

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

EXXON MOBIL CORPORATION,

Plaintiff,

v.

Case No. _____

CLAUDE EARL WALKER, Attorney
General of the United States Virgin Islands,
in his official capacity, COHEN MILSTEIN
SELLERS & TOLL, PLLC, in its official
capacity as designee, and LINDA SINGER,
in her official capacity as designee,

Defendants.

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1441 and 1446, defendants Claude Earl Walker, Cohen Milstein Sellers & Toll, PLLC (“Cohen Milstein”), and Linda Singer, in their official capacities, file notice that this action has been removed from the 17th Judicial District, Tarrant County, Texas to the United States District Court for the Northern District of Texas. In support of removal, defendants state:

1. On April 13, 2016, Exxon Mobil Corporation (“ExxonMobil”) filed the state court action captioned *Exxon Mobil Corporation v. Claude Earl Walker, Attorney General of the United States Virgin Islands, in his official capacity, et al.*, Cause No. 017-284890-16, in the District Court of Tarrant County, Texas, 17th Judicial District.

2. Removal is timely. On information and belief, the Texas Secretary of State was served with a copy of ExxonMobil's Original Petition on April 18, 2016. This notice is therefore timely filed within 30 days from service of that petition in accordance with 28 U.S.C. § 1446(b).

3. Venue is proper. The United States District Court of the Northern District of Texas, Forth Worth Division, is the district court "embracing the place where [this] action is pending." 28 U.S.C. § 1441(a).

FEDERAL QUESTION JURISDICTION

4. Removal is proper under 28 U.S.C. § 1441(a). According to that statute, "any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or defendants, to the district court of the United States for the district and division embracing the place where such action is pending." Federal district courts have original jurisdiction of all civil actions arising under the laws of the United States. 28 U.S.C. § 1331.

5. This action arises under the laws of the United States. ExxonMobil has asserted claims for violation of the First, Fourth, Fifth, and Fourteenth Amendments to United States Constitution, and for violation of 48 U.S.C. §§ 1561, 1571, 1591, and 1611. Further, ExxonMobil claims a right of action under 42 U.S.C. § 1983.

6. Specifically, ExxonMobil claims that a subpoena mailed to it by defendants is an "impermissible content-based restriction on speech" in violation of the First Amendment to the United States Constitution, made applicable to the states under the Fourteenth Amendment and to the United States Virgin Islands pursuant to 48 U.S.C. § 1561. Ex. 5 Original Petition ("Pet.") ¶¶ 64-67. ExxonMobil claims that a cause of action for this violation arises under 42 U.S.C. § 1983. *Id.* § VI.A.

7. ExxonMobil also asserts that the mailing of the subpoena constitutes an “unreasonable search and seizure,” contravening the Fourth Amendment to the United States Constitution, made applicable to the states under the Fourteenth Amendment and to the Virgin Islands pursuant to 48 U.S.C. § 1561. *Id.* at ¶¶ 68-70. ExxonMobil claims that a cause of action for this violation arises under 42 U.S.C. § 1983. *Id.* § VI.B.

8. ExxonMobil further claims that Attorney General Walker’s collaboration with his attorneys, Linda Singer and the law firm of Cohen Milstein, is an improper delegation of Attorney General Walker’s investigative and prosecutorial authority in violation of the due process clause of the Fifth Amendment to the United States Constitution, made applicable to the states by the Fourteenth Amendment and to the Virgin Islands pursuant to 48 U.S.C. § 1561. *Id.* at ¶¶ 71-73. In addition, ExxonMobil asserts that the alleged improper delegation contravenes the separation of powers doctrine codified at 48 U.S.C. §§ 1571, 1591, and 1611. Pet. ¶ 72. ExxonMobil claims that the delegation gives rise to a cause of action pursuant to 42 U.S.C. § 1983. *Id.* § VI.C.

9. In addition to subject matter jurisdiction over ExxonMobil’s claims that arise under federal law, this Court has proper jurisdiction over all of ExxonMobil’s remaining claims, which involve questions of Texas state law. Under 28 U.S.C. § 1367(a), this Court has jurisdiction over “all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.” As this Court has recognized, “[c]laims are so related to the same case or controversy when they derive from a common nucleus of operative fact, such that the relationship between the federal claim and the state claim permits the conclusion that the entire action before the court comprises but on[e] constitutional case.” *Merritt Hawkins & Associates,*

LLC v. Gresham, No. 3:13-CV-00312-P, 2013 WL 2387749, at *2 (N.D. Tex. May 28, 2013) (quoting *Chicago v. Int'l College of Surgeons*, 522 U.S. 156, 165-66 (1997) (internal quotation marks omitted and alterations added)). “When determining whether the Court has supplemental jurisdiction, courts identify the common or overlapping facts” that give rise to the federal and state law claims. *Merritt Hawkins*, 2013 WL 2387749, at *2.

