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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

CITY OF OAKLAND, a Municipal Corporation, and THE PEOPLE OF THE STATE OF CALIFORNIA, acting by and through Oakland City Attorney, BARBARA J. PARKER

Plaintiff and Real Party in Interest,

v.

BP P.L.C., a public limited company of England and Wales, CHEVRON CORPORATION, a Delaware corporation, CONOCOPHILLIPS, a Delaware corporation, EXXONMOBIL CORPORATION, a New Jersey corporation, ROYAL DUTCH SHELL PLC, a public limited company of England and Wales, and DOES 1 through 10,

Defendants.

First Filed Case: No. 3:17-cv-6011-WHA
Related Case: No. 3:17-cv-6012-WHA

DEFENDANT EXXON MOBIL CORPORATION'S REPLY MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF ITS MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION

Case No. 3:17-cv-6011-WHA

HEARING

DATE: MAY 24, 2018

TIME: 8:00 A.M.

LOCATION: COURTROOM 12, 19TH FLOOR

THE HONORABLE WILLIAM H. ALSUP

CITY AND COUNTY OF SAN FRANCISCO, a Municipal Corporation, and THE PEOPLE OF THE STATE OF CALIFORNIA, acting by and through the San Francisco City Attorney DENNIS J. HERRERA, Plaintiff and Real Party in Interest, v. BP P.L.C., a public limited company of England and Wales, CHEVRON CORPORATION, a Delaware corporation, CONOCOPHILLIPS, a Delaware corporation, EXXONMOBIL CORPORATION, a New Jersey corporation, ROYAL DUTCH SHELL PLC, a public limited company of England and Wales, and DOES 1 through 10, Defendants.	Case No. 3:17-cv-6012-WHA

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REPLY MEMORANDUM OF POINTS AND AUTHORITIES

Defendant Exxon Mobil Corporation ("ExxonMobil") respectfully submits this reply memorandum of points and authorities in support of its motion pursuant to Federal Rule of Civil Procedure 12(b)(2) to dismiss it from this case for lack of personal jurisdiction.

ARGUMENT

In its opening brief, ExxonMobil demonstrated that a plaintiff seeking to hale an out-of-state defendant into court must plead that the plaintiff's injuries would not have occurred absent the defendant's contacts with the forum state. This is undisputed. (Opp. 7.) Rather than attempt to meet this standard, the Cities' opposition brief resorts to distraction and distortion, creating caricatures for the apparent purpose of setting up straw men to be knocked down. But the sweeping propositions the Cities try to lay at ExxonMobil's feet appear nowhere in its motion to dismiss. Contrary to the Cities' suggestion, ExxonMobil has never contended "that its California-based contribution to global warming must cause *all* of the injury to the Plaintiffs." (Opp. 1 (emphasis added).) Nor does ExxonMobil contend "that *all* the tortious conduct must occur in the forum" for a defendant to be amenable to suit there. (*Id.* (emphasis added).) All that ExxonMobil asks is for the Court to apply the due process protections afforded by settled law, which require the Cities to plead that their claimed injuries *would not have occurred* but for ExxonMobil's contacts *with California*.

The Cities have not done so. Instead, in responding to ExxonMobil's simple request, the Cities offer two primary arguments: (1) that a *contribution* to a harm, however attenuated, suffices to establish "but for" causation, and (2) that personal jurisdiction must be proper because the Cities can purportedly establish ExxonMobil's liability *without* proving "but for" causation. Neither of these arguments finds any support in the law. Contrary to the Cities' arguments, "but for" causation means what it says, and a broad theory of liability cannot substitute for the forum contacts necessary to support personal jurisdiction. As ExxonMobil's opening brief made clear, and the Cities do not seriously dispute, any contrary rules would provide an end-run around the boundaries of due process repeatedly marked by the Supreme Court, and would require ExxonMobil to defend *all* of its historical business activities wherever it has conducted *any* of its historical business activities. Despite having now

amended their complaint in response to a motion to dismiss relying on these very principles, the Cities' pleading remains deficient. The Court should grant ExxonMobil's motion to dismiss.

I. The Cities Cannot Evade the Well-Settled Rule That the Defendant's Forum Contacts Must Be a "But For" Cause of the Plaintiff's Injury

The Cities do not dispute that due process requires a plaintiff to establish that, "but for" a defendant's forum contacts, the plaintiff's injury would not have occurred. (Opp. 7 ("The second prong of the personal jurisdiction test involves a causal analysis. The Ninth Circuit has adopted a but-for test").) Yet the Cities do not claim that such a causal linkage exists. Instead, citing a smattering of dated or inapposite opinions, the Cities appear to suggest that the "but for" causation requirement does not mean what it says. The cases cited by the Cities simply do not support this assertion, and the Supreme Court has explicitly rejected the theory advanced by the Cities: that an action can be a "but for" cause of a result when it merely contributes to that result. *See Burrage* v. *United States*, 134 S. Ct. 881, 890-91 (2014) (rejecting an interpretation that "would treat as a cause-in-fact every act or omission that makes a positive incremental contribution, however small, to a particular result.")

In pressing this point, the Cities rely heavily on Judge Tigar's recent decision in *Dubose* v. *Bristol-Myers Squibb Co*., No. 17-cv-00244-JST. 2017 WL 2775034 (N.D. Cal. June 27, 2017), which they claim stands for the proposition that personal jurisdiction may be proper under the "but for" test even if relevant conduct occurred in "California and many other states." (Opp. 8.) But *Dubose* simply held that the plaintiff's "injuries would not have occurred but for Bristol-Myers's and AstraZeneca's contacts with California because the [drug's] clinical trials conducted here were part of the unbroken chain of events leading to Plaintiff's alleged injury." *Dubose* at *3. The Cities emphasize that *Dubose* concluded that the defendant's conduct in California was merely "*part of*" the causal chain. (Opp. 9.) But that observation just highlights the question the Cities' amended complaint does not answer: would the Cities' claimed injuries have occurred absent the small fraction of ExxonMobil's conduct that occurred in California? The amended complaint's failure to answer this question is fatal.

