTNAME
Author	Loose files and attachments only.
From	Email only.
To	Email only.
CC	Email only.
BCC	Email only.
Subject	Email only.
DateCreated	Loose files and attachments only. MM/DD/YYYY
DateModified	Loose files and attachments only. MM/DD/YYYY
DateSent	Email only. MM/DD/YYYY
TimeSent	Email only. HH:MM:SS AM/PM
DateReceived	Email only. MM/DD/YYYY
TimeReceived	Email only. HH:MM:SS AM/PM
FilePath	Loose files. Original path to the file as maintained in the ordinary course of business.
FileName	Loose files and attachments. Name of file as maintained in the ordinary course of business.
FolderPath	Email only. Path within the mail container file (*e.g.*, PST file) to the message at collection time.
HiddenContent	For loose files and attachments only. List type of hidden content found in document (for content described in section II.C above)
TextPath	The path to the extracted text or OCR for the document, including the file name.

Field	Comments
NativePath	The path to the native-format file for the document, including the file name (if a native-format file is provided).

F. Two sample DAT files in the appropriate format when production is globally de-duped are below.

1. The following three entries are, respectively, the header row, a parent email, and a spreadsheet attachment:

þBatesPrefixþ□þBeginning Bates Numberþ□þEnding Bates Numberþ□þBeginning Bates Rangeþ□þEnding Bates Rangeþ□þPage Countþ□þFile Extensionþ□þFile Sizeþ□þTitleþ□þCustodianAllþ□þAuthorþ□þFromþ□þToþ□þCCþ□þBCCþ□þSubjectþ□þDate Createdþ□þDate Modifiedþ□þDate Sentþ□þTime Sentþ□þDate Receivedþ□þTime Receivedþ□þFilePathþ□þFilenameþ□þFolderPathþ□þHidden Contentþ□þTextPathþ□þNativePathþ

þSAMPLEþ□þ00000001þ□þ00000001þ□þ00000001þ□þ00000002þ□þ1þ□þMSGþ□þ2354þ□þþ□þSmith, John H.þ□þþ□þSmith, John H.þ□þDoe, Janeþ□þSchmidt, Jane W.; Doe, Markþ□þþ□þChecks Payableþ□þþ□þþ□þ12/25/2008þ□þ9:30:01 AMþ□þ12/25/2008þ□þ9:30:11 AMþ□þþ□þþ□þ\Inbox\Payable\þ□þþ□þþ□þText\SAMPLE\0000\00000001.txtþ□þþ

þSAMPLEþ□þ00000002þ□þ00000002þ□þ00000001þ□þ00000002þ□þ1þ□þxlsþ□þ46444þ□þAccounts Receivableþ □þSmith, John H.þ□þSmith, John H.þ□þþ□þþ□þ□þþ□þ12/22/2008þ□þ12/25/2008þ□þþ□þþ□þþ□þþ□þþ□þ2010 budget.xlsþ□þþ□þHidden Columnþ□þText\SAMPLE\0000\00000002.txtþ□þNatives\SAMPLE\0000\00000002.xlsþ

2. In globally de-duped productions there will be instances where production of documents from additional custodians will include documents previously produced. The two entries below are, respectively, the header row, and an overlay row producing a new custodian's copy of an email previously produced:

þBatesPrefixþ□þBeginning Bates Numberþ□þEnding Bates Numberþ□þBeginning Bates Rangeþ□þEnding Bates Rangeþ□þPage Countþ□þFile Extensionþ□þFile Sizeþ□þTitleþ□þCustodianþ□þAuthorþ□þFromþ□þToþ□þCCþ□þBCCþ□þSubjectþ□þDate Createdþ□þDate Modifiedþ□þDate Sentþ□þTime Sentþ□þDate Receivedþ□þTime Receivedþ□þFilePathþ□þFilenameþ□þFolderPathþ□þHidden Contentþ□þTextPathþ□þNativePathþ

þSAMPLEþ□þ00000001þ□þ00000001þ□þ00000001þ□þ00000002þ□þ1þ□þMSGþ□þ2354þ□þþ□þSchmidt, Jane W.þ□þþ□þþ□þþ□þþ□þþ□þþ□þþ□þþ□þþ□þþ□þþ□þþ□þþ□þþ□þþ□þþ□þþ□þ\Inbox\Accts Payable\þ□þþ□þþ□þText\SAMPLE\0000\00000001.txtþ□þþ

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

EXXON MOBIL CORPORATION, Plaintiff, v. ERIC TRADD SCHNEIDERMAN, Attorney General of New York, in his official capacity, and MAURA TRACY HEALEY, Attorney General of Massachusetts, in her official capacity, Defendants.	§ § § § § § § § § § § § § § §	CIVIL ACTION NO. 4:16-CV-469-K

PLAINTIFF EXXON MOBIL CORPORATION'S FIRST SET OF REQUESTS FOR ADMISSION TO DEFENDANT ERIC SCHNEIDERMAN

Plaintiff Exxon Mobil Corporation ("ExxonMobil"), by and through its undersigned counsel, hereby propounds Requests for Admission Numbers 1 through 33 to Defendant Eric Tradd Schneiderman, Attorney General for the State of New York, and requests that he admit the truth of the following requests within thirty (30) days of service hereof pursuant to Federal Rule of Civil Procedure 36, and the orders of the United State District Court for the Northern District of Texas in the above-captioned action, entered on October 13, 2016 (Docket No. 73) and November 10, 2016 (Docket No. 99), and in accordance with the definitions and instructions set forth herein.

DEFINITIONS

1. The terms "communication" and "communicated" shall mean every manner or means of disclosure, transfer or exchange of oral or written information, whether in person, by telephone, mail, electronic mail, personal delivery or otherwise.

2. The term "information" shall be construed expansively and shall include, but not be limited to, facts, data, opinions, images, impressions, concepts and formulae.

3. The term "CID" refers to the Civil Investigative Demand issued by the office of Defendant Attorney General Maura Healey to ExxonMobil on or about April 19, 2016.

4. The term "Subpoena" refers to the Subpoena issued by the office of Defendant Attorney General Eric Schneiderman to ExxonMobil on or about November 4, 2015.

5. The term "Common Interest Agreement" refers to the Climate Change Coalition Common Interest Agreement signed by individuals from the offices of the Attorneys General for California, Connecticut, Illinois, Maine, Maryland, Massachusetts, Minnesota, New Hampshire, New Mexico, New York, Oregon, Rhode Island, Virginia, U.S. Virgin Islands, Vermont, Washington, and Washington, D.C., between April and May 2016.

6. The term "Green 20" refers to the Attorneys General for the States, Commonwealths, or Territories of California, Connecticut, Delaware, Hawaii, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, New Hampshire, New Mexico, New York, Oregon, Rhode Island, the U.S. Virgin Islands, Vermont, Virginia, Washington, and Washington, D.C.; the Offices of these Attorneys General; their directors, officers, employees, agents, representatives or other persons acting, or purporting to act, on their behalf, including, but not limited to, Assistant Attorneys General.

7. The term "Green 20 Press Conference" or "AGs United for Clean Power Press Conference" refers to the Press Conference attended by Defendant Attorney General Eric Schneiderman and other members of the Green 20 on March 29, 2016.

8. The term "investigation" refers to an actual or contemplated issuance of a subpoena or any other investigative process concerning purported violations of law by ExxonMobil concerning or related, directly or indirectly, in whole or in part, to climate change.

9. The term "person" includes any natural person, firm, partnership, joint venture, corporation, sole proprietorship, trust, union, association, federation, labor organizations, legal representatives, trustees, trustees in bankruptcy, receivers, business entities, any other form of business, governmental, public, charitable entity, or group of natural persons or such entities.

10. The term "SEC" refers to the United States Securities and Exchange Commission.

11. The words "You," "Your," "Yours," and/or "Yourself" refer to Defendant Attorney General Eric Schneiderman, as well as the Office of the New York State Attorney General, and its directors, officers, employees, agents, representatives or other persons acting, or purporting to act, on its behalf, including, but not limited to, Assistant Attorneys General in the Office of the New York State Attorney General.

INSTRUCTIONS

1. These Requests for Admission are directed to Defendant and the answers are to be completed to the best of Defendant's knowledge, by the person with the most knowledge, and based on the best knowledge of Defendant's counsel, agents, servants,

investigators, employees, predecessors, representatives and any other person acting or purporting to act on Defendant's behalf.

2. If You are unable to answer any Request for Admission or portion thereof, identify the person whom You believe has the knowledge or information sought by the request(s).

3. The following rules of construction apply to these discovery requests:

(a) The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of each document request all responses that might otherwise be construed to be outside of its scope.

(b) The terms "any," "all" and "each" shall be construed without limitation.

(c) The term "including" shall be construed without limitation.

(d) The use of the singular form of any word includes the plural and vice versa.

(e) A masculine, feminine, or gender-free pronoun shall not exclude the other, or both, genders.

(f) Unless otherwise indicated, all words and terms used in this request shall mean their common connotations.

(g) Unless otherwise stated, the timeframe for this Request for Admissions is January 1, 2011 until the present.

(h) The foregoing Definitions and Instructions also apply to the Definitions and Instructions themselves.

REQUESTS FOR ADMISSION

1. Admit that You communicated and shared information with other members of the Green 20 concerning Your investigation of ExxonMobil.

2. Admit that one objective of the Green 20 was to "reduce emissions of climate change pollution to minimize its harm to people now and in the future."

3. Admit that You attended a presentation on the morning of the Green 20 Press Conference given by Peter Frumhoff on the subject of the "imperative of taking action now on climate change."[1]

4. Admit that the presentation by Peter Frumhoff referred to in Request for Admission 3 was not announced publicly.

5. Admit that You attended a presentation on the morning of the Green 20 Press Conference given by Matthew Pawa of the Pawa Law Group, P.C., on the subject of "climate change litigation."[2]

6. Admit that that the presentation by Pawa referred to in Request for Admission 5 was not announced publicly.

7. Admit that You directed Matthew Pawa "to not confirm or discuss" his attendance at the Green 20 Press Conference.

8. Admit that You participated in the drafting and executing of the Common Interest Agreement.

9. Admit that You signed the Common Interest Agreement, along with other members of the Green 20.

10. Admit that the objectives of the Common Interest Agreement were:

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[1] Ex. I at App. 78.
[2] *Id.*

(a) "[L]imiting climate change"; and

(b) "[E]nsuring the dissemination of accurate information about climate change."[3]

11. Admit that the objective of "limiting climate change" can be accomplished through political and/or legislative means.

12. Admit that You "assembl[ed] a group of state actors to send the message that [You and other attorneys general] are prepared to step into th[e] breach" created by "gridlock in Washington."

13. Admit that one goal of the Green 20 was to use law enforcement powers to achieve a political and/or legislative objective.

14. Admit that climate change is, and has been, a matter of public debate.

15. Admit that "ensuring the dissemination of accurate information" about a matter of public debate involves the regulation of speech.

16. Admit that climate change cannot be limited through a historical investigation of a single energy company.

17. Admit that You perceive ExxonMobil as an opponent to Your preferred policies to address the potential for and effects of climate change.

18. Admit that, in its 2006 Corporate Citizenship Report, ExxonMobil publicly stated that "the risk to society and ecosystems from rising greenhouse gas emissions could prove to be significant" and "strategies that address the risk need to be developed and implemented."

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[3] MTD App. At 57.

19. Admit that, in its 2006 10-K filing with the SEC, ExxonMobil stated that the "risks of global climate change" "have been, and may in the future" continue to impact its operations.

20. Admit that, in its 2015 10-K, ExxonMobil stated that the "risk of climate change" and "pending greenhouse gas regulations" may increase its "compliance costs."

21. Admit that, in 2006, ExxonMobil disclosed and acknowledged the risks to its business from possible future climate change regulations that supposedly give rise to Your investigation.

22. Admit that, under the SEC's rules concerning the reporting of reserves, ExxonMobil is required to estimate its proved reserves in light of "existing economic conditions, operating methods, and government regulations."[4]

23. Admit that Your theory that ExxonMobil may have committed "massive securities fraud" depends on the adoption of regulations not yet promulgated.

24. Admit that You were acting under color of state law in initiating and pursuing Your Investigation.

25. Admit that on or about November 4, 2015, You believed that New York State General Business Law Article 22-A and New York State Executive Law Article 5, Section 63(12) has six-year statutes of limitation.

26. Admit that the Subpoena issued by Your office seeks documents from ExxonMobil dating back to January 1977.

27. Admit that You believe the following groups have expressed skepticism regarding the causes and impacts of climate change:

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[4] *Modernization of Oil & Gas Reporting*, SEC Release No. 78, File No. S7-15-08, 2008 WL 5423153, at *66 (Dec. 31,2008).

(a) American Enterprise Institute (AEI)
(b) American Legislative Exchange Council (ALEC)
(c) American Petroleum Institute (API). [5]

28. Admit that the Subpoena seeks documents relating to trade associations and industry groups perceived to advocate for the fossil fuel industry including, without limitation, the American Enterprise Institute (AEI), the American Legislative Exchange Council (ALEC) and the American Petroleum Institute (API).

29. Admit that You disclosed information about Your investigation of ExxonMobil to the *New York Times* for its November 5, 2015 article concerning the Subpoena issued by Your office.

30. Admit that You publicly discussed the investigation of ExxonMobil on *PBS NewsHour* on November 10, 2015, days after issuing the Subpoena.

31. Admit that on August 19, 2016, You told the *New York Times* that Your investigation will focus on a purported "massive securities fraud" based on a "stranded assets" theory.

32. Admit that You have abandoned any theory of liability premised primarily on ExxonMobil's scientific research about climate change and/or global warming in the 1970s and 1980s.

33. Admit that You shifted the focus of Your investigation away from ExxonMobil's scientific research about climate change and/or global warming in the 1970s and 1980s after learning of challenges ExxonMobil asserted to the CID issued by Massachusetts Attorney General Healey.

[5] Oil Daily, New York Attorney General Comments on Exxon Probe, November 13, 2015.

Dated: November 16, 2016

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

EXXON MOBIL CORPORATION, Plaintiff, v. ERIC TRADD SCHNEIDERMAN, Attorney General of New York, in his official capacity, and MAURA TRACY HEALEY, Attorney General of Massachusetts, in her official capacity, Defendants.	§ § § § § § § § § § § § § § §	CIVIL ACTION NO. 4:16-CV-469-K

PLAINTIFF EXXON MOBIL CORPORATION'S FIRST SET OF INTERROGATORIES TO DEFENDANT ERIC SCHNEIDERMAN

Pursuant to and the orders entered by the United States District Court for the Northern District of Texas in the above-captioned action on October 13, 2016 (Docket No. 73) and November 10, 2016 (Docket No. 99), and pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, and in accordance with the definitions and instructions set forth herein, Plaintiff Exxon Mobil Corporation ("ExxonMobil"), by its attorneys, Paul, Weiss, Rifkind, Wharton & Garrison LLP, requests that Defendant Eric Tradd Schneiderman, Attorney General for the State of New York, answer separately, under oath and in writing, each of the following Interrogatories, within thirty (30) days from the service of this request, or at such other time as may be agreed upon among counsel.

DEFINITIONS

1. The terms "and" and "or" shall be construed either disjunctively or

conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

2. The terms "all" and "each" shall be construed as all and each.

3. The term "any" is used in its inclusive sense. For example, if a request calls for identification of "any statement" made by the Plaintiff on a topic, You shall identify each and all such statements on that topic.

4. The term "communication" shall mean every manner or means of disclosure, transfer or exchange of oral or written information, whether in person, by telephone, mail, electronic mail, personal delivery or otherwise.

5. The term "date" shall mean the exact date, month and year, if ascertainable or, if not, the best approximation of the date (based upon relationship with other events).

6. The term "document" is defined to be synonymous in meaning and equal in scope to the usage of this term in Federal Rule of Civil Procedure 34(a), including any email or electronic or computerized data compilations. A draft or non-identical copy is a separate document within the meaning of the term.

7. The term "identify" means: (a) when referring to a person or persons, to state the name and present address or, if unknown, the last known address, telephone number, e-mail address, title and employer of such person or persons; (b) when referring to a firm, partnership, corporation, association or other entity, to state the full name, address and telephone number or, if unknown, the last known address and telephone number; (c) when referring to documents, to state, to the extent known, the (i) type of document; (ii) general subject matter; (iii) date of the document; and (iv)

author(s), addressee(s) and recipient(s); (d) when referring to communications, to state, to the extent known, the (i) date of the communication; (ii) identity of the parties to the communication; (iii) means of transmission of the communication; and (iv) identity of all documents memorializing all or part of the communication. To the extent any responsive communication is memorialized in a document, please produce the document for inspection and copying.

8. The term "including" shall be construed without limitation.

9. The term "information" shall be construed expansively and shall include, but not be limited to, facts, data, opinions, images, impressions, concepts and formulae.

10. The term "person" includes any natural person, firm, partnership, joint venture, corporation, sole proprietorship, trust, union, association, federation, labor organizations, legal representatives, trustees, trustees in bankruptcy, receivers, business entities, any other form of business, governmental, public, charitable entity, or group of natural persons or such entities.

11. The term "CID" refers to the Civil Investigative Demand issued by the office of Defendant Attorney General Maura Healey to ExxonMobil on or about April 19, 2016.

12. The term "Subpoena" refers to the Subpoena issued by the office of Defendant Attorney General Eric Schneiderman to ExxonMobil on or about November 4, 2015.

13. The term "Common Interest Agreement" refers to the Climate Change Coalition Common Interest Agreement signed by individuals from the offices of

the Attorneys General for California, Connecticut, Illinois, Maine, Maryland, Massachusetts, Minnesota, New Hampshire, New Mexico, New York, Oregon, Rhode Island, Virginia, U.S. Virgin Islands, Vermont, Washington, and Washington, D.C., between April and May 2016.

14. The term "Green 20" refers to the Attorneys General for the States, Commonwealths, or Territories of California, Connecticut, Delaware, Hawaii, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, New Hampshire, New Mexico, New York, Oregon, Rhode Island, the U.S. Virgin Islands, Vermont, Virginia, Washington, and Washington, D.C.; the Offices of these Attorneys General; their directors, officers, employees, agents, representatives or other persons acting, or purporting to act, on their behalf, including, but not limited to, Assistant Attorneys General.

15. The term "Green 20 Press Conference" or "AGs United for Clean Power Press Conference" refers to the Press Conference attended by Defendant Attorney General Eric Schneiderman and other members of the Green 20 on March 29, 2016.

16. The term "investigation" refers to an actual or contemplated issuance of a subpoena or any other investigative process concerning purported violations of law by ExxonMobil concerning or related, directly or indirectly, in whole or in part, to climate change.

17. The words "You," "Your," "Yours," and/or "Yourself" refer to Defendant Attorney General Eric Schneiderman, as well as the Office of the New York State Attorney General, and its directors, officers, employees, agents, representatives or other persons acting, or purporting to act, on its behalf, including, but not limited to, Assistant Attorneys General in the Office of the New York State Attorney General.

INSTRUCTIONS

1. These Interrogatories are continuing in nature. Any information obtained subsequent to the service of answers to these Interrogatories that would have been included in the answers had the information been known shall promptly be supplied by supplemental answers whenever You find, locate, acquire, or become aware of such information, up until the time of trial. Supplemental answers are to be served as soon as reasonably possible after receipt of such information.

2. The answers are to be signed by You under oath. Objections, if any, are to be signed by the attorney making them.

3. Each Interrogatory shall be responded to fully, unless it is in good faith objected to, in which event the reasons for the objections shall be stated with specificity. If an objection pertains to only a portion of an Interrogatory, or to a word, phrase, or clause contained therein, You shall state Your objection to that portion only and answer the remainder of the Interrogatory. If, in responding to these Interrogatories, You claim any ambiguity in an Interrogatory, or in a definition or instruction applicable thereto, such claim shall not be utilized as a basis for refusing to respond, but You shall set forth as part of Your response the language deemed to be ambiguous and the interpretation used in responding to the Interrogatory.

4. If a claim of privilege or other legal doctrine (including, but not limited to, the work product doctrine) is asserted in objecting to any means of discovery or disclosure, You shall comply with the requirements of Federal Rule of Civil Procedure 26(b)(5), and, promptly following Your response, You shall identify with respect to the information: (i) the general nature of the information withheld; and (ii) the specific

privilege or protection claimed and the basis for its assertion. This includes, but is not limited to, specifically stating that You are withholding information in purported reliance on the Common Interest Agreement.

5. Although some Interrogatories may overlap with other Interrogatories, no Interrogatory should be read as limiting any other.

6. The foregoing Definitions and Instructions also apply to the Definitions and Instructions themselves.

7. Unless otherwise specified, the time period covered by these Interrogatories is January 1, 2011, to the present.

INTERROGATORIES

1. State the name, job title and/or position of all members, employees or agents of the Office of Attorney General of the State of New York involved in Your investigation of ExxonMobil, Your issuance of the Subpoena, Your participation in the Green20 Press Conference, and/or Your participation in the Common Interest Agreement, including but not limited to those persons who provided information for answers to one or more of these Interrogatories, and identify by number each Interrogatory that he or she answered or for which he or she provided information.

2. State, identify, and describe the basis for the following statements You made at the Green 20 Press Conference. As part of Your answer, identify all persons, documents or other sources of information that You contacted, consulted, reviewed or otherwise considered in making these statements:

(a) Your statement that there is a "relentless assault from well-funded highly aggressive and morally vacant forces that are trying to

block every step by the federal government to take meaningful action" regarding climate change.

(b) Your statement that "there are companies using the best climate science. They're using the best climate models so that when they spend shareholder dollars to raise their oil rigs, which they are doing, they know how fast the sea level is rising, then they are drilling in places in the Arctic where they couldn't drill 20 years ago because of the ice sheets. They know how fast the ice sheets are receding."

(c) Your statement that "we know that they paid millions of dollars to support organizations that put up propaganda denying that we can predict or measure the effects of fossil fuel on our climate or even denying that climate change was happening."

(d) Your statement that "[w]e know what's happening to the planet. There is no dispute but there is confusion, and confusion sowed by those with an interest in profiting from the confusion and creating misperceptions in the eyes of the American public that really need to be cleared up."

3. State, identify, and describe the basis for Your statements concerning Your investigation of ExxonMobil, quoted in the *New York Times* on August 19, 2016, that "there may be massive securities fraud here" and that "[t]he older stuff really is just to establish knowledge and look for inconsistencies." As part of Your answer, identify all persons, documents or other sources of information that You contacted, consulted, reviewed or otherwise considered in making these statements.

4. State, identify, and describe the basis for Your authority to impose securities disclosure obligations on ExxonMobil that are distinct from or inconsistent with federal securities law and regulations, including those promulgated and/or administered by the Securities and Exchange Commission.

5. Identify any and all plaintiffs' attorneys, environmental attorneys, environmental organizations, current or former public officeholders and their staffs, political party officials and their staffs, or other Attorneys General, that You contacted or with whom You have communicated regarding any Investigation of ExxonMobil. As part of Your answer, identify (i) the date on which any of these communications occurred and (ii) the topics discussed in these communications.

6. State, identify, and describe the actions that Your office, including Your office's Environmental Protection Bureau, took prior to the Green 20 Press Conference to learn the status of other states' investigations and/or plans and explore avenues for coordination with these other states. As part of Your answer, identify all persons, documents or other sources of information that You contacted, consulted, reviewed or otherwise considered in taking these actions.

7. State, identify, and describe Your involvement in drafting the Common Interest Agreement. As part of Your answer, identify all persons, documents or other sources of information that You contacted, consulted, reviewed or otherwise considered in taking these actions.

8. State, identify, and describe Your relationship and any and all communications with Peter Frumhoff and/or the Union of Concerned Scientists, both before and after the Green 20 Press Conference.

9. State, identify, and describe Your relationship and any and all communications with Matthew Pawa, the Pawa Law Group. P.C., and/or the Global Warming Legal Action Project both before and after the Green 20 Press Conference.

10. State, identify, and describe Your relationship and any and all communications with former Vice President Al Gore, both before and after the Green 20 Press Conference. As part of Your answer, describe your understanding of how Al Gore became involved in the Green 20 Press Conference, including whether he was paid a fee in connection with his participation in or attendance at the Green 20 Press Conference.

11. State, identify, and describe Your relationship and any and all communications with Sharon Eubanks, both before and after the Green 20 Press Conference.

12. State, identify, and describe Your relationship and any and all communications with Bill McKibben and/or 350.org, both before and after the Green 20 Press Conference.

13. State, identify, and describe Your relationship and any and all communications with NextGen Climate or any of its directors, officers, employees, agents, or representatives, both before and after the Green 20 Press Conference.

14. State, identify, and describe Your relationship and any and all communications with the Rockefeller Brothers Fund and/or the Rockefeller Family Fund, both before and after the Green 20 Press Conference.

15. State, identify, and describe any and all political meetings, workshops, rallies, fundraising initiatives, or other events attended by persons outside the office of the New York Attorney General, at which You discussed any pending or

potential investigation of ExxonMobil by a member of the Green 20 or any subpoenas or civil investigative demands issued thereto.

16. State, identify, and describe Your participation in, attendance at, or Your relationship to the "Exxon: Revelations & Opportunities" event held on or about January 8, 2016 at 475 Riverside Drive, New York, New York. As part of Your answer, state, identify, and describe the purpose and nature of the meeting, and any known speakers, organizers, attendees, or participants at the event.

17. State, identify, and describe Your participation in, attendance at, or Your relationship to the mock trial referred to as "Exxon vs. The People" held in or around Montreuil, France on or about December 5, 2015. As part of Your answer, state, identify, and describe the purpose and nature of the mock trial, and any known speakers, organizers, attendees, or participants at the event.

18. State, identify, and describe Your policy and practice for publicly discussing or disclosing information concerning ongoing investigations.

19. State, identify. and describe the basis for Your statements on November 13, 2015, at a gathering sponsored by *Politico*, that ExxonMobil funded "aggressive climate deniers." As part of Your answer, describe what You understood to constitute a "climate denier[ ]" when You made this statement.

20. Identify and describe Your statutory authority to "limit[] climate change" and "ensur[e] the dissemination of accurate information about climate change," which are the stated objectives of the Common Interest Agreement You executed.

21. Identify and describe the basis for Your Subpoena's demand that Exxon Mobil produce documents from a time period exceeding 39 years when the

Subpoena purports to investigate violations of statutes with six-year statute of limitations periods.

22. State, identify, and describe the basis for Your belief that investigating a single energy company will help to combat or limit climate change.

23. State, identify and describe all communications You had with the *New York Times* concerning the November 5, 2015 article, "Exxon Mobil Investigated for Possible Climate Change Lies by New York Attorney General," describing Your investigation of ExxonMobil.

24. Identify and describe Your document retention policies in effect between , January 1, 2011 and November 10, 2016. As part of Your answer, describe the efforts undertaken to ensure the preservation of relevant documents in connection with this litigation and the date on which such actions occurred.

Dated: November 16, 2016

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

EXXON MOBIL CORPORATION, Plaintiff, v. ERIC TRADD SCHNEIDERMAN, Attorney General of New York, in his official capacity, and MAURA TRACY HEALEY, Attorney General of Massachusetts, in her official capacity, Defendants.	§ § § § § § § § § § § § § § § §	CIVIL ACTION NO. 4:16-CV-469-K

NOTICE OF DEPOSITION

PLEASE TAKE NOTICE that pursuant to Rule 30 of the Federal Rules of Civil Procedure, Plaintiff Exxon Mobil Corporation, by its attorneys, Paul, Weiss, Rifkind, Wharton & Garrison LLP, will take the deposition of Monica Wagner, Deputy Chief of the Environmental Protection Bureau of the Office of the New York Attorney General.

The deposition will commence on November 21, 2016, beginning at 10:00 am at Paul, Weiss, Rifkind, Wharton & Garrison, 1285 Avenue of the Americas, New York, New York 10019-6064 or at such other time or location as shall be mutually agreed by the parties and the deponent.

The deposition will be recorded by audiovisual and stenographic means before an officer or other person authorized by law to administer oaths, and shall continue until completed.

Dated: November 16, 2016

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PLEASE TAKE NOTICE that pursuant to Rule 30 of the Federal Rules of Civil Procedure, Plaintiff Exxon Mobil Corporation, by its attorneys, Paul, Weiss, Rifkind, Wharton & Garrison LLP, will take the deposition of Lemuel Srolovic, Chief of the Environmental Protection Bureau of the Office of the New York Attorney General.

The deposition will commence on November 28, 2016, beginning at 10:00 am at Paul, Weiss, Rifkind, Wharton & Garrison, 1285 Avenue of the Americas, New York, New York 10019-6064 or at such other time or location as shall be mutually agreed by the parties and the deponent.

The deposition will be recorded by audiovisual and stenographic means before an officer or other person authorized by law to administer oaths, and shall continue until completed.

Dated: November 16, 2016

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Counsel for Exxon Mobil Corporation

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
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EXXON MOBIL CORPORATION, Plaintiff, v. ERIC TRADD SCHNEIDERMAN, Attorney General of New York, in his official capacity, and MAURA TRACY HEALEY, Attorney General of Massachusetts, in her official capacity, Defendants.	§ § § § § § § § § § § § § § §	CIVIL ACTION NO. 4:16-CV-469-K

NOTICE OF DEPOSITION

PLEASE TAKE NOTICE that pursuant to Rule 30 of the Federal Rules of Civil Procedure, Plaintiff Exxon Mobil Corporation, by its attorneys, Paul, Weiss, Rifkind, Wharton & Garrison LLP, will take the deposition of Eric Tradd Schneiderman, Attorney General for the State of New York.

The deposition will commence on December 5, 2016, beginning at 10:00 am at Paul, Weiss, Rifkind, Wharton & Garrison, 1285 Avenue of the Americas, New York, New York 10019-6064 or at such other time or location as shall be mutually agreed by the parties and the deponent.

The deposition will be recorded by audiovisual and stenographic means before an officer or other person authorized by law to administer oaths, and shall continue until completed.

Dated: November 16, 2016

EXXON MOBIL CORPORATION

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Counsel for Exxon Mobil Corporation

Exhibit 4

At IAS Part ___ of the Supreme Court of the State of New York, held in and for the County of New York, at the County Courthouse at 60 Centre Street, New York, New York, on the ___ day of October, 2016

PRESENT: The Hon. _____
Justice of the Supreme Court

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

In the Matter of the Application of the PEOPLE OF THE STATE OF NEW YORK, by ERIC T. SCHNEIDERMAN, Attorney General of the State of New York, Petitioner, For an order pursuant to C.P.L.R. § 2308(b) to compel compliance with a subpoena issued by the Attorney General - against – PRICEWATERHOUSECOOPERS LLP and EXXON MOBIL CORPORATION, Respondents.	Index No. _____ **ORDER TO SHOW CAUSE** **ORAL ARGUMENT REQUESTED**

Upon the Office of the Attorney General's Memorandum of Law in Support of its motion to compel compliance with a *subpoena duces tecum* issued to PricewaterhouseCoopers LLP ("PwC") dated August 19, 2016 in connection with the Attorney General's investigation of Exxon Mobil Corporation ("Exxon") (together with PwC, "Respondents"), the annexed Affirmation of Katherine C. Milgram in Support of such motion to compel dated October 14,

2016, and upon all the other documentation submitted in support of such motion, and sufficient cause having been alleged therefor, it is hereby

ORDERED that the Respondents appear and show cause before IAS Part ___ of the Supreme Court, New York County, at the Courthouse located at __ _____Street, Room ___, New York, New York, on the ___ day of October 2016, at ____ a.m./p.m. or as soon thereafter as counsel may be heard, why an Order should not be issued pursuant to New York Civil Procedure Law and Rules Sections 403(d) and 2308(b)(1):

1. compelling Respondents, within 10 days of issuance of this Order, to comply with the Attorney General's *Subpoena Duces Tecum* dated August 19, 2016, without applying a purported accountant-client privilege; and
2. granting such other and further relief as the Court deems just and proper.

ORDERED that any opposition papers shall be served on Petitioner by electronic mail to Petitioner's counsel, Katherine C. Milgram, at katherine.milgram@ag.ny.gov, by 5:00 p.m. three days prior to the date set forth above for the hearing on Petitioner's motion to compel.

ORDERED that any reply papers shall be served on Respondents by electronic mail to Respondent Exxon's counsel, Theodore Wells Jr., at twells@paulweiss.com and Michele Hirshman, at mhirshman@paulweiss.com, and to Respondent PwC's counsel, David Meister, at david.meister@skadden.com, and Jocelyn Strauber, at jocelyn.strauber@skadden.com, by 5:00 p.m. one day prior to the date set forth above for the hearing on Petitioner's motion to compel.

