STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

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April 11, 2019

VIA NYSCEF AND HAND DELIVERY

The Honorable Barry R. Ostrager,
Supreme Court, New York County

Re: *People v. Exxon Mobil Corporation*, Index No. 452044/2018

Dear Justice Ostrager:

As directed by Commercial Division Rule 24, the Office of the Attorney General ("OAG") submits this pre-motion letter in connection with a dispute regarding the treatment of third-party communications produced by the OAG to ExxonMobil. In sum, the OAG believes that (a) any determination on whether to seal such documents should be delayed until the Court rules on the OAG's pending motion to dismiss, and (b) good cause exists for permanently sealing such documents even if the Court permits ExxonMobil to go forward with its misconduct defenses. ExxonMobil disagrees on both counts.

The documents at issue are communications between a third-party attorney and the OAG that ExxonMobil included as Exhibits 8-12 to its proposed Amended Answer. (ExxonMobil's Proposed Amended Answer, Doc. No. 116, Exs. 8-12.) ExxonMobil has not contended that these documents are relevant to the allegations in the Complaint, but instead offers them as evidence of the "Attorney General's coordination with special interests." (ExxonMobil's Brief in Opposition to the OAG's Motion to Dismiss Certain Defenses at 3, Doc. No. 114.) Accordingly, these documents are relevant only if the Court determines that ExxonMobil has adequately pleaded the defenses related to allegations of collusion with third parties. If, on the other hand, the Court grants the OAG's pending motion to dismiss, these documents have no relevance to any valid claim or defense and should not be made public under any circumstances. For that reason, the OAG has proposed holding this dispute in abeyance until the pending motion to dismiss is decided, but ExxonMobil rejected that proposal.

In addition, even if the Court rules that ExxonMobil has adequately pleaded a defense to which these documents are relevant, there is good cause for sealing these records. The protective order in this case defines "confidential information" as, *inter alia*, documents that, in the "good faith judgment" of the producing party, could be detrimental to the conduct of the Party's business if disclosed. (Stipulation and Order for the Production and Exchange of Confidential Information, ¶ 3(a), Doc. No. 46.) The OAG's business is the protection of the people of the State of New York through the enforcement of state laws. Cooperation and communication with third-parties with information related to potential violations of such laws are critical to that function. Courts have recognized that "[o]fficials with law enforcement responsibilities may be heavily reliant upon the

voluntary cooperation of persons who may want or need confidentiality," and that if "'release is likely to cause persons in the particular or future cases to resist involvement where cooperation is desirable, that effect should be weighed against the presumption of access.'" *United States v. Amodeo*, 71 F.3d 1044, 1050 (2d Cir. 1995) (quoting *Floyd v. City of New York*, 739 F. Supp. 2d 376 (S.D.N.Y. 2010)). That concern is present here. Third parties are less likely to communicate information to the OAG if such communications are likely to be published on a state website.

For the reasons stated above, the OAG is prepared to move by order to show cause for the documents at issue and any similar documents filed in the future to be sealed. We are available to discuss this issue and a proposed motion at the Court's convenience.

Sincerely,

/s Marc Montgomery
Marc Montgomery