



Plaintiff Exxon Mobil Corporation (“ExxonMobil”) submits this reply memorandum of law in support of its motion to remand this action to the 17th District Court of Tarrant County, Texas.

### **ARGUMENT**

Defendants accuse ExxonMobil of filing a remand motion in an effort to return to a “friendlier forum” in Texas state court. (ECF No. 34 at 3.) That allegation is demonstrably false. ExxonMobil has no objection whatsoever to protecting its rights in this forum and has recently filed an action in this Court seeking declaratory and injunctive relief against ongoing constitutional rights violations committed by the Attorney General of Massachusetts. *Exxon Mobil Corp. v. Healey*, Civ. No. 4:16-CV-00469-M (N.D. Tex. June 15, 2016). ExxonMobil seeks a remand of this case solely because of its understanding of Fifth Circuit precedent on ripeness; nothing more.

The Fifth Circuit recently held that a challenge to a state-issued subpoena is not ripe for adjudication in federal court “when there is no current consequence for resisting the subpoena.” *Google, Inc. v. Hood*, No. 15-60205, 2016 WL 2909231, at \*9 (5th Cir. Apr. 8, 2016, *amended* May 18, 2016). Here, ExxonMobil faces no immediate consequences for not complying with Attorney General Walker’s subpoena. For there to be any consequences, Attorney General Walker would need to commence enforcement proceedings against ExxonMobil. As of the filing of this Reply, he has not done so. Under a straightforward application of *Google*, ExxonMobil’s declaratory judgment action against Walker and his co-defendants is not ripe in federal court, notwithstanding its ripeness for adjudication in state court.

ExxonMobil's recently filed action against the Massachusetts Attorney General, by contrast, is ripe for adjudication in federal court under *Google*. The civil investigative demand that ExxonMobil challenges in that action carries immediate, automatic penalties for non-compliance: a "civil penalty" and the forfeiture of objections to the demands. *See* Mass. Gen. Law ch. 93A § 7 (civil penalty); *Attorney General v. Bodimetric Profiles*, 533 N.E.2d 1364, 1365 (Mass. 1989) (forfeiture). Those penalties satisfy *Google*'s requirement that there be a "current consequence for resisting the subpoena," 2016 WL 2909231, at \*9, and permit this Court to hear ExxonMobil's claims against the Massachusetts Attorney General for issuing the demand.

Defendants disagree with ExxonMobil's legal analysis. According to Defendants, *Google*'s holding applies only to claims for injunctive relief that seek to bar the enforcement of a subpoena. (ECF No. 34 at 4-5.) Because ExxonMobil seeks a declaration that the mailing and issuance of Attorney General Walker's subpoena violated its rights, rather than an injunction prohibiting Attorney General Walker from enforcing the subpoena, Defendants contend that *Google* has no bearing on the Court's ability to hear this case. (*See id.*)

Defendants' reading is difficult to square with what the *Google* Court actually ordered. The Fifth Circuit directed the district court to dismiss *Google*'s claims "challenging the administrative subpoena." *Google*, 2016 WL 2909231, at \*11. Like ExxonMobil, *Google* challenged "the issuance" of the subpoena in that case, and it also sought a declaration that the future enforcement of the subpoena would be illegal. *See, e.g.,* Compl. ¶ 102, *Google, Inc. v. Hood*, No. 3:14-CV-00981, (S.D. Miss. Dec. 19,

2014), ECF No. 1 (alleging, in part, that “[t]he Attorney General’s issuance” of the subpoena violated the Fourth Amendment); ¶ 107A (seeking a declaration regarding a future enforcement). Although the Fifth Circuit expressed no view about Google’s request for a declaration that a future enforcement action would be illegal, it treated Google’s claims regarding the issuance of the subpoena as unripe challenges to the subpoena itself. *See Google*, 2016 WL 2909231, at \*11 & n.14 (distinguishing between Google’s unripe claims “challenging the administrative subpoena” and Google’s claims regarding a future enforcement action, which the decision did not address).

Determining whether ExxonMobil or Defendants have the better understanding of the Fifth Circuit’s decision in *Google* is a question of law for this Court. Were this Court to agree with Defendants that the matter is ripe for adjudication in federal court, ExxonMobil would press its claims in this Court. As demonstrated by its recent filing against the Massachusetts Attorney General, ExxonMobil seeks only a full and fair hearing of its claims before a court with jurisdiction to consider the requested relief. If this Court determines that ExxonMobil’s suit is ripe for federal adjudication, ExxonMobil is prepared to proceed.

Dated: June 20, 2016

Respectfully submitted,

EXXON MOBIL CORPORATION

By: /s/ Patrick J. Conlon  
Patrick J. Conlon  
(*pro hac vice*)  
State Bar No. 24054300  
Daniel E. Bolia  
State Bar No. 24064919  
daniel.e.bolia@exxonmobil.com  
1301 Fannin Street  
Houston, TX 77002  
(832) 624-6336

/s/ Theodore V. Wells, Jr.  
Theodore V. Wells, Jr.  
(*pro hac vice*)  
twells@paulweiss.com  
Michele Hirshman  
(*pro hac vice*)  
Daniel J. Toal  
(*pro hac vice*)  
PAUL, WEISS, RIFKIND, WHARTON  
& GARRISON, LLP  
1285 Avenue of the Americas  
New York, NY 10019-6064  
(212) 373-3000  
Fax: (212) 757-3990

Justin Anderson  
(*pro hac vice*)  
janderson@paulweiss.com  
2001 K Street, NW  
Washington, D.C. 20006-1047  
(202) 223-7300  
Fax: (202) 223-7420

*Counsel for Exxon Mobil Corporation*

/s/ Ralph H. Duggins  
Ralph H. Duggins  
State Bar No. 06183700  
rduggins@canteyhanger.com  
Philip A. Vickers  
State Bar No. 24051699  
pvickers@canteyhanger.com  
Alix D. Allison  
State Bar. No. 24086261  
aallison@canteyhanger.com  
CANTEY HANGER LLP  
600 West 6th Street, Suite 300  
Fort Worth, TX 76102  
(817) 877-2800  
Fax: (817) 877-2807

/s/ Nina Cortell  
Nina Cortell  
State Bar No. 04844500  
nina.cortell@haynesboone.com  
HAYNES & BOONE, LLP  
2323 Victory Avenue  
Suite 700  
Dallas, TX 75219  
(214) 651-5579  
Fax: (214) 200-0411

**CERTIFICATE OF SERVICE**

I certify that on this 20th day of June 2016, the foregoing document was electronically transmitted to the Clerk of the Court using the CM/ECF System for filing and transmittal of Notice of Electronic Filing to the attorneys of record in this matter.

/s/ Ralph H. Duggins  
Ralph H. Duggins