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November 23, 2016

**VIA HAND DELIVERY, FEDEX AND EMAIL (JANDERSON@PAULWEISS.COM)**

Justin Anderson, Esquire  
Paul, Weiss, Rifkind, Wharton & Garrison LLP  
2001 K Street, NW  
Washington, D.C. 20006

**Re: November 9, 2016 Subpoena**

Dear Mr. Anderson:

By this letter, non-party 350.org objects to Exxon Mobil's Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action, dated November 9, 2016 (the "Subpoena"), in its entirety pursuant to Rule 45(d)(2)(B), and offers to meet and confer with Exxon Mobil to see whether an agreement can be reached to appropriately narrow the Subpoena in a way that would permit 350.org to produce documents. I would note, at the outset, that I was surprised when we spoke on November 17 by your and your client's refusal to postpone the deadline for this response for a week or so to provide a reasonable amount of time to see if there was a way to avoid these formal objections and the possibility of a motion. We hope that after promptly meeting and conferring we will be able to reach agreement and avoid the necessity of filing such a motion.

350.org is a non-profit environmental organization that builds grassroots movements and undertakes other educational efforts to address climate change, one of the most significant dangers facing humanity today. In fighting to reduce carbon in the atmosphere, 350.org regularly and publicly leads campaigns that put it in opposition to Exxon Mobil, one of the world's largest and wealthiest fossil fuel companies. In our view, with its subpoena, Exxon Mobil attempts to abuse third-party discovery in its lawsuit in the Northern District of Texas (the "Lawsuit") by using it as a weapon against climate change activist groups like 350.org. Rather than seeking real discovery and information relevant to jurisdiction in the Lawsuit, the subpoena and other efforts to broadly investigate 350.org's advocacy appear to be attempts to chill 350.org's exercise of its First Amendment rights, including the rights to free speech, to free assembly and to petition government. Exxon Mobil's subpoena goes well beyond seeking documents that could arguably be relevant to jurisdiction or to the claims and defenses in its Lawsuit. For example, Exxon Mobil seeks 350.org's communications with non-parties, including other environmental activists and with Attorneys General who have not investigated Exxon Mobil. It also seeks 350.org's internal documents discussing climate change advocacy events unrelated to Exxon Mobil's allegations in the Lawsuit. Both the First Amendment to the United States Constitution and the Federal Rules of Civil Procedure bar Exxon Mobil from using the subpoena power of the federal courts in this fashion.

While 350.org enumerates below specific objections to each request in the Subpoena, it first sets forth the following objections that apply to the entire Subpoena, including the Subpoena's instructions, definitions, document requests, Exhibit B (Certification), and Exhibit C (Production Format):

(1) The Subpoena infringes 350.org's rights protected by the First Amendment to the United States Constitution, in that it is an attempt by Exxon Mobil to investigate and chill 350.org's exercise of its rights to free speech, free assembly and to seek redress from government on one of the most important public policy issues of our time. The Subpoena is Exxon Mobil's attempt to use the power of the federal courts to advance its perceived business interests and policy agenda against a non-party participant in the climate change debate.

(2) 350.org objects to the Subpoena to the extent that it seeks information protected from disclosure by the attorney-client privilege, the work product protection, or other privileges or protections, including privacy laws. 350.org will not produce such materials. In the event that 350.org agrees to produce documents after meeting and conferring with Exxon Mobil, or upon order of the Court, 350.org will prepare a privilege log, if necessary, consistent with the requirements of the Federal Rules of Civil Procedure and federal law within a reasonable time in relation to such production.

(3) 350.org objects that the Subpoena imposes an undue burden under Fed. R. Civ. P. 45 on 350.org, a non-party, in that it seeks information that Exxon Mobil already has in its possession, or that is available from other sources that are more convenient, or to which Exxon Mobil has equal access.

(4) 350.org objects to the Subpoena to the extent that it is vague, ambiguous, overly broad and unduly burdensome or that it seeks information that is neither relevant to jurisdiction or to the claims or defenses of the parties to the Lawsuit, nor proportional to the needs of the case, considering whether the burden or expense of the proposed discovery outweighs its likely benefit.

