



STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL

LETITIA JAMES  
ATTORNEY GENERAL

June 19, 2019

The Honorable Barry R. Ostrager  
Supreme Court, New York County  
60 Centre Street, Room 232  
New York, NY 10007

Re: *People of the State of New York v. Exxon Mobil Corporation*, Index No.  
452044/2018 (Sup. Ct. N.Y. Cnty.)

Dear Justice Ostrager:

The Office of the Attorney General (“OAG”) submits this letter, pursuant to the Court’s instructions at oral argument on June 12, 2019, to further explain why Exxon Mobil Corporation’s (“ExxonMobil”) effort to conduct a Commercial Division Rule 11-f deposition of the OAG should be rejected. The OAG’s prior briefing on this topic is available at Dkt. Nos. 164-72 (opening brief) and Dkt. Nos. 211-13 (reply brief).

As a threshold matter, 16 out of 17 of the proposed topics seek information that is relevant only to ExxonMobil’s misconduct defenses. If the Court decides to dismiss the sole remaining defense, those topics will be irrelevant to any claim or defense in this litigation. Even if the remaining defense were to survive, however, a deposition on those topics is still improper, because the information sought by ExxonMobil is available from other sources (*i.e.*, the third parties referenced in the notice) and through alternative vehicles of discovery (*i.e.*, document production, interrogatories, and contention interrogatories). *See Liberty Petroleum Realty, LLC v. Gulf Oil, L.P.*, 164 A.D.3d 401, 406 (1st Dep’t 2018) (“[I]n the unusual situation where a party seeks to depose opposing counsel, . . . the party seeking the deposition must show that the deposition is necessary because the information is not available from another source.”); *People v. Katz*, 84 A.D.2d 381, 384-85 (1st Dep’t 1982) (denying request for deposition testimony when it had yet to be determined whether the requested information could be obtained through a bill of particulars).

The one remaining topic, which seeks information about the factual basis of 54 paragraphs in the Complaint, is improper for other reasons, namely the risk of intruding on attorney work product. As the Court noted at oral argument, ExxonMobil has had access to numerous means of discovery and “do[es] not need to depose people who are prosecuting this case.” Tr. 50:7-8. Indeed, any request for a deposition of opposing counsel, including the OAG, should be rejected unless the party seeking the deposition can show that the requested information is necessary and not available from another source. *Liberty Petroleum Realty*, 164 A.D.3d at 406; *People v. Katz*, 84 A.D.2d at 384-85. In addition, as the Court further noted, ExxonMobil’s claims that it still does

not understand the bases for the OAG's allegations does not withstand scrutiny in light of the numerous disclosures that have been provided by the OAG. *See* Tr. 51:9-11 ("THE COURT: You don't know what the factual bases are after all these interrogatories and document productions and contention interrogatories?").

Indeed, it is entirely unclear what other information a deponent could provide to ExxonMobil about the factual basis for the allegations beyond what the OAG has already provided without invading attorney work product. The OAG has disclosed in detail the factual basis for its allegations in multiple affirmations that were filed over multiple years of the investigation in support of motions to compel; it has responded to ExxonMobil's interrogatories, contention interrogatories, requests for admission, and document requests; it has submitted a preliminary exhibit list; and it has submitted expert reports that are more than one hundred pages in length. Many of those disclosures painstakingly identified the specific communications, specific pages of examination transcripts, and specific cash flow models that are relevant to the various allegations addressed in ExxonMobil's request.<sup>1</sup> ExxonMobil has continually failed to provide a plausible explanation as to why these disclosures are inadequate, or, if they are inadequate – which they are not – why some additional, focused written discovery could not provide the information ExxonMobil seeks.