ORDERED, that service of a copy of this Order and the papers upon which it is granted by electronic mail to Respondent Exxon's counsel, Theodore Wells Jr. and Michele Hirshman,

and to Respondent PwC's counsel, David Meister and Jocelyn Strauber, on or before _____, shall be deemed sufficient service.

ENTER:

_____
J.S.C.

Exhibit 5

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October 17, 2016

By NYSCEF and Facsimile

The Honorable Barry R. Ostrager
Supreme Court of the State of New York
County of New York
60 Centre Street
Room 341
New York, NY 10007

Re: In the Matter of the Application of the People of the State of New York, by Eric T. Schneiderman, Index No. 451962/2016.

Dear Justice Ostrager:

We represent Exxon Mobil Corporation in connection with the Request for Judicial Intervention, Index No. 451962/2016, filed by the New York Attorney General on Friday, October 14, 2016, which asks that the Court enter an Order to Show Cause. We respectfully request an opportunity to be heard prior to any entry of the proposed Order to Show Cause. Pursuant to the Court's Practice Rules for Communications with the Court, we have contacted counsel for the New York Attorney General and PricewaterhouseCoopers LLP, which is also named as a respondent. All parties are available at 9:00 a.m. on Monday, October 17, 2016 for a telephone conference with chambers and are copied on this letter. We will call chambers at that time.

Respectfully,

/s/ Michele Hirshman

Michele Hirshman

cc: Katherine Milgram, Esq.
John Oleske, Esq.
Mandy DeRoche, Esq.
Jonathan Zweig, Esq.
David Meister, Esq.
Jocelyn Strauber, Esq.
Patrick Conlon, Esq.
Theodore V. Wells, Jr., Esq.
Michelle Parikh, Esq.

Exhibit 6

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : CIVIL TERM : PART 61 Mot Seq 001

----------x

In the Matter of the Application of:

THE PEOPLE OF THE STATE OF NEW YORK, by ERIC T. SCHNEIDERMAN, Attorney General of the State of New York,

Petitioner,

Index No. 451962/16

for an Order pursuant to CPLR § 2308(b) to compel compliance with a Subpoena issued by the Attorney General,

-against-

PRICEWATERHOUSECOOPERS LLP and EXXON MOBIL CORPORATION,

Respondents.

----------x

October 24, 2016
60 Centre Street
New York, NY 10007

B e f o r e:

HON. BARRY R. OSTRAGER, Justice.

A p p e a r a n c e s:

STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL
ERIC T. SCHNEIDERMAN
Attorneys for Petitioner
120 Broadway
New York, New York 10271
BY: MANISHA M. SHETH, ESQ., and
KATHERINE C. MILGRAM, ESQ., and
JOHN OLESKE, ESQ., and
JONATHAN C. ZWEIG, ESQ.,
Assistant Attorneys General

(Appearances continue on next page.)

SKADDEN, ARPS, SLATE, MEAGHER & FLOM, LLP
Attorneys for Respondent PRICEWATERHOUSECOOPERS LLP
Four Times Square
New York, New York 10036
BY: DAVID MEISTER, ESQ., and
JOCELYN E. STRAUBER, ESQ.

PAUL, WEISS, RIFKIND, WHARTON & GARRISON, LLP
Attorneys for Respondent EXXON MOBIL CORPORATION
1285 Avenue of the Americas
New York, New York 10019
BY: THEODORE V. WELLS, JR., ESQ., and
MICHELE HIRSHMAN, ESQ., and
MICHELLE K. PARIKH, ESQ., and
EDWARD C. ROBINSON, JR., ESQ.

MINUTES OF PROCEEDINGS

Reported By:
William L. Kutsch
Senior Court Reporter

WLK

Proceedings

THE COURT: All right. I'm prepared to offer everyone an apology here.

There are two significant items of disclosure.

The first item of disclosure is that an envelope was delivered to me from the New York Attorney General, which was not e-filed, and the respondents, to the best of my knowledge, are not aware that this was delivered to my Chambers. I have not looked at this material, so I'm going to return it to the Attorney General.

(Handing.)

THE COURT: The second item of disclosure, which is more significant, or potentially more significant, is that as I was reading the papers in this case over the weekend, I realized that I am an Exxon shareholder. I own 1,050 shares of Exxon stock in an account, and I own an additional 2,000 shares of Exxon stock in an IRA account.

According to the Canons of Judicial Ethics, I will be disqualified from hearing this case unless the parties, pursuant to Section 100.3(F), were satisfied to allow me to continue on the case.

The circumstance that I have shares in Exxon would not in any way, in my opinion, affect my impartiality in the case, but the rules are the rules.

So I'm prepared to disqualify myself if that's the desire of the parties. I'm prepared to continue on the case

if the parties are comfortable that I can be impartial.

MR. WELLS: Your Honor, could I just check with my client, who is here?

THE COURT: By all means.

And if you want to take a ten-minute recess, that would be an appropriate thing to do.

(At this time a brief recess was taken.)

MR. WELLS: Your Honor, we are ready to resume.

I have been authorized to say on behalf of all three parties that we have no objection to your Honor sitting on this case.

THE COURT: All right. Then I will sit on the case.

I should tell you, Mr. Wells knows this, I was a partner at Simpson, Thacher & Bartlett for 35 years, and my Exxon holdings, I'm happy to say, are not a material portion of my life savings.

So, I have a couple of questions which I'll direct to counsel.

First, let me ask counsel for Exxon when Exxon might decide that it has an objection to the production of any material document that it believes production of which would violate the alleged evidentiary accountant-client privilege under the Texas Occupations Code Section 901.457.

MR. WELLS: Your Honor, the way the protocol works

is that Pricewaterhouse identifies documents that they believe are responsive to the subpoena. They then give us on a rolling basis the documents. We then review the documents to determine if we are going to assert the privilege.

To date, we have not asserted the privilege. To date, we have only received two batches of documents. The first batch was 126 documents, and Miss Parikh, who is counsel to Paul Weiss, she is in charge of that project.

Please correct me if I misspeak in terms of numbers.

The first batch involved 126 documents. Of the 126 documents, we have pulled three documents that we're trying to research to understand if there's -- if there are confidential communications embedded. The rest of those, we have signed off on and have not asserted any privilege.

There's a second batch of documents that we just got access to in terms of being able to view them, I think on Friday.

(Pause in the proceedings.)

MR. WELLS: Okay. They're not -- there's another batch of 900 documents Miss Parikh tells me we had access to but then we lost access to because of computer problems in terms of interfacing with Mr. Meister's firm. Of that 900, we have not started that review because we just got back up

online, but on that, I can only tell you where we are in the protocol.

We have not identified to date any document that we are asserting a privilege to, but there are three that we're trying to research and understand if they may contain confidential information.

THE COURT: The reason that I asked the question is that you argue in your brief that it's premature for the court to consider these issues because you haven't raised any specific objections to the production of any of the documents. The compliance subpoena was served some time ago. You've had an opportunity for some period of time to review the documents.

And it does seem strange for a New York court to interpret Section 901.457 of the Texas Occupations Code section, which both parties tell me hasn't been construed by any Texas courts, if you're not expeditiously reviewing the documents that you may or may not assert in an accountant-client privilege with respect to that.

MR. WELLS: Your Honor, we are, and I have no hesitation in saying we are reviewing what we have been given by Pricewaterhouse expeditiously. Pricewaterhouse is still engaged, to my understanding, in the great -- with respect to the vast majority of documents, they haven't even pulled them yet.

So we have only gotten two of the tranches. The first tranche was 126, of which we signed off on 123. We've got three documents now, and we are trying to understand in discussions with our client and Pricewaterhouse whether it contains confidential information on those three documents.

The other 900, we got access to. That's the universe. There are probably thousands of documents that are coming but we have not gotten access to.

THE COURT: Respectfully, Exxon and its outside counsel have the resources to review these documents with considerable expedition, and Pricewaterhouse has the resources to produce the documents to Exxon with considerable expedition. So it seems to me that we could deal with this in a much more concrete way if Exxon and PricewaterhouseCoopers moved a little quicker than they are moving.

MR. WELLS: And what I will say to you, your Honor, and perhaps Mr. Meister should speak for PricewaterhouseCoopers, we had moved expeditiously, and we will, I make that representation, and we are willing to talk in Chambers or whatever, whatever would satisfy your Honor or the State, even to agree, you know, to an order that says we're going to do it expeditiously.

But in terms of the documents we have been given, okay, what is in the queue --

Proceedings

THE COURT: I get it that you have turned over 123 of the 126 documents that you have been provided by PricewaterhouseCoopers, and you are contemplating whether or not to assert an objection with respect to three. I get that.

MR. WELLS: Okay.

THE COURT: The issue here is, if we're going to have a dispute about 5,000 documents, I would like to know that sooner rather than later. If we're going to have a dispute about 14 documents, I would also like to know that sooner rather than later, rather than deal with this in a factual vacuum.

MR. WELLS: Certainly. And I'll make the last representation, and then I will turn it over to Mr. Meister.

I represent that Paul Weiss is devoting resources to do this on an expeditious fashion.

THE COURT: Can you commit to a specific time in the month of October at which the review of these documents would be complete?

MR. WELLS: In terms of the 900 --

THE COURT: Yes.

MR. WELLS: -- and the three? That's all we have right now.

THE COURT: No. In terms of all of the documents.

MR. WELLS: I don't even have any idea what he's

going to give me. I'll sit down and let Mr. Meister speak, because to the extent there's a production issue, I'm at the mercy of what Pricewaterhouse gives me when they give me what they do. I represent, whatever he gives me, we will put in the resources --

THE COURT: Look, the State is essentially claiming that you are unreasonably delaying and, for lack of a better term, flimflamming them because PricewaterhouseCoopers isn't producing the documents to you expeditiously, and you're not reviewing them expeditiously, and so the matter is more complicated than it has to be.

So let me hear from PricewaterhouseCoopers as to why it would take a month to produce these documents.

MR. MEISTER: Good morning, your Honor.

I'm David Meister from Skadden Arps for PwC, PricewaterhouseCoopers.

Just on the issue of how long it's taking us, to be a little bit more concrete, on October the 10th, we shared with Paul Weiss what I would consider core documents here. I guess -- let me take you a little bit back.

The subpoena is quite broad. After we got the subpoena, we engaged in some dialogues with the Attorney General's office to talk about where we would prioritize the production as we uploaded a vast quantity of documents onto a server. We agreed upon to start with five categories of

documents. That's the small set that we've spoken about.

The second set, Judge, are sets of work papers. And the subpoena seeks work papers which each -- for each year going back to 2010. The work papers are vast. Some, not all of those work papers are responsive to the subpoena, but a lot of them are. And so what we proposed to the Attorney General is to start with the most recent stuff of work papers and then go backwards from there. They didn't commit to anything, but they say that's a good way to proceed, at least for now.

We provided the 2015 work papers, the first half of the select version, to Paul Weiss on October the 10th. After that, there was some computer glitch. When we put them onto a website, kind of a shared website, there was a computer glitch, so they lost access for some period of time between October 10th and the 18th of October.

In addition, on October 10th, we also shared the 2014 work papers with Paul Weiss. These are large quantities of documents, Judge. I don't have the exact number at hand, but it's a large quantity of documents.

So that's where we are right now as far as production.

And I do think, your Honor, this is the -- these are core, this is the core stuff.

What is coming potentially are e-mail

communications within Paul Weiss, between Paul Weiss and Exxon, and that is going to be a massive undertaking.

MR. WELLS: Pricewaterhouse. You said Paul Weiss.

MR. MEISTER: Oh, I'm sorry. Between Exxon and Pricewaterhouse. E-mails. And that will be a massive undertaking. That will take some time.

There were a huge number of people from Pricewaterhouse who have worked on this audit, and I think that there's a huge number of Exxon people who interfaced with Pricewaterhouse as well. So the communication part of this is going to take awhile, your Honor. I couldn't responsively say how long it's going to take, but it's going to take awhile.

MS. SHETH: Your Honor, let me introduce myself.

I'm Manisha Sheth. I'm the Executive Deputy AG of the Economic Justice Division at the Attorney General's office.

Let me first begin by addressing the issue of ripeness, which your Honor has raised.

There has been no question in this case that Exxon has asserted clearly and unequivocally that they believe a privilege, an accountant-client privilege, not some rule of confidentiality, but a privilege applies to these documents.

So the harm that we are talking about, the harm that the AG's offices is facing, is happening right now as

we speak.

As we have heard from both sets of counsel, 900 documents are responsive documents. So these 900 documents that counsel for PwC has found to be responsive to our subpoena are presently being withheld on grounds of this purported privilege.

So, and the defendants, or Exxon and PwC, want this court to have the burden of reviewing each of those documents or the contested documents to determine whether the privilege applies. And we respectfully submit that that is not the issue before the court.

The narrow legal issue before the court is twofold:

One, which forum jurisdiction choice of law applies. Is it New York or is it Texas. And we submit, your Honor, that clearly New York law applies and your Honor need not even get to the secondary question of whether there is a privilege under Texas law.

Second, that even if Texas law applies, the Texas Occupations Code does not create any accountant-client privilege. And contrary to Exxon's representation that there has not been a single Texas court case that has decided the issue, your Honor, there have been four cases in the courts of Texas where they have uniformly held --

THE COURT: I read them over the weekend.

MS. SHETH: -- that there is no accountant-client

privilege, and Exxon has not identified a single case that identifies, that holds that there is such a privilege. In fact, what they are referring to is a rule of confidentiality, nothing more.

And what they're asking you to do is basically do a document-by-document review, which would be appropriate if we were talking about an existing recognized privilege such as the attorney-client privilege. That's not what we have here. The question before your Honor is whether or not there actually exists a privilege in this case.

And we submit that if you apply New York's choice of law rules: The place that the trial will be conducted will certainly be in New York; the place of discovery will be in New York; and New York, it's uncontested amongst PwC, Exxon and the AG's office that New York does not recognize an accountant-client privilege. And if your Honor would like, we can articulate why even under Texas law there was not a privilege either.

THE COURT: I understand that there is no accountant's privilege in New York. There may or may not be an accountant's privilege in Texas.

There is a choice of law issue I have to deal with.

For purposes of this morning, because I'm not going to decide this this morning, what I'm interested in having the parties come to some understanding with before we leave

today, is that PwC expedite its production of all responsive documents to Exxon, that Exxon review these documents with some expedition. Both PwC and Exxon have the resources to deal with collecting the potentially responsive documents to which Exxon may or may not have a legitimate claim of privilege to in a very short period of time. And while that's going on, in a telescoped period of time, we'll find out what the Texas court does with respect to the Texas action. And I'm not going to wait for the Texas court to rule on what's before me. I have your fully submitted set of papers, and I will revolve the issue expeditiously.

But in the interim, there is no reason that I can see why the process of collecting the documents that are responsive to the subpoena and Exxon's evaluating which of those documents, if any, it's going to assert a privilege with respect to the documents that it's not going to assert the privilege, and they claim they haven't asserted the privilege with respect to any documents, all of the other documents should be turned over to the New York AG forthwith.

MS. SHETH: Thank you, your Honor. We appreciate that.

The concern we have is that PwC has repeatedly stated that the subpoena is overbroad and that there is an enormous volume of responsive documents.

THE COURT: I don't have anything before me which would enable me to assess the extent to which the subpoena is or isn't overbroad. So, because nobody has asserted in any court filing that the subpoena is overbroad, at least for purposes of today, I'm assuming that the subpoena is a reasonable and appropriate subpoena.

MS. SHETH: Thank you, your Honor.

THE COURT: If anything changes on that score, I'll deal with it.

But in the meantime, until and unless there is a ruling that the subpoena is overbroad, anything that Exxon isn't asserting a privilege with respect thereto should be produced forthwith.

And to the extent that PwC and/or Exxon is dragging their feet in terms of moving this process forward, the New York AG has a legitimate grievance which will be appropriately addressed at an appropriate time.

MS. SHETH: Thank you, your Honor. I mean, that seems to be a reasonable solution. Our concern is that we have a very set timeframe for when PwC completes its production.

THE COURT: We're not going to leave here today without having an agreement on a timeframe.

MS. SHETH: Thank you, your Honor.

THE COURT: So can PwC and Exxon confer and agree

on a timetable? It can't be Christmas.

MR. WELLS: May I talk to PwC's counsel for one second, your Honor?

MR. MEISTER: May we just confer one moment, your Honor?

THE COURT: Sure.

(Pause in the proceedings.)

THE COURT: Counsel.

MR. MEISTER: Thank you, your Honor.

Your Honor, I have two just items to discuss here.

The first is, Judge, you say this shouldn't be Christmas, and I hear you, your Honor. I don't even know the exact number of documents that we have to review in order to determine their responsiveness and whether or not they're covered by, say, for example, the attorney-client privilege, but it's enormous, is my understanding. And we will absolutely put to work whatever resources we can put to work, and PwC will, as well. But these are -- this will be a very large undertaking for us, and I don't know how long it will take us to go through all of the documents.

THE COURT: Okay, look. I don't find this credible, to be perfectly candid.

It seems to me that you can produce all of the documents that are responsive to the subpoena within 30 days of the date that the subpoena was issued to counsel for

Exxon.

While that process is going on, any documents that are privileged attorney-client communications can be the subject of a privilege log. Any documents that are not potentially the subject of the assertion of an accountant's privilege, pending the ruling that I'm going to make on that issue, should be turned over to the Attorney General's office.

If there are claims that the subpoena is overbroad, an application can be made by order to show cause to narrow the scope of the subpoena. That could have been done at an earlier point in time. It wasn't done. It can still be done.

So November 10th should be the outside cutoff date for the turnover of documents to Exxon. That's going to be done on a rolling basis. And Exxon is going to be producing on a rolling basis the documents as to which Exxon doesn't assert any accountant's privilege to it.

So that's just the ministerial portion of what we're doing this morning.

Substantively, I assume that you are now going to argue the issue of whether Texas law or New York law applies, and you are going to argue whether or not, assuming Texas law applies, Texas Occupations Code Section 901.457 creates an evidentiary accountant-client privilege.

MR. MEISTER: Your Honor, I actually was not going to argue the latter.

And just on the scheduling, would it be all right with your Honor if we worked with the Attorney General?

THE COURT: If the Attorney General agrees to some other and different arrangement, whatever you stipulate to is fine with me.

MR. MEISTER: All right.

MS. SHETH: Your Honor, just to clarify the schedule, what we would ask respectfully is that the three documents that Mr. Wells referred to this morning, that those be produced with or without the privilege log by the end of this week, and the remainder of the documents, as your Honor alluded to, can be produced by November 10th. But we would ask that rolling privilege logs be submitted, as well.

THE COURT: Okay. Well, I just said that the documents are going to be produced on a rolling basis.

And as to documents as to which attorney-client privilege are being asserted, a privilege log will be produced on a rolling basis.

And now we have to get to the substantive issue which is the reason that we are here this morning.

MS. SHETH: Thank you, your Honor. Appreciate that.

Proceedings

MR. MEISTER: Your Honor, may we speak to the Attorney General's office about the schedule of production?

THE COURT: You will do that outside of my presence. I've given you a timeframe. If the Attorney General is amenable to another and different timeframe, or in a more convenient timeframe for the parties, and you come to a stipulation, that's fine with me.

But for you to produce to your client, Exxon, within 30 days of the date of the subpoena the documents that are responsive to the subpoena, I don't think that's an unreasonable deadline.

MR. MEISTER: Your Honor, the other issue that I wanted to put on the table here, Judge, is that the protocol that we had worked out, that PwC has worked out with Exxon that PwC has asked for, is that only Paul Weiss review the materials, that Exxon people not review the materials.

And I understand, Judge, having consulted with Paul Weiss, that that makes it more difficult as a matter of timing for Paul Weiss to make the decision as to whether or not the privilege, the Texas privilege, should be asserted. I wanted your Honor to be aware of that.

THE COURT: Well, what I am aware of is that there are well in excess of a thousand attorneys at the Paul Weiss firm, and that Mr. Wells has almost limitless resources in his litigation department to assist in this process.

Proceedings

MS. SHETH: Your Honor, to clarify --

THE COURT: One moment.

Mr. Wells.

MR. WELLS: Thank you, your Honor.

I asked Mr. Meister to raise that last issue with you because -- so the record is clear.

In terms of the protocol, there is a disagreement between Pricewaterhouse and Paul Weiss in terms of whether or not Paul Weiss, once we get the documents, is permitted to talk to our client about the documents in order to figure out if they involve privileged conversations.

Pricewaterhouse is taking the position that we cannot talk to our client about the documents; that after we review the documents at Paul Weiss, which we are doing expeditiously, we then have to come back to Pricewaterhouse to have Pricewaterhouse then tell us, based on their involvement in creating the documents, if the material was based on confidential communications between Exxon people and Pricewaterhouse people.

We have told them we disagree with that because that's -- that's why there are three documents I have. I haven't been able to pass on them because I have to go back to Skadden Arps, then they go back to their client to find out if something was based on a confidential communication.

We have a disagreement, but I want that on the

record, because that's my problem.

I do have significant resources. I can get through these documents if I can talk to my client about the documents to find out if Document A involves confidential communications. But they have decided, in total good faith, but they have decided that I can't do that.

So I want that -- that has to be worked out, because the only way I can do this quickly, and I want to do it quickly, and I make that representation, is if I'm able to talk to my client. And that's just kind of the basis right now to a protocol.

THE COURT: Look, this isn't that complicated. We're going to decide in a very short period of time whether or not there's any evidentiary accountant-client privilege under Texas Occupations Code Section 901.457, and we're going to decide in a very short period of time whether Texas law even applies to this proceeding.

As respects whether documents are privileged attorney-client documents, I am sure that PwC can give you a list of every lawyer at Exxon that's communicated with PwC. If it's a communication from a lawyer to PwC, then it's a privileged communication, and you will log it as a privileged communication. If it's a communication from a businessperson at Exxon to PwC, then it's not privileged communication unless it contains some advice of counsel, and

that should be evident from the document itself once you have a list of all the lawyers involved.

So we are just making this much more complicated than it needs to be. The parties around this table are all very sophisticated. None of these issues are novel nor new to any of you.

And let's get to the merits of why we are here this morning.

MS. SHETH: Thank you, your Honor.

Let me begin by addressing the choice of law issue first. Hopefully that will result in us not getting to resolve the issue of the Texas Occupations Code.

So as a threshold matter, two recent First Department decisions confirm that the law that should be applied is the law of the place where the evidence in question will be introduced at trial or the location of the discovery proceeding. And that -- those two cases are the JP Morgan case and the People v. Greenberg case, both recent First Department decisions.

And there is no question that under that legal standard, the appropriate choice of law in this matter would be New York. And it's undisputed among all three parties here that New York does not provide for an accountant-client privilege.

Now, even if this court were to apply the center of

gravity test that is advocated by Exxon, New York still has the greatest interest in this proceeding and, therefore, New York law would apply.

First, this is a law enforcement proceeding brought by the New York Attorney General's Office of potential violations of New York State law, including the Martin act, by Exxon, a company that does business in the State of New York. Exxon's independent auditor, PwC, also does business in New York, and its U.S. chairman's office is also in New York.

Moreover, neither Exxon nor PwC could have reasonably expected that anything other than New York choice of law would govern their communications, because in their representation letters between -- excuse me, in their engagement letters between Exxon and PwC, they actually agreed that New York was the appropriate choice of law.

And it's further telling that in this matter, PwC does not take a position on the choice of law analysis or whether the Texas Occupations Code creates a privilege.

So, your Honor, we submit that New York is the appropriate choice of law to apply, and there is no dispute that under that law, there is no accountant-client privilege.

Now, Exxon, unable to contest this black-letter law, attempts to manufacture an accountant-client privilege

based on the Texas Occupations Code Section 901.457. We respectfully submit that even if this court were to consider Texas law, it should not interpret Section 901.457 as a privilege but rather construe it to be a rule of confidentiality.

Now, first, contrary to Exxon's claim that not a single court, or that this is a case of first impression, every court that has considered this issue has concluded that 901.457 does not create an evidentiary privilege. And your Honor has read and is familiar with the cases, the four cases we have cited in our papers.

Second, Exxon, despite bearing the burden of establishing this privilege, has not cited the court to a single case, Texas or anywhere else, that interprets Section 901.457 to create an accountant-client privilege.

Now, third, let me talk about the text of Section 901.457. And if it's helpful for your Honor, we have a copy of the language of the text, if your Honor would like it.

THE COURT: You can give it to the Court Officer and I will review. It's obviously part of your papers.

MS. SHETH: Yes. So, your Honor, if you look at Section 901.457, you will see that although the term "Accountant-Client Privilege" is used in the title, nowhere does it appear, nowhere does the word "privilege" appear in the body of the section. And, in fact, if you look at the

language of Subsection (a), it clearly states that: "A license holder...may not voluntarily disclose information communicated to the license holder...by a client in connection with services provided to the client by the license holder...except with the permission of the client..."

Now, the plain language here is phrased as a rule or a restriction against voluntary disclosure of information absent client consent. It is not phrased in any way as a privilege.

And, in fact, there are three characteristics about this particular section that suggest to you that it is a rule of confidentiality.

First, the fact that it is limited to voluntary disclosures. In evidence, rules of privileges, privileges apply regardless of whether the disclosure is voluntary or required. The fact that this section is limited to voluntary disclosures further supports the OAG's argument that this is a rule of confidentiality as opposed to an evidentiary privilege.

Second, if you look at Subsection (b), which contains the exceptions, there is a broad exception under (b)(3) for "a court order that is signed by a judge if the order is addressed to the license holder," in this case, that would be PwC; "mentions the client by name," in this

case, that would be Exxon; "and (C), requests specific information concerning the client."

So, the fact that this exception (b)(3) is broadly written supports the interpretation that 901.457 is a confidentiality rule rather than a privilege.

In fact, had the Texas legislature intended to actually create an accountant-client privilege, then these broad exemptions, particularly "for a court order," would vitiate the privilege and render it nonexistent.

In both the In Re Patel case as well as the In Re Arnold case, the Texas court found, noted that its order on a motion to quash was the requisite order pursuant to (b)(3) that allowed disclosure of otherwise confidential information.

Now, your Honor, we have also prepared a chart for your Honor which compares this section with the prior Texas accountant-client privilege which was in existence before from the time period from 1979 to 1983. It also compares it with other Texas privileges which are cited by Exxon in its motion papers, and other states' accountant-client privileges. And if your Honor will permit, we will hand up a copy of this chart, as well.

So if your Honor looks at this court, we have the three characteristics on the left-hand side of the chart. Does "privilege," the word "privilege" appear in the text,

is the disclosure limited to voluntary disclosures, and is there is a broad exception for court orders.

In the first column, we have this particular statute in question, 901.457, and you see that the word "privilege" does not appear in the text, the statute is limited to voluntary disclosures, and there is a broad exemption. All three characteristics suggest that this is a rule of confidentiality.

Now, if you look at the other columns starting with the second column, there is a prior Texas accountant privilege which was repealed in 1983. And in that case, in that statute, the word "privilege" expressly appeared in the text of the statute, the statute was not limited to voluntary disclosures, and there was no broad exception for court orders.

And similarly, the other Texas privileges which Exxon cites in its papers had the same three characteristics.

And then finally, if we look at other states' accountant-client privileges, we have found 16 states that recognize an accountant-client privilege, and in 13 of those states, the word "privilege" appears in the text of the statute, the disclosures are not limited to voluntary disclosures, and there is no broad exemption for court orders.

And then fourth, if we look at the legislative history behind 901.457, that also confirms that this is not an evidentiary privilege.

As I mentioned earlier, there was a prior statute in place from the period of 1979 to 1983. And in that statute, the 1979 statute, the word "privilege" was used in the text, it was not restricted to voluntary disclosures, and there was no broad exception for court orders.

That provision was repealed in 1983, and in 1989, the Texas court had -- excuse me, the Texas legislature enacted the predecessor to the statute in question today. And that statute was enacted in 1989, and that statute did not use the word "privilege" in the text, that statute was restricted like the statute to voluntary disclosures, and it also contained a broad exemption for court orders.

THE COURT: Did the legislative history specifically say in words or substantial: We're changing the statute in order to make it clear that there is no privilege?

MS. SHETH: The statute did not say that, but, your Honor --

THE COURT: I'm talking about the legislative history.

MS. SHETH: Excuse me. The legislative history did not expressly say that.

THE COURT: What did it say?

MS. SHETH: There is a statement, a sponsor's statement that was made in 2013 when there was an amendment to the statute. And if I can hand that up to your Honor, we can read to you from that statement.

So if your Honor looks at the bottom of page 1, there is a statement made there which clarifies that this is a rule of confidentiality. So it reads: "S.B. 228 clarifies client confidentiality or what some refer to as the accountant-client privilege. Section 901.457 (Accountant-Client Privilege) Occupations Code, outlines the requirements for a certified public accountant to maintain client information confidentiality."

So the changes being proposed by this bill will make it clear that CPA's may disclose client information when required to do so by state or federal law, or when a court order is signed by a judge.

Now, Exxon makes several arguments in response to our papers that -- to our argument that this is a rule of confidentiality.

The first argument they make is that Subsection (b), which contains a list of the required disclosures, is a limited list of required disclosures. We argue that reading Section (b) in this fashion is inconsistent with the plain language in Subsection (a), which suggests that the rule

only applies to voluntary disclosures. So if we read the statute in the way Exxon suggests, we would essentially be reading the word "voluntary" right out of the statute. And rather, we think the better interpretation is that the Texas legislature wanted state enforcement agencies to go through the additional hurdle of coming to a court, getting a court order, before allowing the disclosure of otherwise confidential communications between an accountant and their client.

And then Exxon also makes an argument that this court's order on the office of the Attorney General's application or motion should not be the order that would take us into Subsection (b)(3), and we strongly disagree with that.

Subsection (b)(3) expressly provides that if a court issues an order that meets the requirements of (A), (B) and (C), and that is addressed to PwC, it mentions Exxon, and it requests specific information concerning Exxon, that that order would satisfy the exception outlined in (b)(3) and would allow PwC to produce the documents directly to the OAG without any review or need for review by Exxon.

And, in fact, there are two court cases that we have cited in our papers, In Re Arnold as well as In Re Patel, where the court relied on that order on a motion to

quash to allow information -- this was in the context of a motion to quash the deposition notice, a deposition information as opposed to a document subpoena, but relied on that order to allow production pursuant -- despite the existence of 901.457.

So, your Honor, we respectfully request a finding by this court that there is no accountant-client privilege, certainly not under New York law. And even if this court were to consider Texas law, not even under Texas law.

And we would ask that your Honor ask PwC or require PwC to produce responsive documents that it has collected and is now -- that are now pending review by Exxon to the OAG's office immediately, certainly by the end of this week, and that would include a certain category of documents which was identified in our papers that are not even subject to any accountant privilege because PwC was not acting in the role of accountant. And that category is the documents relating to the Carbon Disclosure Project. So that is a separate bucket of documents where it's uncontested that PwC was not acting as Exxon's independent auditor. Those documents should be produced right away, and they should be completed -- production of those documents should be completed forthwith.

As to the other documents that are being reviewed by Exxon, if your Honor finds that either New York law

applies or that there is no Texas privilege, those documents should also be produced forthwith.

And we respectfully ask that, given that there is no privilege, Exxon should not be permitted to delay the production of responsive documents to the OAG based on the assertion of some purported accountant-client privilege.

Thank you, your Honor.

THE COURT: Mr. Wells.

MR. WELLS: Thank you, your Honor.

First, with respect to the Carbon Study that she referred to, to my understanding, that document has been produced.

Is that correct?

MR. MEISTER: Your Honor, we have produced the CDP-related documents to the Attorney General September 30th, and then a corrected production on October the 7th. The first was black and white, the second was color.

MR. WELLS: So that is off the table. It was produced.

Your Honor, I am going to address the choice of law issue, then I am going to turn to the text of the statute and walk through the history of the statute, and then I'm going to talk about the case law, because it is our position that at no point has a Texas state court ruled that there is no accountant-client privilege. In those opinions, there is

language where they assume for purposes of analysis that there is a privilege, but at no point has there been a ruling.

But before I turn to a discussion of the cases, I want to start with the choice of law issue.

It is our position that the choice of law issue is governed by a balancing test, and that's based on the Court of Appeals decision in Babcock, that this court must look at the respective interests of both sides in deciding on the choice of law. We submit that in this case, ExxonMobil's documents are in Texas, ExxonMobil is based in Texas, the auditing team that audits ExxonMobil is based in Texas, the communications between ExxonMobil and the Pricewaterhouse accountants occur in Texas. In this situation, the court has to balance where the communications took place, where are the parties, what parties have the greatest interest.