(5) 350.org objects to the Subpoena, to the extent that it purports to sets forth requirements that exceed or are inconsistent with the Federal Rules of Civil Procedure, including the Subpoena's purported requirement that 350.org sign a "Certification."

(6) 350.org objects to the Subpoena to the extent that it seeks to impose undue burden and expense on 350.org, a non-profit, public-interest organization with limited resources. If 350.org agrees to produce documents after meeting and conferring with Exxon Mobil or upon Court order, 350.org reserves its right to seek an order shifting its costs for collecting, reviewing, and producing documents to Exxon Mobil pursuant to Fed. R. Civ. P. 45(d)(2)(B)(ii).

(7) 350.org objects to the Subpoena to the extent that it seeks material that contains confidential or proprietary information. 350.org will produce such material only subject to the terms of an appropriate protective order.

(8) 350.org objects to the Subpoena on the ground that it seeks documents and information not relevant to and not within the narrow scope of discovery authorized by the jurisdictional discovery order dated October 13, 2016 entered in the Lawsuit. *See Exxon Mobil Corp. v. Healey*, No. 4:16-CV-469-K (N.D. Tex. Oct. 13, 2016), Dkt. No. 73 (“Jurisdictional Discovery Order”).

(9) 350.org objects to the Definitions and the Instructions to the extent that they purport to impose obligations or burdens that exceed the requirements of the Federal Rules of Civil Procedure or the Local Rules of the United States District Court for the Southern District of New York.

(10) 350.org objects to the definition of “Green 20” as overbroad in that it seeks documents or information that is not relevant to the discovery permitted by the Jurisdictional Discovery Order or to the claims or defenses in the Lawsuit, and as it is vague, ambiguous, overly broad and unduly burdensome in its reference to “Offices of these attorneys general; their directors, officers, employees, agents, representatives or other persons acting, or purporting to act, on their behalf, including but not limited to, Assistant Attorneys General.”

(11) 350.org objects to the “Requested Production Format” as exceeding the requirements of the Federal Rules of Civil Procedure and the Local Rules of the United States District Court for the Southern District of New York, and as purporting to impose undue burdens upon a non-party.

(12) 350.org objects to Instruction No. 23 on the ground that documents created after service of any response to the Subpoena are not relevant to jurisdiction or to any claim or defense in the Lawsuit, and the purported continuing obligation is overly burdensome and not applicable to 350.org, a non-party.

(13) 350.org objects to Instruction No. 34 as purporting to impose an obligation to search “email servers not associated with 350.org” that is vague and ambiguous and that exceeds the requirements of the Federal Rules of Civil Procedure and the Local Rules of the United States District Court for the Southern District of New York.

(14) 350.org objects to the Subpoena to the extent that it seeks disclosure of any material that would constitute an “unretained expert’s opinion or information that does not describe specific occurrences in dispute and results from the expert’s study that was not requested by a party” as barred by Fed. R. Civ. P. 45(d)(3)(B)(ii).

## **SPECIFIC OBJECTIONS AND RESPONSES**

### **REQUEST NO. 1:**

Any and all documents sufficient to show and identify any communications between 350.org, 350.org's agents, representatives, or employees and any Attorney General or their directors, officers, employees, agents, representatives or other persons acting, or purporting to act, on their behalf, including, but not limited to, Assistant Attorneys General, concerning the decision of an Attorney General regarding whether to investigate ExxonMobil. This request includes any communications in which 350.org advocated that an Attorney General initiate an investigation of ExxonMobil, participate in the Green 20 Press Conference, announce approval for or alignment with the investigation of ExxonMobil by any Attorney General, and/or collaborate, cooperate, or work in concert with Attorneys General who were or are investigating ExxonMobil.

### **350.ORG'S OBJECTIONS TO REQUEST NO. 1:**

350.org objects to Request No. 1 on the ground that it seeks to chill 350.org's exercise of its rights under the First Amendment, including its right to engage in free speech and its right to petition the government on crucial matters of climate change policy. 350.org further objects to Request No. 1 as overbroad to the extent that it seeks documents regarding parties not relevant to jurisdiction or to any claims or defenses in the Lawsuit.

