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. _____

**ORAL ARGUMENT REQUESTED**

**MEMORANDUM OF LAW IN SUPPORT OF MOTION TO COMPEL COMPLIANCE WITH AN INVESTIGATIVE SUBPOENA ISSUED BY THE OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF NEW YORK**

Pursuant to Civil Practice Law and Rules ("C.P.L.R.") §§ 403(d) and 2308(b)(1), the Office of the Attorney General of the State of New York ("Attorney General" or "Petitioner") respectfully submits this memorandum of law in support of its motion for an order: (i) compelling PricewaterhouseCoopers LLP ("PwC") to comply with a lawful *subpoena duces tecum* issued to PwC by the Attorney General on August 19, 2016 (the "Subpoena") in connection with the Attorney General's investigation of Exxon Mobil Corporation ("Exxon") (together with PwC, "Respondents"); and (ii) compelling Exxon to allow PwC to produce responsive documents without reviewing and withholding certain documents pursuant to a

purported accountant-client privilege that is not recognized under either New York or Texas law.[1]

## PRELIMINARY STATEMENT

The Attorney General is investigating potential violations of New York General Business Law ("G.B.L.") § 352 (the "Martin Act"), New York Executive Law § 63(12), and G.B.L. § 349 arising out of Exxon's representations to investors and the public about the impact of climate change on Exxon's business, including on its assets, reserves, and operations. PwC serves as Exxon's independent auditor and possesses documents and information that are responsive to the Subpoena and relevant to the Attorney General's investigation. This motion arises out of PwC's withholding from production certain responsive documents and information based on Exxon's assertion of a purported accountant-client privilege under Texas law and instruction to PwC to allow Exxon to review each and every responsive document and withhold certain documents under such privilege.

PwC has not disputed the propriety of the Subpoena or that it possesses responsive documents. Rather, PwC has deferred to Exxon's assertion of a purported accountant-client privilege under Texas Occupations Code § 901.457, and has complied with Exxon's request to allow Exxon to review every responsive document in PwC's possession to determine whether this purported privilege applies. However, every court that has considered Texas Occupations Code § 901.457 has concluded that it merely provides for the confidentiality of information that accountants receive from their clients, and does not create an evidentiary privilege. See, e.g.,

[1] Although the Attorney General issued the August 19, 2016 *subpoena duces tecum* to PwC, Exxon has asserted a purported accountant-client privilege with respect to PwC's documents, and as such, is likely to claim that it is an interested party in this proceeding.

Cantu v. TitleMax, Inc., No. 5:14-CV-628 RP, 2015 U.S. Dist. LEXIS 139406, at *15 (W.D. Tex. Oct. 9, 2015); Canyon Partners, L.P., v. Developers Diversified Realty Corp., No. 3-04-CV-1335-L, 2005 U.S. Dist. LEXIS 26782, at *3 & 4 n.2 (N.D. Tex. Nov. 4, 2005); In re Arnold, No. 13-12-00619-CV, 2012 Tex. App. LEXIS 9957, at *10 (Tex. App. Corpus Christi Nov. 30, 2012); In re Patel, 218 S.W.3d 911, 920 n.6 (Tex. App. Corpus Christi 2007).

Moreover, on its face, Texas Occupations Code § 901.457 applies only to voluntary productions. It does not apply to productions in response to a judicially enforceable subpoena, such as the Subpoena at issue here. In addition, neither the structure nor the legislative history of Texas Occupations Code § 901.457 support Exxon's assertion of a purported accountant-client privilege. In any event, even if Texas Occupations Code § 901.457 did create an evidentiary privilege, New York privilege law, not Texas privilege law, applies in this proceeding, and New York does not recognize an accountant-client privilege. Accordingly, the Attorney General respectfully requests that the Court (i) order PwC to produce all responsive documents and information, and (ii) order Exxon to allow PwC to produce all such responsive documents without a document-by-document review for any purported accountant-client privilege.

