UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Thurgood Marshall U.S. Courthouse 40 Foley Square, New York, NY 10007 Telephone: 212-857-8500

MOTION INFORMATION STATEMENT

Docket Number(s): 18-1170

Caption [use short title]

Motion for: dismissal

Exxon Mobil Corporation

v.

Maura Tracy Healey

Set forth below precise, complete statement of relief sought:

Dismissal as moot of the appeal from the portion of the decision below dismissing appellant's claims against the New York Attorney General

MOVING PARTY: Barbara D. Underwood

☐ Plaintiff ☑ Defendant

☐ Appellant/Petitioner ☑ Appellee/Respondent

OPPOSING PARTY: Exxon Mobil Corporation

MOVING ATTORNEY: Scott A. Eisman

OPPOSING ATTORNEY: Theodore V. Wells, Jr.

[name of attorney, with firm, address, phone number and e-mail]

New York Office of the Attorney General
28 Liberty Street, New York, NY 10005
(212) 416-8019; scott.eisman@ag.ny.gov

Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas, New York, NY 10019
(212) 373-3000; twells@paulweiss.com

Court-Judge/Agency appealed from: U.S. District Court for the Southern District of New York (Caproni, J.)

Please check appropriate boxes:

Has movant notified opposing counsel (required by Local Rule 27.1):
☑ Yes ☐ No (explain):

Opposing counsel's position on motion:
☐ Unopposed ☑ Opposed ☐ Don't Know

Does opposing counsel intend to file a response:
☑ Yes ☐ No ☐ Don't Know

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL:

Has request for relief been made below? ☐ Yes ☐ No

Has this relief been previously sought in this Court? ☐ Yes ☐ No

Requested return date and explanation of emergency:

Is oral argument on motion requested? ☑ Yes ☐ No (requests for oral argument will not necessarily be granted)

Has argument date of appeal been set? ☐ Yes ☑ No If yes, enter date:

Signature of Moving Attorney:
/s/ Scott A. Eisman **Date:** Dec. 7, 2018

Service by: ☑ CM/ECF ☐ Other [Attach proof of service]

U.S. COURT OF APPEALS FOR
THE SECOND CIRCUIT

EXXON MOBIL CORPORATION,

Plaintiff-Appellant, No. 18-1170

v.

MAURA TRACY HEALEY, In her official capacity as Attorney General of the State of Massachusetts, BARBARA D. UNDERWOOD, Attorney General of New York, in her official capacity,

Defendants-Appellees.

MEMORANDUM OF LAW IN SUPPORT OF NEW YORK ATTORNEY GENERAL'S MOTION TO DISMISS

BARBARA D. UNDERWOOD
Attorney General
State of New York
28 Liberty Street
New York, NY 10005
(212) 416-8019

ANISHA S. DASGUPTA
Deputy Solicitor General
SCOTT A. EISMAN
Assistant Solicitor General
of Counsel

Dated: December 7, 2018

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INTRODUCTION

In this lawsuit, Exxon Mobil Corp. requests a federal-court order barring the New York Office of the Attorney General (NYOAG) from investigating Exxon for potentially misleading New York investors and consumers.[1] The U.S. District Court for the Southern District of New York (Caproni, J.) dismissed Exxon's lawsuit, and Exxon has asked this Court to reverse that decision and allow Exxon to continue its suit to enjoin NYOAG's investigation.

Exxon's appeal is now moot because NYOAG's investigation has ended. After filing a civil enforcement action against Exxon, NYOAG decided to conclude its investigation. NYOAG informed Exxon of this development and—on November 21, 2018—entered into a stipulation with Exxon to terminate the New York state court proceeding that NYOAG had opened to compel compliance with NYOAG's investigatory subpoenas, including the November 2015 subpoena that is the focus of Exxon's operative complaint. Because New York's Martin Act permits the Attorney General to continue to investigate a particular act of fraud—

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[1] Exxon has also challenged a similar investigation by the Massachusetts Attorney General.

including through the issuance of subpoenas—even after the Attorney General has brought a civil enforcement action to stop that fraud, *see* N.Y. General Business Law § 352(2), NYOAG's stipulation with Exxon includes a clause confirming that NYOAG has in fact completed its investigation. By agreement of NYOAG and Exxon, any further witness statements and document discovery that NYOAG obtains from Exxon will be through New York's civil discovery rules, in NYOAG's civil enforcement action against Exxon.

As a result of these developments, there remains no NYOAG investigation for a federal court to enjoin. Accordingly, this Court should dismiss Exxon's appeal against NYOAG for lack of subject-matter jurisdiction.

The U.S. Constitution requires that a live controversy persist throughout a federal case. If intervening events render a once-live controversy moot, including while an appeal is pending, those events strip the court of jurisdiction, and dismissal should follow. Here, the dispute that spurred this case—whether NYOAG's investigation should continue—no longer exists. Therefore, a federal court can no longer redress

Exxon's claimed harm by providing the relief Exxon seeks: enjoining NYOAG's investigation.

Given the impossibility of prospective relief, all that remains in Exxon's complaint is Exxon's request for declaratory relief, which is insufficient on its own to create a live controversy. Federal courts may issue declaratory relief only when a live controversy already exists. And there is no longer any such controversy here.

BACKGROUND

This appeal arises from an order of the U.S. District Court for the Southern District of New York dismissing Exxon's first amended complaint against the New York Attorney General and denying Exxon leave to amend its complaint further. The complaint alleges that the New York Attorney General violated Exxon's rights under the U.S. and Texas Constitutions, and under common law, by investigating whether Exxon defrauded New York–based consumers and investors in violation of New York's antifraud laws. (*See* Joint App'x (J.A.) 432–438.)

As relief, the complaint seeks "a preliminary and permanent injunction prohibiting enforcement of the subpoena" that NYOAG issued at the outset of its investigation, in November 2015. (J.A. 438; *see*

J.A. 392.) The complaint also seeks a declaratory judgment that the subpoena violates Exxon's rights. (J.A. 438.) The proposed second amended complaint that Exxon tendered in the district court seeks similar relief: a "preliminary and permanent injunction halting or appropriately limiting" NYOAG's investigation, along with a declaratory judgment that the investigation violated Exxon's rights. (J.A. 1924, 1983–1984.)

Although Exxon claimed to have complied fully with NYOAG's investigative subpoenas (*see* Br. for N.Y. Atty. Gen. (NYOAG Br.) at 13), NYOAG's investigation into Exxon remained open when merits briefing on this appeal concluded (*see id.* at 17; Reply Br. for Pl.-Appellant at 29–30). In addition, NYOAG was participating in subpoena-compliance proceedings in New York state court to compel Exxon and PricewaterhouseCoopers LLP (Exxon's accountant) to comply with NYOAG's investigatory subpoenas, including the November 2015 subpoena that is the focus of Exxon's first amended complaint. *See* NYOAG Br. at 8, 11, 17.

On October 24, 2018, the New York Attorney General commenced a civil enforcement action against Exxon in New York state court. (*See*

Motion App'x (M.A.) 1–97.[2]) The Attorney General's complaint alleges that Exxon engaged in a scheme "to deceive investors and the investment community" about "the risks posed to its business by climate change regulation." (M.A. 7 (¶ 1).) Specifically, the complaint charges Exxon with providing "false and misleading assurances that it is effectively managing the economic risks posed to its business by the increasingly stringent policies and regulations that it expects governments to adopt to address climate change." (M.A. 7 (¶ 1).) The complaint further charges that Exxon's fraudulent scheme violated New York's Martin Act (N.Y. General Business Law §§ 352 and 353), New York Executive Law § 63(12), and New York common law. (*See* M.A. 92–95 (¶¶ 315–329).)

On November 21, 2018, NYOAG, Exxon, and Pricewaterhouse-Coopers stipulated to terminate the New York state-court proceeding that NYOAG had opened to compel compliance with NYOAG's investigatory subpoenas. (M.A. 164–166.) That stipulation included a clause confirming the completion of NYOAG's investigation. (M.A. 165.) Thus, although the Attorney General possesses state-law authority to

[2] The motion appendix is attached to the accompanying Declaration of Scott A. Eisman.

continue investigating a particular act of fraud—including through the issuance of subpoenas—even after the Attorney General has brought a civil enforcement action to stop that fraud, *see* N.Y. General Business Law § 352(2), the Attorney General has taken affirmative steps to close this specific investigation of Exxon.

By agreement of NYOAG and Exxon, NYOAG will not use its investigative authority to obtain further witness statements and document discovery from Exxon. (*See* M.A. 165.) Instead, NYOAG will seek those materials in NYOAG's civil-enforcement action against Exxon, through New York's civil discovery rules. *See* N.Y. Civil Practice Law & Rules (C.P.L.R.) art. 31; (*see also* M.A. 147–163, 165).

New York's civil practice rules provide Exxon with a full opportunity to raise any objections to NYOAG's document requests *see* C.P.L.R. 3122(a); (*see also* M.A. 165), and to the civil enforcement action itself, *see, e.g.*, C.P.L.R. 3018(b). Indeed, although Exxon has not moved to dismiss the civil enforcement proceeding, Exxon's answer in the civil enforcement proceeding sets forth—as defenses—all of the claims that Exxon raises in its complaint in this lawsuit except Exxon's Fourth Amendment claim. (*See* M.A. 143–144.)

ARGUMENT

THIS COURT SHOULD DISMISS EXXON'S APPEAL AGAINST THE NEW YORK ATTORNEY GENERAL AS MOOT

Because the Constitution limits federal jurisdiction to "Cases" and "Controversies," U.S. Const. art. III, § 2, federal courts lack jurisdiction over appeals that present no live controversy, *see, e.g.*, *In re Kurtzman*, 194 F.3d 54, 58 (2d Cir. 1999) (per curiam). A live controversy must exist not only when the case begins, but throughout "all stages of the litigation." *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 90–91 (2013) (quotation marks omitted). Thus, "[e]ven if a case were live at the outset," this Court is "duty bound to dismiss the appeal" when "events occurring during the pendency of the appeal" eliminate the live controversy and thereby "render the case moot." *Arthur v. Manch*, 12 F.3d 377, 380 (2d Cir. 1993).

A. Because the New York Attorney General's Office (NYOAG) Has Concluded Its Investigation, Exxon Cannot Obtain Any Meaningful Relief Against NYOAG.

As described above (*supra* at 5–6), NYOAG has concluded the investigation of Exxon that Exxon has asked this Court to block. And that, in turn, has eliminated any "continuing controversy capable of redress by this Court." *See Haley v. Pataki*, 60 F.3d 137, 141 (2d Cir. 1995). Exxon's appeal is thus moot. *See id.*

Exxon's operative complaint seeks to enjoin enforcement of NYOAG's November 2015 subpoena, and Exxon's proposed amended complaint seeks to enjoin NYOAG's investigation. (J.A. 438, 1983–1984.) But NYOAG has confirmed in a stipulation with Exxon—filed in New York state court on November 21, 2018—that it is no longer seeking to enforce its November 2015 subpoena, and has concluded its investigation of Exxon. See *supra* at 5. Under the parties' agreement, all of NYOAG's future requests for information and all of Exxon's objections will be made under New York's ordinary civil-discovery regime, not as part of any investigatory or subpoena-enforcement process. See *supra* at 6. In short, the relief Exxon requests in this lawsuit is no longer available.

This Court has dismissed appeals as moot under analogous circumstances. For instance, in *Bank of New York Co. v. Northeast Bancorp, Inc.*, this Court held that an appeal from the denial of a motion to enjoin a merger became moot when the merger was consummated. 9 F.3d 1065, 1066–67 (2d Cir. 1993); *accord Bader v. Goldman Sachs Grp., Inc.*, 311 F. App'x 431, 432 (2d Cir. 2009) (summary order). Similarly, in *Richland v. Crandall*, this Court held that plaintiffs' appeal from the denial of a motion to enjoin a shareholder meeting became moot once that meeting occurred and made the requested relief "impossible of fulfillment." 353 F.2d 183, 184 & n.2 (2d Cir. 1965) (per curiam); *see also Independence Party of Richmond Cty. v. Graham*, 413 F.3d 252, 256 (2d Cir. 2005) (appeal from grant of injunction relating to primary election became moot once election occurred).

Other courts of appeals have dismissed appeals as moot where the appellant challenged a subpoena that the issuing party no longer sought to enforce. The D.C. Circuit, for example, dismissed an appeal of an order compelling compliance with a testimonial subpoena as moot because the appellant indisputably complied with the subpoena while the appeal was pending. *See Office of Thrift Supervision, Dep't of the Treasury v. Dobbs*,

931 F.2d 956, 957–58 (D.C. Cir. 1991); *see also Australia/Eastern U.S.A. Shipping Conference v. United States*, Nos. 82-1516, 82-1683, 1986 WL 1165605, at *1 (D.C. Cir. Aug. 27, 1986) (per curiam) (government's withdrawal of civil investigative demand mooted appeal from order enforcing that civil investigative demand). And the First Circuit has held that a challenge to a civil subpoena was mooted by the "appellants' acquiescence in the discovery compelled by the subpoenas," with which the appellants undisputedly "complied fully," obviating any need for enforcement by the issuing party. *Federal Ins. Co. v. Maine Yankee Atomic Power Co.*, 311 F.3d 79, 80–81 (1st Cir. 2002). In keeping with these cases, this Court should dismiss Exxon's appeal as moot now that NYOAG has ended its investigation.

To be sure, the conclusion of an investigation will not ordinarily moot a challenge to a subpoena issued as part of that litigation if "a court can fashion some form of meaningful relief" for the litigant bringing the challenge—for example, by "ordering the Government to return the records" that the litigant provided during the investigation. *Church of Scientology of Cal. v. United States*, 506 U.S. 9, 12–13 (1992) (emphasis omitted). The return of seized records, the Court held, vindicates the

litigant's "interest in maintaining the privacy of his 'papers and effects'" that the Fourth Amendment guarantees. *Id.* at 13.

Here, however, Exxon has not expressly requested a return of the documents that it provided under the subpoena, from this Court or from the New York state court that was supervising its subpoena compliance. Moreover, Exxon never raised any Fourth Amendment objection before that state court when providing the documents during the course of NYOAG's state-court subpoena-compliance proceeding. In addition, Exxon has not moved to dismiss NYOAG's civil enforcement action on Fourth Amendment or other grounds, but is instead actively litigating the merits (*see* M.A. 109–146). Indeed, Exxon agreed with the court presiding over NYOAG's enforcement action that the discovery in that action could be conducted expeditiously because NYOAG will be partly relying on documents that Exxon already produced during NYOAG's investigation. (M.A. 106–107.)

An order directing the return of Exxon's documents therefore would not serve any purpose, because in NYOAG's separate civil securities-fraud action against Exxon, NYOAG could simply obtain the documents again through discovery. That is so because in that civil action, NYOAG

may obtain "liberal discovery" of "any facts bearing on the controversy." *Forman v. Henkin*, 30 N.Y.3d 656, 661 (2018) (discussing C.P.L.R. article 31; quotation marks omitted). Thus, even if Exxon obtained an order in this proceeding requiring NYOAG to return its documents, NYOAG could simply obtain the documents again through discovery in the ongoing lawsuit. In fact, the scheduling order in NYOAG's enforcement action contemplates that the parties will engage in document discovery (M.A. 148), and Exxon has entered into a stipulated protective order governing the confidentiality of the documents it will eventually produce (*see* M.A. 150–163). In other words, ordering NYOAG to return Exxon's documents would not protect any legitimate privacy interest of Exxon's, *see Church of Scientology*, 506 U.S. at 13.

Indeed, NYOAG's alternative means of access to Exxon's documents distinguishes this case from court decisions holding that the potential return of documents prevents a case from becoming moot. In *Church of Scientology*, a summons-enforcement proceeding was the only action the governmental defendant brought against the appellant. *Id.* at 10–11. Likewise, in *In re Grand Jury Proceedings*, the order compelling the appellant to produce documents to a federal grand jury was apparently

the federal government's sole means of current access to those documents. 156 F.3d 1038, 1040 (10th Cir. 1998).[3] Here, in contrast, NYOAG filed a civil enforcement action against Exxon, and may invoke New York's discovery rules to obtain the documents that NYOAG needs to pursue its claims.

Moreover, even if an order requiring NYOAG to return Exxon's documents could provide Exxon with meaningful relief (which it cannot), the Eleventh Amendment would bar such an order. Under the Eleventh Amendment, "an unconsenting State is immune from suits brought in federal courts by her own citizens as well as by citizens of another state." *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 100 (1984) (quotation marks omitted). That holding applies equally to state officials sued in their official capacities. *See, e.g.*, *Huminski v. Corsones*, 396 F.3d 53, 70 (2d Cir. 2005). Although the Supreme Court has recognized an exception for official-capacity suits against state officials accused of

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[3] *See also, e.g.*, *United States v. Golden Valley Elec. Ass'n*, 689 F.3d 1108, 1111–13 (9th Cir. 2012) (compliance with a subpoena for documents did not moot subpoena recipient's appeal in subpoena-compliance proceeding, which was the issuing agency's only proceeding against the subpoena recipient).

violating the Constitution, *see Ex parte Young*, 209 U.S. 123, 159–60 (1908), that exception applies only to suits for "prospective" relief to remedy "an ongoing violation of federal law," *Ford v. Reynolds*, 316 F.3d 351, 355 (2d Cir. 2003) (quotation marks omitted). "[R]etrospective relief," by contrast, remains unavailable. *Huminski*, 396 F.3d at 70.

Here, because NYOAG's investigation and "effort to enforce the subpoena" (J.A. 434 (¶ 113)) has ceased, there is no ongoing conduct of NYOAG that this Court could enjoin. The only relief that Exxon could seek would be a retrospective remedy for a *past* purported violation of its rights: for example, an order requiring NYOAG to return its documents. The Eleventh Amendment forbids such an order, however. *See Huminski*, 396 F.3d at 70. Accordingly, the exception to mootness recognized in *Church of Scientology* cannot save Exxon's appeal. *See Senate Permanent Subcomm. on Investigations v. Ferrer*, 856 F.3d 1080, 1085–88 (D.C. Cir. 2017).

Applying this same logic, the D.C. Circuit—in *Ferrer*—dismissed as moot an appeal from an order compelling compliance with a congressional subpoena, issued during an investigation of the appellant's business, because the subcommittee that had issued the subpoena closed

its investigation while the appeal was pending. *Id.* Although the appeal might not have been moot had the appellant's documents been "held in the grips of a federal agency," *id.* at 1085, the documents were held instead by Congress, which enjoys immunity under the Constitution's Speech and Debate Clause from judicial interference in legitimate legislative functions, *see id.* at 1086–87. Thus, a federal court was powerless to order Congress to return the appellant's documents, and the appeal could not proceed. *Id.* at 1088.

Ferrer's logic shows why dismissal is required here. Because Exxon's documents are held not "in the grips of a *federal* agency," *id.* at 1085 (emphasis added), but rather by the State, which enjoys sovereign immunity from retrospective relief, *see Huminski*, 396 F.3d at 70, a federal court cannot order their return.[4] Exxon's appeal thus must be dismissed as moot.

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[4] NYOAG previously argued that Exxon's claimed full compliance with NYOAG's November 2015 subpoena bars its Fourth Amendment claim because "the only relief a § 1983 plaintiff may pursue against the State is prospective," and Exxon could no longer seek prospective relief. NYOAG Br. at 39 (citing *McGinty v. New York*, 251 F.3d 84, 101 (2d Cir. 2001)). Exxon offered no answer to this tenet of Eleventh Amendment jurisprudence. Instead, Exxon argued only that the investigation was still ongoing (which is no longer true) and that Exxon could seek the

B. Exxon's Request for Declaratory Relief Does Not Create a Live Controversy.

"[A] request for relief in the form of a declaratory judgment does not by itself establish a case or controversy involving an adjudication of rights." *Keene Corp. v. Fiorelli (In re Joint E. & S. Dist. Asbestos Litig.)*, 14 F.3d 726, 731 (2d Cir. 1993). On the contrary, the Declaratory Judgment Act "explicitly incorporates the Article III case or controversy limitation," *id.*, by stating that it applies only in "a case of actual controversy" within the jurisdiction of "any court of the United States," 28 U.S.C. § 2201(a). And because this appeal no longer involves an actual controversy (see *supra* at 8–10), Exxon's declaratory-judgment request cannot preclude a dismissal on grounds of mootness.

At any rate, because Exxon can no longer seek meaningful prospective relief against NYOAG, the Eleventh Amendment precludes Exxon's remaining request for declaratory relief. As the Supreme Court held in *Green v. Mansour*, a federal court cannot declare that a state official's past conduct violated federal law except as part of a grant of

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return of its documents even after the investigation concluded (a point for which Exxon cited a case concerning a *federal* subpoena). *See* Reply Br. for Pl.-Appellant at 21–22 & n.7.

prospective relief. 474 U.S. 64, 73 (1985). The sole function of a declaration that is untethered to prospective relief would be to provide a federal basis for a later state-court damages action against the defendant state officials. And that would amount to "a partial 'end run' around" the Eleventh Amendment's bar on such relief.[5] *Id.*

In sum, a federal court must dismiss on Eleventh Amendment grounds a suit that seeks "only a retrospective declaration that [a state official] had violated federal law." *McGinty v. New York*, 251 F.3d 84, 101 (2d Cir. 2001).[6] Under that rule, Exxon's remaining request for a declaratory judgment that NYOAG previously violated its rights cannot serve as the basis for federal jurisdiction.

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[5] If a declaratory judgment did not have preclusive effect in a separate proceeding, then there would be no live controversy between the parties, and declaratory relief would be unavailable. *See Green*, 474 U.S. at 72–73 & n.2; *see also Keene Corp.*, 14 F.3d at 731.

[6] *Accord Green*, 474 U.S. at 73; *Jemsek v. Rhyne*, 662 F. App'x 206, 211–12 (4th Cir. 2016).

CONCLUSION

For these reasons, the Court should dismiss as moot Exxon's appeal from the district court's dismissal of Exxon's claims against the New York Attorney General.

Dated: New York, New York
December 7, 2018

Respectfully submitted,

BARBARA D. UNDERWOOD
Attorney General
State of New York

By: */s/ Scott A. Eisman*
SCOTT A. EISMAN
Assistant Solicitor General

28 Liberty Street
New York, NY 10005
(212) 416-8019

ANISHA S. DASGUPTA
Deputy Solicitor General
SCOTT A. EISMAN
Assistant Solicitor General
of Counsel

CERTIFICATE OF COMPLIANCE

Pursuant to Rules 27 and 32 of the Federal Rules of Appellate Procedure, Will Sager, an employee in the Office of the Attorney General of the State of New York, hereby certifies that according to the word count feature of the word processing program used to prepare this document, the document contains 3,252 words and complies with the typeface requirements and length limits of Rules 27(d) and 32(a)(5)-(6).

/s/ Will Sager

U.S. COURT OF APPEALS FOR
THE SECOND CIRCUIT

EXXON MOBIL CORPORATION,

Plaintiff-Appellant, No. 18-1170

v.

MAURA TRACY HEALEY, In her official capacity as Attorney General of the State of Massachusetts, BARBARA D. UNDERWOOD, Attorney General of New York, in her official capacity,

Defendants-Appellees.

DECLARATION OF SCOTT A. EISMAN

Scott A. Eisman, in accordance with 28 U.S.C. § 1746, declares as follows:

1. I am an attorney admitted to practice before the courts of the State of New York and in this Court. I am an Assistant Solicitor General in the New York Office of the Attorney General, counsel to defendant-appellee New York Attorney General Barbara D. Underwood. I file this declaration in support of the New York Attorney General's motion to dismiss plaintiff-appellant Exxon Mobil Corporation's appeal from the

district court's dismissal of Exxon's claims against the New York Attorney General.

2. I attach to this declaration an appendix of state-court filings cited in the New York Attorney General's motion to dismiss. Those documents are publicly available and were accessed through the New York State Courts Electronic Filing System.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: December 7, 2018

/s/ Scott A. Eisman
SCOTT A. EISMAN

Motion Appendix

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK,
By BARBARA D. UNDERWOOD,
Attorney General of the State of New York,

Plaintiff,

- against -

EXXON MOBIL CORPORATION,

Defendant.

Index No.

SUMMONS

TO THE ABOVE-NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED to answer in this action and serve a copy of your answer, or if the complaint is not served with the summons to serve a notice of appearance, on the Plaintiff's attorney within twenty (20) days after the service of this summons, exclusive of the day of service. If this summons is not personally served upon you, or if this summons is served upon you outside of the State of New York, then your answer or notice of appearance must be served within thirty (30) days. In case of your failure to appear or answer, judgment will be taken against you by default, for the relief demanded in the complaint.

Plaintiff designates New York County as the place of trial pursuant to CPLR 503(a).

Dated: October 24, 2018
New York, New York

BARBARA D. UNDERWOOD
Attorney General of the State of New York

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By: _____
Jonathan Zweig
Assistant Attorney General
Investor Protection Bureau
212-416-8222
jonathan.zweig@ag.ny.gov

By: _____
Mandy DeRoche
Assistant Attorney General
Environmental Protection Bureau
212-416-8446
mandy.deroche@ag.ny.gov

Steven Glassman
Senior Counsel
Economic Justice Division

Rita Burghardt McDonough
Assistant Attorney General
Investor Protection Bureau

Matthew Eisenson
Special Assistant Attorney General

Benjamin Cole
Project Attorney

Joanna Zwosta
Project Attorney

Office of the Attorney General
28 Liberty Street
New York, New York 10005

Attorneys for Plaintiff
People of the State of New York

Of Counsel:

Manisha M. Sheth
Executive Deputy Attorney General
Economic Justice Division

Lemuel M. Srolovic
Bureau Chief
Environmental Protection Bureau

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK,
by BARBARA D. UNDERWOOD,
Attorney General of the State of New York,

Plaintiff,

- against -

EXXON MOBIL CORPORATION,

Defendant.

Index No.

COMPLAINT

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Plaintiff, the People of the State of New York (the "State"), by Attorney General Barbara D. Underwood, alleges upon information and belief the following against Defendant Exxon Mobil Corporation ("Exxon").

NATURE OF THE ACTION

1. This case seeks redress for a longstanding fraudulent scheme by Exxon, one of the world's largest oil and gas companies, to deceive investors and the investment community, including equity research analysts and underwriters of debt securities (together, "investors"), concerning the company's management of the risks posed to its business by climate change regulation. Exxon provided false and misleading assurances that it is effectively managing the economic risks posed to its business by the increasingly stringent policies and regulations that it expects governments to adopt to address climate change. Instead of managing those risks in the manner it represented to investors, Exxon employed internal practices that were inconsistent with its representations, were undisclosed to investors, and exposed the company to greater risk from climate change regulation than investors were led to believe.

2. For years, and continuing through the present, Exxon has claimed that, although it expects governments to impose increasingly stringent climate change regulations, its oil and gas reserves and other long-term assets face little if any risk of becoming stranded (*i.e.*, too costly to develop or operate) due to those regulations, and reassured investors that it would be able to profitably exploit those assets well into the future. In particular, to simulate the impact of future climate change regulations, Exxon has claimed that, since 2007, it has rigorously and consistently applied an escalating proxy cost of carbon dioxide (CO_2) and other greenhouse gases (together, "GHGs") to its business, including in its investment decisions, business planning, company oil and gas reserves and resource base assessments, evaluations of whether

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long-term assets are impaired (*i.e.*, have net present value lower than book value), and estimates of future demand for oil and gas.

3. Exxon's proxy cost representations were materially false and misleading because it did not apply the proxy cost it represented to investors. This was especially true of investments with high GHG emissions, where applying the publicly represented proxy cost would have had a particularly significant negative impact on the company's economic and financial projections and assessments.

4. First, in projecting its future costs for purposes of making investment decisions, conducting business planning, and assessing company oil and gas reserves, Exxon for many years did not apply the publicly represented proxy cost. Instead, the company applied either: (i) a lower, undisclosed proxy cost contained in internal corporate guidance; (ii) an even lower cost based on existing regulations held flat for decades into the future, in lieu of any proxy cost; or (iii) no cost associated with GHG emissions at all.

5. Second, in evaluating its long-lived assets for purposes of potential impairment charges, Exxon applied no proxy costs to its GHG emissions before 2016. In 2016, one year after this office opened an investigation into the company's climate change risk management practices, Exxon began to apply proxy costs in its impairment assessments, but even then, it applied those costs in a very limited manner.

6. Third, in projecting demand for oil and gas, Exxon did not apply its publicly represented proxy cost to the transportation sector, which accounts for more than half of worldwide demand for crude oil.

7. Fourth, Exxon misled investors by presenting a deceptive analysis that concluded that the company faced little risk associated with a "two degree scenario," in which the

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production and consumption of fossil fuels is severely curtailed in order to limit the increase in global temperature to below two degrees Celsius compared to pre-industrial levels. Exxon's analysis of the costs associated with a two degree scenario was based on assumptions it knew to be unreasonable and unsupported by the sources upon which it purported to rely.

8. Exxon's fraud was sanctioned at the highest levels of the company. For example, former Chairman and Chief Executive Officer (CEO) Rex W. Tillerson knew for years that the company's representations concerning proxy costs were misleading. In particular, Mr. Tillerson knew that the company was using lower, undisclosed proxy cost figures in its internal guidance, rather than the higher, publicly disclosed proxy cost figures in its public representations, in its investment decisions and business planning. Yet despite this knowledge, and despite the recognition that the publicly disclosed proxy costs more accurately reflected the risk of future climate change regulation, Mr. Tillerson allowed the significant deviation between the higher proxy cost figures in Exxon's public representations and the lower proxy cost figures in Exxon's undisclosed internal guidance to continue uncorrected for years.

9. It was not until an Exxon manager sounded the alarm to Exxon's Management Committee regarding the misleading nature of the company's proxy cost representations that Exxon belatedly increased the proxy cost figures in its internal guidance to conform to those in its public disclosures.

10. However, after Exxon revised its internal guidance, Exxon's planners realized that applying the newly increased proxy cost figures would result in severe consequences to its economic projections, such as "massive GHG costs" and "large write-downs" (*i.e.*, reductions in estimated volume) of company reserves.