Request No. 1 is further overbroad in that it seeks communications "concerning" any Attorney General's decision "whether to investigate." The Request's list of examples of such communications, including communications with non-investigating Attorneys General encouraging them to participate in a press conference or "cooperate" with other Attorneys General, demonstrates that Request No. 1 goes far beyond anything that could be relevant to the Lawsuit or jurisdiction, and is merely an attempt to harass and intimidate 350.org in its exercise of its First Amendment rights. 350.org further objects to Request No. 1 on the grounds that it is cumulative and duplicative of discovery that Exxon Mobil could seek from parties to its Lawsuit, *i.e.*, those parties' own communications. 350.org further objects that Request No. 1 is vague and ambiguous, overly broad and unduly burdensome in that it purports to require 350.org to identify "directors, officers, employees, agents, representatives or other persons acting, or purporting to act," on behalf of any Attorney General.

### **REQUEST NO. 2:**

Any and all documents, recordings, or other materials concerning any meetings regarding any investigation of ExxonMobil related to climate change that 350.org or 350.org's agent, employee, or representative attended, which was also attended by any Attorney General, or his/her directors, officers, employees, agents, representatives or other persons acting, or purporting to act, on his/her behalf, including, but not limited to, Assistant Attorneys General.

This request includes, without limitation, video recordings, audio recordings, photographs, attendance logs, notes, and meeting minutes.

**350.ORG'S OBJECTIONS TO REQUEST NO. 2:**

350.org objects to Request No. 2 for all of the reasons stated above regarding Request No. 1. 350.org further objects to Request No. 2 on the ground that it seeks to chill 350.org's exercise of its First Amendment rights, including its right to free speech, its right to petition government and its right to conduct meetings and to deliberate privately regarding its climate change advocacy. 350.org further objects that Request No. 2 is overbroad to the extent that it seeks documents regarding parties not relevant to jurisdiction or to the claims or defenses in the Lawsuit. 350.org further objects to Request No. 2 on the grounds that it is unduly burdensome and harassing in that it purports to require 350.org to determine whether any director, officer, employee, agent, representative or anyone purporting to act on behalf of any Attorney General attended a particular meeting. 350.org further objects to Request No. 2 on the grounds that it is cumulative and duplicative to the extent that it seeks documents and materials that can be obtained directly from parties to the Lawsuit.

**REQUEST NO. 3:**

For the time period January 1, 2015 through the date of production, any and all documents sufficient to show and identify any fees or expenses paid to former Vice President Al Gore in connection with his participation in or attendance at the Green 20 Press Conference.

**350.ORG'S OBJECTIONS TO REQUEST NO. 3:**

350.org objects to Request No. 3 on the ground that it is harassing in violation of Rule 45(d)(1) of the Federal Rules of Civil Procedure, as Exxon Mobil's purported interest in whether Vice President Gore received fees or expenses for participating in the Green 20 Press Conference is irrelevant to jurisdiction or to any claim or defense in the Lawsuit. 350.org further objects that Request No. 3 infringes upon 350.org's First Amendment rights, including the rights to free speech and assembly and to petition government. 350.org also objects to Request No. 3 on the ground that it is overbroad in that it seeks documents dating back to January 1, 2015, more than a year before the Green 20 Press Conference on March 29, 2016.

**REQUEST NO. 4:**

Any and all documents and communications concerning the Common Interest Agreement entered into by members of the Green 20.

**350.ORG'S OBJECTIONS TO REQUEST NO. 4:**

350.org objects to Request No. 4 on the ground that it seeks to chill 350.org's First Amendment rights, including its rights to free speech, free assembly and to petition the government for redress, by demanding 350.org's communications and internal deliberations on a matter relating to climate change policy. 350.org further objects to the extent that Request No. 4 seeks documents regarding parties or events not relevant to jurisdiction or to any claims or defenses in the Lawsuit. 350.org further objects that Request No. 4 is overly broad and unduly burdensome, as any documents and communications in 350.org's possession concerning the Common Interest Agreement are irrelevant to jurisdiction or to any claim or defense in the Lawsuit, as 350.org is a non-party to that agreement. 350.org further objects to Request No. 4 on the grounds that it is cumulative and duplicative in that information about the Common Interest Agreement may be sought from parties to that agreement. 350.org further objects to Request No. 4 on the ground that it is harassing as it appears calculated to invade 350.org's private communications to gain an advantage in Exxon Mobil's climate change policy debate with 350.org, and for no litigation-related purpose.