## BACKGROUND

### I. The Attorney General's Investigation of Exxon

In November 2015, the Attorney General commenced an investigation into the accuracy of Exxon's disclosures relating to the risk that climate change poses to its business. (Affirmation of Katherine C. Milgram ("Milgram Aff.") ¶ 4.) Certain Exxon documents and other materials indicate that Exxon has long been aware of the potentially catastrophic risks posed by climate change, as well as the significant contribution of fossil fuels, Exxon's primary products, to such risks. (Id. ¶ 5)

Despite Exxon's apparently longstanding knowledge of the risks of climate change, including the risks posed to its business by climate change-related policies and regulations, Exxon may have downplayed those risks in statements to investors and to the public. For example, Exxon asserted in a 2014 report entitled "Energy and Carbon – Managing the Risks" that it was "confident that none of [its] hydrocarbon reserves are now or will become 'stranded'" and that "the company does not believe that current investments in new reserves are exposed to the risk of stranded assets[.]" (Id. ¶ 6.) Exxon has also made public statements about how it incorporates the likely effects of carbon regulation into its investment and capital allocation decision-making using a "proxy cost of carbon," and has stated that it accounts for climate change-related risks in managing its operations. (Id. ¶ 7.) However, the accuracy of such statements is called into question when, for example, in an article published on May 25, 2016, the Wall Street Journal reported that Exxon's CEO said "most Exxon projects are either too short-term or too large for the theoretical cost of carbon they use in planning purposes to affect their decision-making." (Id. ¶ 7.)

Further, while oil producers around the world have written down the value of their assets by approximately $200 billion since 2014, Exxon is the only major producer that has not taken impairment charges or write-downs, despite a significant decline in oil and gas prices. (Id. ¶ 8.) Indeed, in a September 2015 interview, Exxon Chief Executive Officer Rex Tillerson stated: "We don't do write-downs. . . . We are not going to bail you out by writing it down. That is the message to our organization." (Id. ¶ 9.) Exxon's public filings include extensive disclosures about the circumstances in which it performs impairment assessments and would take impairment charges or write-downs, the accuracy of which are called into question by Mr. Tillerson's statement. (Id. ¶ 10.)

## II. PwC's Role

PwC has served as Exxon's independent auditor since prior to 2010, the beginning of the period covered by the Subpoena, through the present. (Id. ¶ 11.) In that role, PwC performs audits in which it examines whether the disclosures in Exxon's financial statements are adequately supported. Based on its audits, PwC issues opinions as to whether Exxon's financial statements fairly and accurately represent its financial position and whether Exxon maintains effective internal control over its financial reporting. (Id. ¶ 11.) According to Exxon's public filings, the "Supplemental Information on Oil and Gas Exploration and Production Activities" portion of Exxon's financial statements are not independently audited, but PwC's audits encompassed Exxon's "internal control over financial reporting" and "overall financial statement presentation," including "assessing the risk that a material weakness exists," among other things. (Id. ¶ 11.)

[redacted]

In addition, PwC was also a global advisor and report writer for the Carbon Disclosure Project ("CDP"), a non-profit organization that serves as a global disclosure system for environmental information. In that role, PwC reviewed Exxon's submissions of greenhouse gas emissions data and other climate change-related information. (Id. ¶ 13.) There can be no dispute that PwC was not acting as Exxon's accountant in connection with the CDP.

## III. The New York Attorney General's Subpoena to PwC

On August 19, 2016, the Attorney General issued the Subpoena to PwC pursuant to Executive Law § 63(12) and the Martin Act. The Subpoena calls for documents related to PwC's audits of Exxon, including documents concerning Exxon's accounting and reporting of oil and gas reserves, evaluation of assets for potential impairment charges or write-downs, projections of oil and gas prices, estimates of projected carbon costs, and the application of such estimated carbon costs to Exxon's capital allocation and expenditure decisions. Additionally, the Subpoena requests information concerning the individuals who were involved in PwC's audits of Exxon. (Id. ¶ 14, Ex. A.) The Subpoena also calls for documents concerning PwC's role in compiling and reviewing Exxon's submissions concerning greenhouse gas emissions and other climate change issues for CDP.[2] (Id. ¶ 14, Ex. A.) These categories of documents and information are reasonably related, and indeed highly relevant, to the Attorney General's investigation, as they pertain to the accuracy of Exxon's public statements relating to the impact of climate change and climate change-related policies on its business, including its reserves, any impairments, and capital expenditures.