This is not a case where the New York Attorney General has brought an enforcement action. They talk about what are going to be the rules when they get to trial. There has not been any return of a charge. There is no reality at the moment that there's going to be a trial of anything. This at the moment is a mere investigation. They have the right to conduct the investigation, but that is what it is. This is not a case, as in many situations, where it is clear there's going to be a trial and what rules

should govern in the course of the trial. And I submit that the interests in New York is far different when they have brought a case, when they have alleged some particularized harm to the citizens of New York. This case in contrast is purely in the investigative stage.

Furthermore, in order to do a balancing test, one of the issues is always the materiality of the evidence. To engage in a materiality of the evidence review, you must know what evidence, what documents, we are talking about. That is why, we submit, it is not appropriate to do this in the abstract.

It's similar to a work product privilege. There are situations where a court has the power to override the work product privilege based on a particular document that discloses certain evidence that is important to the truth-finding process. But in that situation, you have to look at the document. You cannot do a balancing test because materiality is a big part of that in the abstract. You need actual documents. So it is our position that Texas law should apply. And, furthermore, to do the balancing test, you cannot do it in the abstract. The court may need to engage in an in Camera review of certain documents in order to ask what is the materiality of the documents that the court is being asked to give over to the New York Attorney General. So we believe Texas law applies.

Now, with that said, I want to turn at this time to a discussion of the Texas statute and how it has evolved over the years, and I would like to hand up to the court an exhibit that sets forth the language of the statute as it was in 1989 when it was drafted, then how it was amended in 1999, how it was then amended in 2001, and then how it was amended in 2013.

We have some charts. So, your Honor, we just start with page 1. That is the actual bill that the Texas legislature voted on.

Now, the title on page 1 of the exhibit is that it regards an Act relating to the regulation of public accountants. That is the title of the Act.

If you turn to the second page, you see what is denominated as Section 26, which is the accountant-client privilege. And it is important that the word "privilege" is used as part of what the Texas legislature -- if you had been voting from a particular county, and you were the legislature voting on this bill, this is what was before you, and it was denominated Privilege. So this is not a term that was put into effect after people had voted on it, and then somebody at WestLaw used it as some organizing term. This is actually part of what was in front of the legislators who voted.

Now, in 1989, when it was enacted, it did not refer

to a court order. That language does not come until much later. It referred to an order "in a court proceeding." That was the language used. It says "in a court proceeding."

There also was no exception with respect to investigative agencies like the SEC or the Internal Revenue Service. That all comes later.

But the point I want to make right now is that the word "privilege" is part of the act, this is what the legislature voted on, and it does not refer to "court order." It refers to "court proceeding."

Now, the thing that happened next, if we go to the third page, is, there is an amendment in 1999. That amendment involves nonsubstantive changes. They changed the word "license" to "licensee." It is -- both sides agree the 1999 amendments were of a nonsubstantive nature, and nothing changes, but they add some commas and a few words. So, that's the next change in 1999. It still involves "court proceeding," not "court order." It's still entitled as a section Accountant-Client Privilege.

The next change then comes in 2001. That's the fourth page of the document I handed you. At that point in time, that is the first time that we have a carveout for certain governmental agencies that do not need to seek any type of judicial approval. The word "privilege" remains,

but it says for the first time in a section entitled (b)(2), that, "under a summons under the provisions of the Internal Revenue Code...and the Securities Act of 1933...or the Securities Act of 1934," that you do not need to get any type of court order. And the words "court order" appear for the first time instead of "court proceeding."

And so what we have in the 2001 statute as amended is a carveout for certain agencies, and I submit this language about summonses from the Internal Revenue Service and the SEC, that refers to those governmental agencies. There's a carveout for the SEC and the IRS. And then in the same section, "court proceeding" is deleted and "court order" is inserted. And that relates to instances where you need a court order. And we contend what that relates to are situations other than people who have been left out of the exceptions. And we think the government exceptions does not pick up New York -- the New York Attorney General's office, nor do we believe that they're covered by this court order section.

But there is another amendment in 2013.

But before I go there, I want to say that the decisions in Patel and the decisions in Arnold all were done under this 2001 amendment. Arnold is I think a 2012 case. Patel is 2007.

This is very important, your Honor, because what

those courts passed on was the 2001 structure of the statute. The statute changes in 2013.

Now, in 2013, there is another amendment, and it changes the structure of the statute. And what happens in 2013, they put in separate sections. There is now a section (2) that is purely a carveout section. They add the word for the first time "subpoena." "Subpoena" has now been added to "summons." They add as part of the carved-out agencies the Securities Act for Texas. So they've added the Texas AG. So at this point in time, the carveout section has taken on an independent role. It's no longer tied to the court order section, and it covers the IRS, it covers the U.S. Securities and Exchange Commission, and now it covers the Texas Attorney General. That is now a separate section.

They then take the court order provision that used to be part of (2) and they drop it into a separate section. It is now an independent item denominated as (b)(3), which says, "under a court order signed by a judge" if it has these three items.

This structure in 2013 is different, as I said, than that that existed during the Patel case or during the Arnold case.

It is the position of Exxon that not only is there an accountant-client privilege, those are the words that the

legislature passed on under the laws of Texas, but that Section (2) states what agencies have the carveout. And it's limited to the IRS, the U.S. Securities and Exchange Commission, and the Texas AG. And that under laws of statutory construction, the New York AG is not part of the carveout section. And it is our position that the New York AG, had they not been named in this section that deals with investigative agencies, they do not now drop down into Section (3) as a catchall.

THE COURT: So your position is that the exceptions that are allowed to be of an otherwise privileged nature of accountant-client communication all relate to the IRS and the SEC and the Texas Attorney General?

MR. WELLS: Yes, sir, with respect to investigative subpoenas. And it is exhaustive, it does not include the New York AG, and it is our position that the New York AG does not now get to drop down into Section (3) and get exempted by way of a court order.

THE COURT: How do you get from a specific exception identified as item (2) being related to item (3) when there's also items (4), (5), (6) and (7) under Section (b)?

MR. WELLS: Because Section (2) deals with specific situations involving investigative agencies. The other agencies listed are different. And the New York AG is akin

to those --

THE COURT: No, I get it. The New York AG doesn't fit within exception (b)(2).

Now, but what about (b)(4), (b)(5), (b)(6) and (b)(7)? Those are also exceptions.

MR. WELLS: That is correct. And they are of a different type of entity. And they also are exceptions.

But what we're saying in terms of an investigative agency like the New York AG, that the exceptions here are exhaustive. They do not come within this section. This section is exhaustive with respect to investigative subpoenas, and they do not get to drop down and pick up the court order exemption like it's a catchall.

And the fact that there are other entities identified in (4), (5) and (6), they do not relate -- (4) and (5), they do not relate to investigative subpoenas but rather they relate to a particular accounting investigation by the board, an accounting entity, and an ethical investigation involving a professional organization of accountants in the course of a peer review. (3), (4) and (5) are different than (2). That is what we are saying.

And what we're saying also --

THE COURT: So you're saying that (b)(2) and (3) aren't, but (b)(4), (5), (6) and (7) are separate exceptions that have no relationship to (b)(2)?

MR. WELLS: That's right. (3) is an independent exception, but (3) does not permit the New York AG to get an exemption under (3) because the New York AG is excluded under (2). Under the rules of statutory construction, if the legislature has identified with specificity a particular type of entity, it is to be assumed that other entities were not covered. They could have written this differently. They could have said "or any law enforcement agency" or "any other Attorney General." They did not do so.

THE COURT: No. What they said was that the section doesn't prohibit a licensor from disclosing information that is required to be disclosed "under a court order signed by a judge if the order is addressed to the license holder, mentions the client by name, and requests specific information concerning the client."

Isn't that a clear reading of the provision?

MR. WELLS: No, your Honor. We submit that (2) is an independent section dealing with investigative-type agencies, that this is exhaustive, and that agencies such as would come under (2) do not drop down to item (3).

THE COURT: Okay. That's your position. I get it.

MR. WELLS: Okay. Now, it is also our position, we want to point out that this structure, where (3) is now separate and (2) is independent, was not passed on by the Patel court or the Arnold court. It didn't even exist at

that time. And I think that also is of significance.

Now, what I would like to talk about now are the four cases they talk about, and I want to begin --

THE COURT: You just told me that those cases don't apply to the 2013 statute.

MR. WELLS: They do not, but what --

THE COURT: But they are instructive.

MR. WELLS: They are instructive. But the importance of the cases is that in none of the cases do they hold, do they hold that there is not an accountant-client privilege.

The New York Attorney General takes the position that these cases hold that no such privilege exists. I submit that if you carefully read the cases, the cases make clear they are not so holding. And we need -- and I would like to walk through the four cases, because what they show is that no court to this date has ever taken the time to look at the statutory history, look at the statutory structure, look at the issue before it, and grapple with all of this. And it's in part because, in many of those cases, the issue never was briefed, and the issue arose in the context of a relatively small tort litigation where somebody was trying to get access to the accountant's records, a claim was made that there was a privilege, people did not fight about it because of what was at stake. No court has

ever grappled with this question in a careful and reasoned way. That is the core point.

If we could just start with the first case, in terms of, I want to go through the cases chronologically, and the first case is the Canyon Partners case, and that is in 2005. This is a case that comes right before Patel, which is 2007, but Canyon probably starts a lot of the trouble, I submit, if you want to kind of do an autopsy on how did we get here, and whether people were actually doing research and issuing reasoned decisions, or did it just happen in terms of a throwaway line.

In Canyon Partners, a federal case, 2005, the court wrote: "The court initially observes that there is no accountant-client privilege under federal or Texas law." The court cites the Ferko case with the proposition that there's no accountant-client privilege for federal court.

Then to support the argument that there's no accountant privilege from Texas law, they cite a case called Sims. Sims is a 1988 case. In 1988, there was no Texas accountant privilege. The Act does not come back until 1989. It did not exist. And if you go and read the Sims case, all the court says in Sims is that under the Texas rules of evidence, there's no reference to a privilege. That's all that was said.

But it's important, your Honor, because that

language in Canyon where they cite Sims keeps getting picked up like somebody thought about it, they cite a case, as I said, that preexisted the passage of the statute, then in Canyon in a footnote they say in a letter to counsel from JDN, it references the accountant-client privilege. And then it says, "However, no court has elevated the professional standard established by this statute to an evidentiary privilege under Texas law." That is an accurate statement. And this is the first case we could find where anybody grappled with it. And to the extent he's saying: "We haven't been able to find a court that has said there is a privilege," that is accurate, but it's not based on any analysis that says the opposite is true, that there is no privilege.

And we went and got the briefs in Canyon, and I want to, at the end of the day, move them into the record because the issue was not briefed. It was not briefed other than this letter appearing in the file.

But that case is kind of the foundational case that people keep citing for the proposition that there is no privilege. But, again, it came up in the context where it wasn't briefed, and there is no support other than to Sims which just says it's not in the Texas rule of evidence.

The next case is 2007. Let's look at the progression. That's the Patel case. And I think there are

only two Texas court cases, Patel and Arnold. The other two cases we talk about, Canyon, and I think it's Cantu, those are federal cases, but I think your Honor in trying to determine what weight to put on what cases, the two Texas court cases have particular importance because that's the Texas court passing on the Texas statute.

But in Patel, in that case, at the lower court, the court had quashed a motion with respect to the -- had ruled against the motion to quash the subpoena. The party then took a mandamus to the Texas appeals court, the intermediate court. It's very important because under Texas law, with respect to questions of both law and fact, for mandamus, it's an abuse of discretion standard. So they are not actually even looking at the issues as if it were a regular appeal even on legal questions. But what the court wrote is that, "First, Nautilus does not counter that an accountant-client evidentiary privilege does not exist in Texas." That's critical. The other side did not question whether the privilege existed. It accepted that the privilege existed but then it looked in one of the exceptions. So this is not a case from the beginning where the party is coming in and saying: No privilege exists. That's not the situation.

Then the court wrote: "Assuming without determining that an accountant-client evidentiary privilege

exists in Texas, we will address the only issue before this court, that being whether there is a court order requiring the production of the requested documents."

So the Patel court assumes for purposes of discussion that a privilege exists, and then they go to whether the exception applies.

The Patel court also has relevant language. In footnote 6 in Patel, the court notes: "Other than citing Section 901.457 of the Occupations Code, neither party has provided authority for the proposition that an accountant-client evidentiary privilege exists in Texas." I think that's a true statement, but the point of it is, both sides were accepting that it existed. That wasn't even briefed. It wasn't even an issue.

Then the court says, "and we find none." And that's a true statement because at that point, no court has ever ruled on the issue except for that snippet of language in Canyon. And then they cite again to the Canyon case, which I've shown was not based on any analysis, and relied on a case that predated the statute.

And then the court ends up saying: "Therefore, because the law is not clear", not clear on the question of whether the privilege exists, "on this issue, to the extent the trial court's denial of the motion to quash in this case was based on no privilege, we cannot conclude it abused its

discretion." And it's really only what the trial court did. They say: "If that's what he was thinking. The law is unclear." So for purposes of mandamus, it's not an abuse of discretion.

But the point is, Patel does not issue a ruling that there is no privilege.

THE COURT: But what was the exception that the Patel court was concerning itself with?

MR. WELLS: There was an ongoing litigation, and in the context of the ongoing litigation, there had been a request to depose and for documents, and then they went to the issue of whether the quashing of that order constituted an order within the exception, and the court said it does.

In our case, we have a totally different argument.

Our argument is that (b)(2), which deals with investigative agencies, occupies the field, is exhaustive.

THE COURT: And (b)(3) is irrelevant.

MR. WELLS: That's right. And when you drop down to (b)(3), it is not a catchall. That is a different issue than presented in Patel.

THE COURT: Okay.

MR. WELLS: Okay?

The last case, the last Texas case, is In Re Arnold. That's 2012. And that case, what the Texas appeal courts wrote: "As we have stated, the existence of an

accountant-client privilege based on Section 901.457 is doubtful." They then quote from Patel. They didn't rule on the issue. And they cite the footnote about the law being unclear, from Patel. But this court does not issue a ruling. There's no ruling. There's an observation.

THE COURT: But Patel and Arnold, both --

MR. WELLS: Texas.

THE COURT: Texas court decisions, they are predating the 2013 amendment.

MR. WELLS: Yes, sir. But even assuming you want to give them weight, what I want to make clear to your Honor is that it would be incorrect to do what the government has urged you to do, which is say: The Texas Court of Appeals has ruled already that no privilege exists. They never issued such a ruling. And that's contrary to what they briefed, your Honor. If I come away with having made that point, I will have done at least part of my job today.

THE COURT: You've done your job.

MR. WELLS: Okay. Now, there's a last case, a last federal case that they cite. It is actually after now the 2013 amendment. It doesn't do any analysis, but it's the last case that they cite. It's called Cantu. It's a federal case. And what they say, the court writes: "However, in Texas, accountant-client communications are confidential, but not privileged." And the court cites

Patel. But, as I demonstrated, that's not what the Patel court said, but he cites to that. And then the court says: "Anyway, this is a federal question case and, accordingly, federal privilege law governs." That's an accurate statement. So, he cites Patel incorrectly.

But the bottom line is, no court has ruled that there is no privilege, and especially the two Texas courts, they don't do it.

Now, again, our core position is that Patel and Arnold are not controlling for our case; that we have a totally different argument involving the interaction between (b)(2) and (b)(3) and whether (b)(2) is exhaustive, and whether you can drop down to (b)(3) as they want to to save it. Those are different. That's a point different than is raised in any of these cases.

And what we are asking your Honor to do ultimately is not deal on an abstract record, to permit us to develop a record so that you could do the balancing test in the context of concrete documents, and that you will rule as you see fit, but that you not go down the road, as they've asked you, to say that Texas courts have ruled on this issue, because they have not.

That completes my argument.

Thank you.

Your Honor, excuse me. One last thing.

I do not think what is going on in Texas has any relevancy to this motion and dispute about the PwC subpoena and the attorney-client privilege, but the New York Attorney General has made reference to the Texas litigation, and if I could take maybe five or ten minutes just to at least explain what is going on there to your Honor, because I don't think it's been fairly described.

THE COURT: Why don't you tell me what it is that you are seeking vis-à-vis the New York Attorney General in the Texas proceeding.

MR. WELLS: Okay. Our original action in Texas was against the Attorney General of the Virgin Islands. I have a timeline that I could give to you as an exhibit that I think would help, your Honor. We can put it up.

This is a timeline of what is going on in Texas.

I start with the first bullet, which is November 4, 2015, when Attorney General Schneiderman issued the subpoena to ExxonMobil.

The day after the subpoena was issued, the New York Times had a full-blown story here about the ExxonMobil subpoena and investigation. The New York Times had the story before we even got the subpoena. We didn't get the subpoena until late at night before this full-blown story is in the paper the next day.

The next thing that happens is March 15, 2016, the

Virgin Islands Attorney General issues a subpoena to ExxonMobil.

March 29, 2016, Attorney General Schneiderman hosts a public press conference entitled: "Attorney Generals United for Clean Power," and they called themselves the "Green 20", with Vice President Al Gore, and they hold a conference, and they get on stage, and it's on the Internet, and what they say is that these attorney generals had banded together because the United States Congress is in gridlock about the issue of climate change, and they are going to step into the void and deal with the fact that Congress has not been able to deal with climate change. And one of the ways they are going to do it is to investigate ExxonMobil.

And that's really what -- up until then, we met with them, we kind of forgotten, you know, the leak to the New York Times in producing documents, but without question, the world changes the day they get on stage and basically say they have decided that we're guilty, they're coming after us for political reasons, and they're sitting there with the vice president.

What happens next, on April 13th -- and the Attorney General of the Virgin Islands is up on stage with him -- April 13th, we then file a petition in the Texas court seeking a declaration that the Virgin Islands subpoena is unconstitutional. We sue based on the First Amendment

and the Fourth Amendment in terms of the suppression of our right to participate in the climate change debate.

Six days later, Attorney General Healey issues a subpoena.

So what's going on now, we started with Attorney General Schneiderman, they've had the press conference, the Attorney General of the Virgin Islands has jumped on us, now the Attorney General of Massachusetts.

We then reach a settlement with the Attorney General of the Virgin Islands where he decides, rather than fighting us in Texas, he's going to withdraw his subpoena.

Then in June of 2016, we file a complaint and motion for a preliminary injunction against enforcement of the subpoena by the state of Massachusetts. We're now in Texas.

And a quick question: "Mr. Wells, why are you in Texas? Why don't you go to Massachusetts? Why don't you go to the Virgin Islands?" It's our position that there is a group of attorney generals who has decided to use their law enforcement powers for a political purpose, and the only place we can get them all, rather than fight them separately in each court, is in our home state of Texas. That's the only forum.

We also actually, when we filed against the state of Massachusetts in Texas, we did also filed against the

state of Massachusetts in Massachusetts, but we asked that court to stay it. It hasn't issued a ruling yet. We argue that I think in December.

Now, then there's an article in the New York Times where Attorney General Schneiderman gives an extensive interview, and he states that there may be massive securities fraud at Exxon, so he made this public statement now in August. Then the same day, he makes the public -- he's quoted in the New York Times, we get the subpoena for PwC documents. Okay? This all comes: New York Times, massive securities fraud, then he serves a subpoena on PwC.

Then on September 19th, this is a critical date, September 19th, we go to Texas and we argue the preliminary injunction against the state of Massachusetts before Judge Kinkeade. During the oral argument, Judge Kinkeade says to us, in essence: "Well, what are you doing about New York? You sue in Massachusetts, but you produce it to New York." At least as we read the court, he's got some concerns that, "Well, why are you suing in Mass. and not New York?" And that's how we read it, that he had those concerns, because he even said: "Doesn't New York have the same motive as Attorney General Healey?"

Then what happened, this is what they don't tell you in their papers. They're trying to create the picture in their papers that they filed this action in front of your

Honor to enforce the PwC subpoena on Friday, and we ran down to Texas and filed something on Monday. Nothing could be further from the truth. They don't tell you about what happened on Thursday. They make the story start on Friday like they filed an order to show cause. Nobody cared about, in all due respect, this accountant issue. What happened on Thursday was that Judge Healey -- I'm sorry, Judge Kinkeade on Thursday issued an opinion, and his opinion said that we were going to get discovery against the Mass. AG, as we read it, the other attorney generals, because we had made a sufficient showing of bad faith under the *Younger* doctrine, and that's when we decide to join them on Monday, but it's because of what happened in that opinion.

Then on the 14th, they filed their action the next day, then we filed our action against the Attorney General of New York in Texas.

In terms of where the Texas case is right now, two things have happened that are not on the chart. Earlier this week -- well, at the end of last week, the state of Massachusetts filed a motion for reconsideration, saying to Judge Kinkeade: We want you to reconsider your order not dismissing the case for jurisdictional purposes and also giving ExxonMobil discovery rights.

We filed a motion to expedite the filing of the Amended Complaint so the New York AG can be brought into the

case because the next step is, we're going to have a discovery conference, and there's no question it's going to be heated because right now we have the right, as we read the order, to take the deposition of both the Mass. AG people and really everybody, as we read it, that was at that March 29th conference. And we would like to get the New York AG in the case as we work out these discovery issues. So that is what we have done.

In terms of where Texas is going to go, it's months down the road because right now we're going to engage without a question in fairly heated discovery issues. We are going to try to take depositions of the state AG's. I have no doubt that the state AG's are going to contest Judge Kinkeade's order. And I have no doubt that they are going to say "investigative privilege." They have, all the AG's have entered into what they call a common-interest agreement. We believe that is a pretext to keep from the public and from us exactly what they have been doing for political purposes, because there's going to be litigation over that common-interest privilege which we submit is designed to keep people from learning the true facts, but it's going to be months down the road.

But when they -- so the order to show cause on Friday and the following Monday were not tied together. What was tied was what happened on Thursday. And we

immediately said in our papers: "We submit to your Honor jurisdiction. We have no problem with your Honor's ruling on this." We said that immediately. And that is our position.

But in terms of where Texas is, that's the one place we can get multiple attorney generals who are coming after ExxonMobil with what we believe are pretextual subpoenas designed not really to ferret out any wrongdoing but really for political purposes because we had deigned not to toe the line in terms of what they see as was politically correct with respect to the issue of climate change.

One last point.

ExxonMobil has been on the record for years now that we recognize the seriousness of climate change. All of these attorney generals operate within a four- to six-year statute of limitations. And we have been, prior to the statutory period, been on the record, we recognize that climate change, the issue is real, it deserves attention.

But this is part of a political agenda, and I understand that the New York AG made our complaint in Texas part of the record, and I would invite your Honor to read the complaint because it sets forth in more detail what I've laid out on this timeline.

Last point.

I just want to read from Judge Kinkeade's order

that was issued on Thursday. I would like to hand to your Honor a copy of the judge's order.

THE COURT: Thank you.

MR. WELLS: This is what Judge Kinkeade ruled on Thursday, signed October 13th. He said: "The court finds the allegations about Attorney General Healey and the anticipatory nature of Attorney General Healey's remarks about the outcome of the Exxon investigation to be concerning to this court. The foregoing allegations about Attorney General Healey, if true, may constitute bad faith in issuing the CID which would preclude *Younger* abstention. Attorney General Healey's comments and actions before she issued the CID require the court to request further information so that it can make a more thoughtful determination about whether this lawsuit should be dismissed for lack of jurisdiction.

"Conclusion.

"Accordingly, the court ORDERS that jurisdictional discovery by both parties be permitted to aid the court in deciding whether this lawsuit should be dismissed on jurisdictional grounds."

So that is where the case is as it stands.

But again, we are in Texas and we are fighting multiple attorney generals, and Texas is the one forum where we can fight them together. We may end up having, as we do

in Mass., we may end up at some point, I don't know, having New York litigation also. Right now, we have given them over one million pages of documents, and that may come to pass. But at this moment, we are in Texas because Texas is the only state, because it's where we're based, where we can bring our constitutional claims against multiple attorney generals rather than fighting state by state by state.

Thank you.

MS. SHETH: Your Honor, may I be heard?

THE COURT: Briefly.

MS. SHETH: Thank you, your Honor.

Let me briefly just address what Mr. Wells just said.

We are not -- the New York AG is not a party to that action in Texas at present, and the order that he just put up in front of your court does not -- is not directed at the New York AG, and the quoted statements were not about statements made by the New York AG.

Now, let me turn back to the issue which is before your Honor involving the PwC documents and this purported privilege.

Just quickly in response to the CDP documents, to date we have only received 30 such Carbon Disclosure Project documents. If that's the full universe, then we would like a representation that that production is complete. But we

find it surprising that there would only be 30 such documents.

Let me now turn to the choice of law.

Mr. Wells argues for a balancing test and relies on the Court of Appeals decision in Babcock. That is a case from 1963 involving a car accident that happened in Canada by two New York parties. It does not involve the question of what state's choice of law provisions apply, what state's choice of law provisions apply when dealing with the question of privilege.

When you are talking about privileges, the appropriate authority to look at is the two cases we cited to your Honor from the First Department, Greenberg as well as JP Morgan.

And in addition, I would point your Honor to the case called Bamco 18 as well as First Interstate, which are also decisions involving the application of choice of law principles to the privilege question.

And what is very telling is a case from the Southern District of New York in 2004 called Condit v. Dunne, 225 FRD 100, and in that case, the court noted, even applying an interest test, as Mr. Wells urges this court to do, that the factors the courts consider in determining which state's privilege logs apply include the following: 1, the state where the allegedly privileged communication

was made; 2, the state where the discovery is sought and the evidence will be admitted; 3, the state of the parties' citizenship; 4, the state where the suit was filed; 5, the state whose laws control the substance of the litigation; and 6, the state where the offense giving rise to the litigation took place."

If we look at that six-factor test, there are four factors that weigh in favor of New York. And the third factor also weighs in favor of New York given that this is a New York law enforcement investigation of a company that indisputably does business here in New York. And if you apply that standard, we urge you to apply New York law, no privilege applies.

Let me now turn to the legislative history that is relied upon by Exxon's counsel.

The key document that was not shown to your Honor, which we are happy to provide you with, is a copy of the original 1979 statute. This is the statute that actually did create an accountant-client privilege. And if your Honor looks at that statute, you will see that the word "privilege" shows up in the statute. There is no restriction to just voluntary disclosures, and there is no exception for broad orders. That is entirely consistent with how privileges work.

Now, if you then look at every subsequent -- well,

the thing we forgot to mention is that in 1983, that statute was repealed. And starting in 1989 through 2013 there were various predecessors and amendments to the current statute. And if you look at those, each of those contain the three characteristics that suggest that this is, in fact, a rule of confidentiality, not a privilege.

Exxon's counsel relies heavily on the fact that the title includes the word "privilege." But, your Honor, if you look at the Texas Government Code Section 311.024, it makes clear that a statute -- that the title of a statute cannot be used to expand its meaning. And that is exactly what Exxon is trying to do here.

If you look at every amendment that Mr. Wells has pointed out, it makes clear that what we're talking about is a rule of confidentiality.

The fact that we went from "a court proceeding" to "a court order" is further confirmation that they have a broad exception. I mean, "a court proceeding" is even broader than "a court order." So that further suggests that this is, in fact, a rule of confidentiality.

And then if we look at the 2013 amendment, the legislature went so far as to have a separate section giving it even more significance for court orders. And to interpret Section (b)(2) as being an exhaustive list that only includes the IRS and the SEC and the Texas Securities

statute, that seems entirely inconsistent with, one, the fundamental principle that this statute is limited to voluntary disclosures, and, from a policy reason, how could it be the case that the Texas legislature wanted to allow accountants to disclose information to ethical boards and licensing boards that are covered in the 4, 5 and 6 exceptions listed in the statute, but not to sister state law enforcement agencies.

In fact, the better reading would be that the Texas legislature thought that those agencies should get the additional protection of a court order before disclosing confidential information.

So, again, we would argue that this structure of the statute conveys that it supports the view that it's better construed as a rule of confidentiality as opposed to an evidentiary privilege.

And, in fact, the cases, the four cases that Exxon's counsel put up on the boards, further illustrate, they are instructive to this court, that no Texas court has interpreted this to be a privilege and, rather, have stated that the existence of an accountant-client privilege is doubtful and not supported in the case law.

We would also argue that no further record is needed on this legal issue. This is a legal issue at its core. Whether it's an issue of statutory construction,

looking at the legislative history, there's further documents that PwC are going to provide, or the accountant-client privilege log if Exxon is ordered to do so. Those are not going to shed light on whether this privilege even exists under the law.

Let me now turn to the Texas action, and I feel compelled to address the allegations against the NYAG which I will reiterate have not -- this is a motion to amend. The AG has not been added as a party to the Texas litigation. And, in fact, the timing of Exxon's motion papers is quite curious.

What has happened in this case is, the subpoena to Exxon was issued back in November of 2015. For the past year, Exxon has produced documents to the New York AG, the most recent of which were produced in this month on October 11th. They have produced, as they said, over 1.2 million pages of documents. At no point during the last year have they contested the authority of this office to bring this investigation or the good faith of this office in bringing this investigation. And they did not do that until we filed these papers in this court. And there can be no dispute that this investigation is proper. It's a proper exercise of our authority to investigate violations of state securities laws and other state statutes.

There is no question that this subpoena to Exxon,

and to PwC for that matter, is valid and is the appropriate forum to decide the validity of our investigation, and the fact that the Attorney General enjoys a presumption of good faith in this court.

THE COURT: They don't dispute that.

MS. SHETH: And they don't dispute that. You are right, your Honor.

And what they have done instead is not raise that issue in this court and instead raise it in the Texas Federal Court, and then try to expedite consideration of their motion as soon as we serve them with a copy of your Honor's order to show cause.

And I would note that the facts that are alleged in their proposed First Amended Complaint in adding the New York State Attorney General, those facts were available to them back in June of 2015 when they filed their case against State Attorney General Maura Healey from Massachusetts, and it is only now, where after we have come to this court, that they have filed that motion.

And then just briefly, your Honor, on the substantive points, we do -- to the extent the Texas court intends to add us as a party to the Texas litigation, I would note that Attorney General Schneiderman's statements with regard to this investigation have been very balanced. He's repeatedly stated that we are at the early stages of

the investigation, that it is too early to say, he's made no predetermination about the outcome of this investigation.

For purposes of our choice of law analysis, all we have said is that if a case is filed, that case will be brought here in New York, and if there is a trial of such a case, that trial will happen here in New York given that it's a case brought by this office involving allegations of violations of state law.

And as to the point of multiple attorney generals working together, that happens all the time to conserve resources of taxpayers involving cases and investigations that transcend states. That is a normal course of practice to have states and federal law enforcement coordinate together to investigate and litigate actions, and the Volkswagen matters is a prime example of that.

Thank you, your Honor.

THE COURT: Okay. So, we have agreed that subject to any agreement that the parties consensually enter into, PwC and Exxon will expedite the production of any documents that are neither attorney-client communications nor allegedly privileged accounting communications on a rolling basis by November 10th. And if that proves to be unworkable and the parties can't consent, you can come back to this court.

In the meantime, I will attempt as expeditiously as

possible to resolve that which is before me, which is whether New York law or Texas law applies to the claim of privilege. If New York law applies, there is no claim of privilege. If Texas law applies, I'll have to determine what the 2013 statute means in terms of this case, and I will do that as expeditiously as I can.

The last thing that we need to have agreement on is that if there are going to be any submissions to the court, that those submissions are to be shared with opposing counsel. And if they are formal submissions, they have to be e-filed. If they are letters, they have to be cc'd to opposing counsel.

I think that concludes everything that we need to discuss today.

MS. SHETH: Your Honor, may I address the question you asked earlier this morning about this envelope?

THE COURT: Yes.

MS. SHETH: Your Honor, we took a look at what was in the envelope. These are the documents that were submitted under seal because they were designated by PwC as confidential. A copy of this exhibit was provided to counsel for both Exxon and PwC but was submitted under seal for your Honor. It was not publicly filed.

THE COURT: Okay. Well, it certainly wasn't clear, to me, from receiving an envelope --

Proceedings

MS. SHETH: I apologize, your Honor.

THE COURT: -- with a note saying: "This is not e-filed," that those are documents that were submitted under seal. So if you want to resubmit them to me for review with an appropriate cover letter, I will review them.

MS. SHETH: Happy to do so.

Thank you, your Honor.