Depositions of opposing counsel are highly disfavored due to the risk of invading attorney work product. *See S.E.C. v. Morelli*, 143 F.R.D. 42, 47 (S.D.N.Y. 1992) (explaining that "the mere request" to depose opposing counsel is good cause for a protective order, because it "involves forays into the area most protected by the work product doctrine – that involving an attorney's mental impressions or opinions"). That concern is particularly acute here. Asking the OAG to explain, in a deposition, how the evidence in this case bears upon the various allegations in the complaint would unavoidably implicate attorney work product. In *S.E.C. v. Morelli*, the defendant in a securities action sought to depose the SEC concerning the factual basis of the action against him. *Id.* at 44. The court granted the SEC's motion to quash on work product grounds, concluding that the deposition was impermissibly "intended to ascertain how the SEC intends to marshal[] the facts, documents and testimony in its possession, and to discover the inferences that [the SEC] believes properly can be drawn from the evidence it has accumulated." *Id.* at 47. The fact pattern here is nearly identical.

ExxonMobil's insistence that the OAG could simply designate a non-attorney, furthermore, is illusory and has been rejected repeatedly by courts. *See* Tr. 50:9-12 ("MR. TOAL: But, Your Honor, this has nothing to do with deposing people who are prosecuting the case. They can designate and educate whoever they want. It doesn't have to be an attorney"). In *S.E.C. v. Rosenfeld*, a defendant seeking to conduct a deposition of the SEC made precisely the same argument as ExxonMobil, claiming that he "never requested the deposition of opposing counsel, but rather, the SEC is completely free to choose its designee." 1997 WL 576021, at \*2 (S.D.N.Y. Sept. 16, 1997). The court flatly rejected that argument, holding that:

[Defendant's argument that the SEC can simply designate a non-attorney]

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<sup>1</sup> The OAG's responses to ExxonMobil's contention interrogatories are attached hereto as Exhibit A. *See*, for example, the OAG's response to Interrogatory No. 2 (identifying 14 spreadsheets, 2 communications, and 37 pages of one examination transcript that form the factual basis of one paragraph in the Complaint); and Interrogatory No. 6 (identifying 9 presentations, 2 communications, and specific page ranges from 4 examination transcripts that form the factual basis of two paragraphs in the Complaint).

disingenuously avoid[s] the fact that this action is an SEC enforcement proceeding seeking a determination as to whether defendant has violated the securities laws of this country, and that because such investigations are conducted by the SEC's legal staff, a Rule 30(b)(6) deposition of an SEC official with knowledge of the extent of that investigative effort, amounts to *the equivalent of an attempt to depose the attorney for the other side*.

*Id.* (emphasis added). The court further explained that “since the investigation was conducted by SEC attorneys, preparation of the witnesses would include disclosure of the SEC attorneys’ legal and factual theories” concerning the allegations, as well as “their opinions as to the significance of documents, credibility of witnesses, and other matters constituting attorney work product.” *Id.* at \*2-3.

Here, the OAG staff most knowledgeable about the proposed topics are attorneys, and the knowledge necessary to prepare a witness is in the possession of OAG attorneys. Therefore, the deposition of any OAG staff member in this case would pose the same privilege concerns as the deposition of an attorney. *See E.E.O.C. v. McCormick & Schmick's Seafood Restaurants, Inc.*, 2010 WL 2572809, at \*6 (D. Md. June 22, 2010) (“All of the subject areas are likely to require testimony of [agency] counsel or a proxy prepared by counsel. Thus, an invasion of attorney work product would be inevitable.”); *United States v. Dist. Council of New York City & Vicinity of United Bhd. of Carpenters & Joiners of Am.*, 1992 WL 208284, at \*15 (S.D.N.Y. Aug. 18, 1992) (“However liberal the discovery rules are, they could not reasonably be construed as requiring a party in a case such as this to make a Rule 30(b)(6) deponent, who is an investigator assisting counsel, the repository of all information known to counsel so that she could then provide it to an adversary.”); *S.E.C. v. Monterosso*, 2009 WL 8708868, at \*1 (S.D. Fla. June 2, 2009) (holding that a deposition “seeks the mental impressions of the SEC’s attorneys” where “the only remaining knowledge as to the ‘factual basis’ of the SEC’s claims is the importance the SEC gives to each document”).<sup>2</sup>

Finally, as a practical matter, educating a lay witness on the factual basis of all of the allegations is a highly inefficient means of discovery, and a deposition in which every question is met with a privilege objection and an instruction not to answer is a fruitless exercise. *See McCormick & Schmick's*, 2010 WL 2572809, at \*4 (citing “the undue burden and inefficiency entailed to prepare a lay witness to engage in rote memorization and recitation of the evidence in the case” as a reason to deny a deposition of a law enforcement agency). The OAG therefore requests that the Court grant its motion for a protective order.