Neither PwC nor Exxon have disputed the Attorney General's authority to issue the Subpoena under Executive Law § 63(12) and the Martin Act. (Id. ¶ 14.) Moreover, PwC has confirmed that it possesses audit files and other Exxon-related materials that are likely to include responsive documents. (Id. ¶¶ 15, 17.) In an August 31, 2016 telephone conversation, counsel for PwC informed the Attorney General that PwC had in its possession and would develop a plan to produce relevant documents, and did not raise any purported accountant-client privilege. (Id.

[2] Documents relating to the Carbon Disclosure Project would not be covered by any purported accountant-client privilege given that PwC was not acting as Exxon's accountant in connection with its CDP work.

¶ 15.) However, in a September 7, 2016 telephone conversation, counsel for Exxon informed the Attorney General that it would be asserting a purported accountant-client privilege under Texas Occupations Code § 901.457 with respect to documents covered by the Subpoena. (Id. ¶ 16.) The next day, counsel for PwC confirmed by telephone that Exxon was asserting such a privilege, and stated that all PwC documents that are responsive to the Subpoena would first be reviewed by Exxon to determine whether the purported privilege applies before any such documents would be produced to the Attorney General. (Id. ¶ 17.) Counsel for PwC represented that the collection and review of responsive documents was underway and requested an extension of the return date of the Subpoena. (Id. ¶ 17.) In that same telephone conversation with PwC, without agreeing that any accountant-client privilege existed, the Attorney General extended the return date of the Subpoena to September 23, 2016, on which date PwC agreed it would begin to make weekly rolling productions to the Attorney General. (Id. ¶ 17.) On September 23, 2016, Exxon sent a letter to the Attorney General confirming its intention to conduct a document-by-document review of materials covered by the Subpoena for the purpose of asserting a purported accountant-client privilege under Texas Occupations Code § 901.457. (Id. ¶ 18.) PwC has produced a list of certain PwC employees that worked on audits of Exxon, and fewer than 100 non-duplicative documents, consisting of its engagement letters with Exxon, management representation letters from Exxon, working paper indices, and some CDP-related documents. (Id. ¶ 19.)

On October 14, 2016, the Attorney General contacted counsel for PwC and Exxon to inform them that Exxon's assertion of a so-called accountant-client privilege was legally unsupported, and requested that Exxon withdraw its claim of such a privilege and allow PwC to

produce responsive documents without Exxon conducting a document-by-document privilege review. (Id. ¶ 20.) As of the filing of this motion, Exxon has not agreed to do so.

## ARGUMENT

### I. Texas Occupations Code § 901.457 Does Not Create an Evidentiary Privilege

Texas law does not recognize an accountant-client evidentiary privilege, whether stemming from the Texas Rules of Evidence or from any other source of law. Exxon has cited Texas Occupations Code § 901.457 as a purported source of such a privilege, but uniform court decisions and the statute's text, structure, and legislative history all make clear that this statute does not create any evidentiary privilege under Texas law.

#### A. Every Court That Has Considered Texas Occupations Code § 901.457(a) Has Concluded That It Does Not Create An Evidentiary Privilege

Under Texas law, Texas Occupations Code § 901.457 does not create an evidentiary privilege. Texas Occupations Code § 901.457 provides that an accountant licensed in Texas "may not *voluntarily* disclose information communicated to the [accountant] by a client in connection with services provided to the client by the [accountant], except with the permission of the client[.]" Tex. Occ. Code § 901.457(a) (emphasis added). The statute does not prohibit disclosure if such disclosure is made pursuant to court order. Id. § 901.457(b)(3).

State and federal courts in Texas have made clear that Texas Occupations Code § 901.457 does not create an evidentiary privilege that could justify the withholding of documents or information. See, e.g., Cantu v. TitleMax, Inc., No. 5:14-CV-628 RP, 2015 U.S. Dist. LEXIS 139406, at *15 (W.D. Tex. Oct. 9, 2015) (holding that "in Texas, accountant-client communications are confidential, but not privileged"); Canyon Partners, L.P., v. Developers Diversified Realty Corp., No. 3-04-CV-1335-L, 2005 U.S. Dist. LEXIS 26782, at *3 & 4 n.2

(N.D. Tex. Nov. 4, 2005) (holding that "there is no accountant-client privilege under federal or Texas law" and noting that "no court has elevated the professional standard established by [Texas Occupations Code § 901.457] to an evidentiary privilege under Texas law"); In re Arnold, No. 13-12-00619-CV, 2012 Tex. App. LEXIS 9957, at *10 (Tex. App. Corpus Christi Nov. 30, 2012) (stating that "the existence of an accountant-client privilege based on section 901.457 is doubtful"); In re Patel, 218 S.W.3d 911, 920 n.6 (Tex. App. Corpus Christi 2007) (finding no authority for "the proposition that an accountant-client evidentiary privilege exists in Texas," notwithstanding Texas Occupations Code § 901.457).