The Cities also cite the nearly 35 year old case of *Keeton* v. *Hustler Magazine*, 465 U.S. 770 (1984) which, according to the Cities, stands for the proposition that a plaintiff seeking "nationwide

damages" may bring suit wherever a defendant can be found "carrying on a part of its general business." (Opp. 8 (citing *Keeton*, 465 U.S. at 775).) Less than a year ago, however, the Supreme Court declined to adopt this interpretation of *Keeton*. In *Bristol-Myers Squibb* v. *Superior Court*, the Court rejected reliance on *Keeton*, explaining that, in *Keeton*, the Court "relied principally on the connection between the circulation of the magazine in New Hampshire and damage allegedly caused within the State"—in-state conduct *causing* an in-state injury. 137 S. Ct. 1773, 1782 (2017). And as particularly pertinent here, *Bristol-Myers Squibb* explicitly *rejected* the notion that *Keeton* authorizes personal jurisdiction over claims seeking to recover for injuries *not* caused by forum conduct. *Id.*

Similarly unavailing is the Cities' reliance on *Shute* v. *Carnival*, 897 F.2d 377 (9th Cir. 1990), which the Cities cite for the proposition that a defendant can be haled into court wherever it advertises, even if the conduct at issue did not occur in the forum. (Opp. 8 n.39.) *Shute* was a slip-and-fall case where the plaintiff, a Washington resident, was injured on a cruise ship off the coast of Mexico. 897 F.2d at 379. And in *Shute*, the Court determined that *but for* Carnival's partnership with travel agents *in Washington* through which plaintiff booked the cruise, the plaintiff would not have suffered the injury. *Id.* at 386. While *Shute* makes clear that there may be many links in a causal chain, it does not undercut the well-settled requirement that the defendant's in-state conduct must constitute a "but for" cause of plaintiff's alleged injury—which the Cities' complaint fails to allege.

The Cities also find no refuge in the 27 year old unreported decision of the Central District of California in the patent case of *Wilden Pump & Engineering Co.* v. *Versa-Matic Tool, Inc.*, No. 91-1562 SVW (SX), 1991 WL 280844 (C.D. Cal. July 29, 1991). The Cities claim that, in *Wilden Pump*, the Court "rejected an interpretation of the but-for test that would require just the California sales to cause the injury." (Opp. 9.) But *Wilden Pump* does not apply here. In *Wilden Pump*, the Court recognized that "[p]atent infringement, [. . .] creates a cause of action every time an infringing product is sold" and the defendant *had* sold products in California—that is to say, the defendant's *in-state* conduct (selling products) created a legally cognizable injury in California. *Wilden Pump*, 1991 WL 280844, at *4. That is simply not the case here, where the Cities' complaint does not, and cannot, concretely plead that the Cities' claimed injuries would not have occurred "but for" ExxonMobil's conduct *in California*. Moreover, *Wilden Pump* relied heavily on the interpretation of *Keeton*

1 that the Supreme Court rejected in *Bristol-Myers Squibb*. *See id.* (describing *Keeton* as authorizing
2 jurisdiction when "the bulk of the harm done to the plaintiff was outside of the forum state.").
3 The copyright cases cited by the Cities—*Mavrix* v. *Brand Technologies*, 647 F.3d 1218 (9th
4 Cir. 2011) and *Hendricks* v. *New Video Channel America*, No. 2:14–cv–02989–RSWL–SSx, 2015
5 WL 3616983 (C.D. Cal. June 8, 2015)—are likewise of no assistance. First, *Mavrix* did not address
6 the "but for" causation requirement at all, but rather focused on whether providing access to infring-
7 ing photographs to California residents through a website sufficed to constitute "purposeful avail-
8 ment." 647 F.3d at 1228. Moreover, *Mavrix* held that the conduct directed to California residents *did*
9 cause an injury in this forum, reasoning that "a significant number of Californians would have bought
10 publications such as People and Us Weekly in order to see the photos," had the photos not been dis-
11 tributed for free. *Id.* at 1231-32.
12 Similarly, *Hendricks* found jurisdiction proper where the plaintiff's injury would not have oc-
13 curred absent the defendants' conduct in California. In *Hendricks*, the plaintiff claimed, in essence,
14 that the defendants had stolen his idea for a television show based on a screenplay he had developed
15 and shared with them. 2015 WL 3616983, at *1. The court in *Hendricks* found jurisdiction proper
16 because of the defendants' "promotion of [the television show] via meetings in California, including
17 at least one meeting with [an] agent . . . as well as [a defendant's] coordination of the distribution of
18 the [s]eries in California." *Id.* at *7. *Hendricks* thus stands for the unremarkable proposition that a
19 defendant can be sued in California if it negotiates and effectuates a copyright infringement scheme
20 in the state. It bears no resemblance to this case, where the Cities have not pled that ExxonMobil's
21 conduct in California is a "but for" cause of their claimed injuries.[1]
22 None of the Cities' cases undermines the well-settled rule that a defendant may not be haled
23 into court in California unless its in-state contacts were a "but-for" cause of the plaintiffs' alleged in-
24 jury. Indeed, the Cities fail to meaningfully join issue with the argument that they have already *twice*
25 taken the position their claims are *not* dependent on activities in any particular location. (Br. 11-12.)
26
27 [1] The Cities' opposition may also be interpreted to suggest that a mere injury in a forum is sufficient.
But the Supreme Court has "made clear that mere injury to a forum resident is not a sufficient con-
28 nection to the forum" to support jurisdiction. *Walden* v. *Fiore*, 134 S. Ct. 1115, 1125 (2014).

Attempting to gloss over the inconsistency in their litigation positions, the Cities offer one sentence in a footnote, asserting that their claims "stem from all the conduct" of ExxonMobil. (Opp. 9 n.46.)[2]

II. The Cities' Brief Improperly Conflates Nuisance Theories of Liability with the Standards for Personal Jurisdiction

The Cities also suggest that jurisdiction is proper because common law nuisance purportedly permits the imposition of liability without strict "but for" causation. (Opp. 10-11.) "The problem with this argument is that it confuses a basis for liability [. . .] with a basis for jurisdiction under the Due Process Clause." *Campanelli* v. *Image First Unif. Rental Serv., Inc.*, No. 15-cv-04456-PJH, 2016 WL 4729173, at *7 (N.D. Cal. Sept. 12, 2016) (granting motion to dismiss where the purported links between a defendant and forum were artifacts of the substantive law to be applied, the Fair Labor Standards Act, but did not satisfy due process). Yet under controlling case law, plaintiff "may not use liability as a substitute for personal jurisdiction." *AT&T Co.* v. *Compagnie Bruxelles Lambert*, 94 F.3d 586, 590–91 (9th Cir. 1996). The Ninth Circuit has gone so far as to caution that, even where jurisdictional principles may "undercut" a law's "sweeping purpose," it remains the case that "liability is not to be conflated with amenability to suit in a particular forum." *Id.*; *see also Kingsley Capital Management, LLC* v. *Members of Bd. of Directors of Park Ave. Bank of New York as of 2008*, No. CV 12–00418, 2012 WL 3542321, at *5 (D. Ariz. Aug. 15, 2012) (observing that "the Ninth Circuit" has "rejected the notion that the scope of liability affected personal jurisdiction.")