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11. When confronted with the negative impact to its economic and financial assessments that would result from applying proxy costs in a manner consistent with the company's representations to investors, Exxon's management directed the company's planners to adopt what an employee called an "alternate methodology." Under this so-called "alternate methodology," Exxon did not apply the publicly represented proxy costs. Instead, Exxon applied only the existing GHG-related costs presently imposed by governments (*i.e.*, legislated costs), and assumed that those existing costs would remain in effect, at existing levels, indefinitely into the future, contrary to the company's repeated representations to investors that it expects those same governments to impose increasingly stringent climate regulations in the future. These existing costs were much lower than Exxon's publicly represented proxy costs, and were applied to only a small fraction of the company's emissions, rendering Exxon's proxy cost-related representations false and misleading. By applying this "alternate methodology," Exxon avoided the "large write-downs" it would have incurred had it abided by its stated risk management practices, and failed to take into account "massive GHG costs" resulting from expected climate change regulation.

12. For example, Exxon's decision not to apply the publicly represented proxy costs in connection with fourteen oil sands projects in Alberta, Canada resulted in the understatement of those costs in the company's cash flow projections by approximately $30 billion CAD (Canadian dollars), or more than $25 billion USD (U.S. dollars). For one of these projects, an investment at Kearl, a 2015 economic forecast shows that the company understated projected undiscounted costs of GHG emissions by as much as 94% – approximately $14 billion CAD ($11 billion USD) – by applying lower costs to GHG emissions than those publicly represented.

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13. Exxon's decision not to apply the publicly represented proxy costs in its company oil and gas reserves assessments enabled the company to avoid "large write-downs" in reserves that it would have had to take had it abided by its public representations. For example, at Cold Lake, an oil sands asset in Alberta, the company's own planners noted that applying a proxy cost consistent with Exxon's public representations would shorten the asset's projected economic life by 28 years and reduce company reserves by more than 300 million barrels of oil equivalent – representing billions of dollars in lost revenues. When presented with these facts, Exxon management instructed the planners to apply a lower cost projection based on existing regulations, contrary to the company's public representations.

14. Additionally, Exxon repeatedly represented that, per the applicable accounting rules, the economic assumptions it applied for impairment evaluation purposes were consistent with those used elsewhere in its business. However, prior to 2016, Exxon did not apply its publicly represented proxy costs in assessing whether its long-lived assets, including production sites that were expected to produce oil and gas for decades into the future, were impaired (*i.e.*, had a value that was less than the book value on the company's balance sheet). Even in 2016, Exxon applied proxy costs only in a very limited manner in its impairment evaluations.

15. Moreover, despite its representation that it would employ proxy costs across the company's business, Exxon did not apply its publicly represented proxy cost in projecting demand for liquid fuels in the transportation sector. And even to the extent Exxon did apply a proxy cost in projecting energy demand, it failed to incorporate those projections in setting its internal oil and gas price assumptions. Instead, Exxon set internal oil and gas price projections based on the desire of its then-CEO Rex Tillerson to send a signal to the organization, rather than any process influenced by proxy costs. Exxon's failure to incorporate proxy costs into its oil and

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gas price projections resulted in the proxy costs being an illusory risk management tool with no actual economic impact on the company.

16. In addition to its misrepresentations concerning proxy costs, Exxon repeatedly presented a highly misleading analysis to investors to reassure them that the company faced little or no risk of its assets becoming stranded under a two degree scenario. Exxon falsely implied that its analysis was supported by reputable academic and government sources, when it was not. Even after being warned by an author of the key source upon which Exxon purported to rely that the company's analysis was "misleading," Exxon continued to present this analysis to investors.

17. Exxon's representations were important to investors. Exxon made these representations to placate investors who increasingly demanded that Exxon explain whether and how it was addressing the long-term economic consequences of increasing regulation of GHG emissions around the world, and to assure investors that the company was effectively managing that risk.

18. Exxon's investors relied on these representations to assess whether the company was adequately managing the risk to its business posed by future climate change regulation. For example, in a 2016 assessment of Exxon's exposure to emerging climate change regulations, Vanguard Group, Inc. ("Vanguard") – the company's largest shareholder – rated Exxon's risk as "low" based on Exxon's claims that it was protecting itself against the risk of rising regulatory costs by applying its publicly represented proxy cost.

19. Through its fraudulent scheme, Exxon in effect erected a Potemkin village to create the illusion that it had fully considered the risks of future climate change regulation and had factored those risks into its business operations. In reality, Exxon knew that its representations were not supported by the facts and were contrary to its internal business

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practices. As a result of Exxon's fraud, the company was exposed to far greater risk from climate change regulations than investors were led to believe.

20. Indeed, rather than protecting against the risk of future climate change regulation by reducing investment in GHG-intensive assets, Exxon expanded its investments in such assets. Between 2008 and 2016, the percentage of Exxon's oil and gas development and production (*i.e.*, upstream) projects in GHG-intensive heavy oil and oil sands increased from less than 20% to more than 30% in oil-equivalent barrels. This increased the GHG intensity of the company's upstream operations and, in turn, increased the company's exposure to future climate change regulation.

21. The State brings this action to enforce General Business Law § 352 *et seq.* (securities fraud) and Executive Law § 63(12) (persistent fraud or illegality), and for common law fraud. The State seeks all appropriate relief to prevent Exxon from making false or misleading claims about its climate change risk management, to compel curative disclosures to investors, and for all appropriate monetary relief for Exxon's fraudulent conduct, including disgorgement of all amounts gained or retained as a result of the fraud, damages, restitution, and costs.

PARTIES

22. The State brings this action by and through Attorney General Barbara D. Underwood.

23. The Attorney General is the chief law enforcement officer of the State of New York and is charged by law with protecting the integrity of the business and securities markets within New York, as well as the economic health and well-being of investors who reside or transact business in the State.

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24. The Attorney General is authorized to bring this action and to assert the causes of action set forth below pursuant to General Business Law § 352 *et seq*. (the "Martin Act"), Executive Law § 63(12), and under the common law.

25. Exxon is a New Jersey corporation and has its principal place of business at 5959 Las Colinas Boulevard, Irving, Texas 75039. It is registered to do business in New York State as an active Foreign Business Corporation and maintains a registered agent for service of process with the Corporation Service Company, 80 State Street, Albany, New York 12207.

26. Exxon was formed on November 30, 1999, by the merger of Exxon Corporation (formerly the Standard Oil Company of New Jersey) and Mobil Oil Corporation (formerly the Standard Oil Company of New York).

27. Since 1999, Exxon has been the world's largest investor-owned oil and gas company. At year-end 2017, there were approximately 4.2 billion shares of Exxon common stock issued and outstanding. The stock is listed on the New York Stock Exchange (NYSE) under the ticker symbol XOM.

28. Exxon operates through a number of wholly-owned subsidiaries, including ExxonMobil Development Company, ExxonMobil Production Company, ExxonMobil Gas & Power Marketing Company, XTO Energy, Inc., ExxonMobil Fuels & Lubricants Company, and ExxonMobil Chemical Company. Additionally, Exxon owns a majority interest in Imperial Oil, Ltd. ("Imperial"), a Canadian oil and gas company.

29. Exxon has three main business segments, from which it derives essentially all of its earnings: (1) upstream, which involves the exploration, development, and production of oil and gas resources; (2) downstream, which involves the refining, marketing, and distribution of

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petroleum and derivative products (*e.g.*, gasoline); and (3) chemical, which involves the manufacture and sale of petrochemicals (*e.g.*, plastics).

30. Exxon has made three public debt offerings in recent years, which collectively total over $25 billion. In 2014, Exxon made a public debt offering of $5.5 billion, with HSBC Securities (USA) Inc., J.P. Morgan Securities LLC ("J.P. Morgan"), and Morgan Stanley & Co. LLC ("Morgan Stanley") as lead underwriters. In 2015, Exxon made a public debt offering of $8 billion, with Citigroup Global Markets Inc. ("Citigroup"), J.P. Morgan, and Morgan Stanley as lead underwriters. In 2016, Exxon made a public debt offering of $12 billion, with Citigroup, J.P. Morgan, and Merrill Lynch, Pierce, Fenner & Smith Incorporated as lead underwriters.

JURISDICTION AND VENUE

31. This Court has jurisdiction over the subject matter of this action, personal jurisdiction over Exxon, and authority to grant the relief requested pursuant to General Business Law § 352 *et seq.*, Executive Law § 63(12), and the common law.

32. Pursuant to C.P.L.R. § 503, venue is proper in New York County, because Plaintiff resides in that county, and because a substantial part of the events and omissions giving rise to the claims occurred in that county.

FACTUAL ALLEGATIONS

I. CLIMATE CHANGE REGULATION AND INVESTOR CONCERNS

A. Climate Change and Global Warming

33. Observations of air and ocean temperatures and other climate-related metrics, in combination with improved understanding of the underpinnings of the Earth's climate system,

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confirm the well-accepted scientific consensus: the Earth's climate system is changing rapidly, primarily due to human activities, especially activities that cause GHG emissions.

34. When emitted into the atmosphere, GHGs (including CO_2) trap heat and energy that otherwise would leave the Earth. Anthropogenic GHG emissions, including from the combustion of fossil fuels, have been increasing since the start of the industrial era, with a dramatic increase of over 80% between 1970 and 2010.

35. Increasing GHG emissions have resulted and will continue to result in significant adverse global impacts, including but not limited to: the increase in number and severity of extreme weather events, including floods, hurricanes, heat waves, and drought; wildfires; rising sea levels; ocean acidification; increased air pollution; and exacerbation of the spread of infectious diseases.

B. Response by Governments

1. Nations of the World Through the United Nations

36. In 1992, the United Nations Framework Convention on Climate Change ("Convention") was opened for signature at the Earth Summit in Rio de Janeiro, Brazil. The treaty's objective was to stabilize the atmospheric concentration of GHGs "at a level that would prevent dangerous anthropogenic interference with the climate system." The Convention entered into force in 1994, and currently has 197 parties, including the United States. Member states conduct an annual Conference of the Parties, where they assess the progress made to achieve the treaty's objective and periodically adopt implementation agreements.

37. Most recently, the parties adopted the 2015 Paris Agreement, which aims to keep the global temperature increase well below two degrees Celsius above pre-industrial levels. The Paris Agreement requires that each participating nation formulate a nationally determined

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contribution and a plan to reduce GHG emissions, and pursue domestic measures to achieve that contribution.

38. As of this filing, 181 nations and the European Union ("EU"), representing more than 88% of global GHG emissions, have ratified or acceded to the Paris Agreement, and a further 15 nations have signed but not ratified or acceded to the agreement.

2. The United States

39. The U.S. Environmental Protection Agency ("EPA") has found that GHG emissions endanger public health and welfare, and has adopted regulations limiting GHG emissions from cars, trucks, power plants, oil and gas development, and other sources.

40. In addition to federal regulation of GHG emissions, numerous states have adopted regulations restricting GHG emissions from electric power generation, motor vehicles, and other sources. A significant number of states and municipalities also have made commitments substantially to reduce their GHG emissions over the coming decades.

41. In response to President Trump's announcement on June 1, 2017 that the United States would withdraw from the Paris Agreement, effective November 2020, a bipartisan coalition of states and Puerto Rico formed the United States Climate Alliance, which is committed to upholding the principles of the Paris Agreement by (i) reducing emissions by at least 26-28% below 2005 levels by 2025, and (ii) tracking and reporting progress to the global community.

3. Other Governments

42. The World Bank reports that, in 2007, ten governmental entities including the EU had adopted policies, regulations, taxes or other fees imposing a cost on GHG emissions. By 2014, the number had grown to 36, and in 2018 to 53, throughout the world.

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43. In 2005, the EU established its Emissions Trading Scheme ("EU ETS"), a cap-and-trade system that limits total GHG emissions and penalizes those who exceed certain allowances. The EU ETS is effective in all 28 EU countries, and in Iceland, Liechtenstein, and Norway. In 2007, the EU set a target of a 20% reduction in GHG emissions from 1990 levels by 2020, and it is on track to exceed this target, having already reduced its emissions by 23% from 1990 levels by 2016.

44. Other governments, such as the Canadian provinces of Alberta and British Columbia, have adopted carbon tax schemes, which set a price per ton on GHG emissions from the combustion of fossil fuels.

45. Alberta's carbon tax is particularly relevant because Exxon, through Imperial and otherwise, has substantial investments in Alberta's oil sands. The oil sands consist of large reservoirs of bitumen, a tar-like substance which functions as an alternative to crude oil, but which requires more energy to produce and process, and is thus more GHG-intensive, than conventional crude.

46. In 2007, Alberta adopted a carbon regulation called the Specified Gas Emitters Regulation ("SGER"), which effectively imposed a GHG price of $15 CAD per ton on emissions from fossil fuel production and coal-fired power generation. The fee applied only to the portion of emissions that exceeded certain emissions-intensity targets. In 2016, the price increased to $20 CAD per ton. In January 2018, Alberta replaced the SGER with the Carbon Competitive Incentive Regulation ("CCIR"), which generally imposes a price of $30 CAD per ton of GHG emissions that exceed certain intensity targets.

47. In 2017, Alberta also adopted a carbon tax that applies to GHG emissions from heating (commercial and residential) and transportation fuels in sectors not covered by the

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SGER/CCIR, with some exemptions. In 2018, the tax rate increased from $20 to $30 CAD per ton of GHG emissions.

C. Climate Change Regulatory Risk Is Important to Investors

1. Long-Term Value Is Important to Investors

48. Many of Exxon's shareholders invest in the company for the long term. Exxon's shareholders include New Yorkers planning for retirement and for their children's college education, as well as pension funds, mutual funds, life insurance companies, and other institutional investors, many of which are based in New York.

49. Approximately 54% of Exxon stock is held by institutional investors, which own Exxon shares on behalf of millions of individuals, including retirees and those saving for retirement. Exxon's top three institutional shareholders are Vanguard, BlackRock, Inc. ("BlackRock"), and State Street Corporation ("State Street"), each of which is also among Exxon's largest bondholders.

50. Additionally, numerous state, municipal, and other pension funds hold Exxon stock on behalf of teachers, clerical workers, nurses, and many others. As of June 2018, the New York State Common Retirement Fund and New York State Teachers Retirement System held Exxon shares with a value of over $900 million and over $500 million, respectively. As of May 2018, New York City Pension Funds held Exxon shares with a value of over $700 million. Pension funds in other states likewise hold significant positions in Exxon stock. As of their most recent financial disclosures, state pension funds across the country directly owned nearly 75 million shares of Exxon stock worth approximately $6 billion at Exxon's current stock price; state pension funds in California, New York, Florida, Ohio, Wisconsin, New Jersey, and Texas owned shares worth more than $300 million each.

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51. In an article entitled "Who owns ExxonMobil? Chances are you do," Exxon's former Vice President of Public and Government Affairs observed that "[p]rivate and public pension funds – managing assets on behalf of more than 60 million U.S. households in 145 million accounts – own nearly a third of all shares in U.S. oil and gas companies . . . . Mutual funds and individual retirement plans account for nearly 40 percent more."

52. Exxon actively solicits these long-term investors, stating that it "pursues business strategies that maximize long-term shareholder value" and that it is "confident in [its] ability to continue to create shareholder value over the long term." For example, Mr. Tillerson told market analysts in 2016:

> Well, as we have said many times, in terms of growth – whether it's volume growth, reserve growth, market share growth . . . our approach to the business has never changed. We really are trying to undertake the most attractive opportunities that we see, thinking about them in terms of 30 years. Are we going to be happy with this over the next three decades? Not, are we going to be happy with it over the next three or four years . . . .
>
> You've heard me say many times, we are not for the short term shareholder, necessarily. That's not what we build the business around. It's not how we run the business. **We run the business for people that are going to own these shares a very long time, that we hope the shares are in the trust that they leave their children and their grandchildren.** Whenever we run into challenges and I have to think about how am I going to pay the dividend? I think about those people. (emphasis added)

53. Climate change risk is an issue of particular importance to long-term investors. For example, Vanguard, Exxon's largest investor, has noted that "climate change poses risks to investors in certain sectors, such as oil and gas, and . . . these risks are most prominently skewed towards long-term asset owners like Vanguard."

54. Exxon has assured its investors that it recognizes that a long-term focus on the future of energy and carbon regulation is of critical importance to the health of its business. For

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example, Exxon's Vice President of Corporate Strategic Planning noted in a public presentation concerning the company's 2014 *Outlook for Energy* report that "we are making billion-dollar investment decisions, and the horizon for these projects, a typical project of ours will last easily 50 years. So we have to keep a strong focus on what is going to happen in the future."

2. Climate Change Disclosures Are Important to Investors

55. Over the past decade, investors concerned with Exxon's long-term value have increasingly expressed interest in the company's climate change disclosures. For its part, Exxon understood that its proxy cost and other climate change regulatory risk disclosures were important to investors.

56. In June 2014, Exxon's Vice President of Investor Relations summarized this trend in an internal email concerning Exxon's responses to an annual questionnaire from CDP (formerly known as the Carbon Disclosure Project), a nonprofit organization that collects information on behalf of institutional investors, including current and prospective Exxon shareholders, with over $87 trillion in funds under management:

> I sometimes get asked if "**real investors**" read the CDP or even care that we participate. I was in New York City last week meeting with some of our largest shareholders, and for the first time, two different portfolio managers mentioned the CDP and [Exxon's Corporate Citizenship Report] to me in a positive manner. A few other shareholders mentioned the **growing importance** of ESG (environmental, social, governance) issues to their clients, and thus we could expect to see more interest from buy side analysts and portfolio managers directly, and indirectly through . . . their ESG analysts.
>
> In fact, we had a call today with two such ESG analysts from Goldman Sachs, following our meeting last week with the investment group of [Goldman Sachs]. They were complimentary of the Energy Outlook, the [Corporate Citizenship Report], and the two environment related reports we produced during Proxy season [*Energy and Climate* and *Managing the Risks*]. . . . All of the folks we talked to said these types of efforts have enhanced our reputation

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> within the investment community and encouraged ExxonMobil to continue. Apparently "reputational risk" has moved into the **upper tier of risks** that investors are concerned about and expect companies to manage. (emphasis added)

57. Investor interest in the management of climate change risk has been growing for years. In 2010, Exxon recognized internally that "managing climate change risks" is a "material" issue in its corporate citizenship reporting to external audiences, including financial institutions, because those risks may have a "substantial impact" on the company.

58. In addition, over 2,000 investment firms, pension systems, and other institutions around the world, with over $80 trillion in assets under management, have signed the United Nations-backed Principles for Responsible Investment. These firms have committed to incorporate environmental, social, and governance ("ESG") issues into their investment analysis and decision-making, with climate change being the "highest priority" among these issues. The signatories include major Exxon investors; for example, BlackRock signed the Principles for Responsible Investment in 2008, State Street in 2012, and Vanguard in 2014.

59. Many of Exxon's major investors have released publications concerning the importance of climate change regulatory risk, also known as "carbon asset risk," in their investment decision-making.

60. J.P. Morgan Chase & Co., a major Exxon investor and underwriter of Exxon's bonds, issued an Environmental and Social Policy Framework in 2014, which asserted that the bank's transaction and portfolio reviews include "how clients manage climate change related risk factors." Likewise, a 2017 report by J.P. Morgan Asset Management observed that it endeavors to understand how companies in which it invests are "managing and adapting to various climate risks and opportunities, including those presented by evolving government policies," which can "have a material impact for high-carbon intensity sectors."

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61. Morgan Stanley Smith Barney LLC, the financial advisory division of a major Exxon investor and underwriter of Exxon's bonds, stated in a 2016 report that "climate change is increasingly recognized as a material investment consideration that investors cannot ignore"; that increased GHG regulation "could dramatically impair the profitability of higher-carbon energy sources"; and that these risk factors "could strand assets in a range of sectors, resulting in unanticipated or premature write-downs, devaluations or conversion to liabilities." This report also noted that Morgan Stanley Equity Research analysts have "incorporated this issue when analyzing their covered companies." The report concluded that climate change risk is a "critical investment issue," both for investors who are explicitly focused on sustainability, and also for "mainstream" investors, including "the world's largest investors." The report noted that investors explicitly focused on incorporating sustainability into their investment strategies "represented more than $1 out of every $6 of professionally managed assets in the United States, totaling $6.57 trillion" by the end of 2014, a significant increase from prior years. Another Morgan Stanley report in 2016 reiterated that the "risk associated with stranded assets" resulting from climate regulation "could have the potential to cause significant reductions in not only the value of specific companies, but also the long-term value of entire sectors."

62. State Street Global Advisors, Inc., the investment management division of Exxon's third-largest shareholder, stated in 2017 that the way that companies integrate climate risk into long-term strategy is "particularly important" in the oil and gas sector "where long investment horizons could render assets stranded." State Street also asserted that the "[c]osts of controlling emissions to meet targets should be considered when making capital allocation decisions to arrive at the true cost of an asset." State Street further noted that "carbon price assumptions are important" because they "provide insights into how companies account for

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climate risk in the planning process" and "are key in helping companies identify potential stranded assets and mitigate the risk of investing in assets that may become stranded in the future."

63. Equity research analysts covering Exxon have also highlighted the importance of climate change regulatory risk in their recommendations. For example, in a 2015 report, HSBC Global Research wrote that "[f]ossil fuel companies, or some of their assets, may become economically non-viable in the future" due to climate change regulation, among other factors. HSBC noted that expensive oil and gas ventures might be at risk, while "oil sands face the greatest stranding risks . . . given the combination of high breakeven price and higher carbon intensity of production." HSBC Global Research had previously observed the risks of stranding associated with oil sands assets in a 2013 report.

64. Exxon knew that there was widespread investor interest in GHG-related topics, including through its knowledge of Bloomberg Terminal usage trends. In 2013, an Exxon Public and Government Affairs advisor observed that, in a recent six-month period, there had been 44 million hits on Bloomberg ESG data. The advisor noted that this data was "used by financial analysts," who showed "far higher interest in [ESG] disclosure scores and GHG emissions than in traditional governance metrics."

65. Likewise, a 2014 survey conducted by PricewaterhouseCoopers, LLP ("PwC"), Exxon's independent auditor, found that over 80% of institutional investors had considered sustainability issues in one or more contexts in the past year, and most incorporated such issues into their investment strategies. Even more expected to do so in the coming years. With respect to climate change and the energy sector in particular, PwC analysts concluded in 2014 that "[t]he investor community is actively analyzing" the issue of "unburnable carbon" (*i.e.*, stranded oil

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and gas assets), and noted that this concern extends "way beyond the activists already." In particular, PwC has highlighted investor interest in Exxon's 2014 climate change reports as an example of how "[i]nvestors are increasing their attention on how carbon regulations and policies impact companies."

3. Shareholder Advocacy and Exxon's Response

66. Exxon shareholders have submitted numerous proposals requesting that the company take various actions addressing climate change. These proposals are included in the annual proxy statement that Exxon is required by law to send to all shareholders prior to voting at Exxon's annual shareholder meeting. The company has consistently opposed these resolutions.

67. For example, beginning in 2007, and for several years thereafter, Exxon shareholders sponsored resolutions requesting that the company adopt quantitative goals for reducing GHG emissions from its products and operations, and report to shareholders its plans to achieve these goals. Between 2007 and 2014, these resolutions received affirmative shareholder votes representing between 22% and 31% of Exxon stock.

68. In December 2013, the Christopher Reynolds Foundation, on behalf of a group of shareholders, submitted a proposal for Exxon's 2014 shareholder meeting requesting that Exxon issue a report on "Climate Change Assumptions used for Strategic Planning," which would describe the company's strategic plan in view of climate change.

69. Similarly, in December 2013, Arjuna Capital LLC ("Arjuna"), a sustainable investment management firm, and others submitted a shareholder proposal requesting that Exxon issue a report describing the company's exposure to climate change regulatory risks, including the risk that the value of Exxon's oil and gas reserves and related infrastructure could be reduced

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before the end of their expected useful life, and assessing the company's plans for managing those risks.

70. On January 21, 2014, Exxon wrote to the U.S. Securities and Exchange Commission ("SEC") requesting that it be permitted to omit both the Arjuna and Christopher Reynolds Foundation proposals from its proxy statement. The SEC rejected Exxon's request.

71. Consequently, Exxon negotiated with Arjuna and agreed to produce a report on the topic of carbon asset risk in exchange for the withdrawal of the shareholders' proposal. This led Exxon to publish a report entitled *Energy and Carbon – Managing the Risks* ("*Managing the Risks*") on March 31, 2014.

72. Likewise, Exxon negotiated with the Christopher Reynolds Foundation and agreed to produce a report that would address the shareholders' concerns in exchange for the withdrawal of their proposal. As a result, on March 31, 2014, the same day that it published *Managing the Risks*, Exxon produced *Energy and Climate*, a report that analyzed global energy and climate change.

73. In 2016, the New York State Common Retirement Fund and the Church of England, on behalf of a group of shareholders, co-filed a proposal that Exxon publish an annual assessment of the long-term portfolio impacts of global climate change policies, including analysis of the impacts on Exxon's oil and gas reserves and resources under a two degree scenario. Shareholders representing approximately 38% of the company's stock voted in favor of the proposal.

74. Then, in 2017, the New York State Common Retirement Fund and the Church of England submitted an updated version of the 2016 proposal. This time, the resolution received majority support and was adopted: shareholders representing **over 62%** of the company's stock,

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including major shareholders such as Vanguard, BlackRock, and State Street, voted in favor of the resolution that Exxon publish an analysis of how global climate change policies, including a two degree scenario, would affect Exxon's long-term value.

75. Exxon's misrepresentations and omissions, set forth below, thus came in the context of intense and growing investor interest in climate change regulatory risk, and negotiations with investors that resulted in the 2014 *Energy and Climate* and *Managing the Risks* reports.

II. EXXON'S FRAUD REGARDING ITS USE OF A PROXY COST IN ITS COST PROJECTIONS

76. Exxon has repeatedly and falsely assured investors that it has taken active and consistent steps to protect the company's value from the risk that climate change regulation poses to its business.

77. The key safeguard that Exxon has frequently touted in its annual *Outlook for Energy* report and in other company publications is that it applies a proxy cost of GHG emissions in its long-term projections for purposes of business planning, investment decision-making, and financial reporting. A proxy cost is a cost that is included in economic projections as a proxy, or stand-in, for the likely effects of expected future events.

78. Exxon represented that it applied escalating proxy costs of GHG emissions in its economic projections as a proxy for increasing regulatory costs resulting from the increasingly stringent climate regulations that it expected. Exxon further represented that it used a specific set of proxy costs across all business units, and that it had been applying these proxy costs since 2007.

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79. Exxon's statements were materially false and misleading. Exxon frequently deviated from its public representations by: (i) applying a lower, undisclosed proxy cost based on internal guidance; (ii) applying even lower costs based on existing regulations and holding those costs flat for decades into the future, in lieu of applying an escalating proxy cost; or (iii) applying no cost associated with GHG emissions at all.

80. The application of proxy costs is important to Exxon in light of its substantial GHG emissions. Had Exxon applied its proxy costs in the manner it publicly represented, it would have projected billions of dollars of additional GHG-related costs, and would have projected total GHG-related costs of over $7 billion in 2040 alone.[1] Because it did not incorporate such costs in its investment decision-making, business planning, and financial reporting in the manner it represented, Exxon's financial vulnerability to climate change regulation is significantly greater than it led investors to believe.

A. Exxon's Misrepresentations Regarding Its Use of a Proxy Cost in Investment Decision-Making and Business Planning

1. Exxon's Representations

81. Since at least 2010, in its annual *Outlook for Energy* reports and other company publications, Exxon has set forth its expectation that costs associated with GHG emissions will increase in the coming decades as a result of future government policies. Over time, these representations grew increasingly specific with respect to both the costs the company expected to incur and Exxon's use of a proxy cost to manage the risk associated with more stringent climate change regulation.

[1] This estimate assumes that Exxon's emissions total in 2040 will be equal to its 2015 total (122 million tons of CO_2 equivalent), and will come from the same sources as in 2015.

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82. Exxon's Corporate Strategic Planning Department prepares the company's *Outlook for Energy* report annually. These reports are presented to and approved by Exxon's CEO and Management Committee before being released to the public.

83. In its 2010 *Outlook for Energy*, Exxon asserted that, as a result of climate policies it expected governments to adopt, regulatory carbon costs would reach $60 per ton of CO_2 by 2030 in OECD countries.[2] Likewise, in its 2012 *Outlook for Energy*,[3] Exxon projected that the cost of GHG emissions would rise to $60 per ton in 2030 and $80 per ton in 2040 in OECD countries, and that non-OECD countries "also will begin adding CO_2 costs around 2030."

84. Exxon also made specific representations about its application of a proxy cost. In its 2013 *Outlook for Energy* report, Exxon stated that for purposes of its projections through 2040, "ExxonMobil assumes a cost of carbon as a proxy for a wide variety of potential policies that might be adopted by governments over time to help stem GHG emissions." Exxon further stated that it expects these costs to reach about $60 per ton by 2030 and $80 per ton by 2040 in OECD countries. The 2013 *Outlook for Energy* also contained a color-coded map that set forth the company's expectations concerning future carbon costs in different regions around the world. (*See* ¶ 87 below.)

85. On March 31, 2014, Exxon published two reports, *Energy and Climate*, and *Energy and Carbon – Managing the Risks*, in exchange for the withdrawal of shareholder resolutions by the Arjuna Capital and Christopher Reynolds Foundation shareholder groups. The primary drafters of these reports were Exxon's Manager of Environmental Policy and Planning,

[2] "OECD" refers to the Organisation for Economic Co-operation and Development, which includes 36 developed and emerging countries as members.

[3] Exxon did not publish a 2011 *Outlook for Energy* report.

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and Manager of the Office of the Secretary. The reports were reviewed and edited by Exxon's Vice President of Investor Relations, Vice President of Corporate Strategic Planning, and others, before ultimately being reviewed and approved by Exxon's then-CEO, Rex Tillerson.