While Texas Occupations Code § 901.457 protects the confidentiality of information provided to an accountant by a client, "[s]tatutory provisions providing for duties of confidentiality do not automatically imply the creation of evidentiary privileges binding on courts." Patel, 218 S.W.3d at 920 n.6 (quoting Pearson v. Miller, 211 F.3d 57, 68 (3d Cir. 2000)); see also Seales v. Macomb Cnty., 226 F.R.D. 572, 576 (E.D. Mich. 2005) (holding that Michigan statutes requiring confidentiality of youth records did not create privilege); Sonnino v. Univ. of Kan. Hosp. Auth., 220 F.R.D. 633, 642 (D. Kan. 2004) ("It is well settled that a concern for protecting confidentiality does not equate to privilege, and that information and documents are not shielded from discovery on the sole basis that they are confidential."); Martin v. Lamb, 122 F.R.D. 143, 146 (W.D.N.Y. 1988) (holding that statute providing for confidentiality of police personnel files did not create privilege); In re Arriola, 159 S.W.3d 670, 676-77 (Tex. App. Corpus Christi 2004) (holding that Texas confidentiality provisions concerning health and safety information did not create evidentiary privilege).

### B. The Text, Structure, Legislative History, And Policy of Texas Occupations Code § 901.457(a) Further Confirm That It Does Not Create An Evidentiary Privilege

The text, structure, legislative history, and policy rationale of Texas Occupations Code § 901.457 further support the Texas courts' rulings that the statute does not create an evidentiary privilege. As noted above, the statute only prohibits an accountant from "voluntarily" disclosing information without consent, and it contains an exception allowing disclosure when there is a court order directed at the information. Tex. Occ. Code § 901.457(b)(3). Further, Texas Occupations Code § 901.457 does not appear in Article V of the Texas Rules of Evidence, where evidentiary privileges under Texas law are set out. See Tex. R. Evid. 501-513. The placement of Texas Occupations Code § 901.457 in the Texas Occupations Code as opposed to in the Texas Rules of Evidence, its limited applicability to voluntary disclosures, and its exception allowing disclosure pursuant to court order are all inconsistent with the evidentiary privileges provided by the Texas Rules of Evidence, and further confirm that Texas Occupations Code § 901.457 does not create an evidentiary privilege. Cf., e.g., Tex. R. Evid. 503 (attorney-client privilege); Tex. R. Evid. 509 (physician-patient privilege).[3]

Indeed, the minority of states that do appear to recognize an accountant-client privilege generally set out such privileges in the state's rules of evidence or court procedure, and none of those states provide for such privileges only in the context of voluntary disclosures. See, e.g., Md. Code Ann., Cts. & Jud. Proc. § 9-110; 12 Okl. St. § 2502.1. Texas' statute is more akin to those of other states, like New Jersey, which require that accountants keep information confidential, but contain broad exceptions for disclosures pursuant to court proceedings. See,

[3] Although the title of Texas Occupations Code § 901.457 is "Accountant-Client Privilege," the term "privilege" does not appear in the statute. Under Texas law, a section heading "does not limit or expand the meaning of a statute." Tex. Gov't Code § 311.024.

e.g., N.J. Stat. Ann. § 45:2B-65 (requiring accountant confidentiality but not prohibiting "disclosures in court proceedings").

The legislative history of Texas Occupations Code § 901.457 also makes clear that the statute was not intended to create an evidentiary privilege. The preamble to the enacting legislation for that statute provided that it was a "nonsubstantive revision of statutes relating to the licensing and regulations of certain professions and business practices." 1999 Tex. ALS 388 (H.B. 3155). As there was no Texas accountant-client privilege in place at that time, see Sims v. Kaneb Servs, Inc., No. B14-87-00608-CV, 1988 Tex. App. LEXIS 2243, at *14 (Tex. App. Houston June 16, 1988), this preamble indicates that Texas Occupations Code § 901.457 was not intended to create a new privilege.