And the Ninth Circuit is not alone. For example, the Seventh Circuit has also held that due process requires more than "transmogrify[ing] insufficient minimum contacts into a basis for personal jurisdiction by making these contacts elements of a cause of action . . . ." *Cent. States, Se. & Sw. Areas Pension Fund* v. *Reimer Express World Corp.*, 230 F.3d 934, 944 (7th Cir. 2000) (holding that "[t]he fact that a defendant would be liable under a statute if personal jurisdiction over it could be

[2] The Cities' statement that their claims "stem from all the conduct" of ExxonMobil is an implicit concession that they can only bring suit where ExxonMobil is subject to *general* jurisdiction. To allow suits challenging "all the conduct" of an out-of-state defendant in the guise of specific jurisdiction would be to endorse a "loose and spurious form of general jurisdiction" that the Supreme Court in *Bristol-Myers Squibb* rejected less than a year ago. 137 S. Ct. at 1781.

obtained is irrelevant to the question of whether such jurisdiction can be exercised.").[3] The same distinction between principles of liability and principles of jurisdiction forecloses the Cities' complaint that ExxonMobil must be subject to jurisdiction because it could be liable under California nuisance law.[4]

That distinction renders irrelevant the Cities' extended discussion of other cases where, they claim, nuisance-like theories of liability have been endorsed in the climate change context. Yet even the Cities' description of these irrelevant cases is distorted. The Cities begin by claiming that ExxonMobil has somehow "improperly" relied upon the squarely-on-point reasoning in *Native Vill. of Kivalina* v. *ExxonMobil Corp.*, 663 F. Supp. 2d 863, 880 (N.D. Cal. 2009), which observed that climate change injuries are, by their nature, not traceable to the conduct of any discrete defendant. (Opp. 12.) ExxonMobil's reliance on *Kivalina* is "improper," the Cities say, because the pertinent portion was "implicitly reversed" by the Ninth Circuit's affirmance of the District Court's decision on other grounds. 696 F.3d 849 (9th Cir. 2012); (Opp. 12.) That assertion may surprise the Ninth Circuit, which *explicitly* stated that it "need not, and do[es] not, reach any other issue urged by the parties" aside from the applicability of federal common law. 696 F.3d at 858.

Similarly unenlightening is the Cities' description of *Massachusetts* v. *EPA*, 549 U.S. 497 (2007), in which the Commonwealth of Massachusetts challenged the EPA's denial of a petition to compel a rulemaking process to regulate greenhouse gas emissions. The Cities claim that *Massachusetts* v. *EPA* demonstrates that climate change injuries can be traced to particular conduct so as to generate standing. (Opp. 12.) But the Cities' argument ignores that the analysis in *Massachusetts* v. *EPA* was heavily influenced by the fact that the challenged conduct was a rulemaking by a public

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[3] Courts throughout the country have agreed. *See, e.g.*, *GCIU–Employer Retirement Fund* v. *Coleridge Fine Arts*, 700 F. App'x 865, 869–70 (10th Cir. 2017) ("the fact a defendant would be liable under a statute if personal jurisdiction over it could be obtained is irrelevant"); *Mendez* v. *Pure Foods Management Group, Inc.*, No. 3:14-cv-1515, 2016 WL 183473, at *6 (D. Conn. Jan. 14, 2016) ("[t]he standard . . . for purposes of liability under specific statutes is perhaps not dissimilar to a jurisdictional standard, but it is distinct, and is likely looser."); *E.E.O.C.* v. *AMX Communications, Ltd.*, No. WDQ–09–2483, 2011 WL 3555831, at *6 (D. Md. Aug. 8, 2011) ("[t]he laws on which the suit are based are irrelevant to the jurisdictional inquiry.")

[4] It is telling that, in arguing that jurisdictional bars should not be set higher than the bar for liability, the Cities cite a case on *standing*, (Opp. 10 n.49), but ExxonMobil's personal jurisdiction motion only addresses whether the Cities' claims can proceed *in this forum*.

body, and "Congress ha[d] moreover recognized a concomitant procedural right to challenge the rejection of [Massachusetts'] rulemaking petition as arbitrary and capricious." 549 U.S. at 520. That is simply not the case here, where the Cities' claims are asserted against private defendants, and the Cities have no statutory right to challenge those entities' conduct (which is, in any event, entirely legal).

Finally, the Cities twist *AEP* v. *Connecticut*, 564 U.S. 410 (2011) beyond recognition in arguing that the Supreme Court there held that "federal common law nuisance liability can be based on conduct by defendants that merely contributes to the creation of a nuisance." (Opp. 12.) That may or may not be an accurate statement of federal common law *outside* the context of climate change, but in *AEP* the Supreme Court squarely held that federal common law nuisance claims relating to carbon dioxide emissions—which, despite the Cities' attempts at window dressing, accurately describes the claims in this case—are *displaced* by the Clean Air Act. 564 U.S. at 424. And, in any event, as set forth above, the Supreme Court has rejected the notion that "every act or omission that makes a positive incremental contribution, however small, to a particular result" is a "cause-in fact" of that result—the relevant inquiry for purposes of this motion. *Burrage*, 134 S. Ct. at 91.

The Cities' focus on theories of *liability* is no response to ExxonMobil's motion to dismiss for lack of *jurisdiction*. Accordingly, ExxonMobil cannot be held to answer these claims in this forum.