THE COURT: Thank you.

I think you should both order a copy of the transcript because you will both want a copy of the transcript, and to the extent that you can get it expedited, that would be a good idea.

Thank you.

(At this time the proceedings were concluded.)

-oOo-

C E R T I F I C A T I O N

This is to certify the within is a true and accurate transcript of the proceedings as reported by me.

William L. Kutsch, SCR

SO ORDERED

WLK BARRY R. OSTRAGER, J.S.C.

Exhibit 7

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 61

_____X

In the Matter of the Application of the

PEOPLE OF THE STATE OF NEW YORK, by ERIC T. SCHNEIDERMAN, Attorney General of the State of New York,

Petitioner,

For an order pursuant to C.P.L.R. § 2308(b) to compel compliance with a subpoena issued by the Attorney General

-against-

PRICEWATERHOUSECOOPERS LLP and EXXON MOBIL CORPORATION,

Respondents.

_____X

Index No. 451962/16

DECISION & ORDER

Motion Seq. No. 001

OSTRAGER, J:

Presently before the Court is a petition by the Office of the New York Attorney General ("NYAG") seeking an order pursuant to CPLR section 2308(b) compelling respondent PricewaterhouseCoopers LLP ("PWC") to comply with a *subpoena duces tecum* issued by the NYAG on August 19, 2016 (the "Subpoena") and compelling respondent Exxon Mobil Corporation ("Exxon") to allow PWC to produce responsive documents without withholding some based on a purported accountant-client privilege. The Subpoena, attached as Exhibit A to the Affirmation of Katherine C. Milgram, Chief of the Investor Protection Bureau of the Office of the Attorney General, was issued in connection with the Attorney General's investigation of Exxon's representations about the impact of climate change on its business, including on its assets, reserves, and operations.

A highly publicized subpoena was originally issued to Exxon on November 4, 2015. Concurrent with additional publicity, including an interview of Attorney General Schneiderman in the New York Times, the NYAG issued its investigative subpoena to PWC on August 19, 2016. Both subpoenas relate to potential Martin Act violations by Exxon in connection with its allegedly misleading public disclosures relating to climate change. All parties agree that this Court is the proper forum in which to resolve the NYAG's application.

It is undisputed that Exxon has produced at least one million documents to the NYAG pursuant to the subpoena issued to Exxon. The question raised by the instant petition is whether the production of PWC documents would violate Texas Occupations Code Section 901.457, which is captioned "Accountant-Client Privilege." The answer to this question turns, in the first instance, on whether New York law applies to an investigative subpoena issued by the NYAG with respect to a New York investigation involving companies that do business in New York. If, as the NYAG claims, New York law applies, counsel agree that there is no accountant-client privilege as New York law does not recognize any such privilege. If, as Exxon claims, Texas law applies to the Subpoena, there is an issue as to whether Texas Occupations Code Section 901.457 would operate to preclude production of non-attorney client communications on the grounds of an accountant-client privilege. Significantly, PWC takes no position on the applicability of the Texas Occupations Code Section 901.457.

The short answer to the latter issue is that Texas Occupations Code Section 901.457 does not preclude production of the requested documents. It is therefore unnecessary to resolve the choice of law issue, although as set forth *infra*, New York law is applicable to the NYAG's petition.

The precursor statute to Texas Occupations Code Section 901.457 was originally enacted in 1979. As originally enacted, the statute appears to have created a limited accountant-client privilege subject to several carve outs, although no Texas case has specifically recognized an accountant-client privilege. The statute was subsequently amended multiple times, first in 1989 and, thereafter in 1999, 2001, and again in 2013. Each succeeding amendment to the statute modified in some respect the carve outs to any arguable accountant-client privilege.

The case law and legislative history relating to the intent and proper interpretation of Texas Occupations Code Section 901.457 and its predecessors is sparse and not dispositive of this case. In all events, all of the limited case law addressing the statute predates the 2013 version of the statute, except for one federal case that mentions the state law but applies federal law. This Court finds that the statute has a plain meaning. Specifically, subdivision (b) of the statute provides in relevant part:

> This section does not prohibit a license holder [PWC] from disclosing information that is required to be disclosed:
>
> (1) by the professional standards for reporting on the examination of a financial statement;
>
> (2) under a summons or subpoena under the provisions of the Internal Revenue Code of 1986 and its subsequent amendments, the Securities Act of 1933 *(15 U.S.C. Section 77a et seq.)* and its subsequent amendments, the Securities Exchange Act of 1934 *(15 U.S.C. Section 78a et seq.)* and its subsequent amendments, or The Securities Act *(Article 581-1 et seq., Vernon's Texas Civil Statutes);*
>
> (3) under a court order signed by a judge if the order:
>
> (A) is addressed to the license holder;
>
> (B) mentions the client by name; and
>
> (C) requests specific information concerning the client;
>
> (4) in an investigation or proceeding conducted by the board;
>
> (5) in an ethical investigation conducted by a professional organization of certified public accountants;

(6) in the course of a peer review under Section 901.159 or in accordance with the requirements of the Public Company Accounting Oversight Board or its successor; or

(7) in the course of a practice review by another certified public accountant or certified public accountancy firm for a potential acquisition or merger of one firm with another, if both firms enter into a nondisclosure agreement with regard to all client information shared between the firms.

This Court rejects Exxon's assertion that subsections (b)(2) and (b)(3) must be read together and that because the Subpoena was not issued pursuant to one of the federal laws specified in (b)(2), the NYAG may not seek a court order compelling production pursuant to (b)(3). As a matter of pure statutory construction, this interpretation of the statute is flawed because there is no textural support for the proposition that the carve out in (b)(3) is tethered to the carve out in (b)(2) while the carve outs in (b)(4), (b)(5), (b)(6), and (b)(7) are not. Consequently, the carve out in (b)(3) would be satisfied by an order from this Court compelling compliance by Exxon and PWC of the investigative subpoenas issued by the NYAG inasmuch as those subpoenas request specific information concerning Exxon. *Cf. In re Arnold*, 2012 WL 6085320 (Tex. App., Nov. 30, 2012) (holding that an order denying a motion to quash a deposition notice functioned as a court order, thus vitiating any confidentiality obligation under the statute).

For the reasons stated above, it is not necessary to resolve the choice of law issue. If there were an applicable accountant-client privilege under Texas law, it would be nevertheless unavailing because New York law applies to the NYAG's application. New York does not recognize an accountant-client privilege, and controlling authority holds that: "The law of the place where the evidence in question will be introduced at trial or the location of the discovery proceeding is applied when deciding privilege issues[.]" *JP Morgan Chase & Co. v Indian Harbor Ins. Co.*, 98 A.D.3d 18, 25 (1st Dep't 2012); *see also G-I Holdings, Inc. v Baron & Budd*, No. 01 Civ. 0216 (RWS), 2005 U.S. Dist. LEXIS 14128, at 7 (S.D.N.Y. July 13, 2005) ("With

respect to the law of evidentiary privileges, New York courts generally apply the law of the place where the evidence in question will be introduced at trial or the location of the discovery proceeding itself."); *Fine v Facet Aerospace Products Co.*, 133 F.R.D. 439, 443 (S.D.N.Y. 1990 ("New York courts apply the privilege law of the place where the evidence in question will be introduced at trial or the location of the discovery proceeding when deciding privilege issues."); *People v Greenberg*, 50 AD3d 195, 198 (1st Dep't 2008) ("New York courts routinely apply the law of the place where the evidence in question will be introduced at trial or the location of the discovery proceeding when deciding privilege issues.") (internal quotation marks omitted).

Accordingly, it is hereby

ORDERED that the motion by the Attorney General of the State of New York to compel compliance with the investigative *subpoena duces tecum* issued on August 19, 2016 is, in all respects, granted. As stated in open court, compliance with the Subpoena shall occur in accordance with any schedule to which the parties agree, as long as that schedule is not unnecessarily protracted. Counsel shall appear for a conference on Thursday, December 15, 2016 at 9:30 a.m. in Room 341.

This corrected opinion supersedes the opinion dated October 25, 2016.

Dated: October 26, 2016

BARRY R. OSTRAGER J.S.C.
JSC

Exhibit 8

At IAS Part 61 of the Supreme Court of the State of New York, held in and for the County of New York, at the County Courthouse at 60 Centre Street, New York, New York, on the 15th day of November, 2016

PRESENT: The Hon. Barry R. Ostrager
Justice of the Supreme Court

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

MOTION SEQUENCE # ~~003~~ 002

In the Matter of the Application of the

PEOPLE OF THE STATE OF NEW YORK, by ERIC T. SCHNEIDERMAN, Attorney General of the State of New York,

Petitioner,

For an order pursuant to C.P.L.R. § 2308(b) to compel compliance with a subpoena issued by the Attorney General

- against –

PRICEWATERHOUSECOOPERS LLP and EXXON MOBIL CORPORATION,

Respondents.

Index No. 451962/2016

ORDER TO SHOW CAUSE

ORAL ARGUMENT REQUESTED

Upon the Office of the Attorney General's Memorandum of Law in Support of its motion to compel compliance with a *subpoena duces tecum* issued to Exxon Mobil Corporation ("Exxon") dated November 4, 2015, the annexed Affirmation of John Oleske in Support of such motion to compel dated November 14, 2016, and upon all the other documentation submitted in support of such motion, and sufficient cause having been alleged therefor, it is hereby

ORDERED that Respondent Exxon appear and show cause before IAS Part 61 of the Supreme Court, New York County, at the Courthouse located at 60 Centre Street, Room 341,

New York, New York, on the 21st day of November 2016, at 3:00 ~~a.m.~~/p.m. or as soon thereafter as counsel may be heard, why an Order should not be issued pursuant to New York Civil Procedure Law and Rules Sections 403(d) and 2308(b)(1):

(1) compelling Exxon to produce, no later than November 23, 2016:

> Documents concerning (i) XOM's valuation, accounting, and reporting of its assets and liabilities, including reserves, operational assets, extraction costs, and any impairment charges; and (ii) the impact of climate change and related government action on such valuation, accounting, and reporting, including documents held by additional custodians and documents found using appropriately-targeted search terms, *including, but not limited to,* documents relating to the disclosure, calculation, use and application of the proxy cost of carbon/greenhouse gases (also known as the carbon price); and

(2) retaining continuing jurisdiction over Exxon's compliance with the subpoena, and mandating such other and further relief as the Court deems just and proper in implementing a schedule for the prompt production of all other responsive documents called for by the subpoena.

ORDERED that any opposition papers shall be served on Petitioner by electronic mail to Petitioner's counsel, John Oleske, at john.oleske@ag.ny.gov, by ~~5:00~~ 1:00 p.m. ~~three days prior to the~~ with a working copy delivered to Room 341 by 1:00 p.m on November 18, 2016 date set forth above for the hearing on Petitioner's motion to compel.

ORDERED that any reply papers ~~shall be served on Respondents by electronic~~ no written will be accepted. mail to Respondent Exxon's counsel, Theodore Wells Jr., at twells@paulweiss.com and Michele Hirshman, at mhirshman@paulweiss.com, and to Respondent PricewaterhouseCoopers LLP's ("PwC") counsel, David Meister, at david.meister@skadden.com, and Jocelyn Strauber, at jocelyn.strauber@skadden.com, by 5:00 p.m. one day prior to the date set forth above for the hearing on Petitioner's motion to compel.

ORDERED, that service of a copy of this Order and the papers upon which it is granted by electronic mail to Respondent Exxon's counsel, Theodore Wells Jr. and Michele Hirshman,

and to Respondent PwC's counsel, David Meister and Jocelyn Strauber, on or before November 15 shall be deemed sufficient service.

ENTER:

J.S.C.

BARRY R. OSTRAGER
JSC

ORAL ARGUMENT DIRECTED
BARRY R. OSTRAGER JSC

Exhibit 9

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

In the Matter of the Application of the PEOPLE OF THE STATE OF NEW YORK, by ERIC T. SCHNEIDERMAN, Attorney General of the State of New York, Petitioner, For an order pursuant to C.P.L.R. § 2308(b) to compel compliance with a subpoena issued by the Attorney General -against- PRICEWATERHOUSECOOPERS LLP and EXXON MOBIL CORPORATION, Respondents.	Index No. 451962/2016

EXXON MOBIL CORPORATION'S CORRECTED MEMORANDUM OF LAW IN OPPOSITION TO THE ATTORNEY GENERAL'S MOTION TO COMPEL COMPLIANCE WITH AN INVESTIGATIVE SUBPOENA

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP
1285 Avenue of the Americas
New York, NY 10019-6064
(212) 373-3000

Attorneys for Respondent Exxon Mobil Corporation

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Respondent Exxon Mobil Corporation ("ExxonMobil") submits this memorandum of law in opposition to the motion of Petitioner New York Attorney General Eric Schneiderman (the "Attorney General") to compel compliance with an investigative subpoena issued to ExxonMobil on November 4, 2015.

PRELIMINARY STATEMENT

With utter disregard for the limits of his power, the Attorney General asks this Court to compel the production of documents that are not called for by the subpoena he issued. While he makes that request in an order to show cause, there is nothing exigent or imminent about the underlying dispute. It raises a simple question about whether documents related to the valuation and reporting of ExxonMobil's assets and liabilities, without any limitation or restriction, must be produced pursuant to a subpoena that is expressly limited to the topic of climate change. ExxonMobil submits—and this should be uncontroversial—that the subpoena's terms must be honored and that it is the proper role of this Court to rebuff the Attorney General's effort to transform his subpoena into an impermissible general warrant.

To justify his position, the Attorney General points to Requests Nos. 3 and 4 in the subpoena, which he contends reach "documents reflecting Exxon's general practices." (Oleske Aff. ¶ 7.)[1] They do not. Those requests, just like all the others set forth in the subpoena, restrict the scope of production only to materials related to climate change. Request No. 3 seeks documents concerning the "integration of *Climate Change-related issues* . . . into [the Company's] business decisions." (Oleske Ex. A at 8

[1] Citations in the form "Oleske Aff." are references to the Affirmation of John Oleske in Support of the Attorney General's Motion to Compel, dated November 14, 2016.

(emphasis added).)[2] Likewise, Request No. 4 requires ExxonMobil to "disclose the *impacts of Climate Change* . . . in [its] filings . . . and [] public-facing and investor-facing reports." (*Id.* (emphasis added).) The common denominator: climate change. For the Attorney General to now claim that the subpoena reaches any and all records pertaining to ExxonMobil's "general practices," he must disregard the express terms of the subpoena. This Court should not ratify that effort to unilaterally revise the content of the subpoena.

The most noteworthy, and revealing, aspect of this "emergency" motion is its timing. It comes just two business days after a federal judge authorized joining the Attorney General to a lawsuit alleging his participation in a conspiracy to violate the constitutional rights of ExxonMobil. Arguing that a "federal injunction barring New York courts from enforcing the . . . subpoena" is imminent (Mem. 2),[3] the Attorney General conjures up a false conflict between the federal case and this one. There is no such conflict. The federal case has nothing to do with the issues raised by the Attorney General's motion, which pertains solely to the construction of the subpoena's text. The constitutional claims in federal court are simply beside the point.

The Attorney General is also mistaken about what is imminent in the federal action. Far from issuing an injunction, the judge has ordered discovery on the question of bad faith, so that he can determine whether jurisdiction exists. At the time the Attorney General filed this motion, he had been served with subpoenas in connection

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[2] Citations in the form "Oleske Ex. __" are references to exhibits to the Oleske Aff, dated November 14, 2016.

[3] Citations in the form "Mem." are references to the Attorney General's Memorandum of Law in Support of Motion to Compel Compliance with an Investigative Subpoena Issued by the Attorney General of the State of New York, dated November 14, 2016.

with that jurisdictional inquiry and faced a looming deadline (then just three days away) to produce relevant documents. Since then, the Attorney General has refused to comply with those subpoenas. Now, the Attorney General's deposition will be scheduled by the federal court "after he files his answer in the matter," which is due on December 5, 2016. It is fear of imminent discovery, not an injunction, that is the driving force behind the Attorney General's motion.

Placed in context, the Attorney General's motion has far more to do with the litigation in federal court—and the Attorney General's desire to avoid court-mandated discovery that might reveal the improper motives animating the underlying investigations—than with any supposedly urgent dispute over the construction of a year-old subpoena. Stripped of hyperbole, the Attorney General's motion amounts to a transparent effort to insert this Court into pending litigation in federal court about whether the Attorney General conspired with others to violate ExxonMobil's federal constitutional rights. There is no legitimate reason to do so. Just as this Court is empowered to adjudicate the scope of the subpoena the Attorney General issued, the federal court is empowered to consider ExxonMobil's constitutional claims. The Attorney General's invitation to use a simple dispute over the text of a subpoena as a pretext to derail the orderly progress of litigation pending in a sister court should be rejected.

STATEMENT OF FACTS

On November 4, 2015, the Attorney General issued a subpoena to ExxonMobil that demanded the production of essentially every document in the Company's possession concerning global warming or climate change. The subpoena was expressly limited in scope to the topic of climate change. Each of the subpoena's eleven

document requests specifically refers to climate change. That restriction appears in the way each and every request is defined in the subpoena, which reaches:

- "any research, analysis, assessment, evaluation, modeling or other consideration" performed by or on behalf of the Company concerning the "causes" and "impacts" of "Climate Change" (Request Nos. 1 and 2);
- the "integration of Climate Change-related issues . . . into [the Company's] business decisions" (Request No. 3);
- "whether and how [the Company] disclose[s] the impacts of Climate Change . . . in [its] filings . . . and [] public-facing and investor-facing reports" (Request No. 4);
- materials "presented to [the Company's] board of directors Concerning Climate Change" (Request No. 5);
- materials "prepared by or for," "exchanged between," or "sent from or to" the Company and "trade associations or industry groups" "[c]oncerning Climate Change" (Request No. 6);
- "support or funding for organizations relating to communications or research of Climate Change" (Request No. 7);
- "marketing, advertising, and/or communication about Climate Change" (Request No. 8);
- "advertisements, flyers, promotional materials, and informational materials" the Company has produced "[c]oncerning Climate Change" (Request No. 9);
- "claims made in the materials identified in . . . [Request] Nos. 4, 8 and 9" (Request No. 10); and
- complaints made by "any New York State consumer" concerning ExxonMobil's "actions with respect to Climate Change" (Request No. 11).

(Oleske Ex. A. at 8–9.)

The subpoena was emailed to ExxonMobil's General Counsel at 9:45 pm on the night of November 4, 2015, just hours before reports about the subpoena appeared

in the press. (Anderson Aff. ¶ 6.)[4] The day after the subpoena was issued, ExxonMobil received multiple media inquiries about the subpoena, and it could read in the New York Times that members of the Attorney General's office had confirmed the subpoena's issuance. (Anderson Ex. A at 1–6.)[5] With the benefit of its sources inside the Attorney General's office, the *New York Times* reported that the focus of the Attorney General's investigation was "on whether statements made to investors about climate risk as recently as this year were consistent with the company's own long running scientific research." (Anderson Ex. A at 1.) That reporting was in accord with the terms of the subpoena, which expressly targeted climate change.

The following week, the Attorney General appeared on a *PBS NewsHour* segment, where he reinforced the subpoena's focus on climate change. (Anderson Ex. B.) During the segment, entitled "Has Exxon Mobil misle[d] the public about its climate change research[,]" the Attorney General described the focus of his investigation as "seeing what science Exxon has been using for its own purposes," and probing the Company's purported decision to "shift[] [its] point of view" and "change[] tactics" on climate change after "putting out some very good studies" and "being at the leadership of doing good scientific work" on climate change "[i]n the 1980s." (*Id.* at 2.) Later that month at an event sponsored by *Politico* in New York, the Attorney General stated that ExxonMobil appeared to be "doing very good work in the 1980s on climate research," but that its "corporate strategy seemed to shift" later. (Anderson Ex. C at 1.) The

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[4] Citations in the form "Anderson Aff." are references to the Affidavit of Justin Anderson in Support of ExxonMobil's Opposition to the Attorney General's Motion to Compel Compliance with an Investigative Subpoena, dated November 18, 2016.

[5] Citations in the form "Anderson Ex. __" are references to exhibits to the Affidavit of Justin Anderson in Support of ExxonMobil's Opposition to the Attorney General's Motion to Compel Compliance with an Investigative Subpoena, dated November 18, 2016.

Attorney General admitted that his "investigation" of ExxonMobil was merely "one aspect" of his office's efforts to "take action on climate change," commenting that society's failure to address climate change would be "viewed poorly by history." (*Id.*) In none of these statements to the press did the Attorney General even mention ExxonMobil's oil and gas reserves or its assets.

While preserving its "right to seek to quash or otherwise object to the subpoena" (Anderson Ex. L at 1),[6] ExxonMobil worked with members of the Attorney General's office to identify responsive documents and prioritize their production, with a clear understanding that all relevant materials pertained to climate change. For example, the Attorney General's Environmental Protection Bureau Chief offered to clarify the scope of Request No. 3, which sought documents "[c]oncerning the integration of Climate Change-related issues . . . into [ExxonMobil's] business decisions . . . ." (Mem. Ex. A at 8.) According to his instructions, that request reached documents at a "very high management level, committee or group in which *climate change is integrated* into the high-level business decisions of the company—that's the essence of Request No. 3." (Anderson Aff. ¶ 3 (emphasis added).) Climate change was a consistent limitation on the scope of production, both in the text of the subpoena and in how members of the Attorney General's office explained the requests.

Within four weeks, the parties agreed on a set of search terms that could be used by ExxonMobil to identify documents responsive to the subpoena. (Anderson Ex. D.) The search terms confirmed the Attorney General's focus on climate change.

[6] In an email from his office dated November 19, 2015, the Attorney General's representative "confirm[ed] our understanding that, by producing documents in accordance with our discussions prior to the return date as extended, Exxon is not waiving any right to seek to quash or otherwise object to the subpoena. Likewise, the Attorney General's office is not waiving any right to compel compliance with the subpoena." (Anderson Ex. L at 1.)

For example, any documents that contained the word "asset" or "reserve" were responsive only if they also contained the word "stranded"—a reference to the alleged risk that climate change might cause oil and gas assets to be unprofitable to develop and therefore left (or "stranded") in the ground. (*Id.*)

Search terms in place, ExxonMobil initiated its production of documents in the order requested by the Attorney General. Document production began on December 3, 2015 and is ongoing, with the most recent production delivered on October 31, 2016. (Anderson Aff. ¶ 4.) During that time, the Attorney General's priorities shifted. First the review focused on ExxonMobil's historic scientific research; it later turned to ExxonMobil's projections about how climate change and possible regulations might affect worldwide demand for energy. ExxonMobil has adjusted to those priorities, all of which related to climate change, as the Attorney General presented them. To date, ExxonMobil has produced on a monthly basis tens of thousands of documents amounting to the equivalent of over a million pages of documents from 54 custodians across numerous business lines. (Anderson Aff. ¶ 4.)

On June 24, 2016, the Attorney General wrote to ExxonMobil requesting that it focus on new "investigative priorities" pertaining to "(i) [ExxonMobil's] valuation, accounting, and reporting of its assets and liabilities, including reserves, operational assets, extraction costs, and any impairment charges; and (ii) the impact of climate change and related government action on such valuation, accounting, and reporting." (Oleske Ex. C at 2–3.) The letter also sought documents from the "Global Reserves Group" and the "Reserves Technical Oversight Group." (*Id.* at 3–4.)

In response, ExxonMobil informed the Attorney General that "[b]ased on the NYAG's subpoena and our prior discussions with the Office, we understand that these requests are targeted at climate change-related documents rather than every document related to 'valuation, accounting, and reporting of . . . assets and liabilities' or otherwise held by those business units." (Oleske Ex. D at 5.) The Attorney General replied in a footnote to his July 22, 2016 letter, claiming for the first time and contrary to the text of the subpoena itself, that his "requests [were] not limited to documents that directly address climate change, but include valuation, accounting, and reporting documents that relate to future oil prices, extraction costs, and/or carbon taxes, all of which may be indirectly impacted by climate change." (Oleske Ex. E at 5 n.2.) The Attorney General also directed ExxonMobil to complete the production of previously identified documents before turning to the new request for reserves and other accounting documents. (*Id.* at 2.)

The parties continued to discuss the Attorney General's request. On September 8, 2016, ExxonMobil provided the Attorney General with the names of 37 custodians who had been placed on litigation hold and were in possession of documents responsive to the new priority. (Oleske Ex. H at A-1–A-2.) In that letter, ExxonMobil made clear that its corresponding production would pertain to "ExxonMobil's 'valuation, accounting, and reporting of its assets and liabilities' *that are affected by climate change*." (*Id.* at 1 (emphasis added).) Likewise, on September 13, 2016, ExxonMobil stated that it would "begin producing documents from the files of individuals" who "are in the Global Reserves Group and the Reserves Technical Oversight Group or otherwise associated with ExxonMobil's 'valuation, accounting, and reporting of its assets and

liabilities' *that are affected by climate change*." (Oleske Ex. I at 2 (emphasis added).) Consistent with those representations, on September 30, 2016, ExxonMobil provided the Attorney General with responsive materials, identified using the previously agreed-upon search terms, that pertained to assets and liabilities—but also related to climate change. (Anderson Aff. ¶ 5.)

The overarching theme of climate change was reflected in the Attorney General's contemporaneous public statements. As has become all too common in this matter, the Attorney General's shift in investigative priorities was fully communicated to the press. In an interview with the *New York Times* on August 19, 2016, the Attorney General stated that he was now focused on whether ExxonMobil had overstated its reserves and failed to impair its assets in light of the potential impact of "global efforts to address climate change," which he claimed might require ExxonMobil "to leave enormous amounts of oil reserves in the ground." (Anderson Ex. E at 1.) Further, the *Wall Street Journal*, in a September 16, 2016 article, quoted a spokesman for the Attorney General stating that ExxonMobil's "historic climate change research" was no longer "the focus of this investigation." (Anderson Ex. F at 2.) The article was attributed to "people familiar with the matter," who made clear that the Attorney General was "investigat[ing] the company's knowledge of the impact of climate change and how it could affect its future business." (*Id.* at 1.) As presented to the press, and consistent with the text of the subpoena itself, the Attorney General described his own inquiry as cabined by climate change.

While ExxonMobil attempted to address these shifting investigative priorities, it became increasingly clear that the Attorney General was participating, and

indeed leading, a larger conspiracy to violate ExxonMobil's constitutional rights. ExxonMobil therefore sought leave on October 17, 2016, to join the Attorney General to litigation that was already pending in federal court against Massachusetts Attorney General Maura Healey.[7] On November 10, United States District Judge Kinkeade granted ExxonMobil's application and joined the Attorney General to the lawsuit. (Oleske Ex. N.) Pursuant to an order authorizing jurisdictional discovery in that matter, the Attorney General was served subpoenas that demanded the production of documents on November 17, followed by three depositions scheduled for November 21 and 28, and December 5.[8]

Meanwhile, the Attorney General began to press his demands for records with newfound urgency. On November 1, the Attorney General wrote to ExxonMobil about the status of document production relating to assets and liabilities, asking ExxonMobil to "provide [] the custodians and search terms used to locate the documents produced on October 3." (Oleske Ex. K at 1.) On November 11, ExxonMobil responded that it used the agreed-upon search terms to identify and produce documents from 19 custodians "whose work involves or involved the valuation, accounting, and reporting of ExxonMobil's assets and liabilities, including issues relating to reserves and impairments." (Oleske Ex. L at 1.) ExxonMobil explained that the search terms "relate to the requests in the NYAG's November 4, 2015 subpoena, which seek documents concerning climate change." (*Id.* at 2.) The letter expressly noted that the Attorney General's subpoena "does not seek reserves or accounting documents that have no

[7] ExxonMobil's filing of this lawsuit fully refutes the Attorney General's claim that "Exxon has conceded in this Court that OAG has the authority to investigate it and it does not dispute that the Subpoena is valid or that OAG has acted in good faith." (Mem. 7.)

[8] After the Attorney General was joined as a party, those requests were replaced with party discovery.

relation to climate change" and, as such, ExxonMobil "ha[d] not searched for or produced such documents." (*Id.*)

Rather than issue a new subpoena or file a motion in the normal course to resolve this disagreement, the Attorney General brought an order to show cause before this Court, creating a false sense of urgency over a routine disagreement about the scope of a subpoena. Two days after filing that motion, the Attorney General informed the judge overseeing the federal litigation that he would not comply with the jurisdictional discovery order entered in that case. (Anderson Ex. I at 11:21–11:22.) In response to the judge's direct question about "comply[ing] with the order on . . . discovery or not," counsel for the Attorney General replied, "the answer is no." (*Id.*) Seeking to expeditiously resolve this discovery dispute, the judge proposed assigning a special master, but the Attorney General rejected the proposal. (Anderson Ex. J.) The judge then issued an order on November 17, 2016, requiring the Attorney General to appear on December 13, 2016, the date on which Attorney General Healey is scheduled to be deposed in connection with jurisdictional discovery. (Anderson Ex. K.) The judge also ordered the Attorney General's deposition to be scheduled "after he files his answer in the matter," which is due on December 5, 2016. (*Id.* at 2.)

ARGUMENT

The Attorney General's motion is flawed in form and substance. As to form, the lack of any urgency renders the filing of an order to show cause wholly improper. That impropriety is compounded because even a regular motion violates court rules disfavoring motion practice of any sort on discovery disputes in pending cases. But even if those procedural failings are excused, the motion cannot withstand scrutiny on the merits. The Attorney General's subpoena is expressly restricted to documents concerning

climate change. While his powers are substantial, the Attorney General lacks authority to unilaterally alter the provisions of a previously issued subpoena. If he were allowed to do so, the safeguard of judicial review would be reduced to a dead letter. This Court should hold the Attorney General to the terms of the instrument he drafted and issued.

I. This Discovery Dispute Is Not Properly Before this Court on an Order to Show Cause.

An order to show cause requires a preliminary showing of urgency, which the Attorney General has failed to plead, let alone establish. But even if he could establish the requisite urgency, an emergency motion would remain improper under the Rules of the Commercial Division and Your Honor's Rules, which require that discovery disputes be raised at a conference, not through motion practice.

A. The Attorney General Has Failed to Show Any "Genuine Urgency."

Under Rule 19 of the Commercial Division, motions may "be brought on by order to show cause *only when there is genuine urgency* . . . , a stay is required or a statute mandates so proceeding." 22 N.Y.C.R.R. § 202.70, Rule 19 (emphasis added). Courts have routinely refused to grant orders to show cause where there was no established exigency. *See, e.g.*, *Hurrell-Harring* v. *State*, 20 Misc. 3d 1108(A), 2008 WL 2522360, at *4 (Sup. Ct. Albany Cnty. May 16, 2008) (denying request for a conference on an order to show cause where "defendant did not offer . . . an explanation as to the urgency that warranted an immediate conference"); *City of New York* v. *W. Winds Convertibles Int'l*, 16 Misc. 3d 646, 655 (Sup. Ct. Kings Cnty. 2007) (denying City of New York's application for an order to show cause where the city sought temporary relief pending a hearing on its motion for a preliminary injunction based, in part, on failure to show required exigency).

The Attorney General has identified only one source of supposed "urgency" to support his application—the pendency of a federal lawsuit against him. In his brief, the Attorney General urges this Court to intervene because of the prospect of a "federal injunction barring New York courts from enforcing [his] subpoena" and the fear that "injunctive relief, if granted, would effectively terminate [the Attorney General's] investigation of Exxon." (Mem. 2, 7.) But fear that a federal court might issue an injunction to halt unconstitutional misconduct is not the type of urgency that would justify this Court's concern. Even if it were, the federal judge has done nothing to indicate that an injunction is about to be issued. To the contrary, the judge is considering whether he has jurisdiction over the matter and has issued a discovery order on that question. The Attorney General's desire not to participate in discovery falls well short of constituting a cognizable emergency.

Under Rule 19, urgency is generally established by a legitimate need to preserve the status quo in order to protect against a risk of irreparable harm, such as the risk of spoliation. *See* 4C N.Y. Prac., Com. Litig. in N.Y. State Courts § 89:48 (4th ed.). Evading discovery orders in federal court does not constitute the type of urgency that courts in New York have recognized—nor should they.