86. In *Energy and Climate*, in a section entitled "The Outlook for Energy: A View to 2040," Exxon described its use of a proxy cost as follows:

> [F]or our Outlook we use a cost of carbon as a proxy to model a wide variety of potential policies that might be adopted by governments to help stem GHG emissions. For example, in the OECD nations, we apply a proxy cost that is about $80 per ton in 2040. In the developing world, we apply a range of proxy costs with the more wealthy countries, like China and Mexico, reaching about $30/ton in 2040.
>
> . . . .
>
> **This GHG proxy cost is integral to ExxonMobil's planning**, and we believe the policies it reflects will increase the pace of efficiency gains and the adoption by society of lower-carbon technologies through the Outlook period . . . . (emphasis added)

87. A map in the middle of that passage divided the world into three categories for purposes of proxy cost application, and set forth Exxon's expectations regarding carbon costs in each country in 2040: "More than $40 per ton" (most of the OECD countries, including Canada); "$20-40 per ton" (mostly non-OECD countries, including China, Indonesia, and Russia, among others); and "Less than $20 per ton" (the remaining non-OECD countries). The color-coded map is reproduced below:

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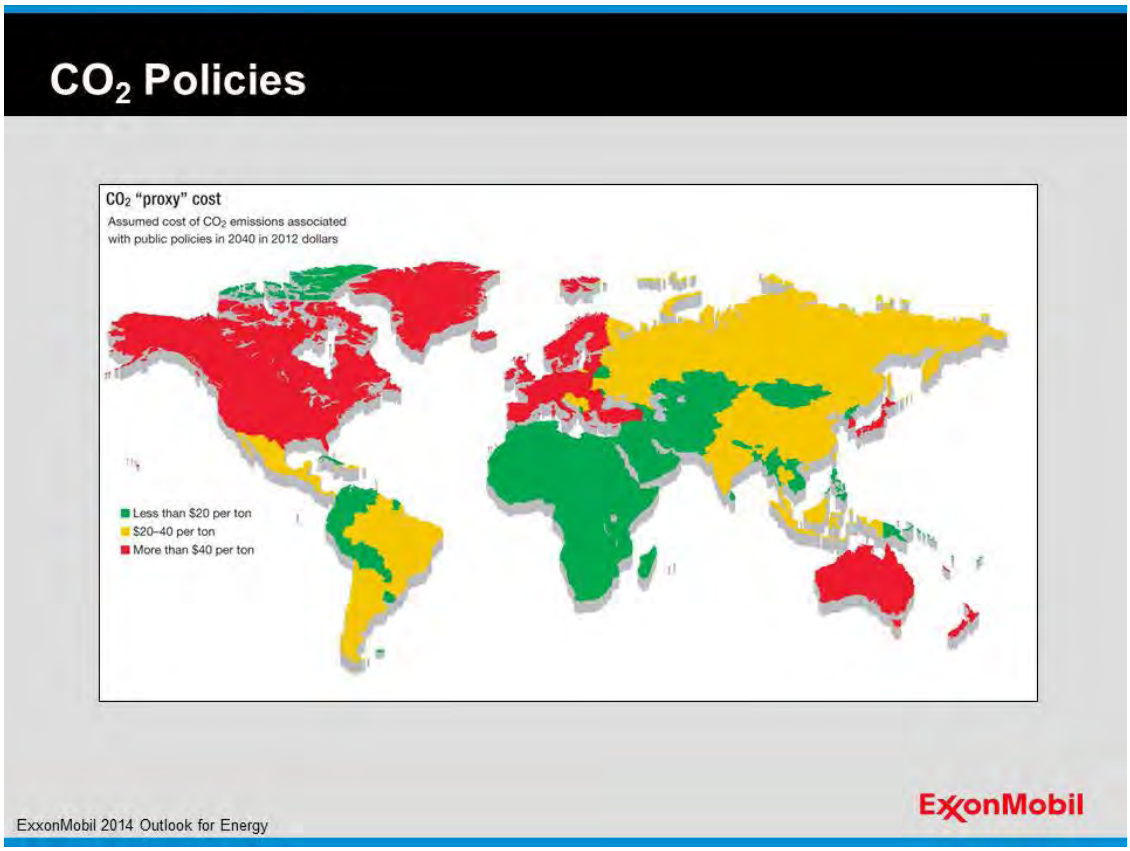

88. The *Energy and Climate* report also stated that Exxon expected "OECD nations to continue to lead the way" in adopting regulatory policies to limit GHG emissions, "with developing nations gradually following, led by countries like China and Mexico."

89. Later in the *Energy and Climate* report, under the subheading "Evaluating climate risk in our planning," Exxon emphasized the consistency with which it applies a proxy cost, stating:

> The company employs a **robust process** for evaluating investment opportunities and managing our portfolio of operating assets. ExxonMobil requires that **all business units** use a **consistent corporate planning basis, including the proxy cost of carbon** discussed above, in evaluating capital expenditures and developing business plans. (emphasis added)

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90. Exxon published the *Managing the Risks* report on its website the same day that it published *Energy and Climate*. Exxon explained that the purpose of *Managing the Risks* was to "address important questions raised recently by several stakeholder organizations on the topics of global energy demand and supply, climate change policy, and carbon asset risk." These topics are of particular importance because, as Exxon stated in *Managing the Risks*, "[g]overnments' constraints on use of carbon-based energy sources and limits on greenhouse gas emissions are expected to increase throughout the Outlook period." The "Outlook period" refers to the future years covered by Exxon's projections.

91. Exxon represented in *Managing the Risks* that it "**rigorously** consider[s] the risk of climate change in [its] planning bases and investments" by "requir[ing] that **all significant proposed projects** include a cost of carbon – which reflects [its] best assessment of costs associated with potential GHG regulations over the Outlook period – when being evaluated for investment." (Emphasis added.)

92. Under the heading "Planning Bases and Investments," Exxon further stated in *Managing the Risks*:

> We also address the potential for future climate-related controls, including the potential for restriction on emissions, through the use of a proxy cost of carbon. This proxy cost of carbon is embedded in our current Outlook for Energy, and has been a feature of the report for several years. The proxy cost seeks to reflect all types of actions and policies that governments may take over the Outlook period relating to the exploration, development, production, transportation or use of carbon-based fuels. Our proxy cost, which in some areas may approach $80/ton over the Outlook period, is not a suggestion that governments should apply specific taxes. . . .
>
> It is simply our effort to quantify what we believe government policies over the Outlook period could cost to our investment opportunities. Perhaps most importantly, we require that **all our business segments** include, where appropriate, GHG costs in their economics when seeking funding for capital investments. **We require that investment proposals reflect the climate-related**

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> **policy decisions we anticipate governments making during the Outlook period and therefore incorporate them as a factor in our specific investment decisions**. (emphasis added)

This statement followed the same color-coded map contained in the *Energy and Climate* report described above.

93. Based on this analysis, Exxon assured investors that it was "confident that none of [its] hydrocarbon reserves are now or will become 'stranded,'" and that "the company does not believe current investments in new reserves are exposed to the risk of stranded assets."

94. In these and other public statements, Exxon described its proxy cost as a unitary concept that applies across its business units and functions. While Exxon noted that it applies different proxy cost values in different geographic regions, the company did not disclose that it used different proxy costs for different business purposes.

95. Following the release of these two reports, Exxon continued to represent to investors that it applied a proxy cost to its projected GHG emissions in business planning and investment decision-making, that its proxy cost reached $80 per ton in OECD countries by 2040, and that it also applied proxy costs in non-OECD countries.

96. For example, in May 2014, Exxon issued its *2013 Corporate Citizenship Report*, which stated:

> To help model the potential impacts of a broad mosaic of future GHG policies, we use a simple cost of carbon as a proxy mechanism. For example, in most OECD nations, we assume an implied cost of CO_2 emissions that will reach about $80 per metric ton in 2040. OECD nations are likely to continue to lead the way in adopting these policies, with developing nations gradually following, led by China.

97. In November 2014, Exxon published an article on its website stating that its application of a proxy cost of GHG emissions informed the company's natural gas investments –

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such as its $44 billion acquisition of XTO in 2010, which made Exxon the largest producer of natural gas in the United States:

> We fully expect governments to take various actions to constrain carbon emissions in coming years. Our increased investment in cleaner-burning natural gas has been guided in part by this assumption. ExxonMobil's Outlook for Energy assumes a proxy cost of carbon of $80 per ton, significantly above the current average worldwide. Our proxy cost of carbon represents the cumulative impact of government actions, regardless of the precise form these actions eventually take.

98. Exxon also made clear to investors that it did not expect governments to take a "business as usual" approach to climate change, and that its proxy cost was intended to reflect increasingly stringent policies over the coming decades. For example, in its CDP response for calendar year 2014, when asked how the company "uses an internal price of carbon," Exxon stated:

> We address the potential for future climate change policy, including the potential for restrictions on emissions, by estimating a proxy cost of carbon. This cost, which in some geographies may approach $80 per ton by 2040, has been included in our Outlook for several years. This approach seeks to reflect potential policies governments may employ related to the exploration, development, production, transportation or use of carbon-based fuels. We believe our view on the potential for future policy action is realistic and, **by no means represents a "business as usual" case.** We require **all of our business lines** to include, where appropriate, an estimate of GHG-related emissions costs in their economics when seeking funding for capital investments. (emphasis added)

99. Exxon has emphasized that it has applied its proxy cost for many years. In a December 2, 2015 publication on its corporate website entitled *ExxonMobil and the carbon tax*, Exxon described its briefings for investors and other interested parties as follows:

> One **key point** we make in many of these briefings is that ExxonMobil has included a proxy price on carbon in our business planning **since 2007**.

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> This enables us to analyze the impact of a price on carbon on various investment opportunities. This proxy cost, which in some regions may approach $80 per ton, seeks to reflect all types of actions and policies that governments may take. (emphasis added)

100. Exxon has also emphasized that its "GHG proxy cost" is "integral" to the company's planning. In a statement on its website, published in 2016 or earlier, entitled *Meeting Global Needs – Managing Climate Change Business Risks*, Exxon represented:

> We use a simple cost of carbon as a proxy mechanism to help model the potential impacts of a broad mosaic of future GHG policies. For example, in most OECD nations, we assume an implied cost of CO2 emissions that will reach about $80 per metric ton in 2040. Developing nations will have a wide range of policy costs with the wealthiest ones reaching about $35 per metric ton.
>
> **This GHG proxy cost is integral to ExxonMobil's planning** . . . . (emphasis added)

101. In its 2016 proxy statement to shareholders, Exxon again emphasized the representations in the *Managing the Risks* report:

> The Company addresses the potential for future climate-related policy, including the potential for restriction on emissions, through the use of a proxy cost of carbon. The proxy cost seeks to reasonably reflect the types of actions and policies that governments may take over the outlook period relating to the exploration, development, production, transportation or use of carbon-based fuels. This proxy cost of carbon is embedded in our Outlook for Energy, and has been a feature of the report **since 2007**. **All business segments** are required to include, where appropriate, an estimate of the costs associated with greenhouse gas emissions in their economics when seeking funding for capital investments. (emphasis added)

102. Exxon explained to investors that the company applies a proxy cost of GHG emissions as an added cost in all of its economic projections. At Exxon's 2016 shareholder meeting, then-CEO Tillerson stated:

> We have, unlike many of our competitors, we have for many years included a price of carbon in our outlook. **And that price of carbon gets put into all of our economic models when we make investment decisions as well. It's a proxy.** We don't know how

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> else to model what future policy impacts might be. But whatever policies are, ultimately they come back to either your revenues or your cost. So **we choose to put it in as a cost**. So we have accommodated that uncertainty in the future, and **everything gets tested against it.** (emphasis added)

103. Exxon also frequently referred investors to its *Energy and Climate* and *Managing the Risks* reports. Indeed, in March 2015, Exxon's Manager of Investor Relations noted that the company "continue[s] getting mileage from those white papers" in its outreach to the investors. More recently, in its 2017 proxy statement opposing a shareholder proposal that sought to address "climate change related risks of stranded carbon assets," Exxon referred shareholders to *Managing the Risks*, stating that the report "describes how the Company integrates consideration of climate change risks into planning processes and investment evaluation."

104. Exxon has also relied on its application of proxy costs in attempting to avoid additional disclosure to investors. For example, in a 2016 letter to the SEC opposing a shareholder proposal for additional company disclosures regarding climate change regulatory risk, Exxon stated that it "uses the proxy cost of carbon in relevant long-term investment decisions to ensure the resiliency of its investments."

2. Exxon's Proxy Cost Representations Were Important to Investors

105. Exxon's representations concerning its purported use of a proxy cost of GHG emissions were important, and remain important, to the company's investors.

106. As early as 2009, investors specifically asked Exxon how it incorporated a carbon price into its investment decisions. For example, at a meeting with institutional investors in September 2009, in response to questions from Lazard Asset Management concerning GHG regulation, then-CEO Tillerson assured investors that Exxon built a cost of carbon into its

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investments and escalated that cost on a forward basis, and that all of Exxon's project economics were burdened with that cost.

107. In March 2014, the Credit Suisse equity research team circulated an article from Bloomberg which noted that, "[o]f 30 U.S. companies that use a shadow carbon price, Exxon's is among the most aggressive." The article continued by stating: "Exxon's shadow price of $60 per ton of CO2 pollution is more than seven times the current cost of carbon permits in the EU cap-and-trade system . . . . While investors might fault Exxon for not doing enough to prepare for the future, it's hard to argue that it's not taking the climate threat seriously, at least on paper."

108. In 2015 and 2016, Exxon's Environmental Policy and Planning Manager and Assistant Treasurer held a series of meetings with representatives of Exxon's largest institutional investors concerning "GHG Stabilization Pathways and Carbon Asset Risk" and "Managing Climate Risks & Greenhouse Gas Stabilization Challenges." These meetings were designed to reassure investors that Exxon was managing the risk of climate change, including through the application of a proxy cost. As the notes from one of those meetings show, a J.P. Morgan employee was told by Exxon in December 2015: "Carbon price = cost of regulation; C [carbon] price is 'conservative' in sense of stranded assets; XOM [Exxon] assumes higher C cost."

109. Exxon's representations influenced investors' views of the climate-related risks to which the company was exposed. In a September 2015 internal presentation that assessed the climate risks faced by major energy companies, Bank of America Merrill Lynch, a major Exxon shareholder, noted:

> XOM does . . . factor in a proxy cost of carbon in planning
>
> XOM's proxy cost in the event a carbon based tax is implemented approaches $80/ton over the outlook period . . .

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> This proxy cost is used to quantify what XOM believes government policies could look like through 2040 and used in decision making for major projects
>
> Evaluating climate risk in planning . . . All business units plan around the proxy cost of carbon[.]

The presentation indicates that the sources for these statements were "ExxonMobil's Energy and Climate Report, ExxonMobil's Energy and Carbon: Managing the Risks Report and ExxonMobil's 2015 Outlook for Energy Presentation."

110. BlackRock, Exxon's second-largest shareholder and the world's largest asset manager, also sought information from Exxon about how it manages climate change-related risk. In an October 2015 meeting, Exxon representatives told BlackRock that Exxon "[i]nclude[s] a proxy cost of carbon for all their investment decisions (varies by region)."

111. Likewise, in December 2015, Exxon employees told fund managers for the Church of England, a lead proponent of several shareholder proposals regarding climate change in recent years, that the "[c]ost of carbon is included in all investment decisions."

112. In 2016, Vanguard, the company's largest shareholder, conducted an internal analysis of Exxon's vulnerability to adverse economic consequences associated with climate change risk, including "cost of climate change compliance" and "decline in company stock value." Vanguard questioned how Exxon's "capital processes and business strategies incorporate analyses of the short and long-term financial risks of a lower carbon economy." In its analysis, Vanguard quoted Exxon's *Managing the Risks* report and noted that Exxon had represented that it "has used a proxy cost of carbon since 2007 which addresses 'the potential for future climate-related controls, including the potential for restriction on emissions' and is Exxon's 'effort to quantify what [they] believe government policies over the Outlook period could cost to [their] investment opportunities.'" Vanguard also identified a risk that Exxon's

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future costs associated with climate change regulations may include fines for non-compliance, but rated this risk as "low" based on its understanding, derived from Exxon's public statements, that Exxon "anticipates that policies will add rising costs (est. $80/ton by 2040)."

113. In February 2016, Exxon's Investor Relations and Environmental Planning and Policy staff told a group of investors – including the New York State Comptroller, the Church of England, and the Vermont Pension Investment Committee – that Exxon "incorporate[s] a proxy cost of carbon," "use[s] it as a means to test resiliency of our investments," and "assess[es] all of [its] investments on proxy cost."

114. On May 26, 2016, Wells Fargo equity research analysts hosted a group of investors at Exxon's corporate headquarters to discuss "climate risks including stranded assets." According to the equity research report in which Wells Fargo summarized the meeting, Exxon stated that it "places a proxy cost of carbon on all of its future developments. Depending on the project and its location, the proxy cost of carbon ranges from $20 to $80 per ton by 2040." Wells Fargo concluded that "[t]his approach reduces the risks associated with future CO2 emissions and incentivizes [Exxon] to reduce overall emissions of all future projects. Thus we believe ExxonMobil is ahead of the curve on pricing in climate risks."

115. Later, in August 2017, Wells Fargo released an equity research report which concluded that Exxon "remains the leading energy company in our view," and expressed Wells Fargo's understanding that:

> All XOM [Exxon] projects are assessed an internal carbon tax (on a per ton basis) to take into account carbon intensity. This is very important for long-lived projects to ensure full-cycle returns are fairly evaluated on an environmental basis as well as financial and operational.

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116. As late as 2017, Exxon was continuing to assert in meetings with investors such as State Street that it had been applying a proxy cost of GHG emissions "since 2007." Investors used that information to assess Exxon's exposure to climate change regulatory risks.

117. Additionally, investors and underwriters rely on the credit ratings provided by rating agencies in making investment and underwriting decisions, and Exxon knew that rating agencies had concerns about the impact of GHG regulation on the company's financial health. Exxon met with representatives of Moody's Investor Service and Standard & Poor's Financial Services LLC in New York City in October 2016, after the ratings agencies had downgraded Exxon's credit rating. Exxon's meeting notes reflect that Moody's "look[s] to understand the potential impact of carbon regulation on the company's ability to remain competitive" and that "Moody's assessment is that carbon regulation has the potential to materially impact [Exxon's] credit quality in the medium to long-term (5+ years)."

3. Exxon's Representations Were Inconsistent with Its Actual Practices

118. Exxon routinely did not apply the proxy costs that the company represented it was using, especially when doing so would have had a significant impact on the company's business decisions.

119. This did not occur by accident. Exxon management, including then-CEO Tillerson, knew of and approved of these deviations.

120. First, Exxon's undisclosed internal guidance authorized applying proxy cost figures that were much lower than those set out in the company's public representations. Second, in projects in developing, non-OECD countries, Exxon did not apply **any** proxy costs to its projected GHG emissions in its base economic projections prior to 2016, contrary to its representations. Third, in significant parts of its business, such as the Alberta oil sands, projects

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in the United States, liquefied natural gas ("LNG") projects, refinery and chemical projects, and North American natural gas assets, Exxon applied much lower proxy costs than it represented or no proxy costs at all to its projected GHG emissions. In these parts of its business, Exxon often applied a much lower price per ton to a small percentage of its GHG emissions, based on then-current regulations, and held those lower costs flat far into the future, rather than applying the escalating proxy costs that it represented to investors. These practices rendered Exxon's proxy cost-related representations materially false and misleading.

a) Exxon's Internal Proxy Costs Deviated Significantly from Its Publicly Represented Proxy Costs

121. For years, to the extent that Exxon applied any proxy cost to its projected GHG emissions, it applied significantly lower proxy costs than those represented to investors.

122. In particular, Exxon used an undisclosed set of proxy costs that was set out in its internal Corporate Plan Dataguides and Appendices ("Corporate Plan"). The Corporate Plan is an internal Exxon document, issued annually, which sets out assumptions for the company's business units to apply in making economic projections. Exxon's management, accountants, and attorneys all recognized that the Corporate Plan contained the company's internal proxy cost assumptions.

123. The proxy cost figures in Exxon's Corporate Plan were inconsistent with, and significantly lower than, the company's publicly represented proxy costs until June 2014 for OECD countries, and until June 2016 for non-OECD countries. For these periods, Exxon's investment decisions and business planning were based on significantly lower proxy costs than those the company represented to investors it used. Exxon's GHG Managers internally warned that using these lower figures made Exxon more susceptible to climate change regulatory risk,

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and indeed, one of those GHG Managers effectively admitted in an internal presentation that the company's proxy cost representations were misleading.

(i) OECD Countries

124. In 2010 and 2011, Exxon publicly represented that its proxy cost for projects in OECD countries was $60 per ton of emissions in 2030, while the undisclosed Corporate Plan proxy cost reached only $40 per ton in 2030. In 2012, 2013, and 2014, Exxon publicly represented that its proxy cost was $60 per ton in 2030, as before, and that it would increase to $80 per ton in 2040. Internally, until June 2014, Exxon's undisclosed Corporate Plan proxy cost still reached only $40 per ton in 2030 for OECD countries, and did not extend to 2040.

125. These deviations between Exxon's public representations and its internal Corporate Plan had a material impact on Exxon's investment decisions and business planning. For example, according to an internal analysis Exxon performed in 2007, a $20 cost per ton of CO_2 would have had a $1.8 billion impact in annual operating expenses for the company's upstream projects in a single year (2020).

126. Exxon's decision to apply lower proxy costs pursuant to its internal Corporate Plan affected investment decisions at major assets. For example, with respect to a 2013 investment decision at the Aspen oil sands asset in Alberta, a planning supervisor noted that the company applied a proxy cost that "flatlined at $40/t GHG (2013$) long term," which was significantly lower than the publicly represented proxy cost that reached $60 per ton in 2030 and $80 per ton in 2040.

127. Likewise, at Exxon's largest European refinery in Antwerp, Belgium, Exxon did not apply the publicly represented proxy costs. Instead, Exxon applied the lower internal proxy costs from its internal Corporate Plan, and furthermore applied that lower proxy cost to only a

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fraction of project-related GHG emissions. Specifically, a cash flow model relating to a 2014 investment project at that refinery applied an internal proxy cost that reached only $40 per ton in 2030 and stayed flat thereafter, as opposed to the publicly represented proxy costs, which escalated to $60 per ton in 2030 and $80 per ton in 2040. The model also applied those lower costs to only 35.6% of project-related GHG emissions, meaning the effective unit cost was $14.24 per ton both in 2030 (instead of $60 per ton) and in 2040 (instead of $80 per ton).

128. Exxon's management, including then-CEO Tillerson and other members of the Management Committee,[4] knew and approved of the significant deviation between the publicly disclosed proxy cost and the lower proxy costs set forth in the undisclosed Corporate Plan. In response to a question from CDP asking Exxon to identify "the highest level of direct responsibility for climate change within [the] organization," the company explained that "the Chairman of the Board and the Chief Executive Officer, the President and the other members of the Management Committee are actively engaged in discussion relating to greenhouse gas emissions and the risk of climate change on an ongoing basis." Indeed, the Management Committee was kept apprised of climate change-related issues generally and received in-depth briefings on the subject. In particular, Management Committee members reviewed and approved the *Outlook for Energy* and key elements of the Corporate Plan each year. Further, Mr. Tillerson reviewed and approved the *Managing the Risks* and *Energy and Climate* reports.

[4] The Management Committee consists of Exxon's CEO and Senior Vice Presidents and is responsible for executive decision-making, long-term strategy, endorsements of the Corporate Plan and *Outlook for Energy*, and major investment decisions. The members of the Management Committee during the time period 2010 to 2016 included: Rex Tillerson (Chairman and CEO), Mark Albers (Senior Vice President), Andy Swiger (Senior Vice President), Don Humphreys (Senior Vice President and Treasurer), Mike Dolan (Senior Vice President), Darren Woods (Senior Vice President), and Jack Williams (Senior Vice President).

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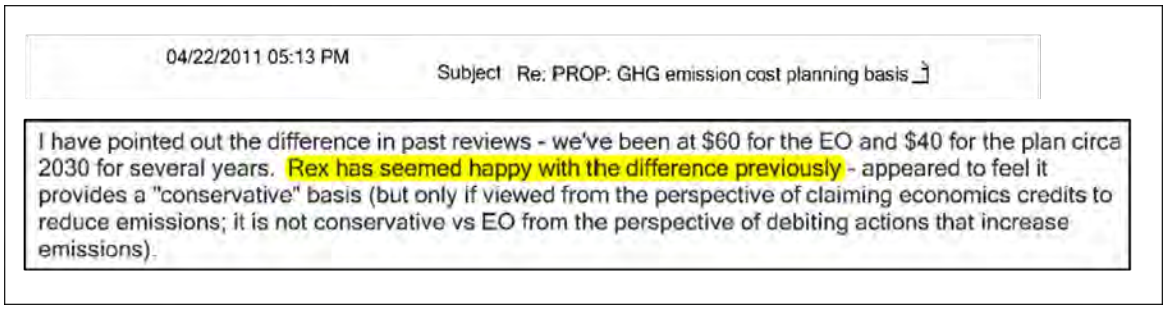
129. Exxon's management approved of this deviation even though it knew that the lower internal values were less protective against climate change regulatory risk than the proxy cost described publicly. Further, Exxon knew that the higher proxy costs described to investors were a more realistic projection of future costs associated with GHG emissions than the lower costs it actually applied in its cost projections. Exxon's then-GHG Manager wrote in an email to colleagues on April 30, 2010, that he "[r]ecognize[d]" that the "2030 cost of $40 [per ton]" in the Corporate Plan was a "low" estimate of costs likely to be incurred, and that the *Outlook for Energy*'s "assumption of $60 [per ton] is likely more realistic."

130. Exxon management discussed reconciling the internal Corporate Plan proxy costs with the publicly disclosed proxy costs years before such alignment took place. On April 22, 2011, Exxon's then-GHG Manager sent an email to colleagues raising the question of "whether to harmonize" the lower, internal proxy costs with the higher, publicly disclosed proxy costs. He argued that doing so would "provide more clarity and alignment throughout [the] organization" and would be "rational." However, the manager responsible for securing executive approval of the internal proxy costs responded that "Rex [Tillerson] has seemed happy with the difference previously," as reflected in the email excerpted below (emphasis added):



04/22/2011 05:13 PM Subject Re: PROP: GHG emission cost planning basis

I have pointed out the difference in past reviews - we've been at $60 for the EO and $40 for the plan circa 2030 for several years. Rex has seemed happy with the difference previously - appeared to feel it provides a "conservative" basis (but only if viewed from the perspective of claiming economics credits to reduce emissions; it is not conservative vs EO from the perspective of debiting actions that increase emissions).

As stated in the email, Exxon's deviation from its representations was "not conservative" as to projects that increase GHG emissions. Such projects comprise the vast majority of Exxon's investments. Nonetheless, Exxon management rejected the proposal to increase the company's

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internal proxy costs to conform to its public representations. Accordingly, the deviation between Exxon's internal and external proxy cost figures continued for over three more years.

131. In May 2014, a new Exxon GHG Manager effectively admitted that the company's *Energy and Climate* and *Managing the Risks* reports contained misleading representations concerning proxy costs, and recommended that the internal figures be increased to match the figures that Exxon had publicly represented. In the speaker notes of a May 2014 presentation to the Management Committee, including Mr. Tillerson, Exxon's new GHG Manager recommended aligning the "non-conservative" (*i.e.*, risky) figures in the Corporate Plan with those in the *Outlook for Energy* reports on the ground that Exxon's March 2014 reports to shareholders had "implied that we use the [Outlook] basis for proxy cost of carbon when evaluating investments."

132. In June 2014, in accordance with its GHG Manager's recommendation, Exxon increased the proxy cost values in its Corporate Plan to conform to its publicly represented proxy cost – but for OECD countries only. The new 2014 Corporate Plan stated that Exxon was changing its internal OECD proxy cost figures to be "aligned with long term Energy Outlook basis," and noted that this was "a change from the 2013 Corporate Plan."

133. Exxon's current GHG Manager testified that he did not know how the lower, internal proxy cost figures utilized prior to June 2014 were derived, even though he and his colleagues "have spent a fair amount of time trying to understand that." He further testified that when he became GHG Manager in 2014, he asked the prior GHG Manager why these figures differed, and his predecessor admitted that he "didn't really know." Likewise, Exxon's current GHG Manager testified that he discussed this issue with the Manager of Environmental Policy and Planning, who also did not know why these figures differed.

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134. Exxon's planners and managers understood the importance of the June 2014 change in internal guidance. In an October 2014 email, a development planning manager described this alignment as a "huge change," and stated that he suspected the change was made "to address GHG risks in response to shareholder increasing queries and concern." In response, a development planning supervisor noted that this change would have a "material impact" on Exxon's oil sands assets. The next month, the same supervisor circulated an analysis to his colleagues showing that the new GHG guidance had a "very material" impact on Exxon's oil sands opportunities, including its projects at Aspen, Clarke Creek, Clyden, Corner, and Grand Rapids.

135. Despite the significance of this June 2014 proxy cost alignment, Exxon never disclosed it to the company's investors, nor did the company disclose that its internal guidance had significantly deviated from the company's publicly represented proxy costs for years.

(ii) Non-OECD Countries

136. Contrary to Exxon's representations that it applied a proxy cost to investment decisions and business planning around the world, including in non-OECD countries, Exxon's internal Corporate Plan directed employees not to apply proxy costs to its projected GHG emissions in base economic models for projects in non-OECD countries until June 2016.

137. Instead, the Corporate Plan instructed employees to include proxy costs in non-OECD countries only in certain sensitivity analyses. Unlike base economic models, which reflect the company's actual forecasts, sensitivity analyses test a range of hypotheticals that are considered less likely to occur, and thus have far less impact on the company's decision-making than base economic models.

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138. Exxon did not perform even these sensitivity analyses in non-OECD countries with any consistency. Indeed, Exxon's pre-2016 Corporate Plans did not contain proxy cost figures for use in sensitivity analyses in non-OECD countries. Moreover, a development planning supervisor testified that she could not recall ever seeing a sensitivity run for such costs, whether in non-OECD countries or otherwise.

139. Exxon did not revise its internal Corporate Plan to include proxy cost figures for non-OECD countries until June 2016, seven months after the commencement of the State's investigation.

140. Contemporaneous documents described the 2016 revision as a "major change" in procedures at the company. The revision resulted in a flurry of activity throughout the company to calculate, for the first time, projected GHG emissions associated with specific assets in non-OECD countries.