III. ExxonMobil's Petition for Limited, Pre-Suit Discovery in Texas Bears No Resemblance to This Case, and the Cities' Attempt to Link the Two Cases is a Further Distraction

The Cities' attempt to set up a false equivalency between this litigation and ExxonMobil's petition for limited pre-suit discovery in Texas is nothing more than a distraction. By the Cities' telling, ExxonMobil's Texas petition "stretches the bounds of zealous advocacy" (Opp. 1), but this breathless (and baseless) rhetoric sheds far more heat than light. The Cities ignore the fact that, unlike here, in the Texas action ExxonMobil has alleged an injury *that would not have occurred* absent the Potential Defendants' contact with Texas.[5]

[5] The Cities' brief trumpets that the Massachusetts state courts found personal jurisdiction over ExxonMobil based on attenuated contacts. (Opp. 6.) ExxonMobil believes that this decision is flawed and inconsistent with due process principles, which do not permit jurisdiction simply because an entity does business in a state. *Daimler AG* v. *Bauman*, 134 S. Ct. 746, 761 (2014). In any event, because of the Massachusetts case's "investigatory context," the court employed a "broaden[ed]" jurisdictional analysis not applicable here. *Exxon Mobil* v. *Att'y Gen.*, 479 Mass. 312, 315 (2018).

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Indeed, a Texas court has already found that it may exercise personal jurisdiction in that case because the Potential Defendants' "conduct was directed at Texas-based speech, activities, and property." (Sestito Reply Decl. Ex. 1 at ¶ 41.) And the Texas court recognized that "[a] violation of First Amendment rights occurs where the targeted speech occurs or where it would otherwise occur *but for* the violation." (*Id.* at ¶ 47 (emphasis added).) Accordingly, the Texas court concluded that "ExxonMobil exercises its First Amendment rights in Texas, and Texas is the site of the speech challenged by the Potential Defendants' lawsuits. The anticipated claims therefore concern potential constitutional torts committed in Texas." (*Id.*) Here, by contrast, the Cities complain of an injury caused by an undifferentiated, global phenomenon that, by Plaintiffs' own description, is the result of all fossil fuel combustion since the dawn of the Industrial Revolution. Unlike in ExxonMobil's Texas petition, the Cities here do not contend that their injuries *would not have occurred* absent ExxonMobil's forum contacts.

IV. Discovery Cannot Cure the Complaint's Jurisdictional Defects

Finally, the Cities devote a mere six lines in their fourteen page opposition brief to requesting jurisdictional discovery of ExxonMobil, purportedly to probe whether ExxonMobil is involved in the climate-related decisions of its subsidiaries or affiliates. (Opp. 14.) But even if all subsidiary or affiliate contacts with California were imputed to ExxonMobil, the Cities do not allege that the combined California-based activities of those subsidiaries and affiliates are a "but for" cause of the Cities' claimed injuries, nor could the Cities plausibly do so. Jurisdictional discovery about this issue thus cannot supply the causal link the Cities are missing, and will do nothing but create burden and delay. The Court should reject the Cities' half-hearted request for jurisdictional discovery.

CONCLUSION

In its opening brief, ExxonMobil explained why, under the controlling law of this Circuit, it cannot be made to answer for *all* of its historical business activities wherever it had conducted *any* of its historical business activities. The Cities' opposition fails to meaningfully rebut any of ExxonMobil's arguments. For the reasons set forth herein and in ExxonMobil's opening brief, the Court should grant ExxonMobil's motion to dismiss for lack of personal jurisdiction.

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May 10, 2018

Respectfully submitted,

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

CITY OF OAKLAND, a Municipal Corporation, and THE PEOPLE OF THE STATE OF CALIFORNIA, acting by and through Oakland City Attorney, BARBARA J. PARKER,

Plaintiff and Real Party in Interest,

v.

BP P.L.C., a public limited company of England and Wales, CHEVRON CORPORATION, a Delaware corporation, CONOCOPHILLIPS COMPANY, a Delaware corporation, EXXONMOBIL CORPORATION, a New Jersey corporation, ROYAL DUTCH SHELL PLC, a public limited company of England and Wales, and DOES 1 through 10,

Defendants.

First Filed Case: No. 3:17-cv-6011-WHA
Related Case: No. 3:17-cv-6012-WHA

REPLY DECLARATION OF DAWN SESTITO IN SUPPORT OF DEFENDANT EXXON MOBIL CORPORATION'S MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION

Case No. 3:17-cv-6011-WHA

HEARING

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TIME: 8:00 A.M.

LOCATION: COURTROOM 12, 19TH FLOOR

THE HONORABLE WILLIAM H. ALSUP

CITY AND COUNTY OF SAN FRANCISCO, a Municipal Corporation, and THE PEOPLE OF THE STATE OF CALIFORNIA, acting by and through the San Francisco City Attorney DENNIS J. HERRERA, Plaintiff and Real Party in Interest, v. BP P.L.C., a public limited company of England and Wales, CHEVRON CORPORATION, a Delaware corporation, CONOCOPHILLIPS COMPANY, a Delaware corporation, EXXONMOBIL CORPORATION, a New Jersey corporation, ROYAL DUTCH SHELL PLC, a public limited company of England and Wales, and DOES 1 through 10, Defendants.	Case No. 3:17-cv-6012-WHA

I, Dawn Sestito, declare as follows:

1. I am an attorney admitted to practice before the Courts of the State of California and this Court. I am a partner at O'Melveny & Myers LLP, counsel for Exxon Mobil Corporation ("ExxonMobil") in this litigation. I make this declaration upon personal knowledge and could and would competently testify to the matters below if called to do so.

2. I file this Declaration pursuant to Local Civil Rule 7-5 in support of ExxonMobil's Reply Memorandum of Points and Authorities in Support of its Motion to Dismiss for Lack of Personal Jurisdiction, filed concurrently herewith.

3. Annexed as Exhibit 1 is a true and correct copy of the Findings of Fact and Conclusions of Law in the Petition of Exxon Mobil Corporation, Cause No. 096-297222-18, in the 96th District Court of Tarrant County, Texas, signed by the Hon. R.H. Wallace, Jr. on April 24, 2018.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge and that this declaration was executed on May 10, 2018, in Los Angeles, California.