Finally, public policy encourages disclosure of accountant-client materials in light of auditors' obligations to investors and the public. As the Supreme Court stated in rejecting a federal accountant-client privilege:

> By certifying the public reports that collectively depict a corporation's financial status, the independent auditor assumes a *public* responsibility transcending any employment relationship with the client. The independent public accountant performing this special function owes ultimate allegiance to the corporation's creditors and stockholders, as well as to the investing public. This "public watchdog" function demands that the accountant maintain total independence from the client at all times and requires complete fidelity to the public trust. To insulate from disclosure a certified public accountant's interpretations of the client's financial statements would be to ignore the significance of the accountant's role as a disinterested analyst charged with public obligations.

United States v. Arthur Young & Co., 465 U.S. 805, 817-18 (1984) (emphasis in original); see also United States v. Marino, 654 F.3d 310, 323 (2d Cir. 2011) (emphasizing "the importance of independent financial auditors as vouching to the investing public for the accuracy of a firm's books"). PwC's obligations to Exxon are therefore of secondary importance compared to its

obligations to investors and the public. Texas law recognizes this principle by not granting an evidentiary privilege for accountant-client materials.

For all of these reasons, Texas Occupations Code § 901.457 does not create an evidentiary privilege that justifies Exxon's instruction to PwC to withhold otherwise responsive documents or information.

## II. Texas Occupations Code § 901.457 Is Inapplicable On Its Face

Texas Occupations Code § 901.457, as noted above, states that an accountant may not "voluntarily" disclose information received from a client. PwC's compliance with the Subpoena, which requires the production of documents and information pursuant to the Attorney General's authority to issue nonjudicial subpoenas under C.P.L.R. § 2302(a), Executive Law § 63(12), and the Martin Act, is in no sense voluntary. See G.B.L. § 352(4) (setting out misdemeanor liability for noncompliance with Martin Act subpoena); C.P.L.R. § 2308(b)(1) (noncompliance with non-judicial subpoena may result in issuance of warrant of commitment to jail until such time as compliance occurs); see also People v. Forsyth, 439 N.Y.S.2d 808, 810 (Sup. Ct. N.Y. Cnty. 1981) (holding that "even seemingly extreme circumstances will not release an individual from his duty to comply with a subpoena" under the Martin Act); Application of Remy Sportswear, Inc., 183 N.Y.S.2d 125, 129-30 (Gen. Sess. N.Y. Cnty. 1959) ("The propriety of a subpoena is for the court to determine, not for the person served, and regardless of his being miscognizant of the law, a person who takes it upon himself to abide or not to abide the command of a subpoena, does so at the pain of suffering the hazardous consequence of a contemner, if wrong in disobeying.").

Further, Texas Occupations Code § 901.457 permits disclosure when there is a court order directed at the information. Id. § 901.457(b)(3). Investigative subpoenas that are

enforceable by court order fall within that exception. For example, in Arnold, a Texas court held that a deposition notice enforceable by court order triggered this exception. 2012 Tex. App. LEXIS 9957, at *10-11. Likewise, in Arriola, the court held that similar exceptions to Texas statutes providing for the confidentiality of health and safety information required that information be disclosed in discovery pursuant to the rules of evidence. 159 S.W.3d at 676-77. See also Rodriguez v. State, 469 S.W.3d 626, 633 (Tex. App. Houston 2015) (holding that Texas Occupations Code § 159.003, which concerns physician-patient communication, "is directed at the physician's authority or lack thereof to disclose a patient's records" but "does not limit the State's access to those records through subpoena.").[4] Because the Subpoena is enforceable by court order under C.P.L.R. § 2308(b)(1), and because compliance with the Subpoena is not voluntary, Texas Occupations Code § 901.457 is inapplicable on its face.

Moreover, even if that statute were applicable to the Subpoena, the order that the Attorney General seeks from the Court through this motion will certainly fall within the court-order exception of Texas Occupations Code § 901.457(b)(3) and obviate any purported privilege that might have existed. See Patel, 218 S.W.3d at 921 (holding that order denying motion to quash qualified for court order exception under Texas Occupations Code § 901.457(b)(3)). In either case, no accountant-client privilege should be applied here.