141. Only after meeting a "tight deadline on implementation of the new guidelines" for the July 2016 planning and budgeting submissions did employees begin to consider "how to incorporate" the new proxy costs for non-OECD countries "into [Exxon's] modeling on a more permanent basis," including considering what impact the new guidance might have on the company's investment decisions and reserves calculations.

142. Before mid-2016, Exxon had not even projected future GHG emissions for many of its non-OECD projects – let alone applied proxy costs to such emissions – even though approximately 30% of Exxon's GHG emissions in 2015 were from non-OECD countries.

143. Exxon deviated from its public representations by not applying proxy costs to its GHG emissions for major investments in non-OECD countries. For example, despite Exxon's public representations in 2013 and 2014 in the color-coded map it included in multiple reports

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(*see* ¶ 87 above) that it applied a proxy cost in Guyana of $20-$40 per ton in 2040, Exxon did not incorporate proxy costs into its economic analysis for a multibillion dollar project in Guyana until after June 2016.

144. Likewise, Exxon did not incorporate its publicly represented proxy costs into cost projections for its multibillion dollar projects in Malaysia, Indonesia, and Singapore before July 2016. While Exxon publicly represented in 2013 and 2014 that it applied proxy costs of $20-$40 per ton for the year 2040 in each of these three countries, email correspondence shows that planners were not instructed to do so until 2016. In July 2016, a planning advisor in the Asia Pacific region, which includes Malaysia, Indonesia and Singapore, instructed planners to apply proxy costs for the first time, explaining that "what previously was just impacting Australia in the past, now impacts ALL countries" in the region.

145. Exxon likewise did not incorporate its publicly represented proxy costs into its cost projections for multibillion dollar projects at its Sakhalin oil and gas asset in Russia in 2010 and 2014, or for a funding decision of several hundred million dollars at the Tengiz oil field in Kazakhstan in January 2016.

146. By not following its public representations regarding the application of proxy costs to its projected GHG emissions in non-OECD countries, Exxon substantially understated its projected costs when making investment decisions and conducting business planning in those countries.

b) Even After Conforming Internal Proxy Cost Guidance to Its Public Representations, Exxon Continued to Deviate from Its Proxy Cost Representations

147. After Exxon increased its internal proxy cost guidance to conform to its public representations, the company's planners realized that the application of the higher publicly

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disclosed proxy costs would result in "massive GHG costs," "large write-downs," and shorter asset lives.

148. Rather than accept the consequences of incorporating the risks of climate change regulation as it had represented to investors by applying the publicly represented proxy cost, Exxon management decided to apply an "alternate methodology." This "alternate methodology" was not disclosed to investors, and consisted of applying a lower proxy cost than publicly represented, or no proxy cost at all, to Exxon's projected GHG emissions in important areas of its business, including the Alberta oil sands, assets in the United States, LNG assets, refineries, and North American natural gas assets.

149. For major projects, rather than applying a proxy cost, Exxon assumed, contrary to its representations, that existing climate regulation would remain in place, unchanged, indefinitely into the future. In these cases, Exxon applied a much lower cost per ton to a small percentage of GHG emissions based on existing regulation, held flat indefinitely. This conduct was directly contrary to Exxon's public representations that it applied escalating proxy costs as a stand-in for the effects of expected future GHG regulation. Exxon's conduct thus rendered those representations materially false and misleading.

150. Exxon's application of lower proxy costs than it publicly represented or no proxy costs at all, even after the company revised its internal guidance, was most frequent in parts of the business with high GHG emissions, where applying the publicly represented proxy cost would have had a particularly significant impact on the company's investment decisions and business planning.

151. In 2011, Exxon's Vice President of Environmental Policy and Planning stated in an internal presentation that the application of a "high cost on GHG emissions" would be a

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"major concern" for many of the company's "energy intensive operations," such as its "refining and chemical businesses" and "LNG and heavy oil production,"[5] and that "greenhouse gas intensive energy sources such as oil sands" would also be "vulnerable." Exxon failed to apply its publicly represented proxy cost to its projected GHG emissions most frequently to GHG-intensive projects in these areas.

(i) Alberta Oil Sands Assets and Investments

152. While Exxon repeatedly told investors that it was applying a proxy cost rising to $80 per ton of GHG emissions in OECD countries such as Canada by 2040, Exxon management instructed employees not to apply this publicly represented proxy cost to its projected GHG emissions for business planning and investment decision-making purposes at its oil sands projects in Alberta.

153. Exxon instead applied what a planning supervisor called an "alternate methodology," which deviated from the company's representations to investors in three ways. First, Exxon did not apply a proxy cost to its projected GHG emissions at all, but instead applied a much lower cost that was based on existing regulations. Second, based on existing regulations, Exxon applied those lower costs to only a small percentage of GHG emissions. Third, Exxon held flat those lower costs, and the small percentage of emissions to which those costs were applied, indefinitely into the future, rather than applying costs that escalated over time.

154. This "alternate methodology" of applying existing legislated costs to a small percentage of project emissions, and holding those costs flat indefinitely into the future, was fundamentally inconsistent with Exxon's repeated representations that the company was

[5] Heavy oil is crude oil that is characterized by high density and viscosity. Oil sands are categorized as heavy oil.

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projecting increasing costs associated with GHG emissions due to increasingly stringent regulation.

155. As a result of these practices, Exxon effectively applied costs for its GHG emissions in Alberta that were less than $5 per ton, held flat into the future for decades. These costs were far below the publicly represented proxy cost of $80 per ton for Canada – including Alberta – in 2040.

156. This deviation from Exxon's public representations was willful, and it was directed by Exxon management. After Exxon increased the proxy costs in the internal Corporate Plan to match the publicly represented proxy costs for OECD countries such as Canada, planners reported that applying the publicly represented proxy costs would result in "massive GHG costs," "large write-downs," and other significant impacts on the company's bottom line. Exxon management then instructed the planners to disregard those publicly represented proxy costs. Instead, Exxon management directed planners to apply an "alternate methodology" that did not include the publicly represented proxy costs.

157. Even when Exxon did apply some proxy costs rather than existing legislated costs to its Alberta oil sands projects, it frequently did so on the basis of the outdated pre-2014 Corporate Plan, which was not aligned with the company's public representations. As a result, for these projects, Exxon applied proxy costs that were significantly lower than those that Exxon represented to investors.

158. Cash flow models for fourteen of Exxon's Alberta oil sands projects show that the company's deviations from its publicly represented proxy costs would have substantially impacted profits. By applying Alberta's legislated cost, held flat into the future, rather than the escalating proxy cost, or by applying proxy cost figures that were significantly lower than those

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set out in Exxon's public representations, Exxon underestimated total projected GHG-related costs at those fourteen projects by approximately $30 billion CAD (more than $25 billion USD), and overestimated cumulative undiscounted cash flows by similar figures.[6] This overestimate represents over 7% of the aggregate projected discounted cash flow returns over all of these projects, with an average (non-weighted) impact across projects of approximately 0.9 percentage points of discounted cash flow return – and with a significantly higher impact on certain projects. Exxon's planners consider even a 0.5 percentage point impact to the discounted cash flow of a project's economics to be material in evaluating the company's investment opportunities.

159. For Exxon's largest Canadian oil sands investment – Kearl – in which the company had invested more than $33 billion in capital expenditures by 2015, the decision to apply an "alternate methodology" instead of the publicly represented proxy costs reduced cost projections associated with GHG emissions by approximately 94%.

160. Exxon's 2015 economic model for Kearl confirms that Exxon did not apply its publicly represented proxy cost. Instead, for investment decision-making and business planning purposes, Exxon (i) applied existing legislated costs of $24 USD per ton, rather than the publicly represented $80 per ton in 2040; (ii) held that cost flat through the end of the asset's projected life in 2065, rather than applying costs that rise over time; (iii) applied that cost to only 15% to 20% of Exxon's emissions, pursuant to existing legislation that only taxed the portion of emissions that exceeded certain emissions-intensity targets; and (iv) held that percentage flat through the end of the asset's projected life. This resulted in an effective cost of less than $5

[6] These estimates are based on economic assumptions as they appear in Exxon's cash flow models.

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USD per ton of GHG emissions in 2040 – approximately 94% less than the $80 per ton figure that Exxon represented for that year.

161. By applying existing legislated costs instead of the publicly represented proxy cost to Kearl, Exxon reduced the projected undiscounted costs of GHG emissions for that asset by approximately 94%, or $14 billion CAD ($11 billion USD). Depending on Exxon's assumption about the future price of oil, this additional cost had the potential to change the cash flow projections for Kearl as a whole from positive to negative, with concomitant reductions in associated reserves.

162. Exxon's use of this "alternate methodology" is also described in a planning supervisor's July 4, 2016 email concerning Kearl:

> Last year, the [Corporate Plan] guidance resulted in **massive GHG costs** in the out years so **alternate methodology** was applied. I suspect something similar will be required this year. (emphasis added)

163. This decision was directed by Exxon's management, and it expressly contradicted the company's public representations and internal guidance, which had only recently been aligned with those representations. On July 14, 2016, another planner wrote:

> Currently the [Kearl] model is still only following 'legislated' GHG guidance (Alberta) as part of a **management decision** last year . . . **versus the global strat[egic] planning guidance**." (emphasis added)

164. Exxon's application of existing legislated costs cannot be squared with its numerous public statements that it was projecting that governments would impose *increasing* costs on GHG emissions over time, with "OECD nations [such as Canada] to continue to lead the way."

165. Moreover, in a 2018 cash flow analysis regarding the Aspen oil sands project in Alberta, Exxon applied proxy costs to only a limited percentage of emissions based on existing

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legislation, resulting in an understatement in projected costs of approximately $3.8 billion USD. For many of the years in this cash flow projection, Exxon multiplied its proxy cost figures by **negative** percentages, effectively turning its purported proxy cost into a proxy **credit**. Exxon never informed investors that it was accounting for climate change regulatory risk by assuming that this risk would actually turn into a reward.

166. Exxon also did not apply its publicly represented proxy costs to its projected GHG emissions for assets in which it had an interest as part of a joint venture. Notably, at the multibillion dollar Syncrude oil sands asset in Alberta, in which Imperial has a 25% interest, Exxon did not incorporate proxy costs into its cost projections when deciding to invest nearly $1 billion in 2011 and 2012. Exxon's failure to inform investors that its proxy cost representations did not apply to massive and GHG-intensive joint ventures like Syncrude rendered those representations misleading.

167. Exxon's misrepresentations concerning its application of proxy costs at its Alberta oil sands assets are highly material. The Alberta oil sands assets are important to Exxon's business overall, and constituted nearly a quarter of Exxon's resource base (*i.e.*, the quantity of oil and gas under Exxon's control that the company expects to develop in the future) as of February 2016.

168. Exxon's investors are keenly interested in, and have often asked Exxon detailed questions about, the performance and risk profile of individual investments, including Kearl and other oil sands assets. Indeed, Exxon has presented information about Kearl specifically at each of its last seven annual analyst meetings in New York City.

169. Exxon's oil sands assets are also very GHG-intensive, and are thus particularly vulnerable to climate change regulation. Further, as some of Exxon's highest-cost projects, they

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are particularly vulnerable to additional costs associated with GHG emissions. As HSBC Global Research noted in 2015, "oil sands face the greatest stranding risks, . . . given the combination of high breakeven price and higher carbon intensity of production." Contrary to its representations, Exxon's response to this acute risk was to remove the proxy cost guardrails that it had touted to its investors.

(ii) United States Assets and Investments

170. Exxon also failed to apply its publicly represented proxy cost to the projected GHG emissions associated with certain investments in the United States for which it had either received a permit to emit GHGs, or determined that no permit was required.

171. For example, Exxon did not apply a proxy cost with respect to an investment of over $1 billion in its Point Thomson gas field in Alaska in 2012 on the ground that it had received the necessary permit to emit a substantial quantity of GHGs.

172. Further, Exxon did not apply a proxy cost to investments totaling nearly $1 billion at its Baytown and Beaumont chemical plants in Texas, in 2011 and 2016, respectively, on the ground that the projected GHG emissions did not meet the threshold at which obtaining a permit would have been required under the Clean Air Act.

173. Exxon never disclosed to investors that it did not apply its proxy cost when it had received a permit to emit GHGs, or determined that no such permit was required under existing law. To the contrary, Exxon consistently represented that it expects climate change regulations to grow increasingly stringent over the long term, including in the United States and other OECD countries, and that applying its escalating proxy cost protected its investments from that risk. Nonetheless, for these major projects, with long-term cash flow implications, Exxon did not apply its publicly represented proxy cost, but instead assumed, contrary to its representations to

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investors, that existing law would remain in place, indefinitely into the future, and would allow Exxon to continue to emit GHGs without ever imposing increased costs.

(iii) LNG Assets and Investments

174. Exxon also deviated from its public representations regarding the use of proxy costs in its "large and diverse portfolio" of liquefied natural gas projects around the world.

175. Like the oil sands in Alberta, LNG projects are particularly GHG-intensive. Specifically, LNG requires energy to convert natural gas to liquid form for purposes of transportation. According to an internal Exxon document, LNG was the sector "most impacted" by the prospective application of proxy costs. However, Exxon did not apply proxy costs to its GHG emissions in assessing project economics for major LNG projects.

176. For example, Exxon did not apply any proxy costs in 2016 to its projected GHG emissions in its economic model for an LNG project in Cyprus, an EU member state that was subject to the EU ETS cap-and-trade system, at the time of management's review. An Exxon employee observed that the omission was "material" to the economics of that project. At that time, Exxon had represented to investors that it applied a proxy cost in Cyprus that exceeded $40 per ton in 2040.

177. Likewise, Exxon's publicly represented proxy costs were not incorporated into cost projections for an Alaska LNG project. In January 2016, Exxon planners applied proxy costs of $14 per ton to GHG emissions in 2017, increasing $2 per year and plateauing at $40 per ton "max." At that time, Exxon had represented to investors that it applied a higher proxy cost in OECD countries including the United States, rising to $80 per ton in 2040.

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(iv) Refinery Assets and Investments

178. Managers in Exxon's Refining and Supply business, which oversaw Exxon's downstream assets such as oil refineries, noted in March 2016 that planners in that business unit had not been applying the proxy cost figures in the Corporate Plan to project economics, either in base economic models or in sensitivity analyses. When asked to determine "how CO2 is handled in projects," the Global Project Development and Execution Manager wrote that "[w]e use the GHG pricing outlook *where there is an established program*, but don't think we have been applying a post 2020 sensitivity to projects." (Emphasis added.)

179. This was confirmed in June 2016 by a project executive in Refining and Supply, who stated internally: "We include the carbon cost (or credit) in projects where it is established by the government. We have not put in sensitivities where it is not anticipated, although we may want to reconsider based on the Paris agreement, but really need to have guidelines that would be consistent across all companies."

180. For downstream operations in Singapore, an Exxon planner stated in December 2016 that "we haven't to date been using [the proxy cost] in any of our projects." A manufacturing director in Exxon's downstream business estimated that an impending Singaporean GHG regulation "at roughly 10$ per ton but with likely significantly higher values in the future would . . . significantly impact the ability to compete in the region." By then, Exxon had represented to investors that the proxy cost it applied in Singapore was $20-$40 per ton by 2040.

181. Exxon's failure to apply publicly represented proxy costs in its refining business is significant. For example, in various internal analyses, Exxon found:

- "If CO2 emissions from refineries were charged 20 $/[ton] to emit, the impact on net margins could be significant, as high as -0.85 $/B[arrel]"

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- "Potential CO2 cost for [Exxon] refinery emissions are significant compared to 2002-07 earnings"
- Refineries in the United States would become unprofitable at a carbon price of $30 per ton because "Cost of process emissions = Operating margin (@ $30/Tonne GHG)"
- GHG regulations on refineries could "force curtailment of some operations, and "could be significant relative to earnings."

182. Exxon's failure to apply its proxy cost to GHG emissions from its refineries contradicted its representations that, since 2007, "all business units use a consistent corporate planning basis, including the proxy cost of carbon . . . in evaluating capital expenditures and developing business plans."

(v) North American Natural Gas Assets and Investments

183. Exxon also failed to disclose to investors that it effectively avoided applying a proxy cost in its investment decision-making and business planning for its major North American natural gas assets, at least in 2016, by assuming that the company would be able to pass through any such costs to customers by increasing the prices for its natural gas products at the point of sale.

184. Exxon represented that the company requires that "all significant proposed projects include a cost of carbon – which reflects [its] best assessment of costs associated with potential GHG regulations over the Outlook period – when being evaluated for investment" (*see* ¶ 91 above). Nowhere did Exxon disclose that it was assuming that it would be able to pass on such costs to consumers. By applying this pass-through assumption (also called a "market recovery" assumption), Exxon effectively assumed that it would bear no costs at all in connection with the GHG emissions associated with these assets, and that it would pass on the

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entire cost to consumers in the form of higher prices. Exxon's undisclosed application of this pass-through assumption rendered its proxy cost representations false and misleading.

185. Moreover, when Exxon made this pass-through assumption, it did not acknowledge the concomitant effects on gas prices. A pass-through assumption depends on a company's ability to raise prices in response to increased costs. However, Exxon did not factor the impact of its pass-through assumption into its price projections for natural gas in 2016 or earlier. Exxon simply assumed that it would be able to recover the costs associated with its GHG emissions by raising prices for customers, but did not incorporate those costs into its price analysis.

186. Likewise, Exxon did not incorporate the effects of passing through the cost of its GHG emissions to customers in its natural gas demand projections. In effect, Exxon assumed that demand for natural gas is perfectly inelastic, meaning that consumer demand is completely unaffected by changes in price. Such an assumption, which Exxon never disclosed, is contrary to the basic economic principle known as the "law of demand," under which there is an inverse relationship between quantity demanded and price.

187. By assuming that proxy costs associated with its North American natural gas assets would be fully passed through to customers, without any impact on price or demand, Exxon effectively treated these proxy costs as if they did not exist when evaluating the profitability of its investments. Applying this pass-through assumption allowed Exxon to avoid the "impact to profitability" that would have otherwise resulted from the application of proxy costs at its North American natural gas assets.

188. Exxon ultimately recognized that its pass-through assumptions were overly aggressive. For older, more GHG-intensive natural gas assets, pass-through is less likely, as

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customers generally will not pay more for gas from those assets compared with newer, less GHG-intensive assets. Nonetheless, in 2016, Exxon assumed that it would be able to pass through the full amount of the proxy costs associated with GHG emissions at such older assets. In 2017, Exxon stopped assuming that it would be able to fully pass through its proxy costs at these older assets, at least for purposes of conducting impairment evaluations (*see* ¶ 246 below).

189. Exxon never informed investors that it had previously applied this flawed pass-through assumption in cost projections for its older, more GHG-intensive natural gas assets.

190. Through its undisclosed pass-through assumption, Exxon avoided internalizing the proxy costs associated with GHG emissions at its North American natural gas assets into its economics as it had represented to investors. Such an approach was entirely contrary to Exxon's stated risk management practices.

B. Exxon's Misrepresentations Regarding Its Use of a Proxy Cost in Oil and Gas Reserves and Resource Base Assessments

191. Exxon also sharply deviated from its publicly represented proxy costs in estimating the size of its company oil and gas reserves and resource base.

1. Oil and Gas Reserves and Resource Base Assessment Process

192. An oil and gas company's most valuable upstream assets are its "reserves," which refer to the amounts of hydrocarbons underground that the company (i) has a legal entitlement to extract and produce, and (ii) determines to be economically and technically producible within a specified degree of certainty.

193. Reserves are classified as either "proved," "probable," or "possible," in order of likelihood that they will be profitably extracted. "Proved reserves" – which must satisfy the SEC's definition to be included in a company's financial statements – represent the amount of

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hydrocarbons in a particular reservoir with the highest confidence of economically feasible recovery.

194. An oil and gas company's reserves represent a subset of its total oil and gas "resources," or "resource base." Exxon defines its resource base as "the total remaining estimated quantities of oil and gas that are expected to be ultimately recoverable," which "includes quantities of oil and gas that are not yet classified as proved reserves under SEC definitions, but that [it] believes will ultimately be developed." The "resource base" is particularly significant because it represents the main source of future additions to Exxon's proved reserves.

195. Exxon, like its peers, calculates its resource base as part of an internal "company reserves" process, which is separate and distinct from the estimation of proved reserves under SEC-prescribed criteria. Exxon uses its company reserves assessments for internal business evaluations, while it uses SEC proved reserves estimates for annual disclosure of reserves in its 10-K filings. Exxon's planning and budgeting assumptions "underpin" Exxon's company reserves assessments, and those assessments are "based on the ExxonMobil cost basis and Company Plan Prices," not "the SEC prescribed cost and price basis." Thus, while SEC proved reserves estimates must be based on historical oil and gas prices and current costs, company reserves and resource base assessments are based on a company's own price and cost projections.

2. Exxon's Representations

196. Exxon repeatedly touted the size of its oil and gas resource base. For example, in its publicly available 2014 *Financial & Operating Review*, Exxon represented to investors that the total size of its resource base was more than 92 billion oil-equivalent barrels – significantly

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greater than its proved reserves alone. Exxon further stated that "[t]he size and diversity of ExxonMobil's global resource base, the largest held by an international oil company, provide us with unequaled investment flexibility to profitably develop new supplies of energy to meet future demand." Exxon also highlighted the volume of its resource base on many other occasions, such as in its 2014 *Managing the Risks* report, its 2016 *Energy and Carbon Summary*, and a March 2014 presentation to prospective bondholders.

197. Exxon made three distinct representations concerning the application of proxy costs in assessing its company reserves and resource base.

198. First, Exxon explicitly represented that it applied a proxy cost in its reserves assessments. In seeking SEC approval to omit a shareholder resolution concerning climate change from its proxy statement, Exxon wrote in a February 2016 letter, copying the shareholder proponents: "The Company has tied its analysis of a proxy cost of carbon and that cost's effect on the company's oil and gas reserves to the time period between now and 2040."

199. Exxon also represented in *Managing the Risks* that, based on the analysis summarized in that report, including the company's purported use of a proxy cost, the company was "confident that none of [its] hydrocarbon reserves are now or will become 'stranded,'" and "does not believe current investments in new reserves are exposed to the risk of stranded assets."

200. Second, Exxon represented to investors that all of the company's business units incorporated its proxy cost as part of its business planning process, also known as "planning and budgeting."

201. A key element of Exxon's business planning is its company reserves and resource base assessments. According to the company's procedures and training materials, Exxon's company reserves and resource base assessments are "a key element that underpins the value of

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the Corporation," and it is "[i]mportant to get probable [non-proved] reserves correct for planning and budgeting purposes." Moreover, a "good understanding" of Exxon's resource base is "important as it is a prime source of future Opportunity Generation and Asset value enhancement," which enables Exxon to "maximize value [and] maximiz[e] economic recovery from all reservoirs." Exxon's resource base "represents [its] future production," and "[c]lear quantification" of those resources allows the company to "allocat[e] appropriate resources to projects, including people, capital, and new technology[.]"

202. Exxon's business planning involves "setting near-term operating and capital objectives in addition to providing the longer-term economic assumptions used for investment evaluation purposes." Exxon has repeatedly represented that it applied a proxy cost in its business planning. For example, in its 2014 *Energy and Climate* report, under the subheading "Evaluating climate risk in our planning," Exxon stated that it "requires that all business units use a consistent corporate planning basis, including the proxy cost of carbon discussed above, in evaluating capital expenditures and developing business plans." Likewise, in a December 2, 2015 publication on its website entitled *ExxonMobil and the carbon tax*, Exxon represented that it "has included a proxy price on carbon in our business planning since 2007." In a 2016 publication on its corporate website entitled *Meeting Global Needs – Managing Climate Change Business Risks*, Exxon similarly stated that its "GHG proxy cost is integral to ExxonMobil's planning."

203. Third, Exxon represented to investors, including in its 2016 *Energy and Carbon Summary*, that its "Reserves and Resources [are] Governed by a Rigorous Process with Reporting Integrity," and stated that its resource base assessments are "aligned with" the

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Petroleum Resources Management System (PRMS), the common industry standard for evaluating reserves and resources.

204. PRMS states that all reserves and resource assessments "require application of a consistent set of forecast conditions, including assumed future costs and prices." PRMS guidelines further specify that such assessments "shall reflect," *inter alia*, "[t]he estimated costs associated with the project . . . including environmental . . . costs charged to the project, based on the [company's] view of the costs expected to apply in future periods." Likewise, PRMS states that "[r]esources evaluations are based on estimates of future production and the associated cash flow schedules."

205. Exxon repeatedly described its proxy costs as reflecting the company's view of the climate-related regulatory costs it expects to incur in the future. Such costs fall squarely within the consistency requirements of the PRMS guidelines. Exxon's representations that its resource base assessments were aligned with the PRMS guidelines are representations that the publicly disclosed proxy costs were incorporated into those estimates.

3. Exxon's Representations Were Inconsistent with Its Actual Practices

a) Exxon Did Not Apply the Publicly Represented Proxy Cost to Company Reserves and Resource Base Assessments for Oil Sands Assets in Alberta

206. Exxon did not apply its publicly represented proxy costs in the cost projections associated with its company reserves assessments for its Alberta oil sands assets. Rather, as with its investment decision-making, Exxon applied far lower existing legislated costs, held those costs flat into the future, and applied those costs to only a small percentage of emissions pursuant to existing legislation. This is a far cry from the higher, rising proxy costs that Exxon described

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in its representations to investors. Accordingly, the company's representations were materially false and misleading.

207. On October 5, 2015, Exxon management instructed an Imperial planner tasked with evaluating company reserves to assume based on existing legislation that only 20% of GHG emissions would be taxed, and to "hold flat" that assumption indefinitely into the future.

208. In response, the planner expressed frustration, stating that "[t]he basis provided is different from the pricing/guidance at CP15 [2015 Corporate Plan]; Meaning, on this basis, our GHG costs are misaligned," and that the costs "need to be accurate & aligned . . . for our economics to be accurate." He then asked a colleague: "Just between ourselves ..... Why is it necessary to deviate from CP15 [2015 Corporate Plan] GHG assumptions?"

209. Rather than correcting this deviation, Exxon management decided, as described in an October 8, 2015 internal email, to "go 'full legislated' (legislated price of carbon, legislated intensity)." Thus, for purposes of evaluating company reserves, Exxon assumed that no new costs associated with GHG emissions would be imposed in Alberta, and (with respect to "intensity") that only 20% of GHG emissions would be taxed, indefinitely into the future.

210. Additionally, a November 2015 internal presentation concerning the Kearl oil sands asset states that, for company reserves assessments, Exxon was applying proxy costs that were "reflective of current Alberta legislation (not corporate guidance)." According to an internal company analysis, this resulted in an application of projected GHG-related costs at Kearl of approximately $0.25 USD per barrel rather than $4 USD per barrel, a difference of nearly 94%.

211. Exxon's employees observed significant economic impacts on company reserves and resource base volumes as a result of being instructed to use lower costs than the publicly

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represented proxy cost. For example, an internal meeting invitation from August 2016 concerning company reserves assessments in Alberta states: "Last year, after initial guidance to use the EM [Exxon] corporate forecast (despite warnings it would result in **large write-downs**) we had to redo our calculations using legislated GHG taxes." (Emphasis added.)

212. Exxon's decision not to apply the publicly represented proxy costs to its company reserves assessments, and instead to apply existing legislated costs, also had a particularly significant impact on its multibillion dollar Cold Lake oil sands asset in Alberta.

213. In September 2015, an Imperial employee observed internally that applying the publicly represented proxy cost to evaluate company reserves at Cold Lake would "result in enough additional opex [operating expense] to shorten asset life and reduce gross reserves." According to the company's analysis, applying the publicly represented proxy costs would have reduced Cold Lake's asset life by 28 years and reduced company reserves by more than 300 million barrels of oil equivalent. The projected reduction in reserves would have reduced the company's revenues by billions of dollars.

214. An internal review confirmed that it was the "GHG tax price forecast" that "drives the reduced cash flow that shortens end of life" at Cold Lake.

215. As a result of these forecasts, Exxon's corporate planning department decided that a proxy cost should not be applied in assessing company reserves at Cold Lake. Instead, according to an October 2015 email by an Exxon reserves coordinator, corporate planning decided that existing Alberta "legislated price and intensity" (*i.e.*, the percentage of emissions to which the price is applied) should be used, which "reduce[d] the EOFL [end of field life] impact significantly." By not applying the publicly represented proxy costs, Exxon projected that it would be profitable for the company to continue producing at Cold Lake for a significantly

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longer period of time, which led the company to report inflated company reserves and resource base figures.

216. Exxon reserves personnel were well aware, as an October 2015 internal meeting invitation made clear, that proxy cost assumptions have "significant reserves implications." Further, Exxon management was frequently briefed concerning company reserves assessments, including for assets where proxy costs had a significant impact. Nonetheless, Exxon chose not to apply its publicly represented proxy costs to its company reserves and resource base assessments for its oil sands assets in Alberta, thereby rendering its representations to investors false and misleading.

b) Before 2016, Exxon Generally Did Not Apply a Proxy Cost to Company Reserves and Resource Base Assessments

217. Before 2016, Exxon generally did not apply proxy costs to its GHG emissions for purposes of assessing its company reserves and resource base in many countries throughout the world. Indeed, until mid-2016, Exxon planners did not develop a methodology for applying proxy costs to GHG emissions for purposes of those estimates.

218. On July 20, 2016, Exxon's Deepwater Supervisor of Upstream Development Planning suggested to colleagues that they "start thinking about how to incorporate [the new 2016 Corporate Plan proxy costs] into our modeling on a more permanent basis including for Reserves." The next day, the same supervisor noted that a "methodology" for incorporating these costs into reserves assessments would be determined at an August 2016 meeting.

219. A Senior Upstream Advisor's notes from a December 2016 meeting state that company reserves calculations and asset recoverability (*i.e.*, impairment evaluations, discussed below) were two areas with "unintended consequences" resulting from the proxy cost guidance in the 2016 Corporate Plan.

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220. Exxon's decision not to incorporate its publicly represented proxy cost into its company reserves and resource base assessments for many countries before mid-2016 rendered its representations relating to proxy costs and to company reserves and resource base assessments false and misleading.