/s/ Dawn Sestito
Dawn Sestito

EXHIBIT 1

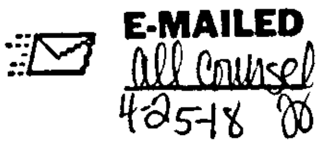
CAUSE NO. 096-297222-18

EXXON MOBIL CORPORATION,	§	IN THE DISTRICT COURT OF
	§	
	§	TARRANT COUNTY, TEXAS
Petitioner.	§	
	§	96th JUDICIAL DISTRICT

~~[PROPOSED]~~ FINDINGS OF FACT AND CONCLUSIONS OF LAW

On January 8, 2018, Exxon Mobil Corporation ("ExxonMobil") filed a petition under Rule 202 of the Texas Rules of Civil Procedure seeking pre-suit discovery to evaluate potential claims and preserve evidence related to constitutional violations, abuse of process, and civil conspiracy. ExxonMobil's potential claims arise from an alleged conspiracy by California municipalities to suppress Texas-based speech and associational activities on climate policy that are out-of-step with the prevailing views of California public officials. According to ExxonMobil's petition, the California municipalities alleged facts in their lawsuits against the Texas energy sector that are contradicted by contemporaneous disclosures to municipal bond investors. ExxonMobil seeks pre-suit discovery on whether the lawsuits were brought in bad faith as a pretext to suppress Texas-based speech and associational activities by members of Texas's energy sector.

The potential defendants and prospective witnesses named in ExxonMobil's petition (collectively the "Respondents") challenged this Court's personal jurisdiction by filing special appearances under Rule 120a of the Texas Rules of Civil Procedure. ExxonMobil opposed. Both the Respondents and ExxonMobil filed affidavits and evidence in support of their respective positions. At a hearing held on March 8, 2018, the Court accepted all filed affidavits and evidence, as permitted by Rule 120a. Neither ExxonMobil nor the Respondents objected to the evidence at



the hearing; the parties disputed only the legal significance of the uncontested factual record before the Court. On March 14, 2018, the Court denied all of the special appearances in light of the factual record.

On March 27, 2018, ExxonMobil filed a request for findings of fact and conclusions of law supporting this Court's denial of the special appearances. In accordance with Rule 297 of the Texas Rules of Civil Procedure, the Court makes the following findings of fact and conclusions of law based on the uncontested evidentiary record.

FINDINGS OF FACT

A. Parties

1. Petitioner ExxonMobil is a corporation incorporated under the laws of the State of New Jersey with its principal place of business in Texas. It formulates and issues statements about climate change from its headquarters in Texas. Most of its corporate records pertaining to climate change are located in Texas, and it engages in speech and associational activities in Texas.

2. Potential Defendants the County of San Mateo, the County of Marin, the City of Imperial Beach, the City of Santa Cruz, the County of Santa Cruz, the City of Oakland, and the City of San Francisco are cities or counties in California that do not maintain a registered agent, telephone listing, or post office box in Texas.

3. Potential Defendants Barbara J. Parker, Dennis J. Herrera, John Beiers, Serge Dedina, Jennifer Lyon, Brian Washington, Dana McRae, and Anthony Condotti are California municipal officers who do not reside in Texas or maintain offices or registered agents in Texas.

4. Potential Defendant Matthew F. Pawa is an attorney in private practice,

based in Massachusetts and serving as outside counsel for Potential Defendants the City of Oakland and the City of San Francisco. Mr. Pawa does not maintain an office or registered agent in Texas and is not licensed to practice law in Texas.

5. Prospective Witnesses Sabrina B. Landreth, Edward Reiskin, John Maltbie, Andy Hall, Matthew Hymel, Carlos Palacios, and Martín Bernal are California municipal officers who do not reside in Texas or maintain a registered agent, telephone listing, or post office box in Texas.

B. Preparatory Activities Directed at Texas-Based Speech

Pawa and Others Develop a Climate Change Strategy

6. In June 2012, Potential Defendant Pawa and a group ~~of special interests~~ RAW attended a conference in La Jolla, California, called the "Workshop on Climate Accountability, Public Opinion, and Legal Strategies." Peter Frumhoff, the Director of Science and Policy for the Union of Concerned Scientists; Naomi Oreskes, then a professor at the University of California, San Diego; and Richard Heede, of the Climate Accountability Institute, conceived of this workshop and invited Mr. Pawa to participate as a featured speaker.

7. During the conference, participants discussed strategies to "[w]in [a]cess to [i]nternal [d]ocuments" of energy companies, like ExxonMobil, that could be used to obtain leverage over these companies. The conference participants concluded that using law enforcement powers and civil litigation to "maintain[ ] pressure on the industry that could eventually lead to its support for legislative and regulatory responses to global warming." One commentator observed, "Even if your ultimate goal might be to shut down a company, you still might be wise to start out by asking for compensation for injured parties."

8. At the conference, the attendees also concluded that "a single sympathetic

state attorney general might have substantial success in bringing key internal documents to light."

9. At the conference, Potential Defendant Pawa targeted ExxonMobil's speech on climate change, and identified such speech as a basis for bringing litigation. Mr. Pawa claimed that "Exxon and other defendants distorted the truth" (as Mr. Pawa saw it) and that litigation "serves as a 'potentially powerful means to change corporate behavior.'" Myles Allen, another participant at the La Jolla conference, claimed that "the fossil fuel industry's disinformation has effectively muted a large portion of the electorate."

10. In January 2016, Mr. Pawa engaged ~~special interests~~ participants at the Rockefeller Family Fund offices in New York City to further solidify the "[g]oals of an Exxon campaign" that Mr. Pawa developed at the La Jolla conference. According to a draft agenda for the meeting, the goals of this campaign included: (i) "[t]o establish in [the] public's mind that Exxon is a corrupt institution that has pushed humanity (and all creation) toward climate chaos and grave harm"; (ii) "[t]o delegitimize [ExxonMobil] as a political actor"; (iii) "[t]o drive divestment from Exxon"; and (iv) "[t]o force officials to disassociate themselves from Exxon, their money, and their historic opposition to climate progress, for example by refusing campaign donations, refusing to take meetings, calling for a price on carbon, etc."

11. According to the draft agenda, Mr. Pawa and the other participants aimed to chill and suppress ExxonMobil's speech through "legal actions & related campaigns," including "AGs" and "Tort[]" suits. The draft agenda notes that participants planned to use "AGs" and "Tort[]" suits to "get[] discovery" and "creat[e] scandal."

State Attorneys General Adopt the Climate Change Strategy

12. On March 29, 2016, New York Attorney General Eric Schneiderman, Massachusetts Attorney General Maura Healey, and other state attorneys general, calling

themselves the "Green 20," held a press conference where they promoted regulating the speech of energy companies, including ExxonMobil, whom they perceived as an obstacle to enacting their preferred policy responses to climate change. Attorneys General Schneiderman and Healey discussed their investigations of ExxonMobil. They were also joined by former Vice President Al Gore, an investor in alternative energy companies.