10. ExxonMobil’s state law claims form part of the same case or controversy as the federal claims asserted in the petition because they are based on the same alleged conduct, to wit, the mailing of the subpoena to ExxonMobil’s offices in Irving, Texas. Specifically, ExxonMobil claims that the mailing of the subpoena violated its free speech rights under Section Eight of Article One of the Texas Constitution (Pet. ¶ 65), its right to freedom from unreasonable searches and seizures under Section Nine of Article One of the Texas Constitution (*id.* ¶ 65), and its due process rights under Section Nineteen of Article One of the Texas Constitution (*id.* ¶ 72). ExxonMobil further claims that the mailing of the subpoena constitutes a common law abuse of process. *Id.* ¶¶ 74-75. Finally, ExxonMobil asks the Court to declare under Texas Civil Practice and Remedies Code Section 37.003 that enforcement of the subpoena mailed by defendants violates the First, Fourth, Fifth, and Fourteenth Amendments to the United States Constitution, the Eighth, Ninth, and Nineteenth Sections of Article One of the Texas Constitution, 48 U.S.C. § 1561, and is an abuse of process under the common law.

11. The foregoing state law claims are based on identical conduct and identical facts as ExxonMobil’s federal law claims. The state law claims therefore are subject to this Court’s jurisdiction according to 28 U.S.C. § 1367(a). *See Merritt Hawkins*, 2013 WL WL 2387749, at *2.

CONSENT OF ALL PROPERLY SERVED DEFENDANTS

12. Under 28 U.S.C. § 1446(b)(2)(A), all defendants who are properly joined and served must join in or consent to removal if removal is based solely on § 1441(a). Defendants Walker, Singer, and Cohen Milstein all join in and consent to removal.

LOCAL RULE 81.1

13. Defendants attach the following items pursuant to Northern District of Texas

Local Rule 81.1:

Exhibit	Description
1	Civil Cover Sheet
2	Supplemental Cover Sheet
3	Index of All Documents
4	State Court Docket Sheet
5	Plaintiff's Original Petition For Declaratory Relief
6	Civil Case Information Sheet
7	Citation to Claude Earl Walker
8	Citation to Cohen Milstein Sellers & Toll PLLC
9	Citation to Linda Singer
10	Daniel J. Toal's Motion for Pro Hac Vice Admission
11	Philip A. Vickers Motion in Support of Michele Hirshman's Motion for Pro Hac Vice Admission
12	Order Granting Michele Hirshman Admission Pro Hac Vice
13	Michele Hirshman's Motion for Pro Hac Vice Admission
14	Philip A. Vickers' Motion in Support of Justin Anderson's Motion for Pro Hac Vice Admission
15	Order Granting Justin Anderson Admission Pro Hac Vice
16	Justin Anderson's Motion for Pro Hac Vice Admission
17	Philip A. Vickers' Motion in Support of Daniel J. Toal's Motion for Pro Hac Vice Admission

18	Order Granting Daniel J. Toal Admission Pro Hac Vice
19	Theodore V. Wells, Jr. Motion for Pro Hac Vice Admission
20	Philip A. Vickers' Motion in Support of Theodore V. Wells, Jr.'s Motion for Pro Hac Vice Admission
21	Order Granting Theodore V. Wells, Jr. Admission Pro Hac Vice
22	Return of Service on Claude Earl Walker
23	Return of Service on Cohen Milstein Sellers & Toll PLLC
24	Return of Service on Linda Singer
25	The State of Texas Secretary of State Verification re Cohen Milstein Sellers & Toll PLLC
26	The State of Texas Secretary of State Verification re Linda Singer
27	Plea in Intervention of the States of Texas and Alabama
28	Certificate of Interested Persons

14. In addition, defendants will promptly file a copy of this notice of removal with the clerk of the Tarrant County court where the suit has been pending.

Dated: May 18, 2016

Respectfully Submitted,

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CERTIFICATE OF SERVICE

On May 18, 2016, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served the following counsel electronically or by another manner authorized by Federal Rule of Civil Procedure 5 (b)(2):

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