4. Exxon's Decision Not to Apply a Proxy Cost to Company Reserves and Resource Base Assessments Is Material to Investors

221. An oil and gas company's non-proved reserves and resource base represent its sources of future growth. Exxon's reserves and resource base size are thus highly important to investors, and the company often publicizes its ability to exploit its large oil and gas resource base. For example, at a 2015 meeting with equity research analysts in New York City, then-CEO Rex Tillerson stated:

> The lifeblood of our business relies upon capturing the highest quality resources. . . . These resource captures add to our high-quality 92 billion oil-equivalent barrel resource base, which is the largest and most diverse resource base in the industry. . . . Simply put, our large resource base affords us the flexibility to select and develop the most attractive opportunities.

222. Similarly, Rex Tillerson described Exxon's "enormously large resource base" as a prerequisite to the company's "selective investment process," which he frequently touted to investors.

223. Exxon failed to disclose to investors that, in estimating the reserves and resource base volumes that are the "lifeblood" of the company, it decided not to apply the proxy costs that it publicly represented. Further, Exxon did not disclose that it was choosing to exclude such proxy costs just when they would have had particularly consequential effects, such as "large write-downs" or "significantly" reducing an asset's projected production life. This information

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would have been highly significant to investors from the perspectives of both climate change regulatory risk and the status of Exxon's resource base more generally.

224. Additionally, company reserves estimates are inputs that feed into Exxon's impairment assessments, which are discussed below. Exxon's decision not to include its publicly represented proxy cost in its company reserves assessments therefore caused Exxon to utilize assumptions for impairment evaluation purposes that were inconsistent with its public representations.

C. Exxon's Misrepresentations Regarding Its Use of a Proxy Cost in Evaluations for Impairment of Long-Lived Assets

225. Exxon flouted its representations to investors, as well as applicable accounting standards, by failing to apply proxy cost assumptions in its impairment evaluations that were consistent with the assumptions described in its public statements.

1. Impairment Evaluation Process

226. An impairment evaluation is the process mandated by accounting rules for determining whether the value of an asset is less than the value listed on a company's balance sheet. Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("ASC") 360 governs accounting for the impairment (*i.e.*, "write-down") of long-lived assets[7] under U.S. Generally Accepted Accounting Principles ("GAAP"). GAAP are accounting standards that companies reporting their financial results in the United States must follow.

[7] A long-lived asset is an asset that a company expects to retain for at least one year. Included within long-lived assets are a company's property, plant, and equipment, *i.e.*, its tangible property, which includes oil and gas-related assets. Both an impairment of a long-lived asset and a reduction in estimated reserves volumes can be referred to as a "write-down."

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227. ASC 360 sets out a three-step process for identifying and measuring the impairment of long-lived assets.

228. First, a company must assess whether indicators of potential impairment are present. Examples of such indicators, also known as "impairment triggers," include (i) a "current-period operating or cash flow loss combined with a history of operating or cash flow losses or a projection or forecast that demonstrates continuing losses associated with the use of a long-lived asset"; (ii) a "significant adverse change in legal factors or in the business climate that could affect the value of a long-lived asset . . . including an adverse action or assessment by a regulator"; and (iii) an "accumulation of costs significantly in excess of the amount originally expected for the acquisition or construction of a long-lived asset." Exxon has repeatedly represented to investors that it follows this accounting rule by "perform[ing] asset valuation analyses on an ongoing basis as a part of its asset management program" to determine whether impairment triggers are present.

229. Second, if one or more impairment triggers are present, a company must test the asset in question by comparing its "carrying value" as set forth on the company's balance sheet, and included within the "property, plant and equipment" portion of its financial statements, with the sum of the undiscounted future cash flows expected to result from the asset's use and disposition. If the sum of undiscounted future cash flows is less than the asset's carrying value, then that carrying value is not considered to be recoverable, and an impairment loss must be recognized and reported. Exxon has represented in its public filings that it has complied with its obligations under this accounting requirement.

230. To the extent that an impairment trigger is identified based on an analysis of an asset's projected future cash flows (*see* ¶ 228 above), the same cash flow analysis is used to

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determine whether the sum of undiscounted future cash flows is less than the asset's carrying value.

231. Third, if the sum of undiscounted future cash flows is less than a long-lived asset's carrying value, then a company must recognize and report an impairment loss equal to the difference between the carrying value and the fair value of the asset.[8] Exxon has represented to investors that it has complied with its obligations under this accounting requirement.

232. In developing future cash flow estimates to determine whether an impairment trigger exists or whether the carrying amount of an asset is recoverable, accounting standards state that a company "shall incorporate [its] own assumptions . . . and shall consider all available evidence." According to the accounting standards, "[t]he assumptions used in developing those estimates shall be reasonable in relation to the assumptions used in developing other information used by the [company] for comparable periods, such as internal budgets and projections, accruals related to incentive compensation plans, or information communicated to others." By contrast, if an asset is impaired, then the magnitude of the impairment is measured using fair value, which incorporates marketplace assumptions that may be different from the company's own assumptions.

2. Exxon's Representations

233. Exxon repeatedly represented that it follows GAAP accounting standards in preparing its public filings. Exxon specifically represented that it follows the accounting rules relating to impairment of long-lived assets set out in ASC 360.

[8] Fair value is based on market prices if an active market exists for the asset, and is otherwise based on a discounted cash flow analysis.

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234. Exxon also repeatedly represented to investors that it uses cost assumptions for impairment evaluations that are "consistent" with those it uses in its annual planning and budgeting process and in investment decisions. For example, in its 2015 Form 10-K, Exxon stated: "Cash flows used in impairment evaluations . . . make use of the Corporation's price, margin, volume, and cost assumptions developed in the annual planning and budgeting process, and are consistent with the criteria management uses to evaluate investment opportunities." Exxon made essentially the same representation the following year in its 2016 Form 10-K.

235. Exxon's assumptions concerning a proxy cost of GHG emissions are a quintessential "cost assumption" of the kind that Exxon represented it would apply in its impairment evaluations in a manner consistent with its investment decision-making criteria, planning and budgeting process, and public communications.

236. As set forth below, Exxon failed to act in a manner consistent with these representations or with GAAP requirements.

3. Exxon's Representations Were Inconsistent with Its Actual Practices

237. Exxon's senior management has expressed general opposition to taking impairments. For example, Exxon's then-CEO Rex Tillerson stated in an August 2015 interview:

> We don't do write-downs. I mean, if you look at our history, we do not write investments down. And we follow the accounting standards. But a lot of other people are very quick to want to write investments down because then it kind of improves things going forward. . . . [W]e're not going to bail you out by writing that down. That's kind of the message to our organization, and they all understand that.

238. Exxon management's reluctance to take impairments is also illustrated by a March 2014 email in which Exxon's Vice President for Investor Relations recommended that a

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footnote concerning asset impairment be removed from the company's *Managing the Risks* report (as indeed it was) because "[t]hat word gives the folks on the third floor heartburn." The "third floor" is a reference to Exxon's executive suite.

239. It was in this context of senior management's general opposition to taking impairments that Exxon deviated from its representations in the following ways.

a) Prior to 2016, Exxon Misled Investors by Not Incorporating Proxy Costs into Cost Projections for Impairment Evaluations

240. Contrary to its representations to investors, Exxon did not incorporate a proxy cost of GHG emissions in making cost projections for purposes of its impairment evaluations for any of its assets prior to its year-end 2016 evaluation. In particular, Exxon did not incorporate such costs in determining whether impairment triggers related to future cash flows existed, or whether the carrying value of its assets was recoverable.

241. This was no oversight. Exxon's Assistant Controller testified that he was aware in 2015 that the cost projections in Exxon's impairment evaluations did not incorporate a proxy cost of GHG emissions.

242. Exxon's knowing failure to apply a proxy cost to its projected GHG emissions in its impairment evaluations made its representations materially misleading. By using cost assumptions for its impairment evaluations that differed from, and were more favorable than, those it used for other business purposes and stated in its public communications, Exxon misled investors concerning the value of its assets.

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b) In 2016, Exxon Misled Investors by Incorporating Proxy Costs into Cost Projections for Impairment Evaluations in a Limited, Internally Inconsistent Manner

243. In its 2016 year-end impairment evaluations, Exxon incorporated a proxy cost of GHG emissions into some of its cost projections for the first time, but even then did so in a limited and internally inconsistent manner that rendered its impairment-related representations materially misleading.

244. First, Exxon applied existing, legislated costs associated with GHG emissions in conducting impairment evaluations for oil sands assets in Alberta rather than the proxy costs set out in its public statements and internal guidance. Exxon thus assumed that existing costs would remain flat indefinitely into the future rather than applying a proxy cost. As set forth above, this practice was contrary to Exxon's representations.

245. Second, Exxon assumed for purposes of its year-end 2016 impairment evaluations that any proxy cost of GHG emissions associated with natural gas production would be fully recovered in the market and passed through to customers via higher prices. As discussed above at ¶ 184, this means that Exxon was assuming that it would bear no costs resulting from the GHG emissions caused by its natural gas production, and that such emissions would have no effect on the value of its assets. This rendered misleading the company's representations that it applied assumptions in its impairment evaluations that were consistent with its business processes and public communications, such as its statements concerning the "consistent" application of a proxy cost of GHG emissions.

246. Exxon also applied this pass-through assumption in an internally inconsistent manner, as discussed above at ¶¶ 185-90. Exxon did not incorporate its pass-through assumption into its natural gas demand or price projections in 2016, even though recovery in the market depends on raising prices, meaning that Exxon effectively assumed that its proxy cost would

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simply disappear. Moreover, Exxon assumed in 2016 that it would be able to pass through to its customers all of its GHG-related costs at its older, more GHG-intensive assets, even though passing through those assets' high GHG-related costs would render Exxon's product uncompetitive on the market. Exxon recognized internally in 2017 that it would not be able to fully pass through GHG-related costs at those older assets, but never disclosed that it had applied an unrealistic pass-through assumption in 2016.

247. Additionally, Exxon's purported justification for its pass-through assumption was based on conditions in North America, not conditions in other regions, yet Exxon nonetheless applied its pass-through assumption for natural gas assets outside of North America in its 2016 impairment assessments.

248. Third, for its XTO natural gas assets, Exxon assumed in calculating proxy costs for impairment evaluation purposes that GHG emissions would decrease every year going forward. To the extent that such reductions occur, they would likely require upfront costs, such as the cost of purchasing and installing more efficient equipment. However, Exxon did not incorporate costs associated with achieving those GHG emissions reductions into its impairment evaluations for many of those assets. Exxon thus assumed, without justification, that the costs associated with its GHG emissions would decline significantly over time without any upfront expenditures by Exxon.

249. These undisclosed practices limited Exxon's application of a proxy cost of GHG emissions to the cost projections associated with its impairment evaluations in 2016. In doing so, they rendered misleading Exxon's representations that it followed the impairment-related accounting standards and applied assumptions to its impairment evaluations that were consistent

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with those set out in the company's public communications and applied for other business purposes.

4. Exxon's Impairment-Related Misrepresentations Are Material to Investors

250. Exxon's decision not to apply a proxy cost in its impairment analysis before 2016, and its decision to apply those costs in only a very limited manner in 2016, were particularly significant in light of the company's economic position. As oil and gas prices plunged in 2014 and 2015, Exxon took no price-related impairments, even as other major oil and gas companies did so. Indeed, Exxon stated publicly that it "does not view temporarily low prices or margins as a trigger event for conducting impairment tests." With oil and gas prices at low levels, Exxon relied on long-term cash flow models to forecast that certain of its assets, even if losing money currently and in the short-term, would ultimately generate cash flows that exceed their carrying values, and thus were not impaired or did not exhibit triggers for impairment evaluation.

251. Meanwhile, Exxon publicly represented that its proxy cost of GHG emissions rises over time, and assured investors that it was "confident that none of [its] hydrocarbon reserves are now or will become 'stranded'" and that "the company does not believe current investments in new reserves are exposed to the risk of stranded assets."

252. Exxon failed to disclose to investors that, despite this optimistic assessment, it did not even apply a proxy cost – the very mechanism the company purportedly used to manage climate change regulatory risk – to its GHG emissions in its impairment evaluations.

253. Exxon thus used long-term projections of profit to downplay short-term losses for impairment evaluation purposes. But it omitted from those long-term projections the proxy cost of GHG emissions that it had repeatedly touted to investors, all the while misleadingly assuring

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investors that its assets were not at risk of being stranded due to rising costs associated with GHG emissions.

254. Had Exxon applied its proxy cost of GHG emissions to the cost projections associated with its impairment evaluations in 2015 as it had represented, at least one of Exxon's major upstream assets in the United States would have been subject to a significant impairment.

255. Moreover, according to Exxon's own analysis, if the company had not applied a pass-through assumption to the projected GHG emissions associated with natural gas production for its impairment evaluations in 2016, that same major U.S. asset would have been subject to a significant impairment (if it were not impaired in 2015). In fact, this asset would have been subject to a significant impairment in 2016 even if Exxon had assumed that only half of the proxy cost of GHG emissions associated with natural gas production at that site could be passed through to consumers.

256. Additionally, an analysis by Exxon indicates that, had the company not assumed that it would be able to pass through proxy costs to consumers by raising natural gas prices outside of North America, at least one of Exxon's major European upstream assets would have been impaired in 2016.

257. Exxon's impairment practices are critical to an investor's understanding of the company's financial picture and attendant risks. The materiality of Exxon's impairment practices is underscored by Exxon management's emphasis on the significance of the company's relative lack of write-downs. For example, at a March 2016 meeting with equity research analysts in New York, then-CEO Tillerson distinguished Exxon from its competitors by stating that "[t]he quality of ExxonMobil's portfolio is also evident relative to significant, recent asset impairments by our competitor group." Investors' understanding of the quality of Exxon's

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portfolio was undermined by the company's misleading representations concerning its impairment evaluations.

D. Exxon's Representations About Its Consistent Application of Proxy Costs Were False and Misleading

258. Exxon management also failed to implement internal controls or processes to ensure consistent application of proxy costs.

259. As a result of this failure, Exxon's claims that it used a "consistent corporate planning basis" in applying its proxy cost to its investment decisions, business planning, and financial reporting, and that it "rigorously consider[ed] the risk of climate change in [its] planning bases and investments," were false and misleading.

260. In effect, Exxon erected a Potemkin village to ward off investor proposals and inquiries about climate change regulatory risk. The yearly *Outlook for Energy* reports, the 2014 *Managing the Risks* and *Energy and Climate* reports, and other publications presented a carefully constructed and rosy picture of Exxon's use of the publicly represented proxy cost to manage the economic risk posed by climate change. But investors were never told that, for years, Exxon (i) repeatedly and deliberately chose not to incorporate such costs at all, or did so only to a limited extent, and (ii) did not monitor whether those costs were actually applied consistently throughout the company.

261. The Exxon managers who had responsibility for GHG-related issues failed to ensure that the publicly represented proxy costs were consistently used in the company's investment decision-making, business planning, or financial reporting.

262. For example, Exxon's Manager of Environmental Policy and Planning testified that he was unaware of anyone in the company who verified that costs associated with GHG emissions were actually applied by the business units.

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263. Likewise, Exxon's GHG Manager testified that he did not review cash flow models to ensure that costs associated with GHG emissions were properly incorporated.

264. As a result of Exxon's failure to implement a process that matched its representations to investors, Exxon's publicly represented proxy costs were not consistently or rigorously applied, and were often not applied at all, in the company's business processes.

III. EXXON'S FRAUD REGARDING ITS USE OF A PROXY COST IN ITS DEMAND AND PRICE PROJECTIONS

265. Exxon also did not apply a proxy cost of GHG emissions as represented in projecting oil and gas demand, oil and gas prices, or the company's revenues.

A. Exxon's Representations

266. As set forth above, in its *Outlook for Energy* reports and other public statements, Exxon described its purported adoption of a rising proxy cost of GHG emissions as a means of incorporating its expectation of increasingly stringent climate regulations into the company's investment decisions, business planning, and financial reporting.

267. One aspect of Exxon's business decisions, planning, and reporting is the projection of its revenues, which are influenced by the company's expectations as to future oil and gas prices. Because future climate policies may influence demand for oil and gas, which affects oil and gas prices, Exxon represented that it applied a proxy cost of GHG emissions in estimating demand, just as it represented that it applied a proxy cost in projecting its own costs. For example, at a 2015 meeting held at the New York Stock Exchange, then-CEO Rex Tillerson told research analysts that the company's "demand projections anticipate government policies will impose rising costs on carbon dioxide emissions."

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268. Exxon represented that it applied proxy costs in estimating demand for oil and gas in all significant economic sectors, and that proxy costs were incorporated into the company's project economics.

269. However, Exxon's application of proxy costs to its demand, price, and revenue projections deviated from the company's representations in two important ways. First, contrary to its representations, Exxon did not apply its proxy cost in estimating demand in the transportation sector. Second, the projected oil and gas prices that Exxon applied in its economic models were set with little reference to the company's demand analysis. As a result, Exxon's publicly represented proxy costs did not meaningfully influence its revenue projections, rendering the company's proxy cost-related representations misleading.

B. Exxon's Failure to Apply Its Proxy Cost in Projecting Demand in the Transportation Sector

270. Exxon has made numerous representations that it applied its proxy cost broadly across relevant economic sectors, including the transportation sector.

271. For example, in its 2014 *Managing the Risks* report, Exxon stated that its proxy cost "seeks to reflect all types of actions and policies that governments may take over the Outlook period relating to the exploration, development, production, transportation or use of carbon-based fuels."

272. Exxon made the same or similar statements about the broad scope of its application of a proxy cost in numerous publications, including its 2014, 2015 and 2016 responses to CDP, its 2015 Corporate Citizenship Report, and its 2016 proxy statement to shareholders.

273. Likewise, in its 2013 *Outlook for Energy*, after describing its proxy cost, Exxon explained that "rising CO_2 costs will have a variety of impacts on . . . energy use in *every sector*

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and region within any given country." (Emphasis added.) In that report, Exxon projected that energy demand will increase over the coming decades, and that this includes "[g]rowth in transportation sector demand."

274. In practice, Exxon did not apply the publicly represented proxy cost to the transportation sector in projecting demand for oil and gas.[9] In May 2011, Exxon's Senior Energy Advisor explained internally that the company's proxy cost for future regulations was factored into demand projections only for "non-transport sectors." By failing to apply its proxy cost in the transportation sector as represented, Exxon overestimated demand for its products, because applying a cost of GHG emissions would have suppressed future demand for oil and gas. (*See* ¶ 186 above.)

275. The transportation sector is important to Exxon's overall business. Exxon projects that oil, which accounts for roughly half of the company's reserves and resource base, will remain the world's "leading energy source," and that the transportation sector will be a key source of growth in oil demand. For example, in its 2017 Form 10-K, Exxon stated that it expects global demand for liquid fuels to grow by about 20% by 2040, and that it expects about 60% of this growth to derive from the transportation sector. Indeed, the transportation sector accounts for more than half of worldwide demand for crude oil. Despite the importance of the transportation sector to its overall business, Exxon did not apply the publicly represented proxy cost to demand projections in that sector, and never disclosed its failure to do so to investors.

[9] Exxon also did not apply the publicly represented proxy cost in projecting demand in the asphalt and lubricants sectors.

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C. Exxon's Failure to Apply Its Proxy Cost in Projecting Oil and Gas Prices

276. Regardless of any limited role that proxy costs may have played in Exxon's oil and gas demand forecasts, that analysis did not meaningfully influence Exxon's oil and gas price projections.

277. Exxon's representations that it applied a proxy cost of GHG emissions in estimating future demand for oil and gas would have led a reasonable investor to conclude that Exxon's oil and gas price projections also took into account such proxy costs, because demand forecasts would necessarily impact prices.

278. However, in practice, Exxon did not set its oil and gas price projections, also called its Corporate Plan prices, by means of a formula or other quantitative process that incorporated its demand analysis. Rather, setting Exxon's Corporate Plan Prices was the responsibility of then-CEO Rex Tillerson, and he did so based primarily on factors independent of the company's demand analysis.

279. In a 2013 memorandum, the outgoing Planning Manager of Corporate Strategic Planning explained to his successor that Mr. Tillerson set price projections for crude oil at a level that would serve as a "signal" to the company:

> Be careful – the Brent price basis is [Tillerson]'s purview. Do not suggest that you know best. You can make a suggestion or proposal if asked, but be humble about it. **Rex's decision will be more about the signal that he wants to send the organization than about what we think the market will actually do**. (emphasis added)

280. The outgoing Planning Manager similarly explained in another transition memorandum:

> Note that Rex [Tillerson] does not like us to suggest a crude price basis – just review the facts and finish the meeting with a reminder of last year's crude price basis and let him decide what he wants to do.

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281. Rex Tillerson's practice of setting oil and gas price projections in order to send a particular signal – rather than setting those projections based on demand projections that incorporated proxy costs – means that any link between Exxon's proxy cost and its actual economic decision-making was severed.

282. In all of its public statements touting its proxy cost, Exxon never told investors that the proxy cost was disconnected from the company's actual business decisions, which renders those statements materially false and misleading.

283. The actual oil and gas price projections that were ultimately approved did not meaningfully incorporate Exxon's publicly represented proxy costs. Exxon's publicly represented proxy costs escalate in real (*i.e.*, pre-inflation) dollars over time. By contrast, the company's long-term oil and gas price projections in the Corporate Plan plateau in real terms within a few years of the date of the projection. For example, in its 2014 Corporate Plan, Exxon instructed its planners to assume that oil prices would plateau in 2015 and remain at that level indefinitely into the future. Similarly, in its 2015 Corporate Plan, Exxon instructed its planners to apply flat oil and gas prices from "2020+" in their economic projections. By contrast, Exxon's publicly represented proxy cost increased significantly in real terms after 2020, reaching $60 per ton in 2030 and $80 per ton in 2040.

284. In testimony, Exxon employees have been unable to explain how the fact that the Corporate Plan oil and gas prices plateau in real dollars within a few years of the projection date could be consistent with proxy costs that increase significantly over the coming decades, if the Corporate Plan prices had indeed meaningfully incorporated Exxon's proxy cost.

285. By failing to apply its proxy cost to demand projections in important sectors, and by failing to meaningfully incorporate such costs into its oil and gas price or revenue projections,

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Exxon misled investors about the extent to which the proxy cost it publicly described was incorporated into its business decisions.

IV. EXXON'S FRAUD REGARDING RISKS TO ITS BUSINESS POSED BY TWO DEGREE SCENARIO

286. In *Managing the Risks*, one of the two reports that Exxon published in March 2014 in response to shareholder concerns about climate risk, Exxon concluded that it was "confident that none of [its] hydrocarbon reserves are now or will become 'stranded,'" and that it "does not believe current investments in new reserves are exposed to the risk of stranded assets."

287. A key basis for this conclusion was Exxon's much-touted application of a proxy cost of GHG emissions, which purportedly ensured that Exxon's investment decisions, business planning, and financial reporting incorporated the company's projections of rising costs associated with GHG emissions due to increasingly stringent climate regulation.

288. A second important basis for Exxon's conclusion that it was not subject to stranded asset risk was an analysis that purportedly showed that governments would not impose the more stringent climate regulations that would be necessary to achieve a "two degree" scenario, and that governments thus would not impose additional regulations beyond those which Exxon claimed it already incorporated into its proxy costs. This analysis, which Exxon set out in *Managing the Risks* and in numerous other representations to investors, was materially misleading.

289. The "two degree" scenario refers to a scenario in which deep cuts in global GHG emissions are achieved to limit the increase in global temperature to below two degrees Celsius above pre-industrial levels. According to the Intergovernmental Panel on Climate Change ("IPCC"), a United Nations organization, the average GHG concentration in the atmosphere

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should not exceed 450 parts per million (ppm) to have a likely chance of keeping global warming below two degrees Celsius. The two degree scenario, also known as the "450 ppm" or "low carbon" scenario, has become an international climate policy goal.

290. Numerous observers have questioned whether the exploitation of much of the world's existing fossil fuel reserves would be consistent with the two degree scenario. For example, a November 2011 report by the nonprofit Carbon Tracker Initiative observed that achieving the two degree scenario would require that cumulative future GHG emissions be kept below a certain threshold – in effect, a "global carbon budget." The emissions from combusting existing fossil fuel reserves, however, would far exceed that budget. To achieve a two degree scenario, according to Carbon Tracker, only 20% of global reserves of oil, gas, and coal could be used, while the remaining 80% of fossil fuel reserves would be "subject to impairment" and "stranded." Similarly, the International Energy Agency ("IEA") has concluded that, under a two degree scenario, substantial oil and gas reserves may be stranded.

291. Exxon's investors have expressed concern that the company's oil and gas reserves are vulnerable to becoming stranded under a two degree scenario. In the 2014 shareholder resolution that resulted in Exxon's release of its *Managing the Risks* report, the shareholders asked the company to issue a report on its "strategy to address the risk of stranded assets presented by global climate change, including analysis of long and short term financial and operational risks to the company." As a result, in *Managing the Risks*, Exxon addressed the "concern expressed by some of [its] stakeholders" regarding "whether [] a 'low carbon scenario' could impact ExxonMobil's reserves and operations – *i.e.*, whether this would result in unburnable proved reserves of oil and natural gas." Exxon made clear that, by "low carbon scenario," it was referring to the two degree scenario.

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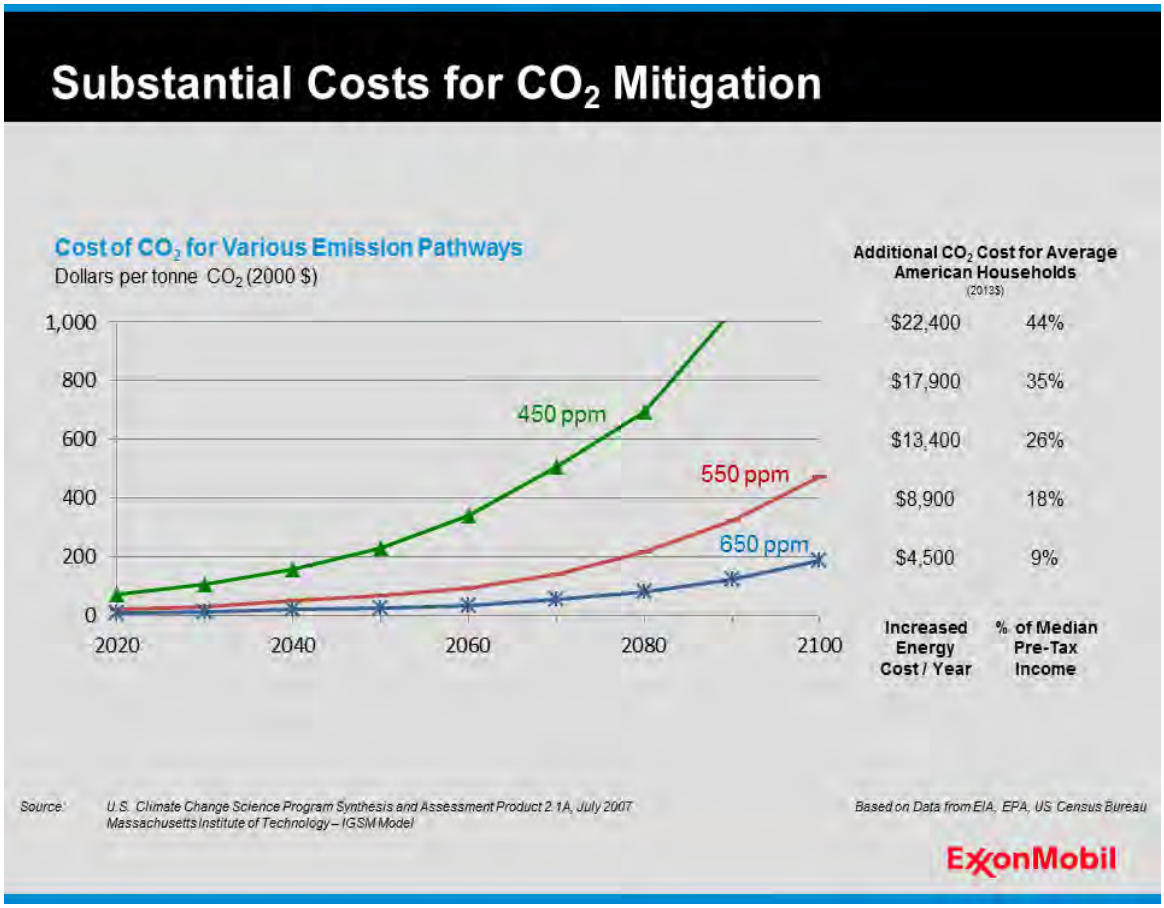
292. Exxon concluded in *Managing the Risks* that a two degree scenario is "highly unlikely" to occur because such a scenario would impose enormous CO_2 costs on consumers, and that Exxon therefore does not face a risk of its assets becoming stranded. This conclusion rested upon a deeply misleading analysis that was purportedly supported by government and academic data, which it was not.

A. Exxon's Representations

293. In support of its conclusion that a two degree scenario would impose enormous costs on consumers, Exxon presented the following graphic in its *Managing the Risks* report:



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294. The left section of this graphic sets out three pathways for dollars per ton of CO_2 costs over the years 2020 through 2100. According to the report, these pathways were "representative of scenarios with assumed climate policies that stabilize GHGs in the atmosphere at various levels, from 650 ppm CO2 down to 450 ppm CO2, a level approximating the level asserted to have a reasonable chance at meeting the 'low carbon scenario.'"

295. The report then stated: "In the right section of the [graphic], different levels of added CO2 are converted to estimated added annual energy costs for an average American family earning the median income. For example, by 2030 for the 450ppm CO2 stabilization pathway, the average American household would face an added CO2 cost of almost $2,350 per year for energy, amounting to about 5% of total before-tax median income. These costs would need to escalate steeply over time, and be more than double the 2030 level by mid-century."

296. The horizontal lines representing dollars per ton of CO_2 on the left side of the graphic align with the columns on the right side projecting CO_2 cost impacts for the average American household. For example, according to the graphic, under the two degree (450 ppm) scenario, the cost of CO_2 would rise to $1,000 per ton by 2090. According to the graphic, this corresponds to increased yearly energy costs of $22,400, or 44% of median pre-tax income.

297. Exxon asserted that the three "pathways" in this graphic were taken from the Massachusetts Institute of Technology's Integrated Global Systems Model ("MIT IGSM model") used in the 2007 U.S. Climate Change Science Program study ("2007 U.S. Report"),[10] and that the household cost analysis was "[b]ased on data from" three government agencies: the U.S. Energy Information Administration, the EPA, and the U.S. Census Bureau.