**REQUEST NO. 5:**

Any and all documents, recordings, or materials of any kind discussed or presented during any meeting concerning the conference entitled "Establishing Accountability for Climate Change Damages: Lessons from Tobacco Control" held in La Jolla, California from on or about June 14, 2012 to on or about June 15, 2012.

**350.ORG'S OBJECTIONS TO REQUEST NO. 5:**

350.org objects to Request No. 5 on the ground that it seeks to chill 350.org's exercise of its First Amendment rights, including its rights to engage in free speech and free assembly and its right to petition government, by demanding 350.org's communications and internal deliberations on questions of climate change policy. 350.org further objects that Request No. 5 is overly broad, unduly burdensome and seeks information that is not relevant to jurisdiction or to the claims or defenses of any party to the Lawsuit, as it seeks "any and all documents" concerning an event that neither 350.org nor any Attorney General appears to have participated in, and that occurred more than three years before Attorney General Schneiderman subpoenaed Exxon Mobil and almost four years before Attorney General Healey sent the civil investigative demand. 350.org further objects to Request No. 5 on the ground that it is harassing, as it appears calculated to invade 350.org's private communications for no litigation-related purpose.

**REQUEST NO. 6:**

Any and all documents concerning the actual or anticipated participation of ExxonMobil or other fossil fuel companies or trade associations in the international Paris Climate Change Conference of December 2015.

**350.ORG'S OBJECTIONS TO REQUEST NO. 6:**

350.org objects to Request No. 6 on the grounds that it seeks to chill 350.org's exercise of its First Amendment rights by demanding 350.org's communications and internal deliberations on questions of climate change policy. 350.org further objects that Request No. 6 is overly broad, unduly burdensome and seeks information that is not relevant to the claims or defenses of any party to the Lawsuit. 350.org further objects that Request No. 6 is cumulative and duplicative in that the documents sought can be obtained from a source that is more convenient than non-party 350.org. Exxon Mobil can obtain information about its own anticipated participation in the Paris Climate Change Conference of December 2015, or that of other fossil fuel companies or trade associations, by searching in its own files. 350.org further objects to Request No. 6 on the grounds that it is harassing and appears calculated to invade 350.org's private communications for no litigation-related purpose.

**REQUEST NO. 7:**

Any and all documents concerning any shareholder resolution relating to climate change made at ExxonMobil's annual shareholder meeting in either 2015 or 2016.

**350.ORG'S OBJECTIONS TO REQUEST NO. 7:**

350.org objects to Request No. 7 on the grounds that it seeks to chill 350.org's exercise of its First Amendment rights by demanding 350.org's communications and internal deliberations on questions of climate change policy. 350.org further objects that Request No. 7 is overly broad, unduly burdensome and seeks information that is not relevant to jurisdiction or to the claims or defenses of any party to the Lawsuit. 350.org further objects that Request No. 7 is cumulative and duplicative in that the documents sought can be obtained from a source that is more convenient than non-party 350.org. Exxon Mobil can obtain information about shareholder resolutions made at its own shareholder meeting by searching in its own files or in publicly available documents. 350.org further objects to Request No. 7 on the grounds that it is harassing as it appears calculated to invade 350.org's private communications for no litigation-related purpose.

**REQUEST NO. 8:**

Any and all documents and communications concerning fundraising for candidates for political office, including fundraising for any member of the Green 20, and also concerning ExxonMobil.

**350.ORG'S OBJECTIONS TO REQUEST NO. 8:**

350.org objects to Request No. 8 on the grounds that it is harassing and abusive in violation of Rule 45 of the Federal Rules of Civil Procedure. 350.org further objects that Request No. 8 attempts to intimidate 350.org in the exercise of its First Amendment rights to free speech, to assembly, and to petition government. 350.org further objects to Request No. 8 on the grounds that it is overbroad and seeks information about fundraising and regarding parties (*e.g.*, the "Green 20"), that is not relevant to jurisdiction or the claims or defenses of any party to the Lawsuit. 350.org further objects that Request No. 8 is vague, ambiguous and unintelligible, as 350.org cannot determine what a document "concerning fundraising for candidates" that is also "concerning ExxonMobil" would be.