13. At the press conference, Attorney General Schneiderman discussed the need to regulate the energy industry's speech on climate change, just as Potential Defendant Pawa had urged at La Jolla and at the Rockefeller meeting. He stated, "There is no dispute but there is confusion, and confusion sowed by those with an interest in profiting from the confusion and creating misperceptions in the eyes of the American public that really need to be cleared up." Attorney General Schneiderman denounced the "highly aggressive and morally vacant forces that are trying to block every step by the federal government to take meaningful action" and announced that "today, we're sending a message that, at least some of us—actually a lot of us—in state government are prepared to step into this battle with an unprecedented level of commitment and coordination."

14. Attorney General Healey similarly echoed themes from the strategy Mr. Pawa developed at La Jolla. She stated, "Part of the problem has been one of public perception," and she blamed "[f]ossil fuel companies" for purportedly causing "many to doubt whether climate change is real and to misunderstand and misapprehend the catastrophic nature of its impacts." Attorney General Healey announced that those who "deceived" the public "should be, must be, held accountable." In the next sentence, she disclosed that she too had begun investigating ExxonMobil and concluded, before receiving a single document from ExxonMobil, that there was a "troubling disconnect between what Exxon knew . . . and what the company and industry chose

to share with investors and with the American public."

15. At the press conference, former Vice President Al Gore praised Attorney General Schneiderman's efforts to "hold to account those commercial interests" who "are now trying to convince people that renewable energy is not a viable option"~~, a position that aligned well with Mr. Gore's financial stake in renewable energy companies.~~ Mr. Gore also focused on First Amendment-protected activities, condemning the "political and lobbying efforts" of the traditional energy industry.

State Attorneys General Conceal Ties to Pawa

16. At a closed-door meeting held before the March 2016 press conference, Mr. Pawa and Dr. Frumhoff conducted briefings for assembled members of the attorneys general's offices. Mr. Pawa, whose briefing was on "climate change litigation," has subsequently admitted to attending the meeting, but only after he and the attorneys general attempted and failed to conceal it.

17. The New York Attorney General's Office attempted to keep Mr. Pawa's involvement in this meeting secret. When a reporter contacted Mr. Pawa shortly after this meeting and inquired about the press conference, the Chief of the Environmental Protection Bureau at the New York Attorney General's Office told Mr. Pawa, "My ask is if you speak to the reporter, to not confirm that you attended or otherwise discuss the event."

18. Similarly, the Vermont Attorney General's Office—another member of the "Green 20" coalition—admitted at a court hearing that when it receives a public records request to share information concerning the coalition's activities, it researches the party who requested the records, and upon learning of the requester's affiliation with "coal or Exxon or whatever," the office "give[s] this some thought . . . before [it] share[s] information with this entity."

State Attorneys General Target Texas-based Speech, Activities, and Property

19. Attorney General Schneiderman issued a subpoena and Attorney General Healey issued a civil investigative demand ("CID") to ExxonMobil requesting documents and communications concerning climate change and expressly referencing documents in ExxonMobil's possession in Texas.

20. The Massachusetts CID targets specific statements ExxonMobil and its executives made in Texas. For example, it requests documents concerning (i) a 1982 article prepared by the Coordination and Planning Division of Exxon Research and Engineering Company; (ii) former Chairman and CEO Rex Tillerson's "statements regarding Climate Change and Global Warming . . . at an Exxon shareholder meeting in Dallas, Texas"; (iii) ExxonMobil's 2016 Energy Outlook, which was prepared and reviewed in Texas; and (iv) internal corporate documents and communications concerning regulatory filings prepared at ExxonMobil's corporate offices in Texas. Many of the statements under government scrutiny pertain expressly to matters of public policy, such as remarks by ExxonMobil's former CEO that "[i]ssues such as global poverty [are] more pressing than climate change." The Massachusetts CID also seeks documents pertaining to ExxonMobil's associational activities, including its communications with 12 organizations derided as climate deniers and its reasons for associating with those entities.

21. The New York subpoena also targets ExxonMobil's speech and associational activities in Texas, including investor filings, the "*Outlook For Energy* reports," the "*Energy Trends, Greenhouse Gas Emissions, and Alternative Energy* reports," the "*Energy and Carbon - Managing the Risks Report*," and communications with trade associations and industry groups.

22. ExxonMobil filed a lawsuit seeking injunctive and declaratory relief against

Attorneys General Schneiderman and Healey. The Attorney General of the State of Texas, along with ten other state attorneys general, filed an amicus brief in support of ExxonMobil's claims, stating that a state official's power "does not include the right to engage in unrestrained, investigative excursions to promulgate a social ideology, or chill the expression of points of view, in international policy debates." Judge Ed Kinkeade of the U.S. District Court for the Northern District of Texas questioned whether the New York and Massachusetts Attorneys General were attempting to "further their personal agendas by using the vast power of government to silence the voices of all those who disagree with them."

C. Lawsuits Against the Texas Energy-Sector Are Directed at Texas-Based Speech, Activities, and Property

23. With the investigations of the state attorneys general underway, Mr. Pawa next promoted his La Jolla strategy to California municipalities, as potential plaintiffs in tort litigation that would be filed against energy companies, including ExxonMobil.

24. Mr. Pawa sent a memo outlining this strategy to NextGen America, the political action group funded by political activist Tom Steyer. The memo "summarize[d] a potential legal case against major fossil fuel corporations," premised on the claim that "certain fossil fuel companies (most notoriously ExxonMobil), have engaged in a campaign and conspiracy of deception and denial on global warming." Mr. Pawa emphasized that "simply proceeding to the discovery phase would be significant" and "obtaining industry documents would be a remarkable achievement that would advance the case and the cause."

25. Mr. Pawa also gave a number of speeches in which he targeted speech that ExxonMobil formulated and made in Texas. At a 2016 conference, for instance, Mr. Pawa accused ExxonMobil of "undert[aking] a campaign of deception and denial" and targeted a speech concerning climate change delivered by former CEO Tillerson in Texas. In the same speech, Mr.

Pawa also discussed the company's internal memos from the 1980s, where company scientists evaluated potential climate change impacts.