[10] The MIT IGSM model was one of three models presented in the 2007 U.S. Report, and it projected higher carbon prices under the two degree scenario than either of the other models.

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B. Exxon's Representations Were Misleading Because They Were Based on Assumptions Exxon Knew Were Unsupported and Unreasonable

298. Exxon's analysis of the CO_2 costs likely to result from a two degree scenario relied on unreasonable and undisclosed assumptions that resulted in a gross overstatement of projected costs under such a scenario. Further, Exxon falsely implied that its analysis was supported by reputable academic and government sources, which it was not.

299. First, Exxon's analysis assumed that American household energy use, the U.S. energy mix (*i.e.*, sources of energy), and attendant GHG emissions would remain at the same level through 2100, even if governments imposed climate policies sufficient to achieve a two degree scenario. This assumption, which is not supported by any of the sources upon which Exxon purported to rely, is completely unreasonable. The very point of climate regulation intended to achieve a two degree scenario is to reduce GHG emissions, which involves a reduction in energy consumption and a shift to cleaner sources of energy, such as renewables. Indeed, all three of the climate models presented in the 2007 U.S. Report, including the MIT IGSM model upon which Exxon purportedly relied, found that reductions in energy consumption "play an important role in all of the stabilization scenarios," along with displacement by renewables. Yet Exxon, having determined that certain carbon costs would be necessary to achieve a two degree scenario, made the further undisclosed assumption that imposing those costs would not actually result in a two degree scenario after all, but that households would instead continue to consume energy and emit GHGs at exactly the same rate as before. Because this scenario would require consumers to pay extremely high energy costs, reaching nearly half of median pre-tax income by 2090, Exxon concluded that governments would not impose regulations consistent with a two degree scenario in the first place.

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300. Second, in calculating the percentage of median pre-tax income that would be consumed by these energy cost projections, Exxon made the undisclosed assumption that American household income would remain the same through 2100 as it was in 2013. None of the data sources cited by Exxon projected that American household income would remain flat through 2100, and such an assumption is at odds with Exxon's projections of robust GDP growth elsewhere in *Managing the Risks*, as well as GDP growth projections in the MIT IGSM model.

301. Third, in projecting carbon costs under a two degree scenario, Exxon made the undisclosed assumption that the revenues associated with carbon taxes would simply disappear, and would not be returned to American households in any fashion, such as through cuts to other taxes or improvements in government services. Yet elsewhere in *Managing the Risks*, Exxon recognized that the revenues associated with carbon taxes would not disappear, and proposed that carbon taxes should be "revenue-neutral" (*i.e.*, should be offset by reducing other taxes). Indeed, Exxon was aware of MIT research which it summarized internally as follows: "consumers may also *benefit* from a carbon tax policy, depending upon how the government redistributes revenues from carbon taxes or allowance auctions."

302. By listing the MIT IGSM model as a source, Exxon implied that its estimates of additional CO_2 costs for average American households were consistent with that model. This was not true. While the carbon price projections on the left side of the graphic were derived from MIT's IGSM model, the household carbon cost projections on the right side of the graphic were calculated by Exxon. These cost projections were inconsistent with the MIT IGSM model in that they overstated projected costs by assuming no reduction in energy use or GHG emissions under a two degree scenario, and by assuming no growth in American household income through

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2100. Exxon's projections were also inconsistent with other MIT research known to Exxon concerning the use of carbon tax revenue.

303. Following the release of the *Managing the Risks* report, an MIT economist who worked on the IGSM model warned Exxon that its statements as to CO_2 cost impacts on the average American household under a two degree scenario were misleading. Specifically, in July 2015, the MIT economist wrote to Exxon to discuss "the cost of climate policy in your shareholders report attributed to the IGSM results." The MIT economist told Exxon that these numbers were "not numbers we report in that study" and "were extremely high," "especially the 40+%" figure for the percentage of pre-tax median income projected to be consumed by energy costs under the two degree scenario. The MIT economist advised Exxon that, if this figure represented undiscounted costs as a percentage of income (as it does), then the analysis that Exxon presented was "misleading" in that it overstated the costs associated with a two degree scenario.

304. Ignoring this warning as to the misleading nature of the graphic, Exxon continued to feature *Managing the Risks* on its corporate website, and its representatives continued to make numerous presentations to investors and other interested parties through at least June 2016 that included this misleading graphic.

305. For example, in November 2015, Exxon's Manager of Environmental Policy and Planning gave presentations which included this graphic. His talking points concluded that Exxon did not consider the 450 ppm scenario to be a "realistic, meaningful or practical case on which to plan our business," and that "MIT economists agree." Those talking points also stated: "[a]t $200/ton, we are talking over $4,000 per year added cost, or nearly 10% of median income." This purportedly direct connection between the carbon costs described on the left side

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of the graphic and the effects on household income on the right side was misleading for the reasons described above.

306. Exxon's investors paid close attention to the company's statements on this issue. For example, in a 2015 analysis of Exxon's climate-related risks, Bank of America Merrill Lynch took note of Exxon's view that a two degree scenario is "highly unlikely" and "would require CO_2 prices to rise above $200 per ton by 2050."

307. Likewise, in a 2016 internal analysis of Exxon's climate change risks, Vanguard stated that although Exxon's portfolio does not appear to be "structured to withstand" a two degree scenario, Exxon's analysis concluded that such a scenario is unlikely.

308. Having concluded that a two degree scenario is unlikely to occur, Exxon failed to conduct any meaningful analysis of the company's exposure to economic stranding in such a scenario, including, for example, whether the company's reserves would be cost competitive to develop and produce, as compared to competitors' reserves.

V. EXXON'S FRAUD CAUSED SIGNIFICANT HARM

309. Investors in Exxon's equity and debt securities were harmed, and are still being harmed, as a result of Exxon's false and misleading statements and omissions of material fact.

310. Exxon did not incorporate climate change regulatory risk into its business processes in the manner it represented to investors. This failure resulted in the company having a materially different risk profile than it would have had if it had actually incorporated climate change regulatory risk into its business in the manner it represented to investors.

311. In particular, Exxon's investments and asset valuations were, and remain, riskier than investors were led to believe, because the company did not apply the publicly represented proxy cost to its investment decisions, business planning, company reserves and resource base

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assessments, impairment evaluations, and demand and price projections in a manner consistent with its representations.

312. Further, Exxon faced and continues to face greater risk associated with a two degree scenario than it represented to investors.

313. As a result, Exxon's securities are overvalued, and investors purchased or held Exxon securities at artificially inflated prices.

314. Exxon's failure to abide by its representations has also had the effect of moving the company's investments toward more GHG-intensive assets, and away from emissions-reducing investments. As a result, Exxon has brought and will bring more GHG-intensive oil and gas to market, such as its GHG-intensive oil sands assets, than it would have if it had abided by its representations. This trend is borne out by the increasing GHG intensity of Exxon's upstream assets over the past decade. In addition to having negative environmental consequences, the increased GHG intensity of Exxon's assets exposes the company to greater risk from climate change regulation than Exxon represented to investors.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

(Martin Act Securities Fraud – General Business Law §§ 352 *et seq*.)

315. The State repeats and re-alleges the paragraphs above as if fully stated herein.

316. Exxon's acts and practices alleged herein, including the company's misrepresentations and omissions concerning (i) its use of proxy costs in its cost projections, including in investment decision-making, business planning, oil and gas reserves and resource base assessments, and impairment evaluations; (ii) its consistent application of proxy costs; (iii) its use of proxy costs in its demand and price projections; and (iv) the risks to its business posed

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by a two degree scenario, violated General Business Law §§ 352 *et seq.*, insofar as such acts, practices, misstatements, and omissions employed deception, misrepresentations, concealment, suppression, fraud, false pretenses, and false promises, and employed devices, schemes, and artifices to defraud, regarding the issuance, distribution, exchange, sale, negotiation, or purchase of securities within or from this state.

SECOND CAUSE OF ACTION
(Persistent Fraud and Illegality – Executive Law § 63(12))

317. The State repeats and re-alleges the paragraphs above as if fully stated herein.

318. Exxon's acts and practices alleged herein, including the company's misrepresentations and omissions concerning (i) its use of proxy costs in its cost projections, including in investment decision-making, business planning, oil and gas reserves and resource base assessments, and impairment evaluations; (ii) its consistent application of proxy costs; (iii) its use of proxy costs in its demand and price projections; and (iv) the risks to its business posed by a two degree scenario, violate § 63(12) of the Executive Law, in that Exxon engaged in repeated fraudulent or illegal acts or otherwise demonstrated persistent fraud or illegality, and repeatedly violated the Martin Act in the carrying on, conducting, or transaction of business within New York.

319. Exxon's repeated fraudulent acts and persistent fraud include devices, schemes, and artifices to defraud, and deception, misrepresentations, concealment, suppression, false pretenses, and false promises.

THIRD CAUSE OF ACTION
(Actual Fraud)

320. The State repeats and re-alleges the paragraphs above as if fully stated herein.

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321. As alleged herein, Exxon made material misrepresentations and omitted to disclose material facts concerning (i) its use of proxy costs in its cost projections, including in investment decision-making, business planning, oil and gas reserves and resource base assessments, and impairment evaluations; (ii) its consistent application of proxy costs; (iii) its use of proxy costs in its demand and price projections; and (iv) the risks to its business posed by a two degree scenario.

322. As alleged herein, Exxon made those misrepresentations and omitted to disclose material facts intentionally, knowingly, or recklessly.

323. Upon information and belief, investors did in fact rely on Exxon's misrepresentations and omissions in making investment decisions and such reliance was justifiable and reasonable.

324. Those misrepresentations and omissions of material facts as alleged herein constitute actual fraud under New York common law.

325. Exxon's investors suffered damages in connection with purchasing and retaining securities that were the direct and proximate result of Exxon's fraud.

FOURTH CAUSE OF ACTION
(Equitable Fraud)

326. The State repeats and re-alleges the paragraphs above as if fully stated herein.

327. As alleged herein, Exxon made material misrepresentations and omitted to disclose material facts concerning (i) its use of proxy costs in its cost projections, including in investment decision-making, business planning, oil and gas reserves and resource base assessments, and impairment evaluations; (ii) its consistent application of proxy costs; (iii) its use of proxy costs in its demand and price projections; and (iv) the risks to its business posed by a two degree scenario.

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328. Upon information and belief, investors did in fact rely on Exxon's misrepresentations and omissions in making investment and other business decisions and such reliance was justifiable and reasonable.

329. Those misrepresentations and omissions of material facts as alleged herein constitute equitable fraud under New York common law.

PRAYER FOR RELIEF

WHEREFORE, the State requests that this Court grant the following relief:

A. Enjoining Exxon from engaging in any ongoing and future violations of New York law;

B. Directing a comprehensive review of Exxon's failure to apply a proxy cost consistent with its representations, and the economic and financial consequences of that failure;

C. Awarding damages caused, directly or indirectly, by the fraudulent and deceptive acts and repeated fraudulent acts and persistent illegality complained of herein, and applicable pre-judgment interest;

D. Awarding disgorgement of all amounts obtained in connection with or as a result of the violations of law alleged herein, all moneys obtained in connection with or as a result of the fraud alleged herein, and all amounts by which Exxon has been unjustly enriched in connection with or as a result of the acts, practices, misrepresentations, and omissions alleged herein;

E. Awarding restitution of all funds obtained from investors in connection with or as a result of the fraudulent and deceptive acts complained of herein;

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F. Awarding such other and further equitable relief as may be necessary to redress Exxon's violations of New York law and its fraudulent and deceptive acts complained of herein;

G. Awarding the State its costs and fees, including attorneys' fees as provided by law; and

H. Granting such other and further relief as may be just and proper.

Dated: October 24, 2018
New York, New York

BARBARA D. UNDERWOOD
Attorney General of the State of New York

By: _____
Jonathan Zweig
Assistant Attorney General
Investor Protection Bureau
(212) 416-8222
jonathan.zweig@ag.ny.gov

By: _____
Mandy DeRoche
Assistant Attorney General
Environmental Protection Bureau
(212) 416-8446
mandy.deroche@ag.ny.gov

Steven Glassman
Special Counsel
Economic Justice Division

Rita Burghardt McDonough
Assistant Attorney General
Investor Protection Bureau

Matthew Eisenson
Special Assistant Attorney General

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Benjamin Cole
Project Attorney

Joanna Zwosta
Project Attorney

Office of the Attorney General
28 Liberty Street
New York, New York 10005

Attorneys for Plaintiff
People of the State of New York

Of Counsel:

Manisha M. Sheth
Executive Deputy Attorney General
Economic Justice Division

Lemuel M. Srolovic
Bureau Chief
Environmental Protection Bureau

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : CIVIL TERM PART 61

----------X

PEOPLE OF THE STATE OF NEW YORK,
By BARBARA D. UNDERWOOD,
Attorney General of the State of New York,
Plaintiff,

- against -

EXXON MOBIL CORPORATION,
Defendant.

----------X

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60 Centre Street
New York, New York
November 7, 2018

BEFORE:

THE HON. BARRY R. OSTRAGER, J.S.C.

APPEARANCES:

FOR THE PLAINTIFF:

BARABARA D. UNDERWOOD
STATE OF NEW YORK
Office of the Attorney General
28 Liberty Street
New York, New York 10005
BY: MANISHA M. SHETH, Executive Deputy AG
JONATHAN ZWEIG, Assistant AG
RITA BURGHARDT McDONOUGH, Assistant AG

FOR THE DEFENDANT:

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP
1285 Avenue of the Americas
New York, New York 10019
BY: THEODORE V. WELLS, JR., ESQ.
DANIEL J. TOAL, ESQ.

JACK L. MORELLI
Senior Court Reporter

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PROCEEDINGS

THE COURT: All right, in the Exxon case. Let me preface my remarks this afternoon by noting that although there are seven justices of the Commercial Division, at this time and for a significant period of time prior to today, only five justices of the Commercial Division are in the wheel, including me. None of the other four justices to whom this case could conceivably be assigned have presided over seven hearings in proceedings that generated 434 docket entries. None of the other four justices read almost 500 pages of pretrial submissions or investigation related submissions that the parties made to the Court, which resulted in the Court supervising the production of a half million documents by Exxon Mobil to the New York AG.

So, against that background I have a very elegant solution to the New York Attorney General's problems. I am prepared to liquidate all holdings that I have in Exxon Mobil by the time the sun goes down tomorrow, assuming that the New York Attorney General has no further concerns about the Court's impartiality and no further concerns about the propriety of proceeding with this case in accordance with the general schedule that I outlined to the parties, with no objection whatsoever from the New York Attorney General's office last August.

I'll hear from the New York Attorney General's

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office.

MS. SHETH: Your Honor, thank you for that proposed solution. Manisha Sheth, on behalf of the Office of the Attorney General. Let me begin by saying that we fully appreciate all the care, the time and the attention that Your Honor has been --

THE COURT: I don't want any reference to the historic efforts that I invested in this case. I've told you that I'm prepared to divest all of my holdings in Exxon Mobil by the close of business tomorrow. Even though under well-settled principles of law I have no obligation to do so.

So I'm simply asking you, yes or no, is that satisfactory to the New York Attorney General's office?

MS. SHETH: Your Honor, we appreciate --

THE COURT: Yes or no.

MS. SHETH: Your Honor, I don't believe it's a yes or no. I can't answer that yes or no at this time because I don't have enough --

THE COURT: What would prevent you from answering that question yes or no? You appeared before me seven times. You were told last August that we were going to trial in 2019. You caused me to make Exxon Mobil produce a half million documents. You caused me to read close to 500 pages of briefs, not to mention a number of

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affidavits. You completely waived any conflict associated with my ownership of Exxon Mobil stock expressly the first day that you appeared before me and each time that you came back to appear before me.

MS. SHETH: Your Honor, respectfully, we don't believe that we have waived. The reason I can't answer your question yes or no is because the rules provide for two economic interests. The first is the interests in the party. Your Honor is telling us that you're prepared to sell Your Honor's interest in the party. That resolves one portion of the economic interest in the --

THE COURT: Yes, and there are myriad cases that say that the conflict that you waived, which isn't a conflict any more anyway, can be cured by divesture. So what's the second point that you have?

MS. SHETH: The second point is that there is a second economic interest and that is the interest of the Court in the subject matter in controversy. So although that Your Honor may disavow, may get rid of the Exxon stock, what we don't know if Your Honor held the stock during a time period when we would allege that the stock price was inflated. If that is the case, see, if Your Honor purchased the stock during the relevant time period of the alleged scheme which goes from 2000 to the present, that Your Honor still could be part of the class of

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individuals who would recover, who would benefit from any recovery. So that's the part where I don't --

THE COURT: This is patent nonsense and I'm not going to abide it.

Do you have anything to say, Mr. Wells?

MR. WELLS: No, Your Honor. But I assume if this is not too intrusive and to the extent the New York AG has some concern that in theory you might be part of some class even though you sell, and to the extent that you were part of some class, I assume that you would relinquish any --

THE COURT: I relinquish any interest I have whatsoever.

MR. WELLS: Future or past.

THE COURT: From this time the sun goes down tomorrow in perpetuity.

MR. WELLS: Or in the past. That seems to be what she's talking about.

THE COURT: Is that what you're talking about?

MS. SHETH: That is what I'm talking about.

THE COURT: If there is a class action and by virtue of my historic holdings I am entitled to collect 33 cents, I'm going to not collect the 33 cents. Is that satisfactory to the New York Attorney General?

MS. SHETH: Your Honor, the way that we read the

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rule is, that Rule 100.3, E sub (1) sub (23) provides security of divestment is available where the judge has an economic interest in the party. But the rule is cited when the interest is in the subject matter of the controversy.

THE COURT: I have no interest in the subject matter of the controversy. We are dealing with a situation in which you expressly waived my presiding over the case even if I continue to hold the stock. Now, this is gamesmanship and judge shopping and I'm not going to abide it.

MS. SHETH: Your Honor, what I was going to finish saying was, that the rule is silent as to the economic interest in the subject matter of the proceeding.

That being said, if Your Honor is, we are willing to consider that. I think that we need to get --

THE COURT: I'm not interested in what you're willing to consider. Your motion to disqualify me is denied. Even though the Court has no obligation whatsoever to divest itself of Exxon Mobil shares because you waived my holding in Exxon Mobil, I'm going to divest myself in all interests in Exxon Mobil from tomorrow to the end of time. Understood?

MS. SHETH: We understand, Your Honor.

THE COURT: Then you can take this to the

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Appellate Division. I would like to see an opinion finding that after your waive and after my voluntary undertaking to divest myself of shares I do not have to divest myself because you waived my holding this stock, you're still quibbling.

MS. SHETH: Your Honor, with respect, we are not quibbling. We don't submit, we don't agree that our waiver was a waiver as to all cases. There is a distinction between the case that was to be an enforcement proceeding and the instant plenary action; they are not the same.

THE COURT: I don't know what you're talking about and I don't think that anybody in this room does either. You waived my involvement in this case after I disclosed to you the first 30 seconds the case was before me.

MS. SHETH: I'm sorry, Your Honor. Go ahead.

THE COURT: And I presided over seven different hearings without objection. I told you in August that when the case ceases to be an enforcement proceeding and seeks to be a formal complaint I will give you a 2019 trial. That is what I'm going to do. You'll meet with my court attorney and you will work out a preliminary conference order. Your motion to disqualify me is denied and you have an appealable order. I will divest myself of

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any Exxon Mobil shares that I beneficially own.

MS. SHETH: May we?

THE COURT: I'm sorry?

MS. SHETH: May we take a five minute recess so I can just consult with my colleagues?

THE COURT: Yes.

MS. SHETH: Thank you, Your Honor.

(Short recess taken)

MS. SHETH: Thank you for Your Honor's indulgence. I wanted to answer more directly Your Honor's question. Assuming that Your Honor divest Your Honor's shares in Exxon as well as any interest in the proceeding in this instant plenary filed action against Exxon, the AG's office is prepared to proceed with Your Honor as the trial court judge and we do not intend to seek an appeal of Your Honor's ruling.

THE COURT: All right, thank you.

MS. SHETH: Then in addition with regard to --

THE COURT: I'm sorry?

MS. SHETH: With regard to our proceeding in this action, we would propose that we contact the defense counsel, work out a schedule for the pretrial phase of this case and approach Your Honor at the appropriate time with the preliminary conference.

THE COURT: All right, that is satisfactory to

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the Court. It is my intention for the benefit of the People of the State of New York, for the New York Attorney General to have a trial of this action in 2019.

Yes, Mr. Wells?

MR. WELLS: There is a reference just now to the pretrial conference. I know that we have a date on the calendar to appear before Your Honor on November 14th. Is that the date that you were referring to?

MS. SHETH: That would be fine with the AG.

MR. WELLS: I just want to know is November 14th still on? That date is fine.

THE COURT: If you can work things out with the Attorney General's office between now and the 14th, we'll proceed on the 14th. If you can't work things out between now and the 14th you'll let the Court know and we'll have a different date before the end of 2018.

MR. WELLS: Okay. I would suggest, Your Honor, that we hold the appearance for November 14th regardless of whether we're able to work out every point.

THE COURT: There is no point of you coming here on the 14th if you haven't agreed on how you wish to proceed. Unless there is an issue that requires guidance from the Court. But as I recall, the New York Attorney General's office has taken pretrial examinations of at least 19 custodians of documents. Has reviewed something

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on the order of a half million documents in connection with its investigation into this matter. So I assume that the New York Attorney General is in a position to work with you on a meet and confer basis, a targeted schedule that will get this case ready for trial by the end of 2019.

MR. WELLS: Your Honor, first, Exxon Mobil wants to try the case in 2019 and we are delighted that you're going to move the case. What I'm concerned about and I think that the New York AG may have the same concerns in order to get the case trial ready for 2019, if we are not able to reach agreement on the meet and confer, I would prefer that we not start a whole motion schedule around that we can't agree to, but come here on November 14th.

THE COURT: All right, you'll come back here on November 14th. But between now and November 14th I'm requesting in the most polite and emphatic terms, that you use the week to accomplish something constructive.

MR. WELLS: I promise. I think that it will help both sides, I think that it will help both sides if we have a date where we have to come back here if we have not been able to get there. I promise we're going to work out to come back with an expedited trial schedule.

THE COURT: If anything comes back between now and then you demonstrated in the past you know how to

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reach chambers.

MR. WELLS: Yes, Your Honor. Thank you.

MS. SHETH: Thank you.

* * *

CERTIFIED TO BE A TRUE AND ACCURATE TRANSCRIPT.

JACK L. MORELLI, CM, CSR

SO ORDERED
BARRY R. OSTRAGER, J.S.C.

- J L M -

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK, by BARBARA D. UNDERWOOD, Attorney General of the State of New York, Plaintiff, -against- EXXON MOBIL CORPORATION, Defendant.	Index No. 452044/2018 IAS Part 61 Hon. Barry R. Ostrager **ANSWER**

Defendant Exxon Mobil Corporation ("Defendant" or "ExxonMobil"), through its undersigned attorneys, responds to Plaintiff's Complaint as follows:

Defendant denies all allegations, except as specifically admitted. Any factual averment admitted herein is admitted only as to the specific facts and not as to any conclusion, characterization, implication, innuendo or speculation contained in any averment or in the Complaint as a whole. Headings in the Complaint are not allegations and therefore do not require a response.

1. Defendant denies the allegations in Paragraph 1.

2. Defendant denies the allegations in Paragraph 2, except admits that ExxonMobil applies a proxy cost to model projected energy demand and, where appropriate, also applies a GHG cost when seeking funding for capital investments.

3. Defendant denies the allegations in Paragraph 3.

4. Defendant denies the allegations in Paragraph 4.

5. Defendant denies the allegations in Paragraph 5.

6. Defendant denies the allegations in Paragraph 6.

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7. Defendant denies the allegations in Paragraph 7.

8. Defendant denies the allegations in Paragraph 8.

9. Defendant denies the allegations in Paragraph 9.

10. Defendant denies the allegations in Paragraph 10.

11. Defendant denies the allegations in Paragraph 11.

12. Defendant denies the allegations in Paragraph 12, and refers the Court to the 2015 economic forecast referenced by Plaintiff for its contents.

13. Defendant denies the allegations in Paragraph 13.

14. Defendant denies the allegations in Paragraph 14.

15. Defendant denies the allegations in Paragraph 15.

16. Defendant denies the allegations in Paragraph 16.

17. Defendant denies the allegations in Paragraph 17.

18. Defendant denies the allegations in Paragraph 18, and refers the Court to the referenced 2016 Vanguard assessment for its contents.

19. Defendant denies the allegations in Paragraph 19.

20. Defendant denies the allegations in Paragraph 20.

21. The allegations in Paragraph 21 contain Plaintiff's description of its own claims, to which no response is required. To the extent a response is required, Defendant denies the allegations in Paragraph 21.

22. Defendant admits the allegations in Paragraph 22.

23. Defendant denies the allegations in Paragraph 23, except admits that the Attorney General is the chief law enforcement officer of the State of New York.

24. Defendant denies the allegations in Paragraph 24.

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25. Defendant admits the allegations in Paragraph 25.

26. Defendant admits the allegations in Paragraph 26.

27. Defendant admits the allegations in Paragraph 27.

28. Defendant denies the allegations in Paragraph 28, except admits that ExxonMobil operates a number of subsidiaries.

29. Defendant denies the allegations in Paragraph 29, except admits that ExxonMobil has an upstream business segment, a downstream business segment, and a chemicals business segment.

30. Defendant admits the allegations in Paragraph 30.

31. Defendant denies the allegations in Paragraph 31.

32. Defendant denies the allegations in Paragraph 32.

33. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 33, except admits that the Earth's climate system has experienced changes due to human activities.

34. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 34, except admits that GHGs can trap heat and energy, and admits that GHG emissions have increased since the start of the industrial era.

35. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 35, except admits that increasing GHG emissions may result in adverse global impacts.

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36. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 36, and refers the Court to the United Nations Framework Convention on Climate Change for its contents.

37. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 37, and refers the Court to the Paris Agreement for its contents.

38. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 38, and refers the Court to the Paris Agreement for its contents.

39. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 39, and refers the Court to the U.S. Environmental Protection Agency regulations referenced by Plaintiff for their contents.

40. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 40, and refers the Court to the state and municipal regulations and commitments referenced by Plaintiff for their contents.

41. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 41.

42. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 42, and refers the Court to the World Bank report referenced by Plaintiff for its contents.

43. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 43.

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44. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 44, and refers the Court to the Alberta and British Columbia carbon tax regimes referenced by Plaintiff for their contents.

45. Defendant denies the allegations in Paragraph 45, except admits that ExxonMobil has investments in Alberta.

46. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 46, and refers the Court to the Specified Gas Emitters Regulation and the Carbon Competitive Incentive Regulation referenced by Plaintiff for their contents.

47. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 47, and refers the Court to the Alberta carbon tax referenced by Plaintiff for its contents.

48. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 48, except admits that some of ExxonMobil's shareholders are long-term investors.

49. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 49, except admits that approximately 54% of ExxonMobil stock is held by institutional investors, and admits that ExxonMobil's top three institutional shareholders are Vanguard, BlackRock, Inc., and State Street Corporation.

50. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 50, except admits that as of June 2018, the New York State Common Retirement Fund held ExxonMobil shares, admits that,

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as of June 2018, the New York State Teachers Retirement System held ExxonMobil shares with a value over $500 million, admits that, as of May 2018, New York City Pension Funds held ExxonMobil shares, and admits that pension funds in others states hold ExxonMobil shares.

51. Defendant denies the allegations in Paragraph 51, and refers the Court to the article referenced by Plaintiff for its contents.

52. Defendant denies the allegations in Paragraph 52, and refers the Court to the statements of ExxonMobil and Mr. Tillerson referenced by Plaintiff for their contents.

53. Defendant denies the allegations in Paragraph 53, and refers the Court to the statements of Vanguard referenced by Plaintiff for their contents.

54. Defendant denies the allegations in Paragraph 54, and refers the Court to the comments of ExxonMobil's Vice President of Corporate Strategic Planning referenced by Plaintiff for their contents.

55. Defendant denies the allegations in Paragraph 55.

56. Defendant denies the allegations in Paragraph 56, and refers the Court to the email referenced by Plaintiff for its contents.

57. Defendant denies the allegations in Paragraph 57, and refers the Court to the statements referenced by Plaintiff for their contents.

58. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 58.

59. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 59.

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60. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 60, and refers the Court to the 2014 J.P. Morgan Chase & Co. Environmental and Social Policy Framework and 2017 report by J.P. Morgan Asset Management referenced by Plaintiff for their contents.

61. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 61, and refers the Court to the 2016 Morgan Stanley Smith Barney LLC report referenced by Plaintiff for its contents.

62. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 62, and refers the Court to the 2017 State Street Global Advisors, Inc. document referenced by Plaintiff for its contents.

63. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 63, and refers the Court to the 2013 and 2015 HSBC Global Research reports referenced by Plaintiff for their contents.

64. Defendant denies the allegations in Paragraph 64, and refers the Court to the document referenced by Plaintiff for its contents.

65. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 65, and refers the Court to the 2014 PwC survey referenced by Plaintiff for its contents.

66. Defendant denies the allegations in Paragraph 66, except admits that certain ExxonMobil shareholders have submitted proposals requesting that ExxonMobil take certain actions concerning climate change, and that these proposals are at times included in ExxonMobil's annual proxy statement.

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67. Defendant denies the allegations in Paragraph 67, except admits that certain ExxonMobil shareholders have sponsored resolutions requesting that ExxonMobil adopt goals for reducing GHG emissions.

68. Defendant denies the allegations in Paragraph 68, and refers the Court to any referenced shareholder proposals for their contents.

69. Defendant denies the allegations in Paragraph 69, and refers the Court to any referenced shareholder proposals for their contents.

70. Defendant denies the allegations in Paragraph 70, except admits that on January 21, 2014, ExxonMobil wrote to the U.S. Securities and Exchange Commission requesting that ExxonMobil be permitted to exclude from its 2014 proxy statement the Arjuna and Christopher Reynolds Foundation proposals.