Where courts have granted orders to show cause in discovery disputes, the moving party established the egregious bad faith of the party against whom discovery was sought. This bad faith generally took the form of destroying or concealing evidence. *See, e.g.*, *Lu Huang* v. *Di Yuan Karaoke*, 28 Misc. 3d 920, 921 (Sup. Ct. Queens Cnty. 2010) (order to show cause granted "[i]n light of the particular circumstances of this case, and the prospect that respondent may be destroying or concealing the potent evidence");

Hypo Bank Claims Grp., Inc. v. *Am. Stock Transfer & Trust Co.*, 4 Misc. 3d 1020(A), 2004 WL 1977612, at *2 (Sup. Ct. New York Cnty. June 28, 2004) (similar). Where there is a risk that evidence will be lost, the urgency is clear. By contrast, ExxonMobil has engaged in no conduct, and the Attorney General has identified none, suggesting that any evidence is at risk of being destroyed or concealed. To the contrary, ExxonMobil has continued to comply with the subpoena and to accommodate the Attorney General's ever-shifting priorities for a period of twelve months, notwithstanding the litigation in federal court. In the absence of any urgent need for court intervention, the Attorney General's motion should be denied as improper.

B. The Attorney General's Motion Is Premature Under this Court's Rules.

The Attorney General purports to file his "emergency" application before this Court as part of a pending case concerning the subpoena he issued to PricewaterhouseCoopers ("PWC") over the assertion of a privilege. There is good cause to question the propriety of raising this dispute, which concerns a different subpoena and has nothing to do with an assertion of privilege, in the same litigation as the dispute over the PWC subpoena. But the Attorney General's decision to do so has consequences. Chief among them is that he must comply with this Court's Rules and the Rules of the Commercial Division, which govern discovery disputes in "pending case[s]." *See* 22 N.Y.C.R.R. § 202.70, Rule 14 ("If the court's Part Rules address discovery disputes, those Part Rules will govern discovery disputes in a pending case."). He has failed to do so.

Rule 14 of the Commercial Division provides that "[d]iscovery disputes are preferred to be resolved through court conference as opposed to motion practice." 22

N.Y.C.R.R. § 202.70, Rule 14. Counsel must "consult with one another in a good faith effort to resolve all disputes about disclosure." *Id.* This Court's Rules similarly require good faith efforts to resolve disputes. *See* "Discovery Disputes and Conference," Practice Rules for Part 61. Under those Rules, the Attorney General is not permitted to resort to motion practice, much less an order to show cause, to resolve discovery disputes in a pending action. *Id.* Such disputes are properly resolved through private consultation and then a court appearance. But in his haste to reach the courthouse, the Attorney General did neither.

Courts routinely deny discovery motions due to a party's failure to abide by the "good faith" requirement, which is "'intended to remove from the court's work load all but the most significant and unresolvable disputes over what has been the most prolific generator of pre trial motions: discovery issues.'" *In re Cassini*, 41 Misc. 3d 1207(A), 2013 WL 5493965, at *1 (Surr. Ct. Nassau Cnty. Sept. 26, 2013) (quoting *Eaton* v. *Chahal*, 146 Misc. 2d 977, 982 (Sup. Ct. Rensselaer Cnty. 1990)). "[D]iscovery disputes can and should be resolved by the attorneys without the necessity of judicial intervention." *Murphy* v. *Cnty. of Suffolk*, 35 Misc. 3d 1239(A) (Sup. Ct. Suffolk Cnty. 2012), *aff'd*, 115 A.D.3d 820 (2d Dep't 2014). A party that simply informs opposing counsel by letter of its dissatisfaction fails to "demonstrate" the "diligent effort" required "to resolve a discovery dispute." *See, e.g.*, *Amherst Synagogue* v. *Schuele Paint Co.*, 30 A.D.3d 1055, 1057 (4th Dep't 2006); *Baez* v. *Sugrue*, 300 A.D.2d 519, 521 (2d Dep't 2002).

Rather than file an order to show cause, the Attorney General should have conferred with ExxonMobil in good faith and then requested a court appearance to

address any concerns that could not be resolved. The Attorney General's failure to do so provides another reason to deny the motion as improperly filed.

II. The Subpoena Does Not Extend to Materials Unrelated to Climate Change

If the Court considers the merits of the Attorney General's motion, it should be denied for the most basic of reasons: The documents the Attorney General seeks are outside the scope of the subpoena. A subpoena recipient need only "produce a book, paper or other thing which he was directed to produce by the subpoena." C.P.L.R. § 2308(b); *Dias* v. *Consol. Edison Co. of N.Y.*, 116 A.D.2d 453, 454 (2d Dep't 1986). Here, the scope of the subpoena is limited to climate change. Notwithstanding that express limitation, the Attorney General now seeks all documents related to the valuation and reporting of ExxonMobil's assets and liabilities, not merely those related to climate change. This Court should honor the subpoena's clear language and reject the Attorney General's attempt to rewrite his own subpoena and to transform it into an impermissible general warrant.

Rather than address the question of whether the subpoena actually reaches documents pertaining to reserves, assets, and liabilities that do not concern climate change, the Attorney General presents this Court with platitudes about its power to issue subpoenas. (Mem. 8–10.) That power—when properly exercised—is not in dispute. ExxonMobil does not contest here the Attorney General's authority to issue subpoenas when appropriate and in the normal course. But when the Attorney General exercises his power to issue subpoenas, he must abide by the requirement that subpoenas be "limited in scope, relevant in purpose, and specific in directive so that compliance will not be unreasonably burdensome." *See* v. *City of Seattle*, 387 U.S. 541, 544 (1967). If that principle means anything at all, it means that the scope of a subpoena cannot be modified

after the fact and on the whim of the issuer. Were it otherwise, a subpoena would be nothing more than a blank check, making judicial review of breadth and burden meaningless.

Nothing in the Attorney General's brief suggests otherwise. To the contrary, the precedent invoked by the Attorney General confirms that a subpoena recipient can be compelled to produce only those documents that are within the scope of the subpoena at issue. *See, e.g.*, *Abrams* v. *Thruway Food Mkt. & Shopping Ctr., Inc.*, 147 A.D.2d 143, 145 (2d Dep't 1989) (identifying the specific requests contained in the subpoena); *Weiner* v. *Abrams*, 119 Misc. 2d 970, 972 (Sup. Ct. Kings Cnty. 1983) (same). The principle should be utterly uncontroversial, for the failure to recognize such limits would merely license abuse and oppression.

Here, there can be no legitimate dispute that the subpoena reaches only documents concerning climate change. Nevertheless, the Attorney General contends that Request No. 3 calls for documents reflecting ExxonMobil's "general practices concerning the valuation, accounting, and reporting of its assets and liabilities," without any limitation whatsoever. (Mem. 4.) The Attorney General's reading contradicts (i) the face of the 113-word Request, which at no point makes reference to ExxonMobil's general valuation and accounting practices;[9] (ii) the representation of the Attorney General's Environmental Protection Bureau on November 18, 2015 that Request No. 3 is

[9] Request No. 3 seeks: "All Documents and Communications, within Time Period 2, ***Concerning the integration of Climate Change-related issues*** (including but not limited to (a) a future demand for Fossil Fuels, (b) future emissions of Greenhouse Gases from Fossil Fuel extraction, production and use, (c) future demand for Renewable Energy, (d) future emissions of Greenhouse Gases from Renewable Energy extraction, production and use, (e) Greenhouse Gas emissions reduction goals, (f) the physical risks and opportunities to climate change, and (g) impact on Fossil Fuel reserves ***into Your business decisions***, including but not limited to financial projections and analyses, operations projections and analyses, and strategic planning performed by You, on Your behalf, or with funding provided by You." (Oleske Ex. A at 8 (Req. No. 3) (emphasis added).)

in fact limited in scope to those documents concerning climate change; and (iii) the Attorney General's public statements about the scope of his investigation. The Attorney General's claim that Request No. 3 somehow covers accounting documents unrelated to climate change thus defies the plain language of the Request.[10]

It is no answer for the Attorney General to point to correspondence with ExxonMobil in an effort to expand the scope of the subpoena. (Mem. 4–5.) In addition to providing no authority for such a view, the Attorney General would be hard-pressed to explain how the right to judicial review would be upheld under that regime. New York law protects subpoena recipients, like ExxonMobil, against the "abuse of subpoena power" by providing for judicial review. "Bifurcation of the power, on the one hand, of the public official to issue subpoenas duces tecum and, on the other hand, of the courts to enforce them, is an inherent protection against abuse of subpoena power." *See Hynes* v. *Moskowitz*, 44 N.Y.2d 383, 393 (1978); *see also In re A-85-04-38*, 525 N.Y.S.2d 479, 481 (Sup. Ct. Albany Cnty. 1988) ("It is ancient law that no agency of government may conduct an unlimited and general inquisition into the affairs of persons within its jurisdiction solely on the prospect of possible violations of law being discovered, especially with respect to subpoenas duces tecum.") (quoting *A'Hearn* v. *Comm. on Unlawful Practice of Law*, 23 N.Y.2d 916, 918 (1969)).

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[10] The Attorney General has also claimed that Request No. 4 seeks documents concerning reserves and impairments that do not relate to climate change. For the reasons already discussed, this interpretation cannot be reconciled with the plain language of the Subpoena. Request No. 4 targets: "All Documents and Communications, within Time Period 1, ***Concerning whether and how You disclose the impacts of Climate Change*** (including but not limited to regulatory risks and opportunities, physical risks and opportunities, Greenhouse Gas emissions and management, indirect risks and opportunities, International Energy Agency scenarios for energy consumption, and other carbon scenarios) ***in Your filings with the U.S. Securities and Exchange Commission and in Your public-facing and investor-facing reports*** including but not limited to Your *Outlook For Energy* reports, Your *Energy Trends, Greenhouse Gas Emissions, and Alternative Energy* reports, and Your *Energy and Carbon - Managing the Risks* Report." (Oleske Ex. A at 8 (Request No. 4) (emphasis added).)

If the Attorney General had actually served a new subpoena on ExxonMobil, ExxonMobil would have had the right to challenge in court the Attorney General's request through a motion to quash or to modify the subpoena.[11] *See* C.P.L.R. § 2304. The Attorney General's attempt to compel compliance with a request not contained in the subpoena subverts that protection.

III. If the Subpoena Is Held to Reach Documents Unrelated to Climate Change, Further Briefing Is Warranted.

Should the Court conclude that, notwithstanding its express textual limitation, the subpoena reaches documents having nothing to do with climate change, that holding would raise a number of complicated and weighty legal questions. Chief among those questions are those relating to burden and breadth. If the subpoena no longer means what it says, what limits can this Court place on the Attorney General's power to modify the terms of the subpoena at will? How will judicial review proceed and on what record? How can burden be measured when the parameters of production—even after a year of compliance, as here—remain constantly in flux? And if ExxonMobil is required to produce asset and liability documents without a climate change restriction, what limitation will cause this sweeping and boundless request not to be overly burdensome?

Separately, the production of any and all documents related to the reporting of reserves, assets, and liabilities presents substantial questions of federal

[11] Several of the very precedents on which the Attorney General relies to buttress his argument that an investigatory subpoena need only be authorized in order for this Court to provide relief under C.P.L.R. § 2308(b)(1) are themselves decisions on a motion to quash or modify a subpoena, or expressly note that the noncompliant party had an opportunity to move to quash or modify the subpoena at issue. *See Anheuser-Busch, Inc.* v. *Abrams*, 71 N.Y.2d 327, 331 (1988) (reversing quashing of subpoenas); *LaRossa, Axenfeld & Mitchell* v. *Abrams*, 62 N.Y.2d 583, 590 (1984) ("Plaintiffs also had the opportunity to move pursuant to CPLR 2304 to modify or quash the subpoenas. . . ."); *Matter of Roemer* v. *Cuomo*, 67 A.D.3d 1169, 1169 (3d Dep't 2009) (appeal from order denying motion to quash); *Am. Dental Coop., Inc.* v. *Att'y Gen. of N.Y.*, 127 A.D.2d 274, 284 (1st Dep't 1987).

preemption in light of the Attorney General's public statements about his purpose in obtaining those records. Second-guessing the reasoned judgment of the Securities and Exchange Commission as expressed in duly issued regulations is simply not the proper role of the Attorney General. And insofar as the Attorney General seeks documents with no connection to New York, the demand raises serious questions about jurisdiction and extraterritoriality.

These questions, and others, are significant and complicated. They would require careful consideration on a fully developed factual record supported by adequate and thoughtful briefing. For that reason, ExxonMobil respectfully requests that, if this Court holds that the subpoena is not bound by its express climate change limitation, a briefing schedule be set to resolve the serious issues presented by such a holding.

CONCLUSION

Facing the obligation to respond to a jurisdictional discovery order likely to expose bad faith and bias, the Attorney General looks to this Court for refuge by ginning up an "emergency" discovery dispute over a year-old subpoena. There is no valid basis to accept that overwrought invitation. The Attorney General's motion pertains to the narrow question of whether the words written on the face of a subpoena have any meaning. ExxonMobil submits that the question must be answered in the affirmative. To accept the Attorney General's view is to reject the fundamental protection that judicial review affords the recipients of subpoenas. And ExxonMobil looks to this Court to vindicate the rights of subpoena recipients in the face of abusive government practices, just as it looks to federal court to protect its constitutional rights from a conspiracy to violate them. Whether for its failure to demonstrate any urgency, to

comply with court rules, or to present any legitimate reason to displace the plain text of the subpoena, the Attorney General's motion should be denied.

November 18, 2016

Respectfully submitted,

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Exhibit 10

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: CIVIL TERM: PART - 61

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In the Matter of the Application of the

PEOPLE OF THE STATE OF NEW YORK, by ERIC T. SCHNEIDERMAN, Attorney General of the State of New York,

Petitioner

INDEX NUMBER: 451962/2016

For an order pursuant to CPLR 2308(b) to compel Compliance with a subpoena issued by the Attorney General,

-against-

PRICEWATERHOUSECOOPERS, LLP and EXXON MOBIL CORPORATION

Respondents

----------X

60 Centre Street
New York, New York 10007
November 21, 2016

BEFORE:
HONORABLE: Barry R. Ostrager, JSC

APPEARANCES:

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Justin Anderson, Esq.

Delores Hilliard
Official Court Reporter

Proceedings

COURT CLERK: Index Number 451962/2016.

In the Matter of the Application of the.

P E O P L E O F T H E S T A T E O F N E W Y O R K versus P R I C E W A T E R H O U S E C O O P E R S L L P and E X X O N M O B I L C O R P O R A T I O N.

THE COURT: I have read the order to show cause, the memorandum in support of the order to show cause, the affirmations in support and of course the opposition.

So, as I understand the dispute here, the New York Attorney General's office issued an information subpoena to Exxon Mobil.

And I have looked at the text of your subpoena. And it appears that what is called for under section D, documents to be produced, are 11 specific categories of documents relating to climate change issues.

Now, I am not going to trail into anything. There is an information subpoena that was issued to Pricewaterhousecoopers. And the last time the parties were here I ordered that Pricewaterhousecoopers comply with that subpoena. And then the attorneys from the Attorney General and Pricewaterhousecoopers should work out a more recent schedule for the production of documents than the order that I entered.

So, this application is to compel Exxon to comply with the production of documents that Exxon claims goes

beyond the scope of the subpoena that is at issue.

So, I will hear from the Attorney General.

MR. OLESKE: Yes, your Honor, thank you.

John Oleske for The State, Judge.

First and foremost I need to address some confusion that I think Exxon has stated in their brief.

Documents that we are seeking to compel go beyond this kind of carve-out of category that Exxon is creating, which is the documents they claim are beyond the scope of the subpoena.

There are already, in fact, many documents. We expected the bulk of the response of documents actually do relate or indirectly to climate change. Those are part of the documents, we expect the bulk of the documents we are trying to compel.

They have advanced no argument, whatsoever, as to the burdensomeness or the overbreadth of those requests. They have argued nothing at all in response as to why they cannot produce those documents by the now extended by a year return date that we have offered for the documents that are responsive and to requests 3 and 4 in the original subpoena.

So, really, we see Exxon as having conceded the bulk of this motion.

Now, we are talking about really in this carve-out category Exxon is trying to recreate.

But, it is really a Red Herring, Judge, because the fact is that the documents that we are looking for are documents that explain or reflect how Exxon is including or counting for the impact of climate change related effects directly or indirectly in its valuation, accounting and reporting of its financial condition.

Now, obviously, that calls for documents that say climate change on them, this is our plan for integrating climate change into our decisions.

But, obviously, it also calls for documents that reflect Exxon's practices in valuing, accounting and reporting its evaluations or its assets and liabilities so that we can understand the documents that specifically deal with climate change impacts on those procedures.

THE COURT: That is your position.

MR. OLESKE: Yes. I mean, but first and foremost the vast majority of what we expect to get out of this production they have advanced no argument for why they should not produce this.

THE COURT: Then, there isn't really a lot for me to decide.

MR. OLESKE: No.

THE COURT: You're telling me that they don't object to the vast majority of the documents that you're seeking.

MR. OLESKE: You're right, your Honor.

In their November 11th letter they did not object to or give any specific objection to the scope or breadth of those requests. Although, they refused to commit that they would, would produce by the extended return date and refused to provide any other date that they would provide those documents, the ones they don't have a dispute as to.

But, they did in their November 11th letter openly defy our requests. Because, they said they were not going to produce additional documents related to proxy costs which are documents that specifically relate to climate change. They weren't going to go back and search for documents even though we have identified specific deficiencies in their production.

So, in fact, they have not just not given an explanation for why they are not producing these documents. They have at the same time they are doing that openly refused to produce those documents.

So, we view that as the main issue in getting an order to compel the production of those documents by the extended time.

Now the question is are there documents out there that Exxon is going to say this doesn't relate directly or indirectly to climate change, so we are not going to produce them.

The answer is for Exxon to produce by the return date all of the documents that are encompassed by the subpoena.

When we get those documents and have a chance to review them and we identify deficiencies with which we can go back to Exxon and have an argument over whether or not the documents we think are deficiencies, and we think are, they think are beyond the scope. But, that's not really necessary for the Court to order Exxon to comply with the subpoena requests 3 and 4 with the specific, the clarification that we offered 5 months ago which we are now hearing about for the first time are beyond the scope.

THE COURT: All right. They have received the charts that Mr. Wells has brought with him.

MR. WELLS: May we set up one second?

While we are setting them up, let me take a step back and tell you that our core argument is that the New York Attorney General has requested documents concerning our general accounting practices, concerning valuation, and assets and liabilities.

They are requesting documents that are basically accounting documents.

THE COURT: So, your argument is that that is beyond the scope of the scan.

MR. WELLS: Yes. And what they have done, your

Honor, they started out in November of 2015 with an investigation concerning issues of climate change. And if you look, if you look at that subpoena it is modified not just item 3 and 4 by relating them to climate change.

After we got the subpoena we had meetings with them, because some of the requests on their face were somewhat confusing.

One was item number 3 that talked about integration. But, we don't need this because you said you read that. I will just move right through that.

They told us with respect to item number 3 in terms of integration what they wanted were high level documents concerning how the company integrated its knowledge in fusion climate change into its day to day business practice.

And they told us, candidly, that their theory of investigation was, well, Exxon Mobil at times has said we believe that it doesn't believe in climate change. And we want to see in your day to day business practices if, in fact, you have integrated into your practices a belief that climate change is real, so that you build a certain offshore rig a certain height because you think the ocean is going to rise. So, it is about integration, not about accounting. That's what they told us.

We, thereafter, we agreed upon search terms. Those search terms do not cover any accounting documents or

accounting. The only time the word, these are the actual search terms which are in the certification, the only time the word asset is even used is with respect to a term called stranded assets.

So, the only time you would pick up the word asset would be if it was in 5 words with the word stranded.

Stranded asset is not an accounting concept, it is a political concept that certain environmental groups have coined to deal with the argument that if regulators around the world pass regulations limiting the use of fossil fuels that some of our assets might be stranded in the ground because if wouldn't be profitable to take them out of the ground.

But, the search terms did not involve accounting search terms.

Now, in addition, they stated in press that the investigation was related to climate change. So, that is repeatedly by them in the press what the investigation was about, which was consistent with the subpoena and what they said to us.

Now, in late June of this year they opened up a different arm of the investigation. A non-climate change related piece of the investigation.

That different investigation is not tied to climate change. It concerns our accounting practicing with respect

to how we valued our assets in the face of the last two years of fallen oil prices. That is a different investigation.

They have admitted that the investigation is different in the press. If you look at the Pricewaterhouse subpoena it's not tied in most parts to climate change. They want the accounting records.

What they are trying to get now by this motion is really the flip side of the accounting records that they are getting from Pricewaterhouse.

Now, in terms of -- in terms of what they say they want now, this is from Mr. Oleske's affirmation, I think this is the key point. He says, number 3 calls for documents reflecting Exxon's general practices concerning the valuation, accounting and reporting of its assets and liabilities.

That's what we are objecting to. It's not tied in any way to climate change.

They really want our accounting records, similar to what they have asked Pricewaterhouse to give to them.

We say that these two items or descriptions in the subpoena do not cover that type of general practices accounting requests.

(Short pause)

MR. WELLS: If you look at the Pricewaterhouse

subpoena that was served August 19th, as they have done throughout this case, they serve a subpoena. They leak to the press.

So, the subpoena was served August 19th. Then, in The New York Times the same day the subpoena is issued they say in the press, if collectively the fossil fuel companies are overstating their assets by trillions of dollars that is a big deal. Okay. There may be massive securities fraud here.

That is not a climate change investigation. It is whether or not we have properly valued our assets in light of falling oil prices having nothing to do with climate change.

And we don't have to guess, because as part of their continued practice of leaking after they talked to The New York Times the same day they issued the Pricewaterhouse subpoena they then talked to The Wall Street Journal.

And what The Wall Street Journal reported based upon what is described as sources close to their investigation, they say the new probe, that is a 100 scored word, new, the new probe and why Exxon hasn't written down the value of its assets two years into a crash in oil prices is an outgrowth of the climate change investigation say people familiar with the matters.

This is a new, this is a new investigation.

The same day there is another article in The Wall Street Journal, we are still September 16th. New York Attorney General's probe focuses on why Exxon is the only oil firm not to write down value of assets amid price route.

That is a new piece of the investigation that is not tied to climate change.

If you turn to page 6 of their brief, page 6 of their brief they, The New York Attorney General writes, finally, Exxon unilaterally declared that it would not produce documents revealing how it values accounts for and reports its assets and liabilities, generally, but only documents that specifically discuss how those processes are effected by climate change. Which would leave OAT understanding only one half of the relevant equation.

The next sentence which is key.

Exxon's unilateral limitations would deprive the OAG of documents reflecting Exxon's procedures for assessing the impact, for example, of the declining oil and gas prices on reserves and impairments and capital expenditures.

That is what the new investigation is about. It is not climate change related.

We do not dispute for purposes of argument that if they want to open up that new front that they can serve us with a new subpoena.

THE COURT: Of course.

MR. WELLS: Okay. But, they cannot take the old subpoena that was about something else and now use it to get our general accounting practice documents. They have to serve us with a new subpoena.

I represent to the Court that if they serve us with the new subpoena I will discuss it with my client, I'll discuss it with them. And if we decide that it is overly broad or it raises Federal preemption issues as we think it very well might, we will move to quash the subpoena. If you want to set a briefing schedule to make sure everybody does things proper, we have no objection to that.

But, they cannot take the old subpoena and turn it into something it was not intended for. And that is the core of what this dispute is about.

THE COURT: I understand completely.

Did you have an agreed upon date pursuant to which you were going to produce climate change documents in accordance with the old subpoena?

MR. WELLS: Yes. We have been producing on a rolling basis.

I would prefer, since Mr. Anderson is involved in that if I let him speak to that. Because, he is the one who is involved in the process.

I just don't want to make a misstep because I'm not down at that level.

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THE COURT: All right, Mr. Anderson.

MR. ANDERSON: Yes, Judge.

We have been producing documents to The Attorney General.

THE COURT: I understand there are more documents.

My specific question is do you have a date certain by which you have agreed that you're going to produce the climate change documents?

MR. ANDERSON: Your Honor, I don't believe that we set a date certain.

But, based upon the schedule that we are producing at we expect that for the assets, liabilities and reserves custodians who have been identified that the production would be completed by the end of the year.

THE COURT: Okay. And why is that unacceptable to the AG's office?

MR. OLESKE: Yes, your Honor.

THE COURT: Let's just assume hypothetically that I agree with Mr. Wells that the documents that you are entitled to are climate change documents. And Mr. Wells' partner is representing that by the end of the year you will have all of the documents responsive to the 11 categories of documents to be produced in the subpoena ready.

MR. OLESKE: There is the problem, your Honor, is that your Honor interpreted that is what Exxon's counsel may

have just said.

That's not what they said.

What they said was there is a list of custodians relating just to that June 24th letter that they came up with two months later that they said, okay, we have got these custodians relating just to your letter. And we are going to produce these on a time frame that we are not going to tell you about on a rolling basis.

Now, for the first time we are hearing that they are going to give us those custodians.

We have no idea what universal custodians are. They are not representing that this is even all of the documents to requests 3 and 4, let alone what your Honor is saying which is the entirety of the subpoena.

That is how we have been going for 5 months.

THE COURT: Let me hear from Mr. Anderson, so there is no confusion about this.

It seems to me that you issued an investigative subpoena a long, long time ago.

You have worked out with each other search terms. You have worked out with each other schedules within reason recognizing that millions of documents can't be produced overnight.

Are you going to produce all of these documents by the end of the year?

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MR. ANDERSON: Your Honor, I think it is the definition of these documents that we have to address.

THE COURT: The climate change documents that refer to items 1 through 11 of documents to be produced.

MR. ANDERSON: No, that cannot happen by the end the year, Judge.

THE COURT: When can it happen?

And then we can get some parameters on what is reasonable and what requires Court intervention and what doesn't.

MR. ANDERSON: The system that we worked out with The Attorney General's office is that we would identify custodians and we would identify search terms.

We would gather the documents from the custodians based upon the priorities set by The Attorney General's office. Run those documents through the search terms and then make our production.

And that is how we have proceeded for the last year.

We initially began with scientists and others who were responsive to that initial inquiry about whether Exxon was using an internal knowledge to run its business and whether it is inconsistent with statements it was making to the public.

And we made multiple productions based upon the

priorities that were identified where we could provide The Attorney General with the documents it wanted.

The shift, there was a first shift around February or March of this year when the priority became a report called Managing The Risks.

So, we said, fine, we have custodians for that.

We came up with 17. And we have produced the records from those 17 custodians to The Attorney General's office.

Then, in June, July we start hearing about, no, now we want to know about the assets and the liabilities. So, then we switched over to that to start to work out who are the custodians for this. We will run them through the search terms and produce documents.

You can see in the declaration that Mr. Oleske filed that the letters go back and forth and have attachments with custodians.

This is not something that is being done in a vacuum. It is a process that has been going on for a year. And there has been no need to come to court before.

Because, as they shifted priorities we have produced the documents that they wanted.

The only reason we are here now is because they have asked for documents that are outside the scope of the subpoena.

MR. OLESKE: Your Honor, if I may? Because, this keeps coming up.

I have to address their issue of this shift that does not exist. And somehow explain why Exxon and Paul, Weiss a year after the subpoena cannot even commit to when they are going to finish production.

There has never been an issue. This law enforcement investigation from the beginning has been trying to find out whether or not Exxon has misrepresented to investors, consumers or the public generally the impact of the effects of climate change on its business.

And so, for example, all of the characterization that Mr. Wells made or that The Wall Street Journal had made about different phases of the investigation are not relevant. What is relevant is what is in the subpoena.

And for example, the question of declining oil prices is in the subpoena. It is in request 3. It specifically talks about it. The effects of future declines in oil prices. And of course, we need to know if we are looking at documents that talk about Exxon's reaction to the impact of oil price declines that have to do with climate change on its business. We also need to know how Exxon deals with accounting, valuation and reporting relating to declines of oil prices generally to see how that fits into their business.

But, to The Court's specific inquiry about these documents and this time line for production, it started as a process. We did go back and forth on search terms in December of 2015.

We did ask for Exxon to focus on producing custodians who were responsible for the managing of the risks report that is detailed in our papers in February.

That was part of request number 4. That was not some new priority we came up with. This was specifically identified in request number 4 of the subpoena.

They did produce a bunch of custodians relating to that report. We don't know if they are complete or not. They haven't confirmed that.

But, then, yes, come June we got to the point where it is now 7 months, 8 months later. We still haven't gotten any documents that show the integration of climate change impact into their business other than the managing structures trying to push them to do this.

It is 5 months later. They still cannot tell us when they are going to give us even those documents related to those specific requests.

And this whole integrated process idea, in our most recent letter that prompted this request to the Court, we told them there are these documents about the proxy that your company says that it uses to insure investors that it

is incorporating these impacts.

We have noticed there are deficiencies in these productions. That there are documents that would not be caught by the prior search terms.

We have spent the previous 5 months trying to get Exxon to revamp the search terms to catch these additional documents. They didn't do it.

Then, in their most recent letter on November 11th they have flatly refused to supplement their search terms to catch documents that we know relate directly to climate change and we know are in their production. And they cannot explain why they are not even willing to do that.

And now we are hearing about an integrative process where they are cooperating and there is just no way they can put an end date on this process.

That is a real problem for The Attorney General's office from a law enforcement perspective. Because, we are conducting an investigation. And the investigation, the production of documents from a company like Exxon has to have an ending, Judge. We have to have some expectations of the finality of when at least they say they have completed their production.

Now, I think we can all assume that when Exxon says, okay, we have given you all of the documents in response to these 11 categories, we are going to have

additional questions. We are going to see additional deficiencies. We are going to come back with more questions. But, at least we have to get to that point.

But, the whole point of this seemed to be to never get to that point.

That's why we are here today.

MR. WELLS: Your Honor, this is very unfair what they are saying.

They made a motion last Monday. They filed it at 8:30 in the morning. They proceeded by order to show cause.

The order to show cause for which they wanted emergent relief is very specific. The order to show cause asks for an order compelling Exxon to produce no later than November 23rd documents concerning little i, Exxon Mobil's valuation, accounting and reporting of its assets and liabilities, etc. And little two i, the impact of climate change relating to, on such valuation.

That related to items 3 and 4 that they say were covered by that request.

The order to show cause did not ask for The Court to issue any kind of orders about when we would finish complying with the entire subpoena. Nobody has briefed that issue. No one has discussed that issue.

We have been complying, in all due respect, with their subpoena, we believe in good faith, since it was

filed.

May we have differences on the margins? Everybody does. But, that was not what got us into court today about when are all of the documents going to be finished, because we have worked with them.

And if you look at the June 24th letter which was central to this specific order to show cause, the letter says, we want you to stop what you have been doing and change priorities. And we now want you to look at the, this valuation accounting stuff.

So, and that is how it has worked throughout. They tell us. We work on the science documents. They call us. They say, you know what, we have decided we want you to go here. We find the custodians. We go here. They get that and they tell us, we want you to go somewhere else.

What happened on June 24th, for the first time we felt they were asking for something that was beyond the subpoena. That is where the friction was created, because it was in the paper. They had said, they had a new investigation about, not about climate change, but about the impairment issues and whether you did certain things.

Okay, they knew we were not supposed to be in court today to talk about the general schedules of when we would finish the 11 items. Because, they know they take us one place one day and another place another day. Because, its a

broad area.

This subpoena in part goes back to either 10 years for some items or 40 years for others. This is a huge request. And we have been working cooperatively with them. And they haven't briefed that.

That's not, that's not what got us into court and had teams working around the clock to get these papers in. They were very focused on these accounting documents.

And now for them to have flipped this court conference into some discussion of when are we going to finish the 11 items that nobody has briefed, discussed at all, I mean, I just don't think --

THE COURT: I understand the issues here.

Obviously, the parties have been engaged for an extended period of time in discussions about what documents should be prioritized, what should be produced and how they are going to be produced.

I agree with Exxon that there is a difference between an inquiry relating to climate change and an entirely different inquiry relating to Exxon's general accounting procedures.

Now, if The Attorney General's office issues a subpoena to Pricewaterhousecoopers which dealt with Exxon's general accounting procedures, apparently, The Attorney General's office has worked out a stipulation with

Pricewaterhouse with respect to the manner in which Pricewaterhouse will produce documents relating to Exxon's general accounting procedures.

I don't see any prejudice to The Attorney General's office in awaiting the production of that information from Pricewaterhousecoopers in accordance with the schedule that The Attorney General's office worked out with Pricewaterhousecoopers.

If The Attorney General's office wants to issue a subpoena to Exxon Mobil with respect to its general accounting procedures, it is free to do so.

With respect to the climate change documents there clearly does need to be an agreement between the parties concerning the production of those documents. And The Court is not going to fix a specific date today. Because, there has been a long negotiation between the parties relating to search terms, relating to priorities, relating to the sequencing of various kinds of documents.