**REQUEST NO. 9:**

Any and all documents, recordings, or materials of any kind that were discussed or presented during any meeting concerning the mock trial referred to as "ExxonMobil vs. The People" held in or around Montreuil, France on or about December 5, 2015.

**350.ORG'S OBJECTIONS TO REQUEST NO. 9:**

350.org objects to Request No. 9 on the grounds that it is intended to harass and intimidate 350.org in the exercise of its First Amendment rights, including 350.org's rights to free speech and assembly and to petition government on issues of public concern. 350.org further objects that Request No. 9 is overly broad, unduly burdensome and seeks information that is not relevant to jurisdiction or to the claims or defenses of any party to the Lawsuit. Exxon Mobil has not alleged that Attorney General Healey was present at the mock trial. As Request No. 9 seeks material that is irrelevant to the Lawsuit, it is also overbroad and unduly burdensome in seeking "any and all" such documents.

**REQUEST NO. 10:**

Any and all communications between 350.org, 350.org's agents, representatives, or employees and any member of the Green 20 concerning the mock trial referred to as "ExxonMobil vs. The People" held in or around Montreuil, France on or about December 5, 2015.



**350.ORG'S OBJECTIONS TO REQUEST NO. 10:**

350.org objects to Request No. 10 on the grounds that it is intended to harass and intimidate 350.org in the exercise of its First Amendment rights, including 350.org's rights to free speech and assembly and to petition the government concerning issues of public concern. 350.org further objects that Request No. 10 is overly broad, unduly burdensome and seeks information that is not relevant to jurisdiction or to the claims or defenses of any party to the Lawsuit. Exxon Mobil has not alleged that Attorney General Healey was present at the mock trial. As Request No. 10 seeks material that is irrelevant to the Lawsuit, it is also overbroad and unduly burdensome in seeking "any and all" such documents and in seeking communications with "any member of the Green 20." 350.org further objects to Request No. 10 on the grounds that it is cumulative and duplicative. To the extent that Exxon Mobil seeks communications with parties to its Lawsuit, it may seek such communications from the parties.

**REQUEST NO. 11:**

Documents and records sufficient to identify 350.org's document retention policy.

**350.ORG'S OBJECTIONS TO REQUEST NO. 11:**

350.org objects to Request No. 11 on the ground that it is not relevant to the claims or defenses of any party, and is put forward solely to harass 350.org. 350.org is not party to Exxon Mobil's Lawsuit, there has been no allegation or suggestion that 350.org has disposed of any otherwise discoverable document, and Exxon Mobil is not entitled to demand that 350.org "identify" any document retention policy.

**REQUEST NO. 12:**

Documents and records sufficient to identify any and all documents or communications within the scope of these requests that were disposed of or destroyed since April 13, 2016.

**350.ORG'S OBJECTIONS TO REQUEST NO. 12:**

350.org repeats its objections stated above for Requests 1 through 11, and incorporates those objections herein. 350.org objects to Request No. 12 on the grounds that it is overly broad and unduly burdensome and seeks documents that are not relevant to jurisdiction or to the claims or defenses of any party. Request No. 12 is put forward solely to harass 350.org and to intimidate 350.org in the exercise of its First Amendment rights, including its right to free speech, free assembly and to petition government. 350.org is not a party to Exxon Mobil's Lawsuit. There has been no claim that 350.org has disposed of any discoverable document. Exxon Mobil is not entitled to demand that 350.org engage in the burdensome task of

identifying any documents within the scope of Exxon Mobil's otherwise objectionable requests.

As a result of the above-stated objections, 350.org objects to the Subpoena in its entirety and will not produce any documents. However, 350.org's counsel stands ready to meet and confer with Exxon Mobil's counsel to consider whether an agreement on the subpoena may be reached that would permit 350.org to produce documents and avoid filing a motion to quash.

Sincerely,

A handwritten signature in cursive script that reads "Abbe David Lowell /MS".

Abbe David Lowell