71. Defendant denies the allegations in Paragraph 71, except admits that on March 31, 2014, ExxonMobil released a report titled "Energy and Carbon – Managing the Risks" (the "MTR Report"), and that the proponents of the shareholder proposal referenced by Plaintiff withdrew their shareholder proposal when ExxonMobil indicated it would release the MTR Report.

72. Defendant denies the allegations in Paragraph 72, except admits that on March 31, 2014, ExxonMobil released a report titled "Energy and Climate" (the "E&C Report"), and that the proponents of the shareholder proposal referenced by Plaintiff withdrew their shareholder proposal when ExxonMobil indicated it would release the E&C Report.

73. Defendant denies the allegations in Paragraph 73, except admits that in 2016 the New York State Common Retirement Fund and the Church of England co-filed a

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proposal that ExxonMobil publish an annual assessment of the long-term impacts of global climate change policies, and that certain shareholders voted in favor of the proposal.

74. Defendant denies the allegations in Paragraph 74, except admits that in 2017 the New York State Common Retirement Fund and the Church of England submitted a proposal that ExxonMobil publish an annual assessment of the long-term impacts of global climate change policies, and that certain shareholders voted in favor of the proposal.

75. Defendant denies the allegations in Paragraph 75.

76. Defendant denies the allegations in Paragraph 76.

77. Defendant denies the allegations in Paragraph 77, except admits that ExxonMobil applies a proxy cost of carbon to model a wide variety of potential policies that might be adopted by governments to help stem GHG emissions in evaluating capital expenditures and developing business plans, and that a proxy cost is used as a proxy for the likely effects of expected future events.

78. Defendant denies the allegations in Paragraph 78, except admits that ExxonMobil applies a proxy cost of carbon to model a wide variety of potential policies that might be adopted by governments to help stem GHG emissions in evaluating capital expenditures and developing business plans, and admits that ExxonMobil has applied a proxy cost of carbon to assess investments since 2007.

79. Defendant denies the allegations in Paragraph 79.

80. Defendant denies the allegations in Paragraph 80.

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81. Defendant denies the allegations in Paragraph 81, except admits that ExxonMobil's Outlook for Energy contains ExxonMobil's long-term views of energy supply and demand.

82. Defendant denies the allegations in Paragraph 82, except admits that ExxonMobil prepares the Outlook for Energy report annually, and that the Outlook for Energy report is reviewed with ExxonMobil's CEO and Management Committee.

83. Defendant denies the allegations in Paragraph 83, and refers the Court to ExxonMobil's 2010 and 2012 Outlook for Energy for their contents.

84. Defendant denies the allegations in Paragraph 84, and refers the Court to ExxonMobil's 2013 Outlook for Energy for its contents, and further incorporates, as if set forth in full, the response to the allegations in Paragraph 87.

85. Defendant denies the allegations in Paragraph 85, except admits that on March 31, 2014, ExxonMobil published the MTR Report and the E&C Report, admits that the proponents of the shareholder proposals referenced by Plaintiff withdrew their proposals when ExxonMobil indicated it would release the MTR Report and the E&C Report, and admits that the MTR Report was reviewed by Mr. Tillerson.

86. Defendant denies the allegations in Paragraph 86, and refers the Court to the E&C Report for its contents.

87. Defendant denies the allegations in Paragraph 87, and refers the Court to the E&C Report for its contents.

88. Defendant denies the allegations in Paragraph 88, and refers the Court to the E&C Report for its contents.

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89. Defendant denies the allegations in Paragraph 89, and refers the Court to the E&C Report for its contents.

90. Defendant denies the allegations in Paragraph 90, except admits that on March 31, 2014 ExxonMobil published the MTR Report, and refers the Court to the MTR Report for its contents.

91. Defendant denies the allegations in Paragraph 91, and refers the Court to the MTR Report for its contents.

92. Defendant denies the allegations in Paragraph 92, and refers the Court to the MTR Report for its contents.

93. Defendant denies the allegations in Paragraph 93, and refers the Court to the MTR Report for its contents.

94. Defendant denies the allegations in Paragraph 94.

95. Defendant denies the allegations in Paragraph 95.

96. Defendant denies the allegations in Paragraph 96, and refers the Court to ExxonMobil's 2013 Corporate Citizenship Report for its contents.

97. Defendant denies the allegations in Paragraph 97, and refers the Court to the November 2014 article referenced by Plaintiff for its contents.

98. Defendant denies the allegations in Paragraph 98, and refers the Court to ExxonMobil's 2014 CDP response referenced by Plaintiff for its contents.

99. Defendant denies the allegations in Paragraph 99, and refers the Court to the publication entitled ExxonMobil and the carbon tax for its contents.

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100. Defendant denies the allegations in Paragraph 100, and refers the Court to the statement published on ExxonMobil's website entitled Meeting Global Needs – Managing Climate Change Business Risks for its contents.

101. Defendant denies the allegations in Paragraph 101, and refers the Court to ExxonMobil's 2016 proxy statement for its contents.

102. Defendant denies the allegations in Paragraph 102, and refers the Court to the statements of Mr. Tillerson at ExxonMobil's 2016 shareholder meeting for their contents.

103. Defendant denies the allegations in Paragraph 103, and refers the Court to the statements of ExxonMobil's Manager of Investor Relations referenced by Plaintiff and ExxonMobil's 2017 proxy statement for their contents.

104. Defendant denies the allegations in Paragraph 104, and refers the Court to ExxonMobil's 2016 letter to the SEC referenced by Plaintiff for its contents.

105. Defendant denies the allegations in Paragraph 105.

106. Defendant denies the allegations in Paragraph 106, and refers the Court to the statements of Mr. Tillerson at a meeting with institutional investors in September 2009 referenced by Plaintiff for their contents.

107. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 107, and refers the Court to the Bloomberg article referenced by Plaintiff for its contents.

108. Defendant denies the allegations in Paragraph 108, except admits that in 2015 and 2016, ExxonMobil held meetings with certain representatives of ExxonMobil's

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institutional investors, and refers the Court to the J.P. Morgan notes from one of those meetings referenced by Plaintiff for its contents.

109. Defendant denies the allegations in Paragraph 109, and refers the Court to the September 2015 Bank of America Merrill Lynch presentation referenced by Plaintiff for its contents.

110. Defendant denies the allegations in Paragraph 110, and refers the Court to the statements by ExxonMobil representatives made at the October 2015 meeting referenced by Plaintiff for their contents.

111. Defendant denies the allegations in Paragraph 111, and refers the Court to the statement by ExxonMobil employees referenced by Plaintiff for its contents.

112. Defendant denies the allegations in Paragraph 112, and refers the Court to the Vanguard internal analysis referenced by Plaintiff for its contents.

113. Defendant denies the allegations in Paragraph 113, and refers the Court to the statements by ExxonMobil's Investor Relations and Environmental Planning and Policy staff referenced by Plaintiff for their contents.

114. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 114, and refers the Court to the Wells Fargo report referenced by Plaintiff for its contents.

115. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 115, and refers the Court to the Wells Fargo report referenced by Plaintiff for its contents.

116. Defendant denies the allegations in Paragraph 116, except admits that ExxonMobil held meetings with investors in which climate-related risks were

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discussed, and otherwise denies knowledge or information sufficient to form a belief as to the truth of the of the allegations in the second sentence of Paragraph 116.

117. Defendant denies the allegations in Paragraph 117, and refers the Court to the meeting notes referenced by Plaintiff for their contents.

118. Defendant denies the allegations in Paragraph 118.

119. Defendant denies the allegations in Paragraph 119.

120. Defendant denies the allegations in Paragraph 120.

121. Defendant denies the allegations in Paragraph 121.

122. Defendant denies the allegations in Paragraph 122, except admits that ExxonMobil annually issues its internal Corporate Plan, including its accompanying Dataguide Appendices, the latter of which includes greenhouse gas emissions budget and project considerations.

123. Defendant denies the allegations in Paragraph 123.

124. Defendant denies the allegations in Paragraph 124.

125. Defendant denies the allegations in Paragraph 125, and refers the Court to the analysis referenced by Plaintiff for its contents.

126. Defendant denies the allegations in Paragraph 126, and refers the Court to the statement referenced by Plaintiff for its contents.

127. Defendant denies the allegations in Paragraph 127, and refers the Court to the cash flow model referenced by Plaintiff for its contents.

128. Defendant denies the allegations in Paragraph 128, except admits that members of the Management Committee annually review the Outlook for Energy and key

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elements of the Corporate Plan and its accompanying Dataguide Appendices, that Mr. Tillerson reviewed and approved the MTR Report, and refers the Court to the ExxonMobil statement referenced by Plaintiff for its contents."

129. Defendant denies the allegations in Paragraph 129, and refers the Court to the email referenced by Plaintiff for its contents.

130. Defendant denies the allegations in Paragraph 130, and refers the Court to the email referenced by Plaintiff for its contents.

131. Defendant denies the allegations in Paragraph 131, and refers the Court to the speaker notes referenced by Plaintiff for their contents.

132. Defendant denies the allegations in Paragraph 132, and refers the Court to the 2014 Corporate Plan referenced by Plaintiff for its contents.

133. Defendant denies the allegations in Paragraph 133, and refers the Court to the testimony referenced by Plaintiff for its contents.

134. Defendant denies the allegations in Paragraph 134, and refers the Court to the email referenced by Plaintiff for its contents.

135. Defendant denies the allegations in Paragraph 135.

136. Defendant denies the allegations in Paragraph 136.

137. Defendant denies the allegations in Paragraph 137.

138. Defendant denies the allegations in Paragraph 138, and refers the Court to the testimony referenced by Plaintiff for its contents.

139. Defendant denies the allegations in Paragraph 139.

140. Defendant denies the allegations in Paragraph 140.

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141. Defendant denies the allegations in Paragraph 141, and refers the Court to the statements referenced by Plaintiff for their contents.

142. Defendant denies the allegations in Paragraph 142.

143. Defendant denies the allegations in Paragraph 143, and refers the Court to the reports referenced by Plaintiff for their contents, and further incorporates, as if set forth in full, the response to the allegations in Paragraph 87.

144. Defendant denies the allegations in Paragraph 144, and refers the Court to the email correspondence referenced by Plaintiff for their contents.

145. Defendant denies the allegations in Paragraph 145.

146. Defendant denies the allegations in Paragraph 146.

147. Defendant denies the allegations in Paragraph 147.

148. Defendant denies the allegations in Paragraph 148.

149. Defendant denies the allegations in Paragraph 149.

150. Defendant denies the allegations in Paragraph 150.

151. Defendant denies the allegations in Paragraph 151, and refers the Court to the statements referenced by Plaintiff for their contents.

152. Defendant denies the allegations in Paragraph 152.

153. Defendant denies the allegations in Paragraph 153.

154. Defendant denies the allegations in Paragraph 154.

155. Defendant denies the allegations in Paragraph 155.

156. Defendant denies the allegations in Paragraph 156.

157. Defendant denies the allegations in Paragraph 157.

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158. Defendant denies the allegations in Paragraph 158, and refers the Court to the cash flow models referenced by Plaintiff for their contents.

159. Defendant denies the allegations in Paragraph 159.

160. Defendant denies the allegations in Paragraph 160.

161. Defendant denies the allegations in Paragraph 161.

162. Defendant denies the allegations in Paragraph 162, and refers the Court to the email referenced by Plaintiff for its contents.

163. Defendant denies the allegations in Paragraph 163, and refers the Court to the statement referenced by Plaintiff for its contents.

164. Defendant denies the allegations in Paragraph 164, and refers the Court to the statement referenced by Plaintiff for its contents.

165. Defendant denies the allegations in Paragraph 165, and refers the Court to the cash flow analysis referenced by Plaintiff for its contents.

166. Defendant denies the allegations in Paragraph 166.

167. Defendant denies the allegations in Paragraph 167, except admits that as of February 2016, ExxonMobil's assets in Canada constituted a significant amount of its resource base.

168. Defendant denies the allegations in Paragraph 168, except admits that certain ExxonMobil investors have asked questions about the performance and risk profile of individual investments, and admits that ExxonMobil has presented information about Kearl at its last seven annual analyst meetings.

169. Defendant denies the allegations in Paragraph 169, and refers the Court to the HSBC report referenced by Plaintiff for its contents.

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170. Defendant denies the allegations in Paragraph 170.

171. Defendant denies the allegations in Paragraph 171.

172. Defendant denies the allegations in Paragraph 172.

173. Defendant denies the allegations in Paragraph 173.

174. Defendant denies the allegations in Paragraph 174.

175. Defendant denies the allegations in Paragraph 175, except admits that liquefied natural gas projects require energy to convert natural gas to liquid form for purposes of transportation, and refers the Court to the internal ExxonMobil document referenced by Plaintiff for its contents.

176. Defendant denies the allegations in Paragraph 176, and refers the Court to the statement referenced by Plaintiff for its contents.

177. Defendant denies the allegations in Paragraph 177, except admits that ExxonMobil's 2016 Outlook for Energy provided that ExxonMobil assumed that governments would enact policies that impose rising costs on energy-related CO2 emissions, reaching an implied cost in OECD nations of about $80 per tonne in 2040.

178. Defendant denies the allegations in Paragraph 178, and refers the Court to the statement referenced by Plaintiff for its contents.

179. Defendant denies the allegations in Paragraph 179, and refers the Court to the statement referenced by Plaintiff for its contents.

180. Defendant denies the allegations in Paragraph 180, and refers the Court to the statements referenced by Plaintiff for their contents.

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181. Defendant denies the allegations in Paragraph 181, and refers the Court to the internal analyses referenced by Plaintiff for their contents.

182. Defendant denies the allegations in Paragraph 182.

183. Defendant denies the allegations in Paragraph 183.

184. Defendant denies the allegations in Paragraph 184, and further incorporates, as if set forth in full, the response to the allegations in Paragraph 91.

185. Defendant denies the allegations in Paragraph 185.

186. Defendant denies the allegations in Paragraph 186.

187. Defendant denies the allegations in Paragraph 187.

188. Defendant denies the allegations in Paragraph 188, and further incorporates, as if set forth in full, the response to the allegations in Paragraph 246.

189. Defendant denies the allegations in Paragraph 189.

190. Defendant denies the allegations in Paragraph 190.

191. Defendant denies the allegations in Paragraph 191.

192. Defendant denies the allegations in Paragraph 192 because they do not fairly describe the oil and gas industry.

193. Defendant denies the allegations in Paragraph 193 because they do not fairly describe the oil and gas industry, except admits “proved reserves” must satisfy requirements provided by the SEC.

194. Defendant denies the allegations in Paragraph 194, except admits that ExxonMobil defines its resource base as the total remaining estimated quantities of oil and gas that are expected to be ultimately recoverable, which includes

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quantities of oil and gas that are not yet classified as proved reserves under SEC definitions, but that ExxonMobil believes will ultimately be developed.

195. Defendant denies the allegations in Paragraph 195, except admits that its company reserves, which are based on the price bases contained in the Corporate Plan, reflect a separate estimate from its proved reserves.

196. Defendant denies the allegations in Paragraph 196, except admits that on March 23, 2015, ExxonMobil filed a document titled "Financial & Operating Review," and refers the Court to that document for its contents.

197. Defendant denies the allegations in Paragraph 197.

198. Defendant denies the allegations in Paragraph 198, except admits that, on February 29, 2016, ExxonMobil submitted a letter to the SEC, and refers the Court to that letter for its contents.

199. Defendant denies the allegations in Paragraph 199, and refers the Court to the MTR Report for its contents.

200. Defendant denies the allegations in Paragraph 200.

201. Defendant denies the allegations in Paragraph 201, and refers the Court to the materials referenced by Plaintiff for their contents.

202. Defendant denies the allegations in Paragraph 202, and refers the Court to the E&C Report, the December 2, 2015 publication ExxonMobil and the carbon tax, and the 2016 publication Meeting Global Needs – Managing Climate Change Business Risks for their contents.

203. Defendant denies the allegations in Paragraph 203, and refers the Court to ExxonMobil's 2016 Energy and Carbon Summary for its contents.

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204. Defendant denies the allegations in Paragraph 204, and refers the Court to the Petroleum Resource Management System ("PRMS") for its contents.

205. Defendant denies the allegations in Paragraph 205.

206. Defendant denies the allegations in Paragraph 206.

207. Defendant denies the allegations in Paragraph 207, and refers the Court to the statement referenced by Plaintiff for its contents.

208. Defendant denies the allegations in Paragraph 208, and refers the Court to the statements referenced by Plaintiff for their contents.

209. Defendant denies the allegations in Paragraph 209, and refers the Court to the internal email referenced by Plaintiff for its contents.

210. Defendant denies the allegations in Paragraph 210, and refers the Court to the presentation and analysis referenced by Plaintiff for their contents.

211. Defendant denies the allegations in Paragraph 211, and refers the Court to the internal meeting invitation referenced by Plaintiff for its contents.

212. Defendant denies the allegations in Paragraph 212.

213. Defendant denies the allegations in Paragraph 213, and refers the Court to the statement and analysis referenced by Plaintiff for their contents.

214. Defendant denies the allegations in Paragraph 214, and refers the Court to the internal review referenced by Plaintiff for its contents.

215. Defendant denies the allegations in Paragraph 215, and refers the Court to the email referenced by Plaintiff for its contents.

216. Defendant denies the allegations in Paragraph 216, and refers the Court to the internal meeting invitation referenced by Plaintiff for its contents.

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217. Defendant denies the allegations in Paragraph 217.

218. Defendant denies the allegations in Paragraph 218, and refers the Court to the statements referenced by Plaintiff for their contents.

219. Defendant denies the allegations in Paragraph 219, and refers the Court to the meeting notes referenced by Plaintiff for their contents.

220. Defendant denies the allegations in Paragraph 220.

221. Defendant denies the allegations in Paragraph 221, and refers the Court to the statement by Mr. Tillerson referenced by Plaintiff for its contents.

222. Defendant denies the allegations in Paragraph 222, and refers the Court to the statement by Mr. Tillerson referenced by Plaintiff for its contents.

223. Defendant denies the allegations in Paragraph 223.

224. Defendant denies the allegations in Paragraph 224.

225. Defendant denies the allegations in Paragraph 225.

226. Defendant denies the allegations in Paragraph 226, and refers the Court to Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("ASC") 360 and U.S. Generally Accepted Accounting Principles ("GAAP") for their contents.

227. Defendant denies the allegations in Paragraph 227, and refers the Court to ASC 360 for its contents.

228. Defendant denies the allegations in Paragraph 228, and refers the Court to ASC 360 for its contents.

229. Defendant denies the allegations in Paragraph 229, and refers the Court to ASC 360 for its contents.

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230. Defendant denies the allegations in Paragraph 230, and refers the Court to ASC 360 for its contents.

231. Defendant denies the allegations in Paragraph 231, and refers the Court to ASC 360 for its contents.

232. Defendant denies the allegations in Paragraph 232, and refers the Court to ASC 360 for its contents.

233. Defendant admits the allegations in Paragraph 233.

234. Defendant denies the allegations in Paragraph 234, and refers the Court to ExxonMobil's 2015 and 2016 10-Ks for their contents.

235. Defendant denies the allegations in Paragraph 235.

236. Defendant denies the allegations in Paragraph 236.

237. Defendant denies the allegations in Paragraph 237, and refers the Court to the statement of Mr. Tillerson referenced by Plaintiff for its contents.

238. Defendant denies the allegations in Paragraph 238, and refers the Court to the March 2014 email referenced by Plaintiff for its contents.

239. Defendant denies the allegations in Paragraph 239.

240. Defendant denies the allegations in Paragraph 240.

241. Defendant denies the allegations in Paragraph 241, and refers the Court to the testimony referenced by Plaintiff for its contents.

242. Defendant denies the allegations in Paragraph 242.

243. Defendant denies the allegations in Paragraph 243.

244. Defendant denies the allegations in Paragraph 244.

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245. Defendant denies the allegations in Paragraph 245, and further incorporates, as if set forth in full, the response to the allegations in Paragraph 184.

246. Defendant denies the allegations in Paragraph 246, and further incorporates, as if set forth in full, the responses to the allegations in Paragraphs 185 to 190.

247. Defendant denies the allegations in Paragraph 247.

248. Defendant denies the allegations in Paragraph 248.

249. Defendant denies the allegations in Paragraph 249.

250. Defendant denies the allegations in Paragraph 250, except admits that ExxonMobil did not take price-related impairments in 2014 and 2015, and refers the Court to the statement by ExxonMobil referenced by Plaintiff for its contents.

251. Defendant denies the allegations in Paragraph 251, and refers the Court to the statements referenced by Plaintiff for their contents.

252. Defendant denies the allegations in Paragraph 252.

253. Defendant denies the allegations in Paragraph 253.

254. Defendant denies the allegations in Paragraph 254.

255. Defendant denies the allegations in Paragraph 255, and refers the Court to the analysis referenced by Plaintiff for its contents.

256. Defendant denies the allegations in Paragraph 256, and refers the Court to the analysis referenced by Plaintiff for its contents.

257. Defendant denies the allegations in Paragraph 257, and refers the Court to the statements of Mr. Tillerson referenced by Plaintiff for their contents.

258. Defendant denies the allegations in Paragraph 258.

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259. Defendant denies the allegations in Paragraph 259, and refers the Court to the statements referenced by Plaintiff for their contents.

260. Defendant denies the allegations in Paragraph 260.

261. Defendant denies the allegations in Paragraph 261.

262. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 262.

263. Defendant denies the allegations in Paragraph 263, and refers the Court to the testimony referenced by Plaintiff for its contents.

264. Defendant denies the allegations in Paragraph 264.

265. Defendant denies the allegations in Paragraph 265.

266. Defendant denies the allegations in Paragraph 266, and refers the Court to the Outlook for Energy reports and other public statements referenced by Plaintiff for their contents.

267. Defendant denies the allegations in Paragraph 267, except admits that ExxonMobil's projection of revenues are influenced by the company's expectations as to future oil and gas prices, admits that future climate policies may influence demand for oil and gas and in turn affect oil and gas prices, and refers the Court to the statements of Mr. Tillerson referenced by Plaintiff for their contents.

268. Defendant denies the allegations in Paragraph 268, except admits that ExxonMobil applies a proxy cost of carbon to model a wide variety of potential policies that might be adopted by governments to help stem GHG emissions in evaluating capital expenditures and developing business plans.

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269. Defendant denies the allegations in Paragraph 269.

270. Defendant denies the allegations in Paragraph 270.

271. Defendant denies the allegations in Paragraph 271, and refers the Court to the MTR Report for its contents.

272. Defendant denies the allegations in Paragraph 272, and refers the Court to ExxonMobil's 2014, 2015, and 2016 responses to CDP, Exxon's 2015 Corporate Citizenship Report, and ExxonMobil's 2016 proxy statement to shareholders for their contents.

273. Defendant denies the allegations in Paragraph 273, and refers the Court to ExxonMobil's 2013 Outlook for Energy for its contents.

274. Defendant denies the allegations in Paragraph 274, and refers the Court to the statement referenced by Plaintiff for its contents, and further incorporates, as if set forth in full, the response to the allegations in Paragraph 186.

275. Defendant denies the allegations in Paragraph 275, except admits that the transportation sector is one sector of ExxonMobil's overall business, and refers the Court to ExxonMobil's 2017 Form 10-K for its contents.

276. Defendant denies the allegations in Paragraph 276.

277. Defendant denies the allegations in Paragraph 277.

278. Defendant denies the allegations in Paragraph 278.

279. Defendant denies the allegations in Paragraph 279, and refers the Court to the 2013 memorandum referenced by Plaintiff for its contents.

280. Defendant denies the allegations in Paragraph 280, and refers the Court to the memorandum referenced by Plaintiff for its contents.

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281. Defendant denies the allegations in Paragraph 281.

282. Defendant denies the allegations in Paragraph 282.

283. Defendant denies the allegations in Paragraph 283, and refers the Court to ExxonMobil's 2014 and 2015 Corporate Plans for their contents.

284. Defendant denies the allegations in Paragraph 284.

285. Defendant denies the allegations in Paragraph 285.

286. Defendant denies the allegations in Paragraph 286, and refers the Court to the MTR Report for its contents.

287. Defendant denies the allegations in Paragraph 287.

288. Defendant denies the allegations in Paragraph 288, and refers the Court to the analysis in the MTR Report referenced by Plaintiff for its contents.

289. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 289, and refers the Court to the report published by the Intergovernmental Panel on Climate Change referenced by Plaintiff for its contents.

290. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 290, and refers the Court to the November 2011 report published by the Carbon Tracker Initiative and the report by the International Energy Agency referenced by Plaintiff for their contents.

291. Defendant denies the allegations in Paragraph 291, and refers the Court to the 2014 shareholder resolution and the MTR Report for their contents.

292. Defendant denies the allegations in Paragraph 292.

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293. Defendant denies the allegations in Paragraph 293, and refers the Court to the MTR Report for its contents.

294. Defendant denies the allegations in Paragraph 294, and refers the Court to the MTR Report for its contents.

295. Defendant denies the allegations in Paragraph 295, and refers the Court to the MTR Report for its contents.

296. Defendant denies the allegations in Paragraph 296, and refers the Court to the MTR Report for its contents.

297. Defendant denies the allegations in Paragraph 297, and refers the Court to the MTR Report for its contents.

298. Defendant denies the allegations in Paragraph 298.

299. Defendant denies the allegations in Paragraph 299, and refers the Court to three climate models referenced by Plaintiff for their contents.

300. Defendant denies the allegations in Paragraph 300.

301. Defendant denies the allegations in Paragraph 301, and refers the Court to the statement referenced by Plaintiff for its contents.

302. Defendant denies the allegations in Paragraph 302.

303. Defendant denies the allegations in Paragraph 303, and refers the Court to the statements of the MIT economist referenced by Plaintiff for their contents.

304. Defendant denies the allegations in Paragraph 304.

305. Defendant denies the allegations in Paragraph 305, and refers the Court to the talking points referenced by Plaintiff for their contents.

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306. Defendant denies the allegations in Paragraph 306, and refers the Court to the 2016 Vanguard analysis referenced by Plaintiff for its contents.

307. Defendant denies the allegations in Paragraph 307, and refers the Court to the 2016 Vanguard analysis referenced by Plaintiff for its contents.

308. Defendant denies the allegations in Paragraph 308.

309. Defendant denies the allegations in Paragraph 309.

310. Defendant denies the allegations in Paragraph 310.

311. Defendant denies the allegations in Paragraph 311.

312. Defendant denies the allegations in Paragraph 312.

313. Defendant denies the allegations in Paragraph 313.

314. Defendant denies the allegations in Paragraph 314.

315. Defendant incorporates, as if set forth in full, the responses to the allegations in the paragraphs above.

316. Defendant denies the allegations in Paragraph 316.

317. Defendant incorporates, as if set forth in full, the responses to the allegations in the paragraphs above.

318. Defendant denies the allegations in Paragraph 318.

319. Defendant denies the allegations in Paragraph 319.

320. Defendant incorporates, as if set forth in full, the responses to the allegations in the paragraphs above.

321. Defendant denies the allegations in Paragraph 321.

322. Defendant denies the allegations in Paragraph 322.

323. Defendant denies the allegations in Paragraph 323.

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324. Defendant denies the allegations in Paragraph 324.

325. Defendant denies the allegations in Paragraph 325.

326. Defendant incorporates, as if set forth in full, the responses to the allegations in the paragraphs above.

327. Defendant denies the allegations in Paragraph 327.

328. Defendant denies the allegations in Paragraph 328.

329. Defendant denies the allegations in Paragraph 329.

Defendant denies any remaining allegations contained in the Complaint, including any allegations or claims for relief set forth in the preamble, prayer for relief, unnumbered headings or titles, appendices or exhibits, which are not otherwise expressly and specifically admitted heretofore in this Answer as being true.

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SEPARATE DEFENSES

Without assuming any burden of proof it would not otherwise bear, Defendant asserts the following defenses. By listing a defense here, Defendant in no way concedes that it bears the burden of proving any fact, issue, or element of a cause of action (or any burden) where such burden properly belongs to Plaintiff. Defendant reserves the right to assert further defenses as the case proceeds.

First Defense

1. The Complaint fails to state a claim against Defendant upon which relief can be granted.

Second Defense

2. The claims purportedly asserted by Plaintiff are barred, in whole or in part, because this Court lacks personal jurisdiction over Defendant.

Third Defense

3. The claims purportedly asserted by Plaintiff are barred, in whole or in part, by the applicable statutes of limitation and/or statutes of repose.

Fourth Defense

4. The claims purportedly asserted by Plaintiff are barred, in whole or in part, by the doctrine of laches.

Fifth Defense

5. The claims purportedly asserted by Plaintiff are barred, in whole or in part, by the doctrines of waiver and estoppel.

Sixth Defense

6. The claims purportedly asserted by Plaintiff are barred, in whole or in part, by the doctrine of assumption of risk.

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Seventh Defense

7. The claims purportedly asserted by Plaintiff are barred, in whole or in part, because Defendant's statements were accurate in all material respects, and did not contain misrepresentations or omissions.

Eighth Defense

8. The claims purportedly asserted by Plaintiff are barred, in whole or in part, because any alleged false or misleading statements or omissions were not material.

Ninth Defense

9. The claims purportedly asserted by Plaintiff are barred, in whole or in part, because Defendant neither had a duty nor breached a duty to disclose any facts allegedly not disclosed.

Tenth Defense

10. The claims purportedly asserted by Plaintiff are barred, in whole or in part, because some or all of the information that Plaintiff alleges was misrepresented or omitted was publicly available.

Eleventh Defense

11. The claims purportedly asserted by Plaintiff are barred, in whole or in part, because Defendant did not participate in the alleged fraudulent conduct for which Plaintiff seeks relief; did not employ any device, scheme, or artifice to defraud; and did not engage in any act, practice, or course of business which operates or would operate as fraud or deceit on any person.

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Twelfth Defense

12. The claims purportedly asserted by Plaintiff are barred, in whole or in part, because Defendant acted at all times in good faith and had no knowledge, and was not reckless in not knowing, that any alleged misstatement or omission was false or misleading.

Thirteenth Defense

13. The claims purportedly asserted by Plaintiff are barred, in whole or in part, because Plaintiff cannot establish reliance on any statement, omission, or act by Defendant.