And so, frankly, this wasn't a matter for an order to show cause. It is a matter for the parties to come to some reasonable resolution on a consensual basis among themselves. And failing that The Court will enter an order.

MR. OLESKE: Your Honor, if I may be heard on just that one point.

We spent 5 months trying to come to that kind of

agreement. Trying to find out when we were going to get these documents.

And in the most recent correspondence Exxon refused to modify its search terms to capture documents that we knew were missing.

So, while the office understands completely your Honor's interest in having the parties go back and try to work it out without having some kind of enforcement of our return date, we are kind of left in this limbo where we have been for the last 5 months kind of banging our head against the wall trying to get an agreement for a specific date and for the universe of documents that are going to be produced. And we are talking to ourselves.

THE COURT: Well, if you cannot get a specific agreement between now and December 1st, then you can return to The Court and The Court will fix a date.

And if necessary The Court will arbitrate what are reasonable or unreasonable search terms.

And that is the disposition of the motion.

Thank you.

MR. OLESKE: Thank your, your Honor.

THE COURT: Both parties are to order a copy of the transcript.

And the actual disposition of the order to show cause is that the motion is denied with the understanding

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that if the parties do not come to a consensual agreement by December 1st The Court will impose upon the appropriate application.

MR. OLESKE: Thank you, your Honor.

***

Certified to be a true and accurate transcription of said stenographic notes.

Official Court Reporter

SO ORDERED

BARRY R. OSTRAGER, J.S.C. 11/29/16.

Exhibit 11

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December 5, 2016

By NYSEF

The Honorable Barry R. Ostrager
Supreme Court of the State of New York
Commercial Division
60 Centre Street, Room 629
New York, NY 10007

Re: In the Matter of the Application of the People of the State of New York, by Eric T. Schneiderman, Index No. 451962/2016.

Dear Justice Ostrager:

We represent Respondent Exxon Mobil Corporation ("ExxonMobil") in the above referenced matter. We write in response to the New York Attorney General's ("NYAG") letter to the Court, dated December 1, 2016, complaining of purported deficiencies in ExxonMobil's response to the NYAG's November 4, 2015 investigative subpoena (the "Subpoena").

The record in this matter makes clear that ExxonMobil is fully complying with its obligations with regard to the Subpoena. ExxonMobil has undertaken an extensive search for responsive documents that is reasonable in all respects. It has spent millions of dollars producing documents to the NYAG, has accommodated the NYAG's shifting investigative priorities, and has already produced nearly 1.4 million pages of responsive documents. The NYAG nonetheless complains that ExxonMobil must do more. While the NYAG proclaims that something must be done, it does not say what additional steps ExxonMobil should take. Contrary to the NYAG's position, ExxonMobil's production of documents has been entirely reasonable, and the law requires nothing more.

ExxonMobil's History of Compliance

ExxonMobil has been reviewing and producing documents to the NYAG in compliance with the Subpoena since December 3, 2015. To date, and in accordance with the NYAG's investigative priorities, ExxonMobil has collected and produced documents from 56 custodians. The search terms it has used to identify potentially responsive documents are those agreed to by the NYAG and ExxonMobil on December 16, 2015. (Exhibit A.) These include the original terms proposed by ExxonMobil on December 15, 2015, as well as the twelve modifications and three additional terms proposed by the NYAG on December 16—all of which ExxonMobil accepted that same day. The terms are unusually broad, containing such commonplace phrases as (i) "climate" within two words of "change"; (ii) "global warming"; (iii) "carbon dioxide" within five words of "tax," "cost," "asset," or "budget"; and (iv) "greenhouse." Using these broad terms, ExxonMobil has already produced 1,389,703 pages of documents from 56 custodians. The Company has agreed to produce documents from an additional 12 custodians—and, as applicable and if feasible, other key custodians identified during the course of the document review—by the end of December 2016.

The custodians from whom ExxonMobil has produced documents are those most central to the NYAG's investigation. Most of them were identified and prioritized based on the NYAG's shifting investigative theories. ExxonMobil thus produced over 109,000 documents, totaling over 680,000 pages, from four custodians who studied climate science. When these documents evidently refuted the NYAG's investigative theory, the NYAG directed ExxonMobil instead to review the documents of employees who had contributed to a report ExxonMobil published in 2014, entitled "*Energy and Carbon - Managing the Risks*," and those on ExxonMobil's greenhouse gas issue management teams. After ExxonMobil produced over 80,000 documents (totaling over 455,000 pages) from these custodians, the NYAG shifted its focus yet again to ExxonMobil's "valuation, accounting, and reporting of its assets and liabilities," expressing an interest in two groups that have exceedingly limited involvement in issues relating to climate change: the "Global Reserves Group" and the "Reserves Technical Oversight Group."[1]

In view of these diligent and concerted efforts, ExxonMobil has agreed to complete a reasonable production of documents responsive to Requests 3 through 5 by December 31, 2016, and a reasonable production of documents responsive to Requests 8 through 11 by January 31, 2017. And the NYAG has agreed that no further production is required for Requests 1, 2, 6, and 7.

Efforts to Resolve the Discovery Dispute

Notwithstanding ExxonMobil's willingness to work with the NYAG, in a letter dated November 1, 2016, the NYAG demanded the production of all accounting and proxy cost of carbon documents within three weeks' time. ExxonMobil, in a letter dated November 11,

[1] As ExxonMobil stated in its letter to the NYAG, dated September 8, 2016, the Reserves Technical Oversight Group is also known, and referred to, as the Global Reserves Group.

2016, explained that while it was willing to collect documents from the remaining accounting custodians identified on its September 8 list, production from additional custodians inevitably would extend into 2017.

The parties then appeared before your Honor on November 21, 2016. At that hearing, the Court noted that since "there has been a long negotiation between the parties," he would not "fix a specific date" for discovery to be concluded. (Exhibit B at 24:16-17.) Instead, the Court instructed the parties to meet-and-confer to determine when ExxonMobil could reasonably complete production of all documents requested by the Subpoena. (*Id.* at 24:13-23.) The Court added that, if the parties could not reach a "reasonable resolution on a consensual basis among themselves," then the Court would resolve the outstanding issues. (*Id.* at 24:22-23.)

The next day, pursuant to the Court's November 21, 2016 Order, ExxonMobil requested a meet-and-confer with the NYAG to "develop a joint proposal for completing the production of documents responsive to the [Subpoena]." (Exhibit C.) The NYAG accepted ExxonMobil's invitation, and the parties agreed to meet the following week. (Exhibit D.) In advance of the meeting, the NYAG, in a letter dated November 22, 2016, proposed a timeline for the completion of the production with December deadlines. (*Id*.) ExxonMobil responded in a letter dated November 29, 2016 that it would discuss a production schedule that provided sufficient time for review and production, but noted that production from any additional custodians would require additional time.

During the meet-and-confer, which took place on November 29, 2016, ExxonMobil sought to discuss a reasonable production schedule with the NYAG's office. The NYAG, however, declined to discuss specific perceived deficiencies in ExxonMobil's production, instead asserting that the Subpoena would not be satisfied until ExxonMobil had identified every responsive document. The NYAG expressly stated that a "reasonable production" would not suffice, and insisted that it wanted "everything."

ExxonMobil has made substantial efforts to compromise with the NYAG. Although ExxonMobil believes that the agreed-to search terms are more than adequate to identify potentially responsive documents, it nonetheless agreed to add the term "proxy cost" to the list of terms. But, no sooner had the NYAG made this demand, than it rejected ExxonMobil's acceptance of it as inadequate. Similarly, when ExxonMobil said it was willing to consider producing documents from additional custodians at the NYAG's request, the NYAG steadfastly refused to identify any.

The NYAG's December 1 Letter to the Court

In its submission to the Court, the NYAG raised several supposed deficiencies with ExxonMobil's production in response to the Subpoena. Each of the NYAG's complaints is without merit. For the past year, ExxonMobil has worked tirelessly to address the NYAG's ever-changing objectives. This has included the identification and collection of documents from scores of custodians, the negotiation of broad search terms with the NYAG, and the production of over 214,000 documents—and nearly 1.4 million pages—identified by those terms. The

NYAG appears to believe that it is entitled to every responsive document possessed by any of ExxonMobil's tens of thousands of employees, but the law establishes otherwise.[2]

First, the NYAG contends that ExxonMobil has failed to produce documents from certain categories. Not so. ExxonMobil has collected responsive documents from an expansive selection of key custodians, including its CEO, senior management, Public and Government Affairs professionals, members of its Corporate Strategic Planning group, authors and contributors to various external facing publications that reference climate change, and numerous science teams that have focused on climate change. The NYAG has no basis for believing that the current custodians and search terms exclude unique relevant documents in the categories that it has identified. With respect to documents involving the proxy cost of carbon, for example, ExxonMobil has produced 1,403 documents from 25 custodians where the term "proxy cost" appears, notwithstanding that "proxy cost" was not an agreed-to search term. Further, and notwithstanding that this Court explicitly ruled that the current Subpoena applies only to documents concerning climate change, the NYAG continues to press for greater information about reserves, a topic that has no connection to climate change. ExxonMobil nonetheless has produced, and continues to produce, climate change–related documents that mention reserves and are otherwise responsive to the Subpoena. To date, 1,400 such documents have been produced. The NYAG should not be surprised that there are not more documents that discuss a connection between ExxonMobil's reserves and climate change because no such connection exists. "Proved reserves" under Securities and Exchange Commission ("SEC") regulations encompass only energy sources that ExxonMobil estimates with "reasonable certainty" to be economically producible "under existing economic conditions, operating methods, and government regulations." *Modernization of Oil & Gas Reporting*, SEC Release No. 78, File No. S7-15-08, 2008 WL 5423153, at *66 (Dec. 31, 2008). By definition, therefore, future government regulations related to climate change, which may or may not be enacted, are not to be considered when measuring and disclosing proved reserves.

The NYAG's contention that ExxonMobil has failed to search databases or shared folders and collect responsive documents therefrom is similarly baseless. As previously detailed to the NYAG, relevant electronic documents belonging to each custodian are collected from multiple data sources, including shared folders such as "MySite" and "TeamSite." (Exhibit E at 1, Ex. B.) The Company searched shared drives or databases where custodians indicated that there was a reasonable likelihood that a shared drive or database contained responsive

[2] As noted in the *Sedona Principles*, "[d]iscovery should not be permitted to continue indefinitely merely because a requesting party can point to undiscovered documents and electronically stored information when there is no indication that the documents or information are relevant to the case, or further discovery is disproportionate to the needs of the case." The Sedona Conference, *The Sedona Principles (Second Edition): Best Practices Recommendations & Principles for Addressing Electronic Document Production* (2007), at 38, http://www.thesedonaconference.org; *see also Zubulake* v. *UBS Warburg LLC*, 229 F.R.D. 422, 432 (S.D.N.Y. 2004) ("counsel and client must take *some reasonable steps* to see that sources of relevant information are located") (emphasis in original); *Barrison* v. *D'Amato & Lynch, LLP*, 2015 WL 1158573, at *2 (N.Y. Sup. New York Cty. March 16, 2015) (recognizing that "litigants are not entitled to a perfect production of documents in e-discovery").

documents. Thus, the underlying location of a document is immaterial with regard to whether the relevant custodial files of a custodian are reviewed and subsequently produced.

Second, the list of custodians from whom ExxonMobil has collected documents is more than reasonable.[3] ExxonMobil crafted its custodian list through comprehensive research, witness interviews, and document review. The custodial list reaches into almost every component of the Company and includes a cross section of individuals who may have the type of information sought by the Subpoena. This list includes the scientists who conducted ExxonMobil's climate change research, employees who developed ExxonMobil's principal communications regarding the relevance of climate change, individuals involved in accounting and valuation, senior management, and even ExxonMobil's current and former CEOs. Indeed, this was not a list created without the NYAG's knowledge and consent. In fact, the NYAG often proposed names to be added to the list of custodians. Now, having repeatedly selected custodians for collection at earlier stages of the investigation, the NYAG disclaims the obligation and ability to identify additional custodians that it considers necessary to a reasonable production. Instead, the NYAG asserts that key custodians must be missing because it has not found documents supporting any of its investigative theories. Notably, at no point has ExxonMobil refused to add a single custodian requested by the NYAG, although it has noted that the addition of custodians inevitably would affect and prolong the timetable for production.

Third, the search terms to which ExxonMobil and the NYAG agreed in December 2015 are entirely reasonable and sufficient to identify potentially relevant documents.[4] The current search terms used by ExxonMobil were created after discussion with, and modification by, the NYAG. Indeed, when the NYAG suggested the addition of twelve modifications and three additional terms, ExxonMobil immediately complied. (Exhibit A.) Further, as explained above, there is no evidence that these search terms have been inadequate. They have resulted in almost 1.4 million pages of responsive information, and have been broad enough to capture documents related to the proxy cost of carbon, even though "proxy cost" was not itself a search-term. Contrary to the NYAG's suggestion, the search terms agreed to on December 16, 2015 were expected to capture an exceedingly broad swath of documents and were not intended to be "preliminary." (AG Letter at 3.) And, in all circumstances to date, ExxonMobil never said that

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[3] The NYAG's reliance on *Crown Castle USA Inc.* v. *Fred A. Nudd Corp.*, No. 05-CV-6163T, 2010 WL 1286366 (W.D.N.Y. Mar. 31 2010), is unavailing. In that case, the company's in-house counsel erred by failing to implement a litigation hold, leading to the destruction of relevant documents. *Id.* at *12. In contrast, ExxonMobil immediately instituted a litigation hold of relevant custodians—including ExxonMobil's CEO, senior management, and various science-based teams—as soon as the investigation began. ExxonMobil has also conducted numerous witness interviews and reviewed documents in its efforts to identify key custodians.

[4] The NYAG quotes *William A. Gross Const. Associates, Inc.* v. *American Manufacturers Mutual Insurance. Co.*, 256 F.R.D. 134 (S.D.N.Y. 2009), out of context. (NYAG Letter of December 1, 2016 ("AG Letter") at 3 n.4.) Inappropriate search terms, as the court in *William A. Gross* noted, are those created "without adequate information" or "involvement" from the parties themselves. *Id.* at 136. Here, the parties did "carefully craft" the set of search terms. First, ExxonMobil investigated terms that would capture documents of interest through interviews and review of documents. Second, ExxonMobil accommodated the request from the NYAG to add an additional search term. The NYAG has not alleged—nor could it—that there was inadequate "involvement" from both parties in this case.

it was unwilling to consider additional terms that have a reasonable likelihood of identifying unique responsive documents that the prior search terms would have missed. In fact, during the November 29, 2016 discussion with the NYAG, ExxonMobil agreed to add "proxy cost" to the list of search terms that ExxonMobil will apply across the files of the produced custodians. By contrast, the additional search terms that the NYAG proposed in its October 14, 2016 letter were largely unrelated to climate change and, in any event, were unreasonably broad, including such generic terms as "capital investments," "environmental standards," or "project economics" (Exhibit F[5] at 1).[6]

Fourth, the NYAG objects to ExxonMobil's redaction in certain documents of non-responsive material. But the NYAG fails to cite to a single New York state court case in support of its position that it is entitled to the production of non-responsive information, and, as far as ExxonMobil is aware, no such case exists. Instead, the NYAG relies upon a handful of unrepresentative federal cases applying the Federal Rules of Civil Procedure, which are not at issue here, in the context of discovery disputes.[7] While ExxonMobil maintains that New York state law unambiguously and routinely permits redactions for non-responsiveness,[8] it is nonetheless willing to re-review all of its non-responsiveness redactions. In conducting this re-review, ExxonMobil will limit its redactions to proprietary and commercially sensitive information, which even the NYAG concedes is proper. That review is underway and will be completed by month's end.

Finally, ExxonMobil maintains that, the current protocol–which involves monthly document productions and quarterly submissions of privilege logs covering documents withheld over a three-month period–is reasonable.[9] By contrast, weekly productions and productions of

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[5] Exhibit F is an excerpt of a letter from the NYAG, dated October 14, 2016. ExxonMobil omitted the second page of the letter in order to protect the identities of specific document custodians. The Company will provide the full letter to the Court for *in camera* review upon request.

[6] Paradoxically, the very documents highlighted in the NYAG's October 14 letter were identified through use of the search terms the NYAG now claims are inadequate to identify such documents.

[7] Even if these federal cases had been applicable to this matter, which they are not, the NYAG's citations would still be inapt. The NYAG cited *John Wiley & Sons, Inc.* v. *Book Dog Books, LLC*, 298 F.R.D. 184, 186 (S.D.N.Y. 2014), for the proposition that "redactions of portions of a document are normally impermissible unless the redactions are based on a legal privilege." However, it overlooks the court's statement that governing federal standards "specifically contemplate[] that in the case of trade secret[s] or other confidential . . . commercial information, that the Court may order that such information be not revealed at all or be revealed only in a specified way." *Id*. at 186 (internal quotation marks omitted). Indeed, it is well established that "[r]edactions of documents are commonplace where sensitive and irrelevant materials are mixed with highly relevant information." *In re AutoHop Litig.*, 2014 WL 6455749, at *9 (S.D.N.Y. Nov. 4, 2014) (quoting *The New York Times Co.* v. *Gonzales*, 459 F.3d 160, 170 (2d Cir. 2006)).

[8] *See, e.g.*, *Feingold* v. *River Place 1 Holding, LLC*, No. 150084/2012, 2014 N.Y. Misc. LEXIS 2169, at *7 (N.Y. Sup. Ct. N.Y. Cty. May 9, 2014) ("Irrelevant material may be redacted prior to production of the records."); *accord Fox Paine & Co., LLC* v. *Houston Cas. Co.*, 37 N.Y.S.3d 207 (N.Y. Sup. Ct. Westchester Cty. 2016) (holding that a party "may redact[] as irrelevant" information about matters "not relevant to the issues" in the case).

[9] NYAG will be receiving a privilege log for the July through September 2016 productions on December 30, 2016.

privilege logs two weeks later would impose needless administrative burdens. A more frequent production schedule is also unnecessary given the parties' common aspiration to conclude the production by January 31, 2017.

ExxonMobil's Proposal to Conclude Production

ExxonMobil remains intent on completing its reasonable production of documents responsive to the Subpoena by January 31, 2017. To that end, ExxonMobil proposes the following schedule for completion of its production:

1. ExxonMobil agrees with the NYAG that no further production is required regarding Requests 1, 2, 6, and 7.

2. ExxonMobil will complete a reasonable production of documents responsive to Requests 3 through 5 by December 31, 2016. The December production will include documents belonging to (a) three proxy cost of carbon custodians; (b) two greenhouse gas issue management team custodians; (c) seven senior manager custodians; and (d) as applicable and if feasible, other key custodians identified during the course of the document review.

3. ExxonMobil will complete a reasonable production of documents responsive to Requests 8–11 by January 31, 2017.

To the extent that ExxonMobil is required to produce documents from additional custodians, it would not be possible to produce any such documents by January 31, 2017. If ordered to produce from additional custodians, ExxonMobil would have to collect documents from each such custodian and transfer that data to its discovery vendor. The vendor would then have to upload the data and apply the search terms. After determining the volume of documents that contain any of the search terms, ExxonMobil's counsel would then have to conduct a manual review to determine responsiveness, identify privileged documents, and redact any proprietary and commercially sensitive information. As a result, it is only after determining the volume of documents that "hit" any of the search terms that ExxonMobil would be in a position to assess how long it would take to complete the production of documents from those custodians. It is clear, however, that any such production could not be completed by January 31, 2017.

ExxonMobil regrets that the parties have been unable to resolve this discovery dispute without judicial intervention. Nonetheless, ExxonMobil looks forward to a productive discussion that will allow it to complete a reasonable production of documents by a date certain.

Respectfully Submitted,

/s/ Daniel J. Toal
Daniel J. Toal

cc:

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Exhibit 12

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY - CIVIL TERM - PART 61

----------X

In the Matter of the Application of the

PEOPLE OF THE STATE OF NEW YORK, by
ERIC T. SCHNEIDERMAN,
Attorney General of the State of New York,

PETITIONER,

For an order pursuant to CPLR 2308(b) to compel Compliance with a subpoena issued by the Attorney General

-against-

PRICE WATERHOUSE COOPERS LLP and
EXXON MOBIL CORPORATION,

RESPONDANTS

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60 Centre Street
New York, New York
December 9, 2016

B E F O R E:

HONORABLE BARRY R. OSTRAGER,
Justice

A P P E A R A N C E S:

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-appearances continued on following page-

AB

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THE COURT: Presently before the Court is a discovery dispute relating to the compliance by Exxon with the subpoena issued by the New York Attorney General. And in a letter dated December 1, 2016, the Office of the Attorney General requested the Court to order Exxon to, one; insure "all sources of discoverable information identified in search" including adding document custodians, supplemental search terms and searching shared folders and data bases. Two; address the deficiencies identified by OAG as outlined above. Three; complete its production by January 31, 2017, a schedule that was set forth in footnote one, with weekly rolling productions followed by privileged logs for each production two weeks later. Four; produce un-redacted copies of documents previously redacted on responsive grounds.

Now, in response to the December 1st letter, Exxon notes that it's produced 1.4 million pages of responsive documents, its committed to producing all documents it undertook to produce, based on the stipulated search terms from the custodians previously identified no later than January 31, 2017, and that it's going to complete production of documents responsive to a number of the requests by December 31, 2016. And Exxon and the New York A.G. have agreed that no further production is required regarding the requests 1, 2, 6 and 7.

Now, with respect to the New York A.G.'s request that Exxon make rolling productions weekly followed by privileged logs for each production two weeks later, that hasn't been the practice of the parties for the year long period, during which the document production has been ongoing and I think that's an unreasonable burden to impose on Exxon, although perhaps the parties can agree to something other than quarterly productions of privileged logs.

I'll hear from the New York A.G., but the December 1st letter doesn't identify the additional document custodians that the New York A.G. wants to have documents search from. The New York A.G. hasn't indicated what additional search terms it wants Exxon to utilize and Exxon claims that it's already searching shared folders and data bases, so short of having a hearing with witnesses with respect to what Exxon is doing and it's agreed to meet and confer process, I need to understand what it is that the Court can order at this point in time.

MS. SHETH: Thank you, Your Honor.

Your Honor, I think what would be helpful is we prepared a presentation for the Court that will help the Court understand what is deficient about Exxon's production, both from a substantive document and categories of document perspective, but also with regard to the process. And with

regard to Your Honor's last question with regard to the relief we're seeking, we plan to address that as well. So if I may hand up a copy of the presentation, and we have copies for counsel, as well.

THE COURT: All right.

MS. SHETH: Now, Your Honor, I think the question before the Court is why is what Exxon is doing unreasonable. All right, they're telling the Court we've made a reasonable production of documents, what is the A.G. complaining about; and let me address that.

First, we had identified for Exxon and its counsel, specific categories of documents that are missing or incomplete in Exxon's production. And if Your Honor turns to slide one of our presentation, we have listed these nine categories of documents and they're outlined in our letter of December 1st, to Your Honor. These are categories that are missing and incomplete from Exxon's production.

Now, rather than going back to their client and finding these categories of documents, Exxon has simply said we are not going to address these deficiencies until after our production is complete, so, New York A.G., wait until the end of December, wait until the end of January and then we'll go and try to find these documents. That is not appropriate.

Second; Exxon has attempted to shift the burden of

finding all sources of responsive documents to the A.G. and that is what they have done by saying, New York A.G., you identify additional custodians, you identify supplemental search terms, you tell us where these documents are. We can't do that. Exxon has the best knowledge about where these documents reside in the company, whether they're aware of shared drives or with document custodians and what specific language and terms are used within the company to capture these concepts.

THE COURT: I completely understand that, but the problem that I am having is that as a result of extensive negotiations, which culminated a year ago, an agreement was reached with respect to search terms and an agreement was apparently reached with respect to custodians and unless you tell me otherwise, it's my understanding from the correspondence that Exxon is producing documents predicated on search terms that were stipulated to a year ago and custodians that were identified and agreed to a year ago.

Now, if there are additional custodians that the A.G. has identified from its review of the 1.4 million documents that had been produced and New York A.G. can identify from that review of that volume of documents specific individuals who, whose files should be searched, I believe that Exxon will agree to add those custodians to its production and I believe that Exxon will have the production

from those additional custodians made available in the timeframe that you're requesting.

Is that correct, Mr. Wells?

MR. TOAL: Your Honor, during the meet and confer process we invited the A.G.'s Office to identify additional custodians they thought were necessary for reasonable production. We've already produced from the custodians we think are reasonable production. Obviously we've given them the benefit of these 1.4 million pages of documents which give them a basis to identify additional custodians. In the meet and confer they refused to identify additional custodians; they said that's not our job, that is your job. So in this presentation for the first time we're seeing identification of additional custodians.

MS. SHETH: Actually, Your Honor, I do want to correct one point, and that is about the search terms and custodians which Your Honor specifically asked about.

The search terms that were agreed to were a preliminary set of search terms at the very beginning, so literally one month after we got the subpoena before we had the benefit of any documents, so once we started to get the documents we saw that other terms were being used in the documents that Exxon provided and we respectfully asked them over the period from June to present for, you know, your search terms that we initially ran before we had the benefit

of a single one of your documents that are not capturing what we expected.

And if Your Honor turns to slide four in our presentation, we list specific reasons why we think that preliminary search terms were not adequate. We have, for example, just four custodians that we've identified that have produced, where Exxon has produced relevant documents anywhere between one and twenty-four documents. These are highly relevant documents, exactly what we're looking for, but we only have twenty-four documents, and that suggests that there's a serious mismatch or improper use of the search terms that were initially proposed by Exxon.

In addition, another example of why the search terms that were initially proposed and agreed to at the beginning are insufficient are because the number of reserve and proxy reference documents are very small. If you look at the second bullet point, now they keep talking about 1.4 million pages, that's only 20,000 documents, and out of those 20,000 documents we only have slightly more than 1,100 documents that pertain to reserves. So there is something that is inadequate about the search terms that they have identified.

We have repeatedly asked them, can you supplement these search terms and they have refused to do so until the very last meet and confer where they said we are agreeing to

add one -- familiar terms and that term is proxy cost but we will only do that if you agree you're not going to supplement with any additional search terms. Now we can't agree to that.

THE COURT: Given the size of Exxon and the potentially available universe of documents which could be, what is a magnitude more than the 1.4 million pages that Exxon has produced, a Court can't invent search terms and a Court can't identify custodians.

It seems to me that it's incumbent upon the New York Attorney General, after receiving 1.4 million pages of documents over the last year to propose additional search terms and different custodians based on the review of the documents that you already have. And if you do propose additional search terms and additional custodians and Exxon refuses to comply that's something that the Court can rule upon, but what the Court can't do is independently identify search terms for you or independently identify custodians that Exxon should have a document search from.

MS. SHETH: I agree with Your Honor, obviously we can't ask the Court to do that and we wouldn't expect the Court to do that. What we're saying is we've identified where the deficiencies are and let Exxon make the initial proposal, let them tell us who are the custodians and places where these documents reside because what they have given us

is a list of 368 potential custodians that they put on the litigation hold and they have produced from 56 of those custodians. We can't look at that list of the remaining 300 plus custodians and figure out who has the documents that are missing and incomplete from the production.

So what I would propose, respectfully, is that Exxon tell us who are the custodians that have the documents that are missing which we've identified for them, and if they tell us that then we can certainly have a back and forth about whether or not those are the right people, but to put the burden on us to find those people from the list of 38 puts us in a position where we're guessing. We know the documents of search terms are not pulling up the precise documents, but we can't tell them where the documents reside in the company.

MR. TOAL: This is all based on falsity. They pointed to three areas of supposed gaps. One is proxy costs; we've already produced 1,200 documents related to proxy costs even when it was not a search term. We also agreed to supplement our search term with the term proxy cost and we'll produce them from three additional custodians that we think are likely to have documents relating to proxy costs. So we're going to produce all those documents by the end of the year. That's not a gap in the production.

With respect to reserve documents, again there's no

gap in the production. We've explained for a long time that reserves have nothing to do with climate change. Reserves --

THE COURT: I read your letter, I understand your argument, there.

MR. TOAL: And Your Honor, as I said and as you recognize, we have searched, we have searched all the places we think are reasonably likely to have responsive documents and in the meet and confer we said if you think we missed something, if you think there's a custodian we didn't search that is likely to have responsive documents tell us who that is and we can have discussions. And with respect to search terms, we think our existing search terms are adequate. We didn't think we need to search for proxy costs, but we agreed to do it anyway and we said if you think there are missing search terms, tells us what they are and we can have a discussion. And the A.G.'s office was unwilling to have that discussion.

THE COURT: Look, I want to be helpful to the parties and to the process, but it really does seem to me that if you have 1,200 documents relating to a specific subject and those documents are to and from particular people, and undoubtedly cc many other people that New York Attorney General, looking at those 1,200 documents and looking at the recurrence of the names that appear on those

1,200 documents can say these four, six, eight or twelve people whose names appear on repeated occasions in these 1,200 documents are custodians whose documents we want to see. And if you do that and you say to the Court we have a reasonable basis to believe based on our review of these 1,200 documents that these four, six or eight additional custodians are custodians whose documents should be produced, you know, I'll say that makes sense to me.

Similarly, if you look at the 1,200 documents and you see a particular term that's not a search term that you think would produce relevant and pertinent material I would order that Exxon add that to the list of search terms, but this concept that they know what you're looking for, I don't think is fair.

MS. SHETH: Your Honor, I don't want to give the Court the impression that we're not willing to do the work, because we are, and we have done the work. For example, with your last suggestion on proxy cost we did send them a letter, I believe it was October or November of this year where we said what you've pulled with regard to proxy cost is insufficient, 1,400 documents out of a universe of 20,000 documents, clearly, something is missing. And we either proposed --we didn't say, run this particular search term, but we gave them terms that we saw in the documents and we said we're seeing these kinds of words, maybe you want to

run these terms. We can't tell you, but here is what we're seeing, can you go find the correct documents, can you fill out what's missing.

And I want to give Your Honor a better sense of what's missing because, you know, with regard to proxy cost what we don't have, what we have seen in the production is internal policies and procedures that show how Exxon is applying the proxy cost to its projects, the actual application of the proxy cost to specific oil and gas projects, the effect of the proxy cost on the evaluation and reporting of its gas assets and probably most significantly, its CEO's own statement that Exxon's projects are either too short term or too large for the cost of carbon, meaning the proxy cost, to effect the decision-making. So we haven't seen the documents that support the representations that Exxon has made to the public and to the investors.

So what we have seen in documents is one side of the coin. We've seen the documents, actually more than half of their production relates to documents from scientists that talk about climate change as a scientific principle and we've seen the documents that reveal what the representation that Exxon has made about the effect of climate change on its business and its financial reporting, but we haven't seen the other side of the coin, which is what are the documents that support what Exxon has told the public and

investors? What are the documents that show the facts and the assumptions that Exxon considered and relied on in making those statements? And we need those document to test the accuracy of Exxon's own statements, and that's what's missing. And we're happy to do the work to try to identify additional custodians and additional search terms, but what I'm concerned with is that we will be back here in front of Your Honor because we will have suggested wrong custodians, because we have such a limited universe of document to base our review on 1,400 out of 200,000.

And I think another point --well, actually, on reserves I do want to address Mr. Toal's point about reserves, that when he says that reserves are-- let me make sure-- in their letter they say: "Reserves are a topic that has no connection to climate change." And I find that to be a very troubling statement and I'll tell you why.

If I could hand up to Your Honor a copy of the report called Managing the Risks, and this is a report that-- if you can hand that up, thank you.

(Handing.)

MS. SHETH: And Your Honor, this is a publicly available report that Exxon made various disclosures regarding the effect of the climate change on its business.

Now, if Your Honor looks at page 1 of the report, the third paragraph, they say: "Based on this analysis we

are confident that none of our hydrocarbon reserves are now or will become stranded." So they're specifically talking about reserves.

Second, if you look at page --

THE COURT: Let me understand your point today. As I understand it, Exxon's position is that none of its hydrocarbon reserves are now or will become stranded means that nothing relating to climate change will affect its reserves.

MS. SHETH: That's correct. So, if you look at page 8, they make the statement again. They say: "A concern --" this is this the top paragraph of page 8, last sentence. "A concern expressed by some of our stakeholders is whether such a "low carbon scenario" could impact Exxon Mobil's reserves and operations-i.e., whether this would result in unburnable proved reserves of oil and natural gas."

