

Pursuant to Federal Rule of Civil Procedure 42(a), Local Rule 7.1, and this Court's August 6, 2019 Order Consolidating Related Cases and Appointing Lead Counsel (ECF No. 11), Lead Plaintiff Samuel Montini ("Lead Plaintiff Montini") for *In Re Exxon Mobil Corporation Derivative Litigation*, Lead Case No. 3:19-cv-1067-K (the "*Consolidated Derivative Action*") respectfully submits this motion for an order consolidating the recently filed shareholder derivative action, *Walkover v. Woods, et al.*, Case No. 3:20-cv-2302-K, into this action under the leadership of Lead Plaintiff Montini, Lead Counsel Johnson Fistel LLP, and Local Counsel Ron Wells.

I. RELEVANT BACKGROUND

On May 2, 2019, Lead Plaintiff Montini filed the derivative action captioned *Montini v. Woods, et al.*, Case No. 3:19-cv-1068-K (the "*Montini Derivative Action*") against the Individual Defendants¹ who are certain current and former directors and officers of Nominal Defendant Exxon Mobil Corporation ("Exxon"). The *Montini Derivative Action* was reassigned and transferred to this Court on May 8, 2019. ECF No. 4.

On August 6, 2019, the Court entered an order consolidating the *Montini Derivative Action* with a related derivative action, *Von Colditz v. Woods, et al.*, Case No. 3:19-cv-1067-K and assigning the *Consolidated Derivative Action* the above caption and case number (the "August 6, 2019 Order"). ECF No. 11. The Order, which appoints Samuel Montini as Lead Plaintiff, Ron Wells as Local Counsel, and Johnson Fistel, LLP as Lead Counsel, "appl[ies] to each derivative case arising out of the same, or substantially the same, transactions or events as the Consolidated Derivative Action, which is subsequently filed in, remanded to, or transferred to this Court." *Id.* ¶ 5-7, 11.

¹ The "Individual Defendants" include Darren W. Woods, Andrew P. Swiger, David S. Rosenthal, Jeffrey J. Woodbury, Steven S. Reinemund, Michael J. Boskin, Samuel J. Palmisano, Kenneth C. Frazier, Ursula M. Burns, Henrietta H. Fore, William C. Weldon, Rex W. Tillerson, William W. George, Larry R. Faulkner, Douglas R. Oberhelman, and Peter Brabeck-Letmathe.

Since the Court entered the August 6, 2019 Order, two related derivative actions have been consolidated with the *Consolidated Derivative Action*. On February 12, 2020, this Court consolidated *Stourbridge Investments, LLC v. Avery, et al.*, Case No. 3:19-cv-2267-K, with the *Consolidated Derivative Action* (ECF No. 34), and on June 2, 2020, *Hays v. Woods, et al.*, Case No. 3:20-cv-1280-K, was consolidated with the *Consolidated Derivative Action*. ECF No. 43.

On August 18, 2020, another related derivative action captioned *Walkover v. Woods, et al.*, Case No. 3:20-cv-2302-K (the “*Walkover Derivative Action*”) was filed in the United States District Court, Northern District of Texas, with the Honorable Ada Brown presiding. On August 25, 2020, Judge Brown transferred the *Walkover Derivative Action* to this Court because it is related to the *Consolidated Derivative Action*. The *Walkover Derivative Action* seeks redress for the same alleged wrongful conduct against the same defendants during the same time period as the *Consolidated Derivative Action*. As such, the August 6, 2019 Order applies to the *Walkover Derivative Action* as a related derivative action, and it should be consolidated with the *Consolidated Derivative Action*.

II. THE WALKOVER DERIVATIVE ACTION SHOULD BE CONSOLIDATED WITH THE CONSOLIDATED DERIVATIVE ACTION

The power to consolidate related actions falls within the broad authority of every court “to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.” *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936). When considering whether consolidation is appropriate, courts consider “(1) whether the actions are pending before the same court, (2) whether common parties are involved in the cases, (3) whether there are common questions of law or fact, (4) whether there is risk of prejudice or confusion if the cases are consolidated, and if so, whether the risk is outweighed by the risk of inconsistent adjudications of factual and legal issues if the cases are tried separately, and (5) whether consolidation will

conserve judicial resources and reduce the time and cost of trying the cases separately.” *Pfeffer v. HSA Retail, Inc.*, No. SA-11-CV-959-XR, 2012 WL 394645, at *1 (W.D. Tex. Feb. 6, 2012) (citation omitted).