26. Following through on the strategy Mr. Pawa outlined in his memorandum to NextGen America, Potential Defendants Parker, Herrera, and the Cities of Oakland and San Francisco filed public nuisance lawsuits against ExxonMobil and four other energy companies, including Texas-based ConocoPhillips. Mr. Pawa represents the plaintiffs in those actions, and Ms. Parker and Mr. Herrera signed the complaints on behalf of the City of Oakland and the City of San Francisco, respectively. They used an agent to serve the complaints on ExxonMobil's registered agent in California, whose role is to transmit legal process to ExxonMobil in Texas.

27. Potential Defendants Lyon, Washington, Beiers, Condotti, McRae, the City of Imperial Beach, Marin County, San Mateo County, and the City and the County of Santa Cruz filed similar public nuisance complaints against ExxonMobil and other energy companies, including the following 17 Texas-based energy companies: BP America, Inc., Shell Oil Products Company LLC, Citgo Petroleum Corp., ConocoPhillips, ConocoPhillips Company, Phillips 66, Total E&P USA Inc., Total Specialties USA Inc., Eni Oil & Gas Inc., Anadarko Petroleum Corp., Occidental Petroleum Corp., Occidental Chemical Corp., Repsol Energy North America Corp., Repsol Trading USA Corp., Marathon Oil Company, Marathon Oil Corporation, and Apache Corp. Potential Defendants Beiers, Lyon, McRae, Washington, and Condotti signed these complaints. They used an agent to serve the complaints on ExxonMobil's registered agent in Texas.

28. Each of the seven California complaints expressly target speech and associational activities in Texas.

29. The Oakland and San Francisco complaints, for example, target ExxonMobil's Texas-based speech, including a statement by "then-CEO Rex Tillerson" at

"Exxon's annual shareholder meeting" in Texas, where they claim Mr. Tillerson allegedly "misleadingly downplayed global warming's risks." These complaints also target corporate statements issued from Texas, such as ExxonMobil's "annual 'Outlook for Energy' reports," "Exxon's website," and "Exxon's 'Lights Across America' website advertisements." In addition, the complaints target ExxonMobil's associational activities in Texas, including corporate decisions to fund various non-profit groups that perform climate change-related research that the complaints deem to be "front groups" and "denialist groups."

30. The City of Imperial Beach, Marin County, San Mateo County, and the City and County of Santa Cruz complaints similarly focus on ExxonMobil's Texas-based speech and associational activities. For example, they target (i) a 1988 memo from an Exxon public affairs manager that proposes "[r]esist[ing] the overstatement and sensationalization [sic] of potential greenhouse effect"; (ii) a "publication" that "Exxon released" in "1996" with a preface by former "Exxon CEO Lee Raymond"; and (iii) a 2007 Corporate Citizenship Report, issued from the company's Texas headquarters.

31. Each of the seven California complaints also explicitly focus on ExxonMobil property in Texas, including ExxonMobil's internal memos and scientific research. (Imperial Beach Compl. ¶¶ 86-88, 91-92, 95-97, 99-102; Marin County Compl. ¶¶ 86-88, 91-92, 95-97, 99-102; San Mateo Compl. ¶¶ 86-88, 91-92, 95-97, 99-102; Oakland Compl. ¶¶ 60-61; San Francisco Compl. ¶¶ 60-62; County of Santa Cruz Compl. ¶¶ 130-32, 135-37, 140-42, 144-47; City of Santa Cruz Compl. ¶¶ 129-31, 134-36, 139-41, 143-46.)

32. Several Potential Defendants also made statements shortly after filing the lawsuits focusing on Texas-based speech. In a July 20, 2017 op-ed for *The San Diego Union-Tribune*, Potential Defendant Dedina, the mayor of the City of Imperial Beach, justified his

participation in this litigation by accusing the energy sector of attempting to "sow uncertainty" about climate change. In a July 26, 2017 appearance at a local radio station, Mr. Dedina accused ExxonMobil of carrying out a "merchants of doubt campaign."

33. Oakland City Attorney Barbara Parker issued a press release soon after filing suit, asserting that "[i]t is past time to debate or question the reality of global warming." According to Parker, "[j]ust like BIG TOBACCO, BIG OIL knew the truth long ago and peddled misinformation to con their customers and the American public."

34. San Francisco City Attorney Dennis Herrera similarly accused "fossil fuel companies" of launching a "disinformation campaign to deny and discredit what was clear even to their own scientists: global warming is real," and pledged to ensure that these companies "are held to account."

35. These allegations, ~~which pervade Respondents' lawsuits,~~ are contradicted by the Respondents' own municipal bond disclosures. While the California municipalities alleged in their complaints against the energy companies that the impacts of climate change were knowable, quantifiable, and certain, they told their investors the exact opposite. These contradictions raise the question of whether the California municipalities brought these lawsuits for an improper purpose.

36. For example, Oakland and San Francisco's complaints claim that ExxonMobil's and other energy company's "conduct will continue to cause ongoing and increasingly severe sea level rise harms" to the cities. However, the municipal bonds issued by Oakland and San Francisco disclaim knowledge of any such impending catastrophe, stating the Cities are "unable to predict" whether sea-level rise "or other impacts of climate change" will occur, and "if any such events occur, whether they will have a material adverse effect on the

business operations or financial condition of the City" or the "local economy."

37. Similarly, according to the San Mateo Complaint, the county is "particularly vulnerable to sea level rise," with "a 93% chance that the County experiences a devastating three-foot flood before the year 2050, and a 50% chance that such a flood occurs before 2030." Despite this, nearly all of the county's bond offerings contain no reference to climate change, and 2014 and 2016 bond offerings assure that "[t]he County is unable to predict whether sea-level rise or other impacts of climate change or flooding from a major storm will occur."

38. The Imperial Beach Complaint alleges that it is vulnerable to "significant, and dangerous sea level rise" due to "unabated greenhouse gas emissions." Imperial Beach has never warned investors in its bonds of any such vulnerability. A 2013 bond offering, for instance, contains nothing but a boilerplate disclosure that "earthquake . . . , flood, fire, or other natural disaster, could cause a reduction in the Tax Revenues securing the Bonds . . . ."

39. The Marin County complaint warns that "there is a 99% risk that the County experiences a devastating three-foot flood before the year 2050, and a 47% chance that such a flood occurs before 2030." It also asserts that "[w]ithin the next 15 years, the County's Bay-adjacent coast will endure multiple, significant impacts from sea level rise." However, its bond offerings do not contain any specific references to climate change risks, noting only, for example, that "natural or manmade disaster[s], such as earthquake, flood, fire, terrorist activities, [and] toxic dumping" are potential risks.