So we need to be able to test the accuracy of that statement. Exxon is is telling the public and investors, don't worry about climate change, don't worry about climate change regulation, it is not going to affect our business operations and it is not going to affect our oil and natural gas reserves. We need the documents that will allow us to test whether that representation is in fact accurate.

THE COURT: So what specific documents are you

talking about?

MS. SHETH: So what we're talking about, the categories are outlined of bottom of page 1. We're talking about the documents that will discuss the impact of climate change and climate change reservation on reserves, on the reserve replacement ratio, and the likelihood that the reserves will be impaired or stranded, the rate at which reserves will be utilized and the likelihood of low carbon emission scenarios.

THE COURT: You just outlined a half a dozen potential search terms that you can give to Exxon and which I would ask Exxon to utilize.

That's the point of what I'm trying to get across, here, which is if you have search terms that you want to add and they're reasonable, based on everything that you have done for the last year the Court would order them produced. And frankly, I think Exxon would agree to add them at a meet and confer without the Court's intervention.

MS. SHETH: Okay, we've tried that in the past and we'll try that again, Your Honor.

We will try again and we will do it expeditiously because we do want these documents by the end of January.

THE COURT: Well it seems to me we have a record here. You just articulated a half a dozen search terms which may or may not be search terms that Exxon has

previously utilized.

I'm satisfied, based on what you presented to the Court, that those terms are reasonable for Exxon to add to search terms that its using and you should just send Exxon an e-mail or a letter listing those half a dozen search terms and it would be the order of the Court that those should be added to the search that's being made of the 56 custodians that have previously been agreed upon. And if there are additional custodians that you've identified based on the review of the 1.4 million pages of documents that Exxon has produced those will be added, as well. And it seems to me that Exxon has the resources to add those additional custodians and add those additional search terms without affecting the January 31st deadline.

Now, with respect to this business of having privileged logs produced every two weeks, that's just unreasonable.

MS. SHETH: Thank you, Your Honor, we will do that. We will expeditiously provide them with a supplemental list of custodians and supplemental list of search terms.

And if I could address just one other point, Your Honor.

THE COURT: Let me just make sure that Exxon is agreeable to this.

MR. TOAL: So, I would just say a few things. I

think we have a set of search terms that it was agreed upon and it was negotiated.

THE COURT: I understand.

MR. TOAL: So I think those are reasonable terms to accomplish the task of trying to come --

THE COURT: The New York Attorney General has indicated there are these additional search terms that the New York Attorney General deems to be relevant based on its evolving review of the documents and it doesn't seem to me to be extraordinarily onerous to add the four or five additional specific search terms that counsel has articulated, and if there are a couple of, three or four custodians that the New York Attorney General has identified, it doesn't seem to me to be onerous for you to add those.

The burden of your letter to the Court was that the New York Attorney General wasn't telling you what it was they wanted you to search or whose files they wanted you to search. Now we've convened here with a large audience, the New York Attorney General has identified a handful of additional search terms and is proposing to add a handful of additional custodians. I would have thought that could have been agreed upon at a meet and confer but it wasn't, so --

MR. TOAL: So Your Honor, I would say a few things. If we're talking about a handful of search terms and they're

not their terms that are likely to capture documents that the existing search terms wouldn't have caught and they're reasonable and responsive to the subpoena, that obviously is something we've been willing to talk about from the beginning. If we're talking about a few additional custodians and there's a reasonable likelihood to believe they have responsive documents, that is something we can talk about if there is reasonable documents in that the existing custodians wouldn't have produced that we can talk about.

The January 31st deadline was predicated on the custodians that were specifically identified in the search terms that were specifically identified and if we do have to go back and collect data from additional custodians, load that data, run search terms, that will take additional time and we don't know how much additional time until we know how many of those documents hit on the search terms. So that's the only proviso that I would add, Your Honor, is that we really can't predict what the volume is going to be, how many documents will hit on the search terms. Once we know that we can make reliable predictions about how long it will take us to review those documents.

MR. WELLS: Your Honor, if I could just add, in terms of what I'll call a big picture answer we'll get done what you just said. If we're talking about a handful of new

search terms, whatever they are, we'll run them, okay.

With respect to the handful of custodians, we will take care of that and do our best to meet the end of the month deadline, if possible.

The search terms are different from the custodians. What's different is that with the existing custodians they're now in the data base. So they give us handful of new search terms we can run it, okay. The custodians, if they're new names, what has to happen is more time-consuming in the sense we've got to go out to that person's office.

THE COURT: You have to upload the document. I've been there done this, so I understand exactly what we're talking about. And it's my belief that if the parties both behave reasonably and responsibly, adding a handful of additional search terms and a handful of additional custodians shouldn't be an insuperable barrier to production of all of the documents by January 31st.

MR. WELLS: I agree, Your Honor.

MS. SHETH: Thank you, Your Honor.

One last point, and this goes to Mr. Wells's point about the custodians. I just want to be clear about the shared drives, and I know Your Honor is well familiar with shared drives. I like to think of them as an electronic filing cabinet where, you know, the entire filing cabinet a particular department or group of individuals at the company

has access to that cabinet. They can pull it out and within the cabinets are folders and they're organized by either topic or sometimes by person.

Now, Exxon is telling the Court it has searched those shared drives, but I think what Exxon has done, based on my understanding of the correspondence, is that they have searched the folders within this cabinet that relate to the 56 custodians. What they haven't searched are the topical folders. And I have a nice document from Exxon's own production, which if I may hand it up, will show what I'm talking about, here.

So, we were lucky in that we coincidentally found this in Exxon's production, it's on a topic that really is not relevant to this investigation but Exxon happened to produce this document which pertains to something relating to water resource management. But what this document shows is this, a screen shot of the shared drive system or one of the shared drive systems in place at Exxon. And if you look at the right --sorry, the left hand corner, it says Document Resource Library, and at the bottom, you see a bunch of documents; some look like word documents, some appear to be power point documents. But these are documents that are within this folder called Water Resources.

Now, we had asked Exxon repeatedly, can you please search these shared drives. And if you look at page 3 of

our dec we've even identified the specific shared drives that we've identified based on their document production. We said, rather than look for the folder of custodians, please look for the topical folder. For example, look at the folder that pertains to greenhouse gases, look at the folder that pertains to oil and gas project approvals which does have documents concerning the application of the proxy cost and they have refused to do that. So I would ask Your Honor that in addition to us identifying additional supplemental custodians and search terms, that Exxon also search these shared drives and the specific topical folder in the shared drives.

And the one other area is data bases. We have not seen any documents in their production that come from data bases and we know based on a review of the documents there are data bases for example the flex data base which contains emissions and environmental data, so we would ask that they also search those the January 31st deadline.

THE COURT: Well, let me ask a very practical question. Is it contemplated that there are going to be depositions in this proceeding?

MS. SHETH: Yes, Your Honor, I think that that's a fair assumption.

THE COURT: What I think is that the search terms that you give to Exxon, supplemental search terms will

capture what you're looking for.

MS. SHETH: Only if they run them in the shared drives. If they're just running them on custodians we may not get these shared drive documents. That's my understanding of how it works.

THE COURT: You've represented they have run the search terms on shared drives, that's what they have represented.

MS. SHETH: I would ask for a clarification from counsel. Are they running the search terms on the topical shared drive folder?

MR. TOAL: We have asked custodians, we've interviewed custodians, we've asked them where they store documents, we asked them if they store documents on shared drives. They indicated they stored documents on the shared drives that are reasonably likely to be responsive to the subpoena. We searched the shared drive.

THE COURT: Okay, it seems to me that, you know, it's unreasonable for Exxon to deliver to the New York Attorney General's Office every document that Exxon has in its possession and it seems to me that when you commence the deposition process it will become very apparent if there are any gaps in the document production, and you're just throwing darts against the wall, here.

If you give them, as part of the supplemental

search terms, some of the terms that are, that appear on page 3 and they run those through the shared drives, which they have represented that they're doing, you're going to get pretty close to the universe of what you need and what you want.

MS. SHETH: I agree with Your Honor, if that's what they're doing, if they're willing to run our search terms on the shared drives then, yes, you're absolutely right, we will get what we're asking go for and looking for. I don't interpret what Mr. Toal said to be doing that. I think what he's saying is we're only going to look in a particular shared drive because the custodians said I put my documents in the shared drive.

So what that means is, let's say we have the search shared climate change, if I am one of their custodians I mention that drive, they're not running searches in that drive but meanwhile, based on the folder name we know there are documents in a shared drive, that's the climate change implementation shared drive. So we're asking to search that drive using the search terms, and if they're willing to do that, that's perfect.

MR. TOAL: So we're aware of our obligation to search for documents in places that they're reasonably likely to be found. I can't address all the specific shared drives now because they were raised for the first time right

now. This is really what should have happened during the meet and confer. The A.G. was not willing to engage on these topics so I can only talk generally.

We are aware of our obligation to search for documents where they're reasonably likely to be found and we'll continue to do that.

MS. SHETH: And I would submit that the documents relating to climate change are reasonably likely to be found in the shared drives with these names.

THE COURT: Counsel is attempting to be responsive to your concerns and I think we've accomplished all we can accomplish this morning. If it turns out that you believe that there isn't good faith compliance with what we've agreed upon and discussed this morning then you come back here and we'll drill down deeper than we've drilled today, but it seems to me that they have agreed to produce by January 31st, documents captured by additional search terms. They have agreed to produce by January 31st documents from additional custodians and they have agreed, to the extent the search terms are reasonably likely to produce documents from shared drives, they will produce them. That's by order of the Court.

And if there is any further issues you will initiate additional conferences in early January.

MS. SHETH: Thank you, Your Honor, we really

appreciate your time and your patience and we will do that, we'll work expeditiously starting as soon as Monday or even this afternoon to get that done. And I would ask Your Honor that if we could keep the December 15th pre-existing conference on the calendar so that if we do have disputes about what's a reasonable handful of custodians and search terms that we may revisit that issue with Your Honor.

MR. WELLS: I was going to ask just the opposite, Your Honor. The December 15th date was set with respect to the climate. We reached a stipulation, we don't have any dispute, we have a schedule and that's all in place, so that was the purpose of the December 15th date.

THE COURT: I understand and I agree.

MR. WELLS: And so, since -- so I would ask that we not be --not have to hold this date. People have to fly here from Texas and make plans and there's no reason, as Your Honor has indicated it looks like if there's a problem they can write a letter and you call us in on short notice and we appear and that's worked out so far fine with everybody, so I would ask that we adjourn the December 15th date and if we have to get back here whenever, we will.

THE COURT: I agree with that. The December 15th date relating to the PWC issues, and I signed the stipulation yesterday memorializing your agreement as respects the PWC documents, so there's no reason to come

back here on December 15th, but, if things go awry in connection with what we've discussed this morning you'll apprise me by letter and if you have to come back next week or the week after we'll do that. But it seems to me that there's been a meeting of the minds, here, and let's hope that things move smoothly and cooperatively.

MS. SHETH: Thank you, Your Honor.

I think there is one issue that's still pending and that pertains to the redactions of --the redactions for responsiveness. So we had asked in our letter --well, we submitted in our letter that those redactions are improper. Exxon is only permitted to redact on the basis of privilege or work product and instead we have received documents that are responsive but have been redacted oftentimes in the entirety. So we've got multiple documents where the entire document, but for one line, has been redacted for responsiveness reasons. So we would respectfully ask those documents be produced immediately.

THE COURT: I'm not prepared to order that at this point in time. That's something that would have to be fully briefed by both parties. And if you want to submit within ten days simultaneous briefs on that issue, I will address it.

MS. SHETH: Thank you, Your Honor.

MR. TOAL: Your Honor, I would say on the redaction

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point, we have agreed to go back and re-review all of our redactions for responsiveness and limit our redactions to issues regarding sensitive and private information which even the A.G. says is an appropriate reaction.

THE COURT: That's among the reasons why I'm not prepared to order anything today.

MR. TOAL: Thank you, Your Honor.

THE COURT: Okay. Thank you. You will order the transcript.

C E R T I F I C A T E

It is hereby certified that the foregoing is a true and accurate transcript of the proceedings.

ANGELA BONELLO

SENIOR COURT REPORTER

SUPREME COURT-NEW YORK COUNTY

SO ORDERED

HARRY B. OSTRAGER, J.S.C. 12/15/16

Angela Bonello, RPR, Sr. Court Reporter

Exhibit 13

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK: TRIAL TERM PART 61

- X

In the Matter of the Application of the
PEOPLE OF THE STATE OF NEW YORK by
ERIC T. SCHNEIDERMAN,
Attorney General of the State of New York,

Petitioner,

for an order pursuant to CPLR 2308(b) to compel
compliance with a subpoena issued by the
Attorney General

- against -

PRICEWATERHOUSECOOPERS LLP and
EXXON MOBIL CORPORATION,

Respondents.

- X

Index No. 451962/2016

January 9, 2017
60 Centre Street
New York, New York 10007

B E F O R E: THE HONORABLE BARRY R. OSTRAGER, Justice.

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(Appearances continued on next page.)

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Official Court Reporter

Proceedings

THE COURT: All right. Just to level set where we have been and where we are going, when the parties were last here on December 9th I thought we had an agreement that the Office of the Attorney General would provide ExxonMobil with a handful or a half dozen additional custodians whose documents would be searched, and Mr. Wells agreed that that would be done. As I understand it from the submissions that have recently been made, the Office of the Attorney General has provided ExxonMobil with nine custodians. I don't consider that to be a material departure from what I expected the parties to agree to.

It was also my understanding that the Office of the Attorney General would provide ExxonMobil with a handful of additional search terms, and it's my understanding from reading the correspondence that the Office of the Attorney General has provided ExxonMobil with four strings of search terms, and ExxonMobil is resisting using those strings of search terms unless the search terms that are proposed appear within five words of each other which I don't think is a reasonable position for ExxonMobil to take.

Finally, when we were last here there was an issue with respect to searching SharePoint drives, and Mr. Toal indicated that ExxonMobil was aware of its

obligations to search all locations where responsive documents would be found, and I understood Mr. Toal to be stating that ExxonMobil was searching the SharePoint drives accessible by the custodians which seemed perfectly reasonable to me.

Now I will hear the parties about their ongoing disputes.

MS. SHETH: Thank you, your Honor.

Manisha Sheth on behalf of the Attorney General.

Let me focus on the two areas where there are outstanding disputes, first, the specific documents that the OAG has requested that Exxon is refusing to produce, and, second, the three, there are now three, I think in our letter there were four, but we saw recent information for the first time in Exxon's letter to the court which eliminated the need to search one of those four shared drives, so there are three shared drives that are still remaining and the subject of dispute.

Before I talk about those two areas, I want to first give your Honor some background about the investigation, and, remember, that this is about an investigative subpoena so we are not yet in litigation. We are at the stage of the investigation where the standard is quite low, and the case law is clear that

in order for the OAG to receive these documents they merely need to be reasonably related to our investigation. So let me tell your Honor what our investigation is about in part.

The two areas of focus for today's purpose are, one, proxy cost, and, two, reserves. Now with regard to proxy cost, one area of our investigation pertains to Exxon's public statements that it addresses the risk of climate change to its business by applying a proxy cost of carbon in its planning and budgeting process.

THE COURT: You made that very clear in your papers. Respectfully, if the 1.4 million documents that you have already received and the additional documents that you are going to receive from these nine custodians with the additional search terms doesn't provide you with a reasonable amount of information, I frankly don't know what will.

MS. SHETH: Well, I can explain what is missing.

So with regard to the documents that are missing, there are two components that relate to proxy cost. One are the policies and procedures that inform how Exxon is using the proxy cost of carbon, and, second, is how Exxon is applying that proxy cost of

carbon to specific oil and gas projects.

So with regard to the first, the policies and procedures, there are a variety of these documents the first of which are what are called the planning and budgeting guidelines. Now these guidelines detail the process by which the proxy cost of carbon is actually applied in Exxon's business.

THE COURT: Why wouldn't those documents appear from searching the shared drives of the custodians that you have identified using the search terms that you've provided to Exxon? This is a mystery to me because I've had a lot of experience with document searches, and if you have come up with reasonable search terms, and you're investigating the contents of files and shared files of, I believe, it's now 63 custodians, I don't understand how it could possibly be that some manual or some other document that you are looking for that relates to this subject matter wouldn't be included in the output from that search.

MS. SHETH: I agree with your Honor. I am equally perplexed about why we don't have these documents. What I do know is that Exxon has told us that these documents, they don't deny this, they contain responsive information, but what they do say is

that they are duplicative of corporate plan dataguides and appendices, and, therefore, we will not receive these document from them.

Now I can't accept that because, your Honor, I actually do have one such document, the Planning and Budgeting Guidelines, that we were able to find. We don't have all of these. We just happen to have one because one custodian kept these. If your Honor would like, I can provide what we do have --

THE COURT: No, no, I don't need to see it.

What I need to understand is why you believe that applying the search terms that you have stipulated to with Exxon and the additional search terms that the court ordered on December 9th will not yield the documents that you've requested.

I already indicated that ExxonMobil's attempt to limit the use of search terms within five words of each other is unreasonable and not consistent with the spirit of my order of December 9th. So if in any of these 63 custodians documents or shared files the word greenhouse gases appears or the word proxy costs appear or any of the other search terms that you have stipulated to or have added appear, you will get these documents, and you will get them by January 31st.

MS. SHETH: So, I mean, I am speculating

here, but there could be a couple of reasons why we don't have them. One, Exxon has told us that for certain employees who are now formers, their documents were not preserved. So it's possible we don't have all of these documents because the documents just were not preserved for certain custodians. Two, there are certain shared drives which Exxon is refusing to search. Perhaps these documents reside on those shared drives.

As I stand here today, all I can tell you is based on the production we received throughout the course of this investigation as well as the production we received on December 31, shortly thereafter, we do not have these documents. We have specifically asked Exxon for these documents, and they are refusing to provide them on the ground that they are duplicative. So neither side is --

THE COURT: If it's duplicative it means you have them.

MS. SHETH: I don't think that's what they are saying. They are not saying we already have them. They are saying they contain information that is duplicative of other documents.

THE COURT: Okay. They are not privileged to advance a duplicative document objection. They're

obligated to produce the documents from the application of the search terms to the custodians you've identified and that should be the end of this.

MS. SHETH: The concern, your Honor, is that the application of search terms to custodians and shared drives results in a universe of documents. Ideally --

THE COURT: Like 2 million documents.

MS. SHETH: Yet there are still certain documents which we know the company has, and I am not talking e-mails or the like, but we are talking about planning guidelines, policies and procedures, and various other documents that are kept on a project-by-project basis which are not necessarily going to be captured by custodians. That's why it's critical.

THE COURT: Of course it will be captured by custodians. I've seen a partial list of the custodians who you've identified recently, and these are all very senior people in the ExxonMobil organization. It's not conceivable that they don't have copies of the various manuals and documents that you're concerned about.

MS. SHETH: Your Honor, these are documents that Exxon should be able to pull readily. I mean, these are a type of document that they are called

Company Plan Guidelines. They exist by year, as far as we can tell.

THE COURT: You don't think any of these 63 custodians have copies of these documents?

MS. SHETH: We only found one.

THE COURT: Well, they have not yet added the nine custodians that you have added to your list. They have not added the search terms that you've added to the search terms.

Let me hear from ExxonMobil.

MR. TOAL: Your Honor, if I could address the issue --

THE COURT OFFICER: Your name, sir, for the record.

MR. TOAL: I apologize.

Dan Toal on behalf of ExxonMobil.

When we were here last you did tell the New York Attorney General that they could propose a handful or four or five additional search terms, but what we got is a string of search terms that's the equivalent of 519 separate searches. Many of them are incredibly broad and common terms like cash flow, present value, the term book, the term economic. So in an effort to try and compromise and avoid the need to bother your Honor with this, we proposed using terms that would

ensure us -- separate terms that had to be proximate to one another. That's exactly what we've done in the prior terms that we agreed upon. Every compound term has a proximity connector, and generally they are within five, sometimes they are within two.

Many of these documents are very lengthy. The fact that you have terms like carbon and book in the same document 20 pages apart from one another does not give any indication that it is related to climate change. What the Attorney General's Office has told us is they framed these search terms the way they did because they wanted to find the intersection of climate change and Exxon's business.

Now we think we have already provided those documents. One of the terms that we previously used and agreed upon was climate change. We also previously used terms like greenhouse and GHG, an abbreviation for greenhouse gas, but in an effort to try to be accommodating and flexible we said as long as there are reasonable limits on proximity, we are willing to provide those.

THE COURT: I don't think five words is a reasonable proximity.

MR. TOAL: Okay.

THE COURT: This is what you were supposed

to meet and confer about.

MR. TOAL: I agree. The meet and confer process has broken down in a fundamental way. When we proposed a proximity limiter within five, the next thing we received is a letter demanding that we use the and connector, and then we were quickly before your Honor again. So there has not been a functional meet and confer as far as we are concerned.

THE COURT: Well, if I have to play school monitor here, this is what I'm going to order, and it's not very different from what I previously ordered.

I indicated that the Attorney General's Office could expand a list of custodians by four or five or a half dozen. They have expanded it by nine. We will allow them to expand it by nine.

I indicated that they could expand the search terms by a half dozen. You say it's 519. Their papers convincingly suggest that it really isn't 519, but it's more than a half dozen. So the Attorney General's office can pick six or eight additional search terms in addition to the search terms that you've previously stipulated to, and with all due respect to the Office of the Attorney General, the search terms that they've stipulated with you to utilize plus an additional six to eight search terms without space limitations could

not possibly not yield every document that they could possibly be interested in.

Now, I understand it's burdensome for ExxonMobil to produce this. I understand in a 30 page document the search term words are going to come out somewhere in the 30 pages of the document, and you will have to produce them, and it's burdensome, but by the same token what the Attorney General's Office is asking you to do is unreasonable.

That's the order of the court.

If anybody has anything they want to put on the record for purposes of an interlocutory appeal, you can do so.

MS. SHETH: Thank you, your Honor. I do want to address the shared locations because it's very relevant to your Honor's ruling about the application of the search terms.

So the parties did meet and confer. We have narrowed the dispute about the shared drives, the shared locations, to just three locations. If I may, may I go over those with your Honor?

The first is the project folders. These are folders on a shared location that show the application of the proxy cost to specific oil and gas projects.

Exxon is taking the position that they are

not going to run the search terms on these project folders, and we think that's inappropriate given that is the location that will reveal the application of the proxy cost to specific projects.

THE COURT: I must be missing something here. You've identified 63 custodians, and Mr. Toal has indicated that Exxon is searching the shared drives of these 63 custodians. I don't know what more ExxonMobil needs to do beyond what you've previously agreed to and what I've ordered.

The application of these search terms to the 63 custodians is going to yield you all the information you could possibly request, and we are splitting hairs now. I mean, if you just contemplate that there is going to be a 20 or 30 or 40 or 50 page document, and you've got dozens of search terms that are going to be utilized in searching all of the documents in the files and shared drives of 63 custodians, someplace in those 20, 30, 40 or 60 pages every single one of these search terms is going to appear someplace, and you are going to have all the documents you could possibly need for purposes of your investigation.

MS. SHETH: Your Honor, I must not be doing a good job of explaining the shared drives.

Exxon is searching the individual custodians.

I will call them file folders.

THE COURT: And the shared drives that the individual has access to, correct?

MS. SHETH: Some of those shared drives. There are that handful of shared drives that they are not searching, and one of those is these project folders. That's what we are asking them to search. It would be like the equivalent of the filing cabinets in this courtroom.

THE COURT: I understand the filing cabinet metaphor. I get it.

MS. SHETH: And they are not searching certain of the shared drives.

THE COURT: Because I don't think that they have to do any more than I've ordered here for you to receive all of the documents that you require.

MS. SHETH: The problem is, your Honor, that we have documents that show that these shared drives contain responsive documents, and unless they are searched we are not going to get the responsive documents.

So there's two ways to do it. We either get the specific documents we have identified or we say we know the specific documents reside on these shared locations, so apply the search terms, run the search

terms on those shared locations. And there's three that I don't understand why they are not willing to run.

I mean, the thing that is probably most concerning to me, you know, is their position that some of these shared drives don't contain responsive documents. Like, for example, the Environmental Data Management System, EDMS. That is a SharePoint site which clearly contains information about Exxon's greenhouse gas emissions, and Exxon is telling me it does not relate to climate change so they will not search it. That's the kind of thing that gives me concern that we will not get the responsive documents.

THE COURT: Even if it's a document that is in the custodians, the 63 custodians files or shared drives, you get the document.

What am I missing, Mr. Toal? What am I missing?

MR. TOAL: I don't think you are missing anything, your Honor. We are now at over 100 custodians from whom we produced documents.

I would just like to clarify one thing. With respect to the additional search terms, I take it that they have to be reasonably targeted to climate change.

THE COURT: Of course they have to be.

MR. TOAL: Your Honor, since we don't know what the volume will be, it's conceivable we may not be able to complete the production by the end of January, particularly the broader the terms, the greater the likelihood that we may not be able to complete that by the end of January. We won't know until we get the search terms and run them.

THE COURT: Okay. Well, I think you have a pretty good idea of what the terms are going to be. I really think that this is something that you can work out with New York AG's Office.

MR. TOAL: We will try, your Honor.

MR. WELLS: I represent that we will -- we are going to do our best --

THE COURT OFFICER: Please state your appearance.

MR. WELLS: I'm sorry.

My name is Ted Wells from Paul, Weiss on behalf of Exxon.

I represent on behalf of my client that we are going to do our best to get the documents pursuant to what you have just said to the New York AG as quickly as possible.

We don't know -- if you have the word cash flow, which is a very common term, by running that it

might relate to cash flow about a gas station in The Bronx not having to do with climate change. Without any connectors, and we accept your Honor's ruling, I am not trying to be argumentative, we will get a lot of false positives we have to review. We just don't know as we sit here. We will do our best, I represent that.

THE COURT: Understood. All right. I think we have accomplished all that we can accomplish today.

Mr. Wells is right, you are going to get an awful lot of false positives. You are going to get an awful lot of false positives because you can't agree, you can't agree on protocols with each other that will both eliminate a lot of false positives and secure for you documents that you deem to be essential. What I've ordered in my judgment will assure that along with a lot of false positives you are going to get the documents that you really want.

Now, you're free to work out other and different protocols that would be more efficient from everybody's point of view, but failing your ability to come to some common understanding as to how to proceed, what I've ordered is what Exxon is doing, and when Mr. Wells represents ExxonMobil will move heaven and earth to get all the documents to you by January 31st if it's humanly possible, that's the best I can do.

Proceedings

So anything further for the record?

MS. SHETH: No. Thank you, your Honor.

MR. TOAL: Nothing further from us, your Honor.

THE COURT: Have a nice afternoon.

If you have any further disagreements, we will employ the same procedure: You will contact the court, you will exchange correspondence, and, if necessary, we will reconvene.

***

C E R T I F I C A T E

I, Terry-Ann Volberg, C.S.R., an official court reporter of the State of New York, do hereby certify that the foregoing is a true and accurate transcript of my stenographic notes.

Terry-Ann Volberg, CSR, CRR
Official Court Reporter.

SO ORDERED

BARRY R. OSTRAGER, J.S.C. 11/13/14

Exhibit 14

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March 16, 2017

By NYCSEF

The Honorable Barry R. Ostrager
Supreme Court of the State of New York
Commercial Division
60 Centre Street, Room 629
New York, NY 10007

Re: In the Matter of the Application of the People of the State of New York, by Eric T. Schneiderman, Index No. 451962/2016.

Dear Justice Ostrager:

On March 13, 2017, the New York Attorney General filed a letter with this Court regarding former CEO Rex Tillerson's use of multiple ExxonMobil email accounts. That letter marked the first time ExxonMobil learned of the Attorney General's concern about Mr. Tillerson's email accounts. The fact that Mr. Tillerson used two email accounts was readily apparent from documents produced in this matter over the past year. While there is nothing improper about using more than one account to organize and prioritize emails, it is entirely improper for the Attorney General to raise this issue for the first time in a letter filed publicly with the Court. Not only did that letter violate this Court's requirement that parties attempt to resolve disputes before bringing them to the Court, it has unfairly prejudiced ExxonMobil in the eyes of the public based on sensational coverage in the press. A simple question about subpoena compliance should not have been handled this way.

The "Wayne Tracker" Email Account

At times during his tenure as CEO, Mr. Tillerson used two email accounts on the ExxonMobil platform: a primary account identified by his first and last name and a secondary account for priority emails identified by the name "Wayne Tracker." When complying with the subpoena issued by the New York Attorney General (the "NYAG"), ExxonMobil searched the

Wayne Tracker email account, along with Mr. Tillerson's primary account. As fully disclosed to the NYAG in prior communications, ExxonMobil's collection and production efforts have focused on specific *custodians* (*i.e.*, employees and officers of the company), not specific *email accounts*. In keeping with that approach, Mr. Tillerson was designated a custodian, which means that the ExxonMobil email accounts he used were within the scope of ExxonMobil's search for responsive documents. The search of documents from Mr. Tillerson thus reached not only his primary ExxonMobil email account, but also the Wayne Tracker account.

None of this should come as a surprise to the NYAG. ExxonMobil produced emails sent to the Wayne Tracker account for the first time on February 20, 2016, and it has continued to do so over the last year. Mr. Tillerson's use of the Wayne Tracker account is evident from the face of a number of those emails, several of which were transparently addressed to or signed by "Rex" or "RWT" in the body of the email.

Notwithstanding insinuations to the contrary, Mr. Tillerson's use of the Wayne Tracker account was entirely proper. It allowed a limited group of senior executives to send time-sensitive messages to Mr. Tillerson that received priority over the normal daily traffic that crossed the desk of a busy CEO. The purpose was efficiency, not secrecy. Were it otherwise, emails to the Wayne Tracker account would have scrupulously avoided any reference to Mr. Tillerson as the intended recipient. Instead, numerous emails to the Wayne Tracker account are expressly addressed to Mr. Tillerson or contain his initials in the body of the email. And, while some of those emails pertain to climate change, the Wayne Tracker account was not established for the purpose of discussing that or any other particular topic. It was a general purpose means of sending priority communications to the CEO of the company.

In light of the questions raised by the Attorney General in his March 13 letter, ExxonMobil reexamined the Wayne Tracker account in connection with the NYAG's subpoena. ExxonMobil confirmed that it searched for potentially responsive documents from both Mr. Tillerson's primary account and the Wayne Tracker account in January 2016, approximately two months after the NYAG issued his subpoena. Those searches were conducted against the emails that were in the accounts at that point in time. In addition, ExxonMobil confirmed that it also searched both accounts again after the parties agreed to a supplemental set of search terms in January 2017.

In the course of this process, ExxonMobil confirmed that it placed a litigation hold on Mr. Tillerson promptly after receipt of the NYAG subpoena. The legal hold process at ExxonMobil, which was designed and implemented prior to this subpoena, engages a technology that protects emails in accounts from automated processes for persons subject to legal hold. ExxonMobil determined, however, that despite the company's intent to preserve the relevant emails in both of Mr. Tillerson's accounts, due to the manner in which email accounts had been configured years earlier and how they interact with the system, these technological processes did not automatically extend to the secondary email account. ExxonMobil is in the process of determining whether this preexisting technology process design had any impact on the production process. A number of factors suggest that any possible impact will not be significant. First, ExxonMobil searched the Wayne Tracker account within two months of receiving the

NYAG's subpoena. Second, many of the emails sent to or from the Wayne Tracker account included Mr. Tillerson's primary account as a recipient, which means email would appear in both accounts. Third, a limited number of senior executives used the Wayne Tracker address to communicate with Mr. Tillerson, and many of them—including, as relevant here, those who work on matters related to climate change—are on litigation hold. As ExxonMobil's evaluation of this issue continues, we will provide the Court and the NYAG with further information.

Obtaining publicity, not information, appears to have been the real goal of the NYAG's March 13 letter. Under this Court's rules, discovery disputes such as this one should be resolved bilaterally, between the parties, prior to being raised with the Court. But the Attorney General did not do so, raising his concerns about the Wayne Tracker email account for the first time in a public filing received by the Court, ExxonMobil, and the press at the same time. Such an approach does not serve the productive resolution of discovery disputes, but it does serve the NYAG's well-established preference to litigate his case in the press rather than court. That objective also explains the NYAG's decision to portray an innocuous business practice unfairly and inaccurately as a sinister effort to withhold information.