**III. New York Law Applies And It Does Not Recognize An Accountant-Client Privilege**

Even if Texas Occupations Code § 901.457 did create an evidentiary privilege, which it does not, that statute is inapplicable in this New York civil law enforcement proceeding. "The law of the place where the evidence in question will be introduced at trial or the location of the

[4] Texas Rule of Evidence 509 does create an evidentiary privilege with respect to patient-physician communications, but notably, the Texas Rules of Evidence contain no such provision for accountant-client communications.

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 will be introduced at trial or the location of the discovery proceeding.") People v. Greenberg, 50 A.D.3d 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).

Here, New York is the place where the evidence in question may ultimately be introduced at trial, and the place of this proceeding. Further, the Office of the Attorney General of New York is the law enforcement agency seeking documents and information in the course of this investigation, and any damages suffered by New York investors or consumers are tied to this state. See First Interstate Credit Alliance, Inc. v. Arthur Andersen & Co., 150 A.D.2d 291, 293, (1st Dep't 1989) (holding that Maryland accountant-client privilege did not apply because, among other reasons, the injury was sustained in New York). Moreover, New York substantive law, such as the Martin Act, Executive Law § 63(12), and G.B.L. § 349, will govern any action brought by the Attorney General arising from this investigation. See Greenberg, 50 A.D.3d at 198-99 (holding that New York privilege law applied to action by New York Attorney General

under New York securities law).[5] [redacted]

New York privilege law therefore governs, and there is no accountant-client privilege under New York law. First Interstate Credit Alliance, 150 A.D.2d at 292 (stating that New York has no accountant-client privilege); see also Witorsch v. Notaris, No. 95 Civ. 9163 (JFK), 1997 U.S. Dist. LEXIS 12805, at *16-17 (S.D.N.Y. Aug. 25, 1997) (same); Asian Vegetable Research & Dev. Ctr. v. Inst. of Int'l Educ., No. 94 Civ. 6551 (RWS), 1995 U.S. Dist. LEXIS 11776, at *13 n.4 (S.D.N.Y. Aug. 16, 1995) ("neither New York nor Second Circuit law recognizes an 'accountant-client privilege'"); Delta Fin. Corp. v. Morrison, 820 N.Y.S.2d 745, 748 (Sup. Ct. Nassau Cnty. 2006) ("A client's communications with its accountants are not afforded special protections under New York law and are subject to full disclosure.").

In addition, Restatement 2d of Conflict of Laws § 139(2) provides that when state privilege laws conflict, the law favoring admission of the evidence is generally given effect. See Bamco 18 v. Reeves, 685 F. Supp. 414, 416 n.2 (S.D.N.Y. 1988) (applying Restatement § 139 under New York choice of law analysis and holding that Maryland accountant-client privilege did not apply). Further, there is no "special reason" under Restatement 2d of Conflict of Laws § 139(2) why a purported Texas accountant-client privilege should override New York's policy of disclosure in this case. In particular, given the Texas case law cited in Part I above, as well as the lack of an accountant-client privilege under federal law as per Arthur Young & Co., 465 U.S. at 817-18, PwC and Exxon had no reasonable basis to believe an accountant-client privilege is

[5] Additionally, New York is the location of PwC's United States headquarters. See Milgram Aff. ¶ 21, Ex. I (printout from the website of PwC, retrieved October 4, 2016, stating at bottom of page that PwC's U.S. Chairman's Office is located in New York).

firmly established in Texas or to rely on such a privilege on that basis. Thus, even if Texas law is considered as a potential source of privilege rules in this matter, New York law, which does not recognize an accountant-client privilege, should nonetheless govern.

## CONCLUSION

For the reasons stated above, there is no accountant-client privilege applicable to the materials sought in the Subpoena. Accordingly, the Attorney General respectfully petitions the Court to issue the proposed Order compelling PwC to comply with the Subpoena without applying any such privilege, and compelling Exxon to allow PwC to produce responsive documents without subjecting such documents to a document-by-document review for the application of any purported accountant-client privilege.

Dated: New York, New York
October 14, 2016

Respectfully submitted,

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