40. The Santa Cruz complaints warn of dire climate change threats. The county alleges that there is "a 98% chance that the County experiences a devastating three-foot flood before the year 2050, and a 22% chance that such a flood occurs before 2030." The Santa Cruz City Complaint similarly warns that "increased flooding and severe storm events associated with

climate change will result in significant structural and financial losses in the City's low-lying downtown." But none of the city or county bond offerings mention these dire and specific warnings. A 2016 county disclosure merely states that areas within the county "may be subject to unpredictable climatic conditions, such as flood, droughts and destructive storms." A 2017 city bond offering has a boilerplate message that,"[f]rom time to time, the City is subject to natural calamities," including flood and wildfire.

41. Potential Defendants Pawa, Parker, Herrera, Beiers, Dedina, Lyon, Washington, McRae, Condotti, County of San Mateo, County of Marin, City of Imperial Beach, City of Santa Cruz, County of Santa Cruz, City of Oakland, and City of San Francisco either approved or participated in filing the lawsuits against the Texas energy sector. That conduct was directed at Texas-based speech, activities, and property. Prospective Witnesses Landreth, Reiskin, Maltbie, Hall, Hymel, Palacios, and Bernal approved the contemporaneous disclosures that contradict the allegations in the municipal complaints. Those witnesses, along with the Potential Defendants, are likely to have evidence pertaining to that contradiction.

CONCLUSIONS OF LAW

42. Under Rule 202 of the Texas Rules of Civil Procedure, a proper court may allow discovery of a potential claim if the court would have personal jurisdiction over the potential defendants to the anticipated suit.

43. Because this Court is not required to have personal jurisdiction over prospective witnesses who are not potential defendants, the special appearances of Prospective Witnesses Landreth, Reiskin, Maltbie, Hall, Hymel, Palacios, and Bernal are denied.

44. This Court would not have general personal jurisdiction over the Potential Defendants to the anticipated suit.

45. This Court could exercise specific personal jurisdiction over the Potential Defendants for the anticipated claims of constitutional violations, abuse of process, and civil conspiracy.

46. The exercise of personal jurisdiction over the Potential Defendants to the anticipated action would be permitted under the Texas long-arm statute, which allows a Texas court to exercise jurisdiction over nonresidents who commit a tort in whole or in part in Texas. Tex. Civ. Prac. & Rem. Code § 17.042(2). Each of the Potential Defendants is a nonresident within the meaning of the long-arm statute.

47. A violation of First Amendment rights occurs where the targeted speech occurs or where it would otherwise occur but for the violation. ExxonMobil exercises its First Amendment rights in Texas, and Texas is the site of the speech challenged by the Potential Defendants' lawsuits. The anticipated claims therefore concern potential constitutional torts committed in Texas.

48. Exercising jurisdiction over the Potential Defendants in the anticipated action would comport with due process because the potential claims arise from minimum contacts initiated by the Potential Defendants which purposefully target Texas, including speech, activities, and property in Texas.

49. Mr. Pawa initiated contact and created a continuing relationship with Texas by, among other activities, (i) initiating a plan to use litigation to change corporate behavior of Texas-based energy companies at the La Jolla conference; (ii) engaging with the Rockefeller Family Fund to solidify and promote the goal of delegitimizing ExxonMobil as a political actor; (iii) instigating state attorneys general to commence investigations of ExxonMobil in order to obtain documents stored in Texas; and (iv) soliciting and actively promoting litigation by

California municipalities against the Texas energy industry, including ExxonMobil, to target Texas-based speech and obtain documents in Texas.

50. All of the Potential Defendants initiated contact and created a continuing relationship with Texas by (i) developing, signing, approving, and/or filing complaints that expressly target the speech, research, and funding decisions of ExxonMobil and other Texas-based energy companies to chill and affect speech, activities, and property in Texas; and (ii) using an agent to serve ExxonMobil in Texas.

51. The Potential Defendants' contacts were deliberate and purposeful, and not random, fortuitous, or attenuated.

52. Purposeful availment is satisfied where Texas is the focus of the Potential Defendants' activities and where the object of the potential conspiracy is to suppress speech and corporate behavior in Texas. *See, e.g.*, *TV Azteca* v. *Ruiz*, 490 S.W.3d 29, 40 (Tex. 2016); *Hoskins* v. *Ricco Family Partners, Ltd.*, Nos. 02-15-00249-CV, 02-15-00253-CV, 2016 WL 2772164, at *7 (Tex. App.—Fort Worth May 12, 2016).

53. Based on the foregoing findings of fact, ExxonMobil's potential claims of First Amendment violation, abuse of process, and civil conspiracy would arise from the Potential Defendants' contacts with Texas.

54. Exercising jurisdiction over the Potential Defendants for the potential claims would comport with traditional notions of fair play and substantial justice.

55. It would not be burdensome for the Potential Defendants to litigate ExxonMobil's potential claims in Texas, and the Potential Defendants have failed to provide substantial evidence of burden.

56. Texas has a substantial state interest in adjudicating claims concerning

constitutional torts committed in Texas against Texas residents.

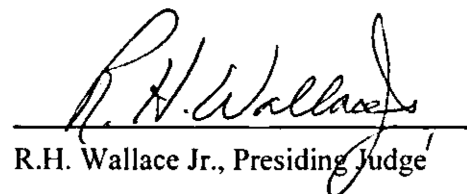
57. ExxonMobil has an inherent interest in obtaining convenient and effective relief by litigating its potential claims in Texas.

58. Exercising jurisdiction in this potential action would comport with the interstate judicial system's interest in obtaining the most efficient resolution of controversies because ExxonMobil's anticipated action encompasses claims and parties that are not part of the Potential Defendants' California nuisance suits and ExxonMobil has objected to the exercise of personal jurisdiction in those suits.

59. Exercising jurisdiction in this potential action would support the shared interest of the several states in furthering substantive social policies because ExxonMobil's anticipated action concerns a conspiracy to suppress and chill speech and associational activities of the Texas energy sector. Texas has an inherent interest in exercising jurisdiction over actions that concern the infringement of constitutional rights within its borders.

60. To the extent the Court's findings of fact are construed by a reviewing court to be conclusions of law or vice-versa, the incorrect designation shall be disregarded and the specified finding and/or conclusion of law shall be deemed to have been correctly designated herein.

SIGNED this 27th day of Apr. 2018.



R.H. Wallace Jr., Presiding Judge