Here, the *Walkover Derivative Action* should be consolidated with the *Consolidated Derivative Action* because it meets all the factors identified in *Pfeffer v. HSA Retail, Inc.* The *Walkover Derivative Action* is pending in the Northern District of Texas, and names the same Nominal and Individual Defendants as the *Consolidated Derivative Action*. Additionally, the crux of the allegations made in the *Consolidated Derivative Action* and *Walkover Derivative Action* are that certain Individual Defendants made or authorized false or misleading statements and omissions concerning the value and profitability of Exxon’s reserve assets and the specific actions certain defendants were supposedly taking to protect those assets from the risks posed by climate-related policies and declining commodity prices. Both actions allege current and former Exxon directors and officers violated securities laws, breached their fiduciary duties owed to Exxon and its shareholders, committed corporate waste, and were unjustly enriched. Because both actions assert the same claims arising from the same facts, common questions of fact and law exist.

Further, there is no risk of prejudice or confusion if the actions are consolidated. Lead Plaintiff Montini and Gail Walkover (plaintiff in the *Walkover Derivative Action*) assert their claims derivatively on behalf and for the benefit of Exxon. Similarly, both actions seek to recover damages derivatively on behalf of Exxon flowing from the same alleged wrongful conduct against the same defendants during the same time period. Likewise, Exxon and the Individual Defendants will not be prejudiced by consolidation because they will not have to defend themselves against the same claims in the same court in two separate actions. A risk of prejudice only exists if the

actions are not consolidated, since Exxon and the Individual Defendants would risk inconsistent judgments by having to separately litigate the substantially similar claims in two separate actions.

Finally, by consolidating the two actions, pretrial proceedings will be minimized, and judicial economy will be maximized. Both the *Consolidated Derivative Action* and the *Walkover Derivative Action* will have the same or similar discovery, motion practice, and trial issues. And, the Court's August 6, 2019 Order "appl[ies] to each derivative case arising out of the same, or substantially the same, transactions or events as the Consolidated Derivative Action, which is subsequently filed in, remanded to, or transferred to this Court." ECF No. 11 ¶ 11. Pursuant to the August 6, 2019 Order, the *Walkover Derivative Action* should be consolidated with the *Consolidated Derivative Action* because it is a "derivative case arising out of the same, or substantially the same, transactions or events as the Consolidated Derivative Action." ECF No. 11 ¶ 11.

III. CONCLUSION

For the foregoing reasons, Lead Plaintiff Montini respectfully requests this Court order the consolidation of the *Walkover Derivative Action* with the *Consolidated Derivative Action* under the leadership of Lead Plaintiff Montini, Lead Counsel Johnson Fistel LLP, and Local Counsel Ron Wells.

Dated: August 28, 2020

RON WELLS LAW OFFICE

/s/ Ron Wells

RON WELLS
State Bar No. 21140950
150 S. Capitol St.
Canton, Texas 75103
Telephone: (214) 720-0300
Facsimile: (903) 567-2510
E-mail: ron@ronwellsllaw.com

*Local Counsel for the Consolidated Derivative
Action*

JOHNSON FISTEL, LLP
FRANK J. JOHNSON
BRETT M. MIDDLETON
CHASE M. STERN
655 West Broadway, Suite 1400
San Diego, CA 92101
Telephone: (619) 230-0063
Facsimile: (619) 255-1856
FrankJ@johnsonfistel.com
BrettM@johnsonfistel.com
ChaseS@johnsonfistel.com

JOHNSON FISTEL, LLP
MICHAEL I. FISTEL, JR.
WILLIAM W. STONE
40 Powder Springs Street
Marietta, GA 30064
Telephone: (470) 632-6000
Facsimile: (770) 200-3101
MichaelF@johnsonfistel.com
WilliamS@johnsonfistel.com

*Lead Counsel for the Consolidated Derivative
Action*

CERTIFICATE OF CONFERENCE

Pursuant to Local Rule 7.1(a), counsel for Lead Plaintiff conferred with W. Scott Holleman, counsel for Gail Walkover, plaintiff in the *Walkover Derivative Action*, on August 27, 2020 regarding the relief requested herein. Counsel for Walkover stated they do not oppose consolidation, but oppose the leadership of Lead Plaintiff Montini, Lead Counsel Johnson Fistel LLP, and Local Counsel Ron Wells.

On August 24, 2020, Counsel for Lead Plaintiff conferred with counsel for the nominal and Individual Defendants in the *Walkover Derivative Action* regarding the present consolidation motion. On August 27, 2020, counsel for the nominal and Individual Defendants in the *Walkover Derivative Action* stated that the present consolidation motion would go unopposed.

Dated: August 28, 2020

/s/ Ron Wells
RON WELLS

CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system on August 28, 2020.

Dated: August 28, 2020

/s/ Ron Wells
RON WELLS