The NYAG knows better. To date, ExxonMobil has produced more than 2.4 million pages of documents in connection with the NYAG's climate-change investigation and has worked diligently to respond to the NYAG's extraordinarily broad and, in our view, often unreasonable and improper, investigative demands. So far the NYAG has found no evidence of the far-flung campaign to mislead the public that he routinely claims has been going on for decades. The NYAG now suggests that a single email account might house the evidence that his 18-month investigation has yet to uncover. The suggestion is preposterous. If the Wayne Tracker account was used to communicate with other ExxonMobil executives about climate change, those emails would reside in the accounts of the other executives. But the NYAG nowhere claims that the emails he has seen involving the Wayne Tracker account are of any significance whatsoever. All that remains is false innuendo and suspicion. Predictably, ExxonMobil received press inquiries within minutes of receiving the NYAG's letter, and advocacy groups allied with the NYAG in his campaign against the company quickly issued press releases denouncing ExxonMobil's purported misdeeds, going so far as to suggest that the Wayne Tracker account was used to conceal information about climate change. The facts, as known to the NYAG, come nowhere near supporting such allegations. And ultimately no amount of distortion and dissembling can distract from the NYAG's failure to develop any evidence supporting the allegations he has been pressing for the last year and a half.

The NYAG's Other Concerns

The NYAG raises three other challenges to ExxonMobil's production that are either frivolous, premature, or both. None is worthy of this Court's consideration at this time.

First, the NYAG falsely contends that ExxonMobil "delayed and obstructed" the production of documents from its top executives. Ltr. 1. The record says otherwise, as ExxonMobil has worked with the NYAG to address an ever widening and ever changing scope of demands and questions about the production. In keeping with that approach, ExxonMobil will

shortly produce additional Management Committee documents to the NYAG on March 17, 2017. The NYAG should not be heard to complain about the adequacy of this production until he has at least taken the time to review it.[1]

Second, the NYAG erroneously argues that 34 additional email accounts contain information that should have been produced to his office. Ltr. 2-3. The NYAG first expressed interest in these accounts a mere 24 hours before filing his March 13 letter, and this request amounts to nothing more than an impermissible attempt to expand the number of custodians beyond the limit expressly ordered by this Court. ExxonMobil is not required to produce documents from every employee within the company, and the NYAG offers no reason to believe that the identified individuals or email addresses are reasonably likely to possess unique responsive documents, as the law requires.

Third, the NYAG wrongly contests ExxonMobil's public statements regarding the manner in which it incorporates a "proxy cost of carbon" into its business operations. Ltr. 3. This argument is refuted by the record. Contained within the documents produced to date are (a) ExxonMobil Dataguide Appendices, *i.e.*, internal policy documents that specify precisely how ExxonMobil applies its proxy cost of carbon in every jurisdiction worldwide through the year 2040 (*see, e.g.*, EMC 002571948), and (b) numerous documents that reflect the actual application of the precise figures used in the Dataguide Appendices to Company-sponsored projects (*see, e.g.*, EMC 000137097). More fundamentally, the thousands of "proxy cost" documents produced to date show that the information contained in ExxonMobil's internal documents is entirely consistent with its public statements—including, for example, ExxonMobil's 2014 *Outlook for Energy*.[2]

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[1] The NYAG's March 12, 2017 email demanded answers to five questions in just 22 hours. When ExxonMobil informed the NYAG that it would provide a response "promptly," but would not meet the NYAG's arbitrarily short deadline, instead of responding, his office filed a letter with the Court approximately two hours later.

[2] The NYAG simply has no reasonable basis for believing that ExxonMobil has failed to apply its proxy cost of carbon in precisely the manner described in its public statements and its internal policies, let alone that any supposed failure affected any New York consumer or investor. As the NYAG is well aware, even among the companies that do utilize internal proxy costs of carbon, it is a matter of public record that the highest carbon prices used by ExxonMobil are in most cases higher than those reported by other energy companies, and among the highest reported by any company. *See, e.g.*, Carbon Disclosure Project, *Putting a Price on Risk: Carbon Pricing in the Corporate World* at 6 (Sept. 2015), *available at* https://www.oceanfdn.org/sites/default/files/CDP%20Carbon%20Pricing%20in%20the%20corporate%20world.compressed.pdf (last visited Mar. 15, 2017); *see also* Cntr. for Amer. Progress, *Proxy Carbon Pricing: A Tool for Fiscally Rational and Climate-Compatible Governance* at 7 (Apr. 2016), *available at* https://cdn.americanprogress.org/wp-content/uploads/2016/04/13143140/CarbonPricing.pdf (last visited Mar. 15, 2017). This simply underscores that the proxy cost of carbon utilized by ExxonMobil is eminently reasonable. In view of this fact, and the NYAG's acknowledgement that companies utilize a range of proxy costs for carbon, ExxonMobil is once again left to conclude that the NYAG's investigation has more to do with the identity of the subject than with any good faith theory that the Company has violated any law.

Respectfully Submitted,

/s/ Theodore V. Wells, Jr.
Theodore V. Wells, Jr.

cc: Manisha Sheth, Esq.
Katherine Milgram, Esq.
Mandy DeRoche, Esq.
Patrick Conlon, Esq.
Daniel J. Toal, Esq.
Michele Hirshman, Esq.

Exhibit 15

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK CIVIL TERM PART 61

----------X

In the Matter of the Application of the,

PEOPLE OF THE STATE OF NEW YORK, by ERIC T. SCHNEIDERMAN,
Attorney General of the State of New York,

Petitioner,

For an order pursuant to CPLR 2308(b) to compel Compliance with a subpoena issued by the ATTORNEY GENERAL

- against -

PRICEWATERHOUSECOOPERS LLP, and
EXXON MOBIL CORPORATION,

Respondents.

----------X

INDEX NUMBER 451962/16

60 Centre Street
New York, New York
March 22, 2017

B E F O R E:

HONORABLE BARRY R. OSTRAGER,
Supreme Court Justice.

A P P E A R A N C E S:

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Senior Court Reporter.

Proceedings

THE COURT: Let me start by observing that in connection with proceedings to compel compliance with the New York Attorney General's subpoena to Exxon and the accountant, auditor are the proceedings on November 21st, 2016, October 24th, 2016, December 9, 2016 and January 9, 2017. I received correspondence from both Exxon and the New York Attorney General.

The first piece of correspondence was March 20th from the New York Attorney General, which was --

I'm sorry, the first piece of correspondence was from the New York Attorney General, dated March 13th. That was responded to by Exxon's counsel on March 16th.

Then there was a March 20th letter submission by the New York Attorney General, and most recently, there was a response by ExxonMobil's counsel on March 21st.

Now I carefully reviewed the correspondence, and the first thing I want to confirm from counsel for Exxon is that the March 21st, 2017 letter has been e-filed?

MR. TOAL: That's correct, your Honor.

THE COURT: And everything in the

March 21st, 2017 letter constitutes, for purposes of today's representation by counsel for Exxon, that everything in the March 21st letter is true and accurate to the best of your knowledge and belief?

MR. TOAL: Yes, your Honor.

MR. WELLS: Yes, your Honor.

THE COURT: All right.

Now, starting with the March 13th letter from the New York Attorney General, the letter concludes with a request that Exxon do five specific things. That's on page 4 of the March 13th letter.

I may be misreading or miscomprehending what's in Exxon's March 21st, 2017 letter, but as I read Exxon's March 21st, 2017 letter, Exxon addressed each of the items you asked me to, requested me to order Exxon to do, except Item 5, which was to establish a firm deadline for the production of all management and board related documents responsive to the subpoena.

Do I have that wrong?

MR. OLESKE: Yes, your Honor.

THE COURT: Okay. Explain to me how and why.

MR. OLESKE: Yes, your Honor.

First of all, as we get into Exxon's most

recent letter, which places the real issues front and foremost, Exxon's explanation in the most recent letter does not satisfy the request, number one.

Number two, Exxon has attempted an explanation on Mr. Tillerson's secondary e-mail. Exxon's letter is completely silent and has remained completely silent about the preservation, collection and production of documents from sources of management custodians, other than Mr. Tillerson. The ones identified first in our March 12th e-mail to Exxon, our March 13th letter to the Court repeated in our most recent letter Exxon's letter of this morning is completely silent about the preservation, collection and production of documents from, for example, Mr. Tillerson's various executive assistants, and from the other secondary e-mail sources that we know exist at Exxon to collect and transmit managing documents, so to that extent, vis-a-vis, number two, Exxon has not even attempted to address in its most recent correspondence our serious problem with the deficiency in that regard.

If it's helpful to the Court, I think I can focus on where we are and what's still outstanding if that's what the Court --

THE COURT: We want to bring this to closure

because -- I don't want to use any adjectives, but it seems to me that at some point the New York AG will have a sufficient quantity of documents to begin the deposition process. Obviously, the New York AG is entitled to documents relevant to its outstanding subpoena. I thought that the March 21st letter went into great detail explaining ExxonMobil's practice for gathering and producing management and board documents, including the reason for the small volume of prior productions and the difference in the collection process as compared to other documents. I think that the letter recites in detail that the most senior management people have potential market moving, highly sensitive documents that might be captured in a search using the expanded search terms that the New York AG had asked Exxon to use, and I ordered Exxon to use, and for that reason, it placed the documents in a separate file after having internal and external counsel review the documents to make sure that the documents that were responsive to the specific requests in the subpoena were produced, and none of the others were produced.

MR. OLESKE: Your Honor, and I believe unfortunately the way the letter was crafted has led the Court to misapprehend, in fact, what Exxon has

done and what is represented to be the current state of affairs. No one wants more than the Attorney General to complete the process of obtaining these documents and moving on to the next stage of the investigation. We've been trying to do that for 16 months. The problem is that it took us to this point to get these answers, which we should have had a year or more ago, and now the day of this appearance, we found out, and what Exxon has carefully avoided saying directly in the letter, but is kind of the bomb shell on page 6 at the end of the letter to begin with, and that does not resolve matters, is that Exxon has lost, has lost one years' worth of the Mr. Tillerson's alias e-mails.

THE COURT: I don't mean to interrupt you.

MR. OLESKE: Yes.

THE COURT: You address in your May 20th letter the issue with respect to certain documents to one of Mr. Tillerson's accounts which were missing, and we'll get to that, I'm trying to deal with the items in your March 13th letter.

MR. OLESKE: Yes, your Honor.

THE COURT: I've just explained that as I read Exxon's March 21st letter, they've explained what its producing and gathering management and board

documents, and it may have explained why there is a small volume of prior productions and the difference in the collection process for management and board documents than the process its used for other documents, and they've undertaken to provide you forthwith an additional production of management and board documents.

MR. OLESKE: And I can address that directly, your Honor. I'll address the process, and the problem with a prescription of the process, and the problem with where it leaves us.

What Exxon says is that more than a year ago at the outset of this, instead of applying the search terms that were actually agreed to, and instead of doing what Exxon has represented ever since they did that counsel interviewed the relevant custodians, found out the appropriate sources of their documents, collected and produced them, something else happened; Exxon's internal IT team and internal system, separate from counsel, apparently, for more than a year was the only one involved in collecting these managing documents not using the search terms agreed on, and again, this is carefully allotted in Exxon's letter. If your Honor looks at page 4 of the letter where they describe their first search, they

acknowledge that this search differed from the terms that were supposed to be applied. They say in many cases the search terms they actually used were broader, but we don't know what basis in fact the search terms were different, or lesser than, and they say specifically the search was done explicitly entirely internally by Exxon, not reviewed by external counsel. That practice and procedure continued for the next year-plus while Exxon was representing to us and to the Court that their ordinary procedure for interviewing, locating, collecting documents was in place.

What we now know is that when Exxon internally first searched, they say they searched Wayne Tracker's e-mails in January of 2016 pursuant to process -- this is a different set of search terms -- by that time they already knew that three months' worth of those e-mails had been lost.

Somehow, over the course of the next 14 months, despite knowing that he was, that Wayne Tracker's account was a relevant repository of documents, they lost another nine months' worth of documents along the way. They continued not to apply the search terms that had been requested.

To your Honor's point about the justification

for this, that they needed to do it internally because of the sensitivity involved, if you look later in the letter what we find out is that, in fact, they could have done it from the very beginning. They didn't want to pay for it. That's what they say on page 5 because they're now doing exactly what they say they couldn't have done a year-and-a-half ago that would have produced these documents before the Court's deadline for production of these documents that would potentially, if presuming counsel had been involved, allowed for the preservation of the now lost years' worth of documents, so the recitation of their process reveals that they violated their obligations the entire time doesn't provide a cure, and what Exxon is now promising after the deadline, and a month after we had to call them to account, still does not address the concerns in either our first or our second letter.

THE COURT: I'm dealing with Item 1 of your first letter. I'll let Exxon speak. I'm not speaking on their behalf.

MR. OLESKE: Yes.

THE COURT: They assert that the New York Attorney General had different priorities in terms of

the production of the documents from various sources, and that the New York AG's interest in management and board documents is a relatively recent phenomenon in terms of priorities, and your request number one of the Court is to order Exxon to explain its past practices for gathering and producing management and board documents, including the reasons for the small volume of other productions and the difference in the collection process as compared to other documents.

MR. OLESKE: Yes.

THE COURT: Now have they done that or not?

MR. OLESKE: No. I'll try to make the problem with number one alone even more clear.

First of all, they have not explained, they're completely silent about the board documents that your Honor just referred to that Exxon promised us we were going to get in the course of this production of management of documents.

More importantly, they're completely silent about whether or not they actually preserved, collected, produced the documents from the, that we know of, 34 of these other sources of management documents. They have not explained whether they actually interviewed the custodians like they said they did, whether or not they found out that these

people were relevant custodians and preserved them, and Judge, to that point, part of what is difficult to respond to number one in our letter from two letters ago is that so much has happened, and we learned so much since then.

For example, what we have learned about those other sources of management documents is that, in fact, there was a climate change litigation in 2009, 2013 that Exxon subjected these assistants to a litigation hold on account of requests for Mr. Tillerson's documents, and yet in their first letter Exxon said that this was a frivolous request for more custodians. In their most recent letter, no, they're silent. They have not explained their process at all. What they've told us is how their process differed from what they said they did, and what they were obliged to do, but they still have not actually explained what the practice was for identifying the documents, and whether or not those custodians were preserved even, let alone whether or not they collected, reviewed and produced them, and so even with respect to what is now kind of a ship has sailed, number one, yes, Exxon tries to respond to this letter, but given what's happened since then and the given the revelations in this letter, frankly,

and with all due respect, counsel's unsworn hearsay recitation of a document collection process that apparently it has not been involved, gives our office no comfort. We don't think we can rely on that, and on top of that, our subpoena specifically requests a sworn statement reciting all of this information, and so at this point, given what's happened since our first letter we believe that the only remedy that's going to allow us to get to the end of this are sworn statements from the people who actually did it to tell us what they did, what was in, what was out, to tell us how those documents got lost, depositions of those witnesses to cross-examine those sworn statements.

In the mean time, we need the broader preservation that we asked for in our second letter in order to make sure that nothing else is lost because they still won't answer about these other sources. They don't acknowledge them in our latest letter.

THE COURT: There's no issues about the broad preservation. That is the order of the Court.

MR. OLESKE: Okay.

And beyond that, your Honor, now that we are not -- when we wrote this letter with questions have

documents been lost, now we know they're lost.

In addition to what else we requested, we're going to need the full suite of intervention to look for back-up tapes, production from there, and we're going to need third-party independent verification of what's happened to these data sources from which recovery could theoretically be possible, so I understand your Honor's focus on what Exxon has managed to finally confess to in this letter, but it's still woefully insufficient to get us to the end, and the problem we have is that we have spent sixteen months trying in the process of meet and confers to get to that point, and instead, to get anywhere, to get this explanation from over a year ago, we have to drag them into Court.

THE COURT: Look, with respect to Item 1, I'll let Mr. Toal speak.

If what you want is affidavits from custodians attesting to what counsel has represented in this letter, then I'll order Exxon to produce those sworn statements, and you can cross-examine the affiants, but again, I'll hear Mr. Toal, but I think the letter responds to Item 1.

MR. OLESKE: Thank you, your Honor.

But, for purposes to make sure there's no

confusion about this, it's not simply that people need to reswear to what's in this letter because what's in this letter is incomplete. We need the people who actually participated in the process described here to describe and confirm not just what's in this letter, but to tell us the information that's not in this letter.

I just wanted to make clear that our subpoena instructions require all of that, and under the circumstances, we believe that's only way we can get to the end.

THE COURT: Okay. Do you have a problem with that, Mr. Toal?

MR. TOAL: Well, if I could just address a number of misunderstandings in the account that Mr. Oleske gave;

The suggestion that outside counsel is not involved in this search and collection process is false. We've been involved the entire time.

THE COURT: That's what your letter says.

MR. TOAL: That's what our letter says.

We tried to describe as clearly as we could exactly how and why. We did the math. The collection and search of the management commission describes the way we did it. The search terms were

added over time. That resulted in changes over time. If we found additional data sources, we searched those. That's what you're supposed to do in a collection. I think that's our obligation. That's what we did, and when we continue to hear complaints about the inadequacy of our production from the management commission custodians, we try to take the issue off the table. We agreed to do it exactly the way we did it with other custodians. We implemented other security protocols. We have had ExxonMobil employees at our vendor site 24 hours a day to preserve the integrity of that data, so we have given them everything they want. The management committee custodians have been on hold since November 6th, 2015, two days after the subpoena was served on us, so setting aside -- and Mr. Wells will address the situation with the Tracker e-mail account, but with respect to all the other management custodians, that data was preserved. It was searched multiple times. This is the fourth time we've searched the data just to try and address and accommodate the concerns that were raised.

I also want to address the suggestion that the Attorney General office has been pressing for this management committee data for more than a year.

That's not accurate.

In February of 2016 they sent us a long list with all their investigative interests, but they prioritize this list, and this whole search has been done pursuant to the direction from the Attorney General about how to prioritize, and it started because this whole investigation supposedly started with articles and inside clients, and the L.A. Times that suggested Exxon had scientific knowledge that nobody else in the world had, and so the very first two requests in their subpoena asked for scientific documents. That was the first --

THE COURT: I understand, Mr. Toal. It's all recited very clearly in your letter, and I understood it, and I understood your letter to clearly address Item Number 1, that New York AG wants affidavits from ExxonMobil people attesting to what's represented by counsel, and I simply asked you whether you have a problem with that?

MR. TOAL: Well, these are representations of counsel. You asked us in the beginning, but if you determine that's what's appropriate, we are, of course, willing to do that.

THE COURT: I'm determining that that's appropriate.

Now with respect to Item 3 of the March 13th letter, your letter indicates that no other relevant Exxon custodians utilize secondary e-mail accounts, and that Mr. Tillerson doesn't have any additional e-mail accounts besides the Tracker account.

MR. TOAL: That's correct.

THE COURT: So, would the New York Attorney General's office agree that Exxon has dealt with Item 3?

MR. OLESKE: Well, it depends, your Honor, on whether I guess we're going to get clarification of the description on page 6 of the letter because we asked whether or not they are relevant custodians, including we believe the 34-plus other custodians that we know have relevant documents and have been put on hold in other litigations in the past, whether or not they, those individuals, have secondary accounts.

Exxon's letter restricts itself twice to claim that no other legal hold custodians; i.e., no one else they've already put on preservation hold has a secondary e-mail, but the people we're talking about, unlike any other litigation from what we can see, aren't on the preservation hold list. They won't answer a question of whether they were

preserved, and so to the extent that the Exxon is trying to split that hair, it's a good time to find out.

THE COURT: Okay, so let's find out.

MR. TOAL: We're not aware of anyone else using secondary ExxonMobil e-mail accounts, so setting that aside, it's possible some people have personal e-mail accounts that we don't have custody and control over, but in terms of ExxonMobil accounts used for work purposes, Mr. Tillerson is the only person we're aware of on this list who used a secondary account.

Let me address -- counsel had raised this issue of 34 other custodians that they raised.

We have addressed that in correspondence with the Attorney General's office. We indicated we didn't think there was any reason to believe any of these people had relevant documents. Fair number of them are not even people. 14 of what they call custodians are actually distributing lists, so for instance, in my firm there's a distribution list for litigation partners. It's just a aggregation of the e-mail addresses of all the litigation partners, so you don't have to type out 45 e-mail addresses. It's just a matter of convenience. It's not

something that can be placed on hold. It's not an account. It's just an aggregation of e-mail addresses.

12 of the other people they ask about are administrative assistants. We have no reason to believe they have, or they are likely to have responsive documents, and the AG has not presented any evidence to suggest that there is any such likelihood.

MR. OLESKE: Your Honor, may I address --

MR. TOAL: If I can just --

Three of the people they identified were already on the litigation hold.

That leaves five others, and I can give you their names.

There was never any indication from the Attorney General about why they thought these people were likely to have responsive documents. We're not aware of any reason why they would, and I think it's important to recognize, we have always told the Attorney General people that we put on hold. We have periodically at their request provided very extensive lists of the people who are on litigation hold, so it's no surprise to the Attorney General who is, and who is not on the list, so you know, we don't think

there's any likelihood that any of these people, the ones who are actually people, not distribution lists, have responsive documents, and the Attorney General has not presented any reason to believe otherwise.

MR. OLESKE: May I address this, your Honor?

First of all, it's not our obligation to figure out whose missing from their list. It was their obligation to do what they said they were going to do, which is interview the custodian and find out where the documents were.

Second, as I said, and I can show you the documents from the prior litigation hold, these people were previously put on litigation hold in another case because they were going to have the rest of those documents.

To remove any doubt, your Honor, if I may, this is a document from the production, so it's something I would like to hand up.

THE COURT: Do you want to hand it up?

MR. OLESKE: Yes, thank you.

Your Honor, obviously, we don't know what counsel knows about what Exxon knew from the outset.

We know what Exxon knew.

This is one of the documents that led us to discover the Wayne Tracker e-mail, and your Honor,

you can see this is correspondence from one of the executive administrative assistants describing, checking in with one of these administrative assistants on our list, Nancy, who is Nancy Gober, who is Mr. Tillerson's -- one of his several executive assistants about -- you will see the document there, that the abbreviation CEP is the carbon exposure project, a document where Exxon makes representations that are directly at issue in this case.

This is by no means the only document like this. We have many documents that indicate that, in fact, Exxon's executive practices are for their communications to be routed through these executive assistants. Exxon knew that. It new it enough in other cases to put them on litigation holds. We don't know why they're on hold here. We don't know if the documents are lost, and the suggestion that Exxon should not now, if it hasn't already, preserving and searching for the documents to us is inexplicable.

THE COURT: Look, I don't see any prejudice to Exxon in putting each and every person on litigation hold that the AG wants there to be a litigation hold on.

By the same token, there's a rule of proportionality in discovery, and it's the case that with respect to a significant percentage of the documents that you're seeking and have been produced, they've been sent to multiple people with cc's or bcc's, and even if you don't get the document from custodians X, the same document that's in custodian X's e-mail inbox is in custodian Y's e-mail inbox, and you have it, and that doesn't excuse Exxon from doing what it undertook to do, it doesn't excuse Exxon from complying with your information subpoena, but there's a rule of proportionality here.

MR. OLESKE: Your Honor, that's true, obviously, in every case like this I guess.

I'll note just, first, they knew these particular people were custodians and could have and should have them put them on hold.

THE COURT: All right, there's going to be on litigation hold.

MR. OLESKE: Right. I guess the issue is --

THE COURT: Then you will meet and confer with them as to whether or not there's anything that you want from them.

MR. OLESKE: Right. Understood, your Honor.

I guess I'm just going to preview for your

Honor, going back to the issue about the lost Tracker e-mails, is that if these were on a preservation hold, we do need explanations, sworn explanations of how that happened and when, if they were put on hold when, what was lost during that time, and we're going to need the same kind of forensic analysis of what's recoverable when it was lost for those documents.

THE COURT: We're not dealing with forensic analyses here at this point in time.

MR. OLESKE: Understood, your Honor, obviously.

THE COURT: All we're doing is going one by one with respect to the things that you asked the Court to order, and whether they're appropriate or whether they're not appropriate.

MR. OLESKE: And just so I understand your Honor's order to us, is that with respect to these sources, that we know the sources of management documents, your instructions, now they're going to be hold going forward, we should meet and confer both about what's happened to them in the past, and what he we believe Exxon should do in terms of producing them in the future, and that if we can't come to some agreement about that, then we should return to your Honor?

MR. TOAL: Your Honor, can I address this?

As, of course, your Honor indicated you would like these individuals to be put on hold, we can put individuals on hold. We will put those individuals on hold. As I said we, cannot put distributing lists on hold because it's not an account.

THE COURT: Understood. Understood and agreed.

MR. TOAL: As to what happened in the past, we have been very clear to the Attorney General whose on hold, and who wasn't, and so it's no mystery. We didn't think these people were reasonably likely to add any unique responsive documents. That's why they weren't put on hold.

THE COURT: I understand that.

MR. TOAL: And the Attorney General hasn't asked us to previously, so the idea there should be some sort of retrospective analysis of why that didn't happen when we didn't think they were likely to have responsive documents I think is several steps too far.

THE COURT: Agreed. Am I incorrect that part of the back and forth between the parties here has been that there's been discussion as to whose going to be identified as custodian on a litigation hold,

and who isn't, and now we're talking about adding additional people on the litigation holds that weren't previously identified as being on being on litigation holds?

MR. TOAL: That's correct, your Honor.

THE COURT: It seems to me, with all due respect to the AG's office, if they've reviewed some, most, or all of the 416,000 documents that you have produced comprising of more than two million pages, and they've thought that somebody's name appeared who wasn't previously identified as custodian, they could have called you up and said we want this person to be identified as a custodian?

MR. TOAL: That's correct, your Honor.

And even better would be if they sent us a document saying this is the basis for our belief that this person is reasonably likely to have responsive documents, and then we can work things like this out.

THE COURT: Okay, so what we're going to do this morning is, you're going to agree to put these people on litigation hold, we'll then meet and confer with the New York AG's office about their suspicions and concerns, and if you can't come to some accommodation on a consensual basis, you will come back here.

So, I believe that we've dealt with Item Three of the New York AG's March 13th letter, and Item Four, that's going to be part of the meet and confer process with respect to these additional custodians, and there should be a deadline for production of all management and board related documents responsive to the subpoena, but as I understood your letter, to the extent they haven't been produced, they're going to be produced by tomorrow.

MR. TOAL: The only thing that's left from the management committee custodians is any responsive documents found on their C drives that are internal hard drives on their computer. We will produce that by Friday, your Honor.

And then, any documents that have to be redacted, we propose to produce a week from today, so that's the 29th.

THE COURT: Okay, if we fix March 31st, would that be acceptable to ExxonMobil?

MR. TOAL: It would, your Honor, and --

THE COURT: Would that be acceptable to the New York Attorney General?

MR. OLESKE: Your Honor, if Exxon is going to represent they're going to be completed with this

production and provide the affidavit describing that completion, of course, we have no objection.

THE COURT: Okay.

MR. TOAL: Your Honor, I just want to make clear because I think in past, if we come across additional sources of data that have responsive documents, we're going to produce that. I think that's our obligation to do that, and that happens in discovery, particularly on this scale. It doesn't mean we have violated the Court's order, or violated a discovery deadline. That's exactly what counsel and clients are supposed to do in situations like this, so if we do encounter additional information and we produce it, I don't want to be subject to the charge that I have done something unethical by doing what I am supposed to do.

THE COURT: Understood. Understood and agreed.

You have a continuing obligation to provide responsive documents. You're representing in good faith that you're going to produce all management and board related documents responsive to the subpoena by March 31st. If somehow a document turns up in somebody's drawer that wasn't on e-mail, you're going to produce it.

MR. TOAL: And, your Honor, we're talking, specifically, about management committee custodians. Members of the board, first of all, are not people over whom they have custody and control. We can't produce those documents.

THE COURT: You can't produce people who you're not representing. I understand that.

MR. TOAL: Okay.

THE COURT: And the New York AG understands that.

MR. TOAL: We'll sit.

And in terms of the affidavit, in terms of the deadline for submitting that affidavit, we did say we would produce the documents from the management committee custodians by the 31st. It's not clear to me that's enough time to produce the affidavit.

THE COURT: Would ten days beyond be enough?

MR. WELLS: Your Honor, what I heard the New York AG do was slip something new into the mix. Your Honor said we would produce, represented we would produce all the management committee documents by March 31st, and we said yes. We stand by that representation. Then he stood up and added something totally new, produced what I'll call the

final certification, that everything had been done by March 31st, and that's a different animal.

What I understand I'm supposed to is get all the management committee documents by the 31st, supposed to get certifications with respect to the statements that are contained in my letter, and I will do that, but this final certification, which usually comes at the very end of the process, he slipped that into the March 31st date.

THE COURT: I'll give you ten days later.

I mean, the world isn't going to come to end if the certification --

MR. WELLS: Sure.

THE COURT: -- is delayed by ten days.

MR. WELLS: Thank you, your Honor.

THE COURT: All right, so --

MR. OLESKE: Your Honor --

THE COURT: Yes.

MR. OLESKE: If I may, just to try to clean up and make sure we don't leave any lose ends, I understand your Honor's order about us meeting and conferring about those additional sources of management documents, and I understand that board members have private e-mails that are not on Exxon's system. We'll meet and confer about that, but just

so the Court understands, a number these assistants we're talking about are assistants to the board, and we were assured by Exxon during our prior meet and confer after we first came to Court that we were going to get communications with the board through the production of the management documents. So far we have not seen that, so we'll meet and confer, but we expect that may become an issue if Exxon is not willing to produce documents, produce these people who have handled that correspondence, board members from the Exxon side, we don't see that.

That's just one thing.

The other thing I wanted to clarify with your Honor is, in the course of this meet and confer, is the Court's intention that we'll also address as part of that the issue of the year's worth of lost e-mails, and what remedies are appropriate for Exxon to undertake to try to see what can be recovered, see what the status of those documents is, is it your Honor's intention to that we try that first?

THE COURT: Yes, absolutely.

MR. OLESKE: Yes. I just wanted to present that to your Honor.

THE COURT: With respect to documents that Exxon generated and sent to board members, that would

be included in the documents that Exxon will be producing to you.

With respect to what the board members have on their personal computers, that's nothing that Exxon can do anything about.

MR. OLESKE: Of course, your Honor.

THE COURT: Because they don't represent those board members in their individual capacities.

MR. OLESKE: Yes, your Honor. That's why we accepted Exxon's representation that we would get the communications from Exxon through this.

THE COURT: So, as I understand it, and correct me if I'm wrong, we have resolved all of yours request from your March 13th letter?

MR. OLESKE: Yes, I believe so, the Court's current order. Yes, your Honor.

THE COURT: So, now with respect to your March 20th letter, you have five more requests.

The first one is duplicative of what we have talked about.

The second one is duplicative of what we talked about.

The third one is duplicative of what we talked about.

The fourth one calls for the immediate

reproduction of all management documents in the format that were planned in the ordinary course of Exxon's business, and with the underlying source's information. I believe that we've resolved that in a reasonable manner.

MR. OLESKE: In fact, your Honor, we've had the opportunity to just preliminarily review the production we received yesterday. Unlike all the previous production, it appears to have the source information. We got another CD today that we understand is going to contain that, so assuming that's all for the case, then yes, we believe four is revolved.

THE COURT: The March 21st letter production included meta data and you should be satisfied.

MR. OLESKE: Yes, the recent reproduction appears to have that information.

THE COURT: All right.

And then, the last item is the complete report by Exxon to this Court that sets forth the extent of any non-preservation of responsive documents, identifies whether any such documents are capable of being recovered, and recovers any such documents for the production to the extent possible, that's going to be the subject of your meet and

confer first, correct?

MR. OLESKE: Yes, your Honor. That's our understanding, and our understanding, although I would like to clarify, we believe our understanding is that we're supposed to meet and confer about what's being done next, the remedies. We had understood, and I want to clarify this with the Court, that the affidavits that Exxon is going to produce are going to contain the information about what's happened in the past that's listed this.

THE COURT: Yes.

MR. OLESKE: Thank you.

THE COURT: So then, unless either party has something further, it's my understanding that we've come to a consensual understanding of everything that is presently in dispute, and it will be at least a day or two after March 31st before I'll be receiving any further correspondence from you, correct?

MR. OLESKE: Yes, your Honor.

THE COURT: All right. Thank you.

MR. TOAL: Thank you, your Honor.

MR. OLESKE: Thank you, your Honor.

THE COURT: You will order the transcript, of course.

CONTINUING...

Proceedings

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Certified to be a true and accurate transcription of the minutes taken in the above-captioned matter.

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Gloria Ann Brandon,
Senior Court Reporter