Fourteenth Defense

14. The claims purportedly asserted by Plaintiff are barred, in whole or in part, because Plaintiff cannot establish justifiable reliance on any statement, omission, or act by Defendant.

Fifteenth Defense

15. The claims purportedly asserted by Plaintiff are barred, in whole or in part, because Plaintiff cannot establish any legally cognizable damages.

Sixteenth Defense

16. The claims purportedly asserted by Plaintiff are barred, in whole or in part, by failure to mitigate damages.

Seventeenth Defense

17. The claims purportedly asserted by Plaintiff are barred, in whole or in part, because any alleged losses were the result of intervening causes not under Defendant's control.

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Eighteenth Defense

18. The claims purportedly asserted by Plaintiff are barred, in whole or in part, because Defendant's conduct did not actually or proximately cause any damages.

Nineteenth Defense

19. The claims purportedly asserted by Plaintiff are barred, in whole or in part, because the alleged damages, if any, are speculative and because of the impossibility of the ascertainment and allocation of the alleged damages.

Twentieth Defense

20. The purported damages, if any, allegedly sustained were proximately caused or contributed to, in whole or in part, by market conditions and/or the conduct of others, or both, rather than any conduct of Defendant.

Twenty-First Defense

21. The Complaint fails to allege facts sufficient to support any granting of injunctive relief.

Twenty-Second Defense

22. The Complaint fails to allege facts sufficient to support any granting of disgorgement.

Twenty-Third Defense

23. The Complaint fails to allege facts sufficient to support any granting of restitution.

Twenty-Fourth Defense

24. Plaintiff is not entitled to recover attorney's fees, experts' fees, or other costs and expenses.

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Twenty-Fifth Defense

25. Plaintiff is not entitled to its requested amount, or rate, of pre-judgment interest.

Twenty-Sixth Defense

26. Plaintiff's claims for damages and restitution are barred, in whole or in part, because the relief sought can be pursued through private litigation.

Twenty-Seventh Defense

27. The relief sought by Plaintiff is barred by the Excessive Fines Clause of the Eighth Amendment of the United States Constitution, as applied to the States through the Fourteenth Amendment to the United States Constitution.

Twenty-Eighth Defense

28. The relief sought by Plaintiff is barred by the Excessive Fines Clause of the Constitution of the State of New York.

Twenty-Ninth Defense

29. The claims purportedly asserted by Plaintiff, are barred, in whole or in part, due to official misconduct, conflict of interests, and other official improprieties in violation of the Due Process Clause of the Fourteenth Amendment of the United States Constitution and other clauses of the United States and New York State Constitutions.

Thirtieth Defense

30. The claims purportedly asserted by Plaintiff, are barred, in whole or in part, due to selective enforcement of the law in violation of the Due Process Clause and Equal Protection Clause of the Fourteenth Amendment of the United States Constitution and other clauses of the United States and New York State Constitutions.

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Thirty-First Defense

31. The claims purportedly asserted by Plaintiff violate Article I, Section 8, Clause 3 of the United States Constitution (*i.e.*, the Commerce Clause).

Thirty-Second Defense

32. The claims purportedly asserted by Plaintiff are preempted, in whole or in part, by federal laws and regulations.

Thirty-Third Defense

33. The claims purportedly asserted by Plaintiff are barred to the extent they concern conduct beyond the territorial reach of the Martin Act or New York Executive Law § 63(12).

Thirty-Fourth Defense

34. The claims purportedly asserted by Plaintiff are barred, in whole or in part, by the Due Process Clause of the Fourteenth Amendment of the United States Constitution.

Thirty-Fifth Defense

35. The claims purportedly asserted by Plaintiff are barred, in whole or in part, by the Due Process Clause of the Constitution of the State of New York.

Thirty-Sixth Defense

36. The claims purportedly asserted by Plaintiff are barred, in whole or in part, by the First Amendment of the United States Constitution, as incorporated by the Fourteenth Amendment of the United States Constitution.

Thirty-Seventh Defense

37. Additional facts that are currently unknown to Defendant may be revealed through the course of discovery and further investigation that will support

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additional defenses. Defendant reserves the right to assert such additional defenses in the future.

RESERVATION OF RIGHTS

Defendant expressly reserves the right to amend and/or supplement this Answer, its defenses, and all other pleadings. Defendant asserts all defenses (affirmative or otherwise) that may be revealed during the course of discovery or other investigation.

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PRAYER FOR RELIEF

WHEREFORE, Defendant respectfully requests that judgment be entered in its favor and against Plaintiff dismissing the Complaint with prejudice, with costs, disbursements and attorneys' fees to Defendant, and such other legal and equitable relief as the Court may deem just and proper.

Dated: November 13, 2018
New York, New York

PAUL, WEISS, RIFKIND, WHARTON
& GARRISON LLP

By: */s/ Theodore V. Wells, Jr.*
Theodore V. Wells, Jr.
Daniel J. Toal
Justin Anderson
Nora Ahmed

1285 Avenue of the Americas
New York, New York 10019-6064
Telephone: (212) 373-3000
Facsimile: (212) 757-3990
twells@paulweiss.com
dtoal@paulweiss.com
janderson@paulweiss.com
nahmed@paulweiss.com

Attorneys for Defendant Exxon Mobil Corporation

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK, By BARBARA D. UNDERWOOD, Attorney General of the State of New York, Plaintiff, – against – EXXON MOBIL CORPORATION, Defendant.	Index No. 452044/2018 IAS Part 61 Hon. Barry R. Ostrager **PRELIMINARY CONFERENCE ORDER – COMMERCIAL DIVISION**

APPEARANCES:

Plaintiff: People of the State of New York, by Barbara D. Underwood, Attorney General of the State of New York

Defendant: Theodore V. Wells Jr., Daniel J. Toal, Justin Anderson & Nora Ahmed (Paul, Weiss, Rifkind, Wharton & Garrison LLP)

It is hereby ORDERED that disclosure shall proceed as follows:

(1) BILL OF PARTICULARS (See CPLR 3130(1)):
(a) Demand for a bill of particulars shall be served by N/A on or before N/A.
(b) Bill of particulars shall be served by N/A on or before N/A.

(2) DOCUMENT PRODUCTION:
(a) Demand for discovery and inspection shall be served by all parties on or before December 14, 2018.
(b) Response to demand shall be served by all parties on or before January 14, 2019. Plaintiff shall produce all transcripts of testimony from ExxonMobil employees on or before November 16, 2018. Plaintiff shall produce documents and transcripts of testimony from third parties promptly after notice is provided. In the event a third party objects, the NYAG will promptly notify ExxonMobil, and to the extent the objection cannot be resolved by the parties, both parties agree that the objection will be promptly raised with the Court.

(3) INTERROGATORIES:
(a) Interrogatories shall be served by all parties on or before December 14, 2018.
(b) Answers to interrogatories shall be served by all parties on or before January 14, 2019. Contention Interrogatories shall be served by all parties on or before April 1, 2019.

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Responses to Contention Interrogatories shall be served by all parties on or before May 1, 2019.

(4) DEPOSITIONS ON ORAL QUESTIONS:

Depositions on oral questions for all parties and non-parties shall be held by July 12, 2019.

(5) OTHER DISCLOSURE:

Fact discovery shall close on May 1, 2019.
Plaintiff shall identify and notify Defendant of its expert witnesses on or before May 1, 2019.
Plaintiff shall provide Defendant with its expert witness reports on or before May 8, 2019.
Defendant shall identify and notify Plaintiff of its expert witnesses on or before June 12, 2019.
Defendant shall provide Plaintiff with its expert witness reports on or before June 19, 2019.
Deposition of experts (which may be taken at any point after the opening report is served) shall be complete on or before July 12, 2019. Parties are presumptively limited to one deposition of each expert identified by another party. To the extent that Exxon deposes NYAG's experts prior to the submission of Exxon's expert reports, Exxon may not seek to preclude any testimony from NYAG's experts responsive to opinions in Exxon's experts' reports solely on the basis that Exxon lacked notice of such testimony. NYAG's expert(s), however, shall not offer any testimony that falls outside the scope of (i) their expert report(s), or (ii) responding to the opinions offered in Exxon's expert report(s).
Expert discovery shall close on July 12, 2019.

(6) If an issue arises relating to disclosure, the parties shall: contact the Part Clerk to request a conference.

(7) IMPLEADER: Shall be completed on or before: per CPLR.

(8) END DATE FOR ALL DISCLOSURE: July 12, 2019.

(9) COMPLIANCE CONFERENCE: Shall be held on: ~~July 19, 2019.~~ June 25, 2019 @ 2:15

(10) MOTIONS: Any dispositive motion(s) shall be made on or before July 26, 2019. Any opposition brief shall be filed on or before August 23, 2019. Any reply brief shall be filed on or before September 6, 2019.

(11) NOTE OF ISSUE: Plaintiff shall file a note of issue/certificate of readiness on or before July 19, 2019.

A copy of this order shall be served and filed with the note of issue.

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THE DATES SET FORTH HEREIN MAY NOT BE ADJOURNED EXCEPT WITH APPROVAL OF THE COURT

SO ORDERED:

Dated: November 15, 2018 _____, J.S.C.

ADDITIONAL DIRECTIVES

In addition to the directives set forth above, it is further ORDERED as follows:

The parties agree to furnish in good faith preliminary witness and exhibit lists without prejudice to subsequent modification in advance of trial. The provision of this information does not alter the rights or obligations of the parties under the CPLR, the Rules of the Commercial Division or the Practice Rules for Part 61. The dates for the initial exchange of Preliminary Witness and Exhibit Lists are as follows:

Plaintiff shall provide a Preliminary Exhibit List and Witness List on or before February 1, 2019.

Defendant shall provide a Preliminary Exhibit List and Witness List on or before February 15, 2019.

Final Witness and Exhibit Lists, Pre-trial Motions, Proposed Facts to be Proven at Trial, and Deposition Designations are due on or before September 27, 2019.

Motions in Limine are due on or before October 4, 2019. by OSC

Final Pre-Trial Conference is scheduled for October 7, 2019, unless a motion in limine is filed.

Trial shall begin on ~~October 15, 2019.~~ October 23, 2019 ~~October 16, 2019~~

SO ORDERED:

Dated: November 15, 2018 _____, J.S.C.

BARRY R. OSTRAGER JSC

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK, By BARBARA D. UNDERWOOD, Attorney General of the State of New York, Plaintiff, – against – EXXON MOBIL CORPORATION, Defendant.	Index No. 452044/2018 IAS Part 61 Hon. Barry R. Ostrager **STIPULATION AND ORDER FOR THE PRODUCTOIN AND EXCHANGE OF CONFIDENTIAL INFORMATION**

This matter having come before the Court by stipulation of plaintiff, the People of the State of New York, by Barbara D. Underwood, Attorney General of the State of New York, and defendant, Exxon Mobil Corporation, (individually "Party" and collectively "Parties") for the entry of a protective order pursuant to CPLR 3103(a), limiting the review, copying, dissemination and filing of confidential and/or proprietary documents and information to be produced by either party and their respective counsel or by any non-party in the course of discovery in this matter to the extent set forth below; and the parties, by, between and among their respective counsel, having stipulated and agreed to the terms set forth herein, and good cause having been shown;

IT IS hereby ORDERED that:

1. This Stipulation is being entered into to facilitate the production, exchange and discovery of documents and information that the Parties and, as appropriate, non-parties, agree merit confidential treatment (hereinafter the "Documents" or "Testimony").

2. Any Party or, as appropriate, non-party, may designate Documents produced, or Testimony given, in connection with this action, or the prior proceedings under Index No.

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451962/2016, as "confidential," either by notation on each page of the Document so designated, statement on the record of the deposition, or written advice to the respective undersigned counsel for the Parties hereto, or by other appropriate means. Exxon Mobil Corporation designates as confidential all Documents and Testimony previously produced by Exxon Mobil Corporation that it designated as confidential during the Office of the Attorney General's investigation of this matter. Exxon Mobil Corporation may also designate as confidential Documents and Testimony previously provided to the Office of the Attorney General by a non-party after it receives those materials from Office of the Attorney General. The Office of the Attorney General reserves its right to challenge any such designations of Documents and Testimony produced by Exxon Mobil Corporation or a non-party.

3. As used herein:

(a) "Confidential Information" shall mean all Documents and Testimony, and all information contained therein, and other information designated as confidential, if such Documents or Testimony contain trade secrets, proprietary business information, competitively sensitive information or other information the disclosure of which would, in the good faith judgment of the Party or, as appropriate, non-party designating the material as confidential, be detrimental to the conduct of that Party's or non-party's business or the business of any of that Party's or non-party's customers or clients. Confidential Information does not include Documents or Testimony, or any information contained therein, that previously was publicly disclosed or submitted on the public record in unredacted form in this action or in any other proceeding.

(b) "Producing Party" shall mean the parties to this action and any non-parties producing "Confidential Information" in connection with depositions, document production or

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otherwise, or the Party or non-party asserting the confidentiality privilege, as the case may be.

(c) "Receiving Party" shall mean the Parties to this action and/or any nonparty receiving "Confidential Information" in connection with depositions, document production, subpoenas or otherwise.

4. The Receiving Party may, at any time, notify the Producing Party that the Receiving Party does not concur in the designation of a document or other material as Confidential Information. If the Producing Party does not agree to declassify such document or material within seven (7) days of the written request, the Receiving Party may move before the Court for an order declassifying those documents or materials. If no such motion is filed, such documents or materials shall continue to be treated as Confidential Information. If such motion is filed, the documents or other materials shall be deemed Confidential Information unless and until the Court rules otherwise. Notwithstanding anything herein to the contrary, the Producing Party bears the burden of establishing the propriety of its designation of documents or information as Confidential Information.

5. Except with the prior written consent of the Producing Party or by Order of the Court, Confidential Information shall not be furnished, shown or disclosed to any person or entity except to:

(a) personnel of the Parties actually engaged in assisting in the preparation of this action for trial or other proceeding herein and who have been advised of their obligations hereunder;

(b) counsel for the Parties to this action and their associated attorneys, paralegals and other professional and non-professional personnel (including support staff and outside copying services) who are directly assisting such counsel in the preparation of this action for trial or other

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proceeding herein, are under the supervision or control of such counsel, and who have been advised by such counsel of their obligations hereunder;

(c) expert witnesses or consultants retained by the Parties or their counsel to furnish technical or expert services in connection with this action or to give testimony with respect to the subject matter of this action at the trial of this action or other proceeding herein; provided, however, that such Confidential Information is furnished, shown or disclosed in accordance with paragraph 7 hereof;

(d) the Court and court personnel;

(e) an officer before whom a deposition is taken, including stenographic reporters and any necessary secretarial, clerical or other personnel of such officer;

(f) trial and deposition witnesses, if furnished, shown or disclosed in accordance with paragraphs 9 and 10, respectively, hereof;

(g) any person who appears from the face of the document to have authored or received a copy of any document designated Confidential, or

(h) outside vendors retained by or for the parties to assist in preparing for pretrial discovery, trial and/or hearings, including, but not limited to, interpreters, translators, litigation-support personnel, jury consultants, individuals to prepare demonstrative and audiovisual aids for use in the courtroom or in depositions or mock jury sessions (as well as their staff), photo copy personnel, stenographic and clerical employees whose duties and responsibilities require access to such materials, provided that the vendor signs the Agreement With Respect to Confidential Material annexed as Exhibit A on behalf of itself and its personnel; and

(i) any other person agreed to by the Producing Party.

6. Confidential Information shall be utilized by the Receiving Party and its counsel

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only for purposes of this litigation and for no other purposes.

7. Before any disclosure of Confidential Information is made to an expert witness or consultant pursuant to paragraph 5(c) hereof, counsel for the Receiving Party making such disclosure shall provide to the expert witness or consultant a copy of this Stipulation and obtain the expert's or consultant's written agreement, in the form of Exhibit A attached hereto, to comply with and be bound by its terms. Counsel for the Receiving Party obtaining the Agreement With Respect to Confidential Material shall supply a copy to counsel for the other Parties at the time designated for expert disclosure, except that any Agreement With Respect to Confidential Material signed by an expert or consultant who is not expected to be called as a witness at trial is not required to be supplied.

8. All depositions shall presumptively be treated as Confidential Information and subject to this Stipulation during the deposition and for a period of fifteen (15) days after a transcript of said deposition is received by counsel for each of the Parties. At or before the end of such fifteen day period, the deposition shall be classified appropriately.

9. Should the need arise for any Party or, as appropriate, non-party, to disclose Confidential Information during any hearing or trial before the Court, including through argument or the presentation of evidence, such Party or, as appropriate, non-party may do so only after taking such steps as the Court, upon motion of the Producing Party, shall deem necessary to preserve the confidentiality of such Confidential Information.

10. This Stipulation shall not preclude counsel for any Party from using during any deposition in this action any Documents or Testimony which has been designated as "Confidential Information" under the terms hereof. Any deposition witness who is given access to Confidential Information shall, prior thereto, be provided with a copy of this Stipulation and

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shall execute a written agreement, in the form of Exhibit A attached hereto, to comply with and be bound by its terms. Counsel for the Party obtaining the Agreement With Respect to Confidential Material shall supply a copy to counsel for the other Parties and, as appropriate, a non-party that is a Producing Party. In the event that, upon being presented with a copy of the Stipulation, a witness refuses to execute the agreement to be bound by this Stipulation, the Court shall, upon application, enter an order directing the witness's compliance with the Stipulation.

11. A Party may designate as Confidential Information subject to this Stipulation any document, information, or deposition testimony produced or given by any non-party to this case, or any portion thereof. In the case of Documents, produced by a non-party, designation shall be made by notifying all counsel in writing of those documents which are to be stamped and treated as such at any time up to fifteen (15) days after actual receipt of copies of those documents by counsel for the Party asserting the confidentiality privilege. In the case of deposition Testimony, designation shall be made by notifying all counsel in writing of those portions which are to be stamped or otherwise treated as such at any time up to fifteen (15) days after the transcript is received by counsel for the Party (or, as appropriate, non-party) asserting the confidentiality. Prior to the expiration of such fifteen (15) day period (or until a designation is made by counsel, if such a designation is made in a shorter period of time), all such Documents and Testimony shall be treated as Confidential Information.

12.

(a) A Party or, as appropriate, non-party, who seeks to file with the Court (i) any deposition transcripts, exhibits, answers to interrogatories, or other documents which have previously been designated as comprising or containing Confidential Information, or (ii) any pleading, brief or memorandum which reproduces or discloses Confidential Information shall file

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the document, pleading, brief, or memorandum on the NYSCEF system in redacted form until the Court renders a decision on any motion to seal (the "Redacted Filing"). If the Producing Party fails to move to seal within seven (7) days of the Redacted Filing, the Party (or, as appropriate, non-party) making the filing shall take steps to replace the Redacted Filing with its corresponding unredacted version.

(b) In the event that the Party's (or, as appropriate, non-party's) filing includes Confidential Information produced by a Producing Party that is a non-party, the filing Party shall so notify that Producing Party within twenty four (24) hours after the Redacted Filing by providing the Producing Party with a copy of the Redacted Filing as well as a version of the filing with the relevant Producing Party's Confidential Information unredacted.

(c) If the Producing Party makes a timely motion to seal, and the motion is granted, the filing Party (or, as appropriate, non-party) shall ensure that all documents (or, if directed by the court, portions of documents) that are the subject of the order to seal are filed in accordance with the procedures that govern the filing of sealed documents on the NYSCEF system. If the Producing Party's timely motion to seal is denied, then the Party (or, as appropriate, non-party) making the filing shall take steps to replace the Redacted Filing with its corresponding unredacted version.

(d) Any Party filing a Redacted Filing in accordance with the procedure set forth in this paragraph 12 shall, contemporaneously with or prior to making the Redacted Filing, provide the other Parties and the Court with a complete and unredacted version of the filing.

(e) All pleadings, briefs or memoranda which reproduce or disclose any materials which have previously been designated by a party as comprising or containing Confidential Information shall identify such documents by the production number ascribed to them at the time

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of production.

13. Any person receiving Confidential Information shall not reveal or discuss such information to or with any person not entitled to receive such information under the terms hereof and shall use reasonable measures to store and maintain the Confidential Information so as to prevent unauthorized disclosure.

14. Any document or information that may contain Confidential Information that has been inadvertently produced without identification as to its "confidential" nature as provided in paragraphs 2 and/or 11 of this Stipulation, may be so designated by the party asserting the confidentiality privilege by written notice to the undersigned counsel for the Receiving Party identifying the document or information as "confidential" within a reasonable time following the discovery that the document or information has been produced without such designation.

15. Extracts of Confidential Information shall also be treated as confidential in accordance with the provisions of this Stipulation.

16. The production or disclosure of Confidential Information shall in no way constitute a waiver of each Producing Party's right to object to the production or disclosure of other information in this action or in any other action. Nothing in this Stipulation shall operate as an admission by any Party or non-party that any particular document or information is, or is not, confidential. Failure to challenge a Confidential Information designation shall not preclude a subsequent challenge thereto.

17. Claw-Back of Privileged Material

(a) If a Receiving Party receives material that appears on its face to the Receiving Party to be privileged material, the Receiving Party shall promptly notify the Producing Party or pursuant to Rule of Professional Conduct 4.4(b).

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(b) A Producing Party may claw back Documents protected from disclosure under the attorney-client privilege, work product doctrine, deliberative process privilege, law enforcement privilege, and/or any other applicable privilege or immunity from disclosure that were produced inadvertently. To claw back such Documents, the Producing Party must provide notice in writing to the Receiving Party specifying the Bates range of the inadvertently produced Documents it wishes to claw back, and the basis of the claim of attorney-client privilege, work product doctrine, deliberative process privilege, law enforcement privilege, and/or any other applicable privilege or immunity from disclosure, relied upon in support of its claw-back request.

(c) Upon notice that a Producing Party wishes to claw back Documents protected from disclosure under the attorney-client privilege, work product doctrine, deliberative process privilege, law enforcement privilege, and/or any other applicable privilege or immunity from disclosure that was produced inadvertently, the Receiving Party shall promptly undertake reasonable efforts to return to the Producing Party or destroy all summaries or copies of such Documents, Testimony, information, and/or things, shall provide notice in writing or by email that the Receiving Party has undertaken reasonable efforts to return or destroy such disclosed materials, and shall not use such items for any purpose until further order of the Court. Such return or destruction and certification must occur within ten (10) business days of receipt of the request. Within ten (10) business days of the notification that reasonable efforts have been taken to return or destroy the disclosed materials, the Producing Party shall produce a privilege log with respect to the disclosed materials. The return of any Documents to the Producing Party shall not in any way preclude the Receiving Party from moving the Court for a ruling that the disclosed information was never privileged; however, the Receiving Party may not assert as a basis for the relief it seeks the fact or circumstance that such privileged documents have already

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been produced. Allegedly privileged Documents shall remain protected against disclosure and use during the pendency of any dispute over their status.

18. This Stipulation is entered into without prejudice to the right of any Party or non-party to seek relief from, or modification of, this Stipulation or any provisions thereof by properly noticed motion to the Court or to challenge any designation of confidentiality as inappropriate under the Civil Practice Law and Rules or other applicable law.

19. This Stipulation shall continue to be binding after the conclusion of this litigation except (a) that there shall be no restriction on documents that are used as exhibits in Court (unless such exhibits were filed under seal); and (b) that a Receiving Party may seek the written permission of the Producing Party or further order of the Court with respect to dissolution or modification of the Stipulation. The provisions of this Stipulation shall, absent prior written consent of the parties, continue to be binding after the conclusion of this action.

20. Nothing herein shall be deemed to waive any privilege recognized by law, or shall be deemed an admission as to the admissibility in evidence of any facts or documents revealed in the course of disclosure.

21. Within sixty (60) days after the final termination of this litigation by settlement or exhaustion of all appeals, all Confidential Information produced or designated and all reproductions thereof shall be returned to the Producing Party or, at the Receiving Party's option, shall be destroyed. In the event that any Receiving Party chooses to destroy physical objects and documents, such Party shall certify in writing within sixty (60) days of the final termination of this litigation that it has undertaken its best efforts to destroy such physical objects and documents, and that such physical objects and documents have been destroyed to the best of its knowledge. Notwithstanding anything to the contrary, counsel of record for the Parties may

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retain one copy of documents constituting work product, a copy of pleadings, motion papers, discovery responses, deposition transcripts and deposition and trial exhibits. This Stipulation shall not be interpreted in a manner that would violate any applicable rules of professional conduct. Nothing in this Stipulation shall prohibit or interfere with the ability of counsel for any Receiving Party, or of experts specially retained for this case, to represent any individual, corporation or other entity adverse to any Party or non-party or their affiliate(s) in connection with any other matter.

22. If a Receiving Party is called upon to produce Confidential Information in order to comply with a court order, subpoena, or other direction by a court, administrative agency, or legislative body, the Receiving Party from which the Confidential Information is sought shall (a) give written notice by overnight mail and either email or facsimile to the counsel for the Producing Party within five (5) business days of receipt of such order, subpoena, or direction, and (b) give the Producing Party five (5) business days to object to the production of such Confidential Information, if the Producing Party so desires. Notwithstanding the foregoing, nothing in this paragraph shall be construed as requiring any party to this Stipulation to subject itself to any penalties for noncompliance with any court order, subpoena, or other direction by a court, administrative agency, or legislative body.

23. Any party to this action who issues a subpoena or other compulsory process to any non-party shall enclose a copy of this Stipulation and notify the non-party that the protections of this Stipulation are available to such non-party.

24. This Stipulation may be changed by further order of this Court, and is without prejudice to the rights of a Party to move for relief from any of its provisions, or to seek or agree to different or additional protection for any particular material or information.

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25. This Stipulation may be signed in counterparts, which, when fully executed, shall constitute a single original, and electronic signatures shall be deemed original signatures.

BARBARA D. UNDERWOOD
Attorney General of the State of New York

By: _____
Jonathan Zhang
Assistant Attorney General

New York, New York

Tel: 212-416-8454

Attorneys for Plaintiff

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP

By: _____
Daniel J. Toal

New York, New York

Tel: 212-373-3869

Attorneys for Defendant

Dated: November 15, 2018

SO ORDERED

_____
J.S.C. BARRY R. OSTRAGER JSC

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EXHIBIT A

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK, By BARBARA D. UNDERWOOD, Attorney General of the State of New York, Plaintiff, – against – EXXON MOBIL CORPORATION, Defendant.	Index No. 452044/2018 IAS Part 61 Hon. Barry R. Ostrager **AGREEMENT WITH RESPECT TO CONFIDENTIAL MATERIAL**

I, _____, state that:

1. My address is_____.

2. My present occupation or job description is _____.

3. I have received a copy of the Stipulation for the Production and Exchange of Confidential Information (the "**Stipulation**") entered in the above-entitled action on

_____.

4. I have carefully read and understand the provisions of the Stipulation.

5. I will comply with all of the provisions of the Stipulation.

6. I will hold in confidence, will not disclose to anyone not qualified under the Stipulation and will use only for purposes of this action, any Confidential Information that is disclosed to me.

7. I will return all Confidential Information that comes into my possession, and documents or things that I have prepared relating thereto, to counsel for the party by whom I am employed o retained, or to counsel from whom I received the Confidential Information.

8. I hereby submit to the jurisdiction of this court for the purpose of enforcement of the

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Stipulation in this action.

Dated: _____ _____

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 BARBARA D. UNDERWOOD, 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. 451962/2016 IAS Part 61 Hon. Barry R. Ostrager **STIPULATION OF DISCONTINUANCE WITH PREJUDICE**

WHEREAS, in November 2015, the Office of the New York State Attorney General ("OAG") commenced an investigation pursuant to New York General Business Law ("G.B.L.") § 352 (the "Martin Act"), New York Executive Law § 63(12), and G.B.L. § 349 concerning Exxon Mobil Corporation ("Exxon");

WHEREAS, OAG, as part of its investigation of Exxon, served investigatory subpoenas on Exxon and PricewaterhouseCoopers LLP ("PwC"), Exxon's independent auditor;

WHEREAS, on October 14, 2016, OAG, on behalf of the People of the State of New York, commenced the above-captioned special proceeding against PwC and Exxon pursuant to New York Civil Practice Law and Rules ("C.P.L.R.") §§ 403 and 2308(b) to compel compliance with an investigatory subpoena served on PwC by OAG;

WHEREAS, OAG made several additional motions in this special proceeding to compel compliance with investigatory subpoenas served on Exxon by OAG;

WHEREAS, Exxon opposed OAG's motions, and also moved before the Court in this

special proceeding for relief related to OAG's investigatory subpoenas;

WHEREAS, the Court has resolved all of the parties' motions, and there is no appeal pending from any of the Court's orders;

WHEREAS, OAG has completed its investigation of Exxon; and

WHEREAS, on October 24, 2018, based on its investigation, OAG, on behalf of the People of the State of New York, commenced a related action against Exxon, entitled *People of the State of New York v. Exxon Mobil Corp.*, No. 452044/2018 (Sup. Ct. N.Y. Cnty.);

IT IS NOW HEREBY STIPULATED AND AGREED, by and among the undersigned, the attorneys of record for all the parties to the above-captioned proceeding, that:

1. The above-captioned proceeding is dismissed with prejudice, and without costs to any parties as against any other parties;

2. The parties in the action, entitled *People of the State of New York v. Exxon Mobil Corp.*, No. 452044/2018 (Sup. Ct. N.Y. Cnty.), retain their rights to seek and object to discovery in that action, including, but not limited to, objections based on documents, materials or testimony provided during the investigation referenced previously, and retain their rights to respond to such objections;

3. This Stipulation may be executed in one or more counterparts, each of which, taken together, shall constitute one and the same document, and facsimile or electronically scanned signatures are acceptable as originals.

Dated: November 21, 2018
New York, New York

BARBARA D. UNDERWOOD
Attorney General of the State of New York

By: _____
Jonathan Zweig
28 Liberty Street
New York, New York 10005
(212) 416-8954

Counsel for People of the State of New York

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP

By: _____
Daniel J. Toal
1285 Avenue of the Americas
New York, New York 10019
(212) 373-3869

Counsel for Exxon Mobil Corporation

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

By: _____
David Meister
4 Times Square
New York, New York 10036
(212) 735-2100

Counsel for PricewaterhouseCoopers LLP

SO-ORDERED:

_____
Hon. Barry R. Ostrager, J.S.C.