Sincerely,

/s Marc Montgomery

Marc Montgomery

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<sup>2</sup> ExxonMobil has relied on dicta from one decision in a federal district court in Florida for the proposition that an entity will “generally” designate a non-attorney as a witness for a federal 30(b)(6) deposition. *S.E.C. v. Merkin*, 283 F.R.D. 689, 698 (S.D. Fla. 2012). While that practice could make sense in other contexts where non-attorneys possess relevant information, it does not make sense here, where the OAG has conducted the investigation and litigation primarily through its attorneys.

# **EXHIBIT A**

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

PEOPLE OF THE STATE OF NEW YORK,  
By LETITIA JAMES,  
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

**PLAINTIFF'S RESPONSE TO DEFENDANT'S FIRST SET  
OF CONTENTION INTERROGATORIES**

Pursuant to Article 31 of the New York Civil Practice Law and Rules, as supplemented by Commercial Division Rule 11-a, Plaintiff, People of the State of New York, by its attorney, Letitia James, Attorney General of the State of New York ("OAG") responds and objects to Defendant Exxon Mobil Corporation's ("ExxonMobil") First Set of Contention Interrogatories dated April 1, 2019, as follows:

**RESERVATION OF RIGHTS**

The responses set forth herein constitute the best information presently known and available to Plaintiff as of the date of these responses. Plaintiff's review of documents and development of legal theories are ongoing. Further, additional document production and witness testimony is expected. Plaintiff therefore reserves the right to amend or supplement the response to each Interrogatory with additional information or documents should such information or

documents become known or available to counsel for Plaintiff.<sup>1</sup> Plaintiff also reserves the right to object to the further disclosure of any such information or documents.

In addition, Plaintiff has already provided a Preliminary Exhibit List in its letter to ExxonMobil's counsel dated February 1, 2019. As those listed exhibits encompass documents and witness testimony that formed the factual basis of Plaintiff's Complaint, Plaintiff expressly incorporates by reference those exhibits into each of its responses to ExxonMobil's Interrogatories and reserves the right to rely upon such documents and witness testimony at trial.

### **OBJECTIONS TO INSTRUCTIONS**

1. Plaintiff objects to Paragraph 5 of ExxonMobil's Instructions to the extent that it imposes obligations on Plaintiff beyond the requirements of CPLR § 3133 (b).

2. Plaintiff objects to Paragraph 6 of ExxonMobil's Instructions to the extent that it imposes obligations on Plaintiff that are beyond the scope of the CPLR.

### **OBJECTIONS TO DEFINITIONS**

1. Plaintiff objects to Definition No. 7 regarding "Concerning" as overbroad and potentially calling for the production of information that may be protected from disclosure by virtue of CPLR § 3101, the attorney work product privilege, deliberative process privilege, public interest privilege, law enforcement privilege, attorney-client privilege, common interest privilege, or any other applicable privileges, immunities, or protections from disclosure.

2. Plaintiff objects to Definition No. 10 regarding "Document" to the extent it seeks "All records and other tangible media of expression" that may be protected from disclosure by virtue of CPLR § 3101, the attorney work product privilege, deliberative process privilege,

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<sup>1</sup> Plaintiff also reserves the right to supplement these responses to include transcripts of the Commercial Division Rule 11-f deposition of ExxonMobil and the deposition of Brant Edwards, being held on April 30-May 1, 2019.

public interest privilege, law enforcement privilege, attorney-client privilege, common interest privilege, or any other applicable privileges, immunities, or protections from disclosure.

3. Plaintiff objects to Definition No. 15 regarding “GHG Costs” as vague and ambiguous, and concerning a contested issue in this case.

4. Plaintiff objects to Definition No. 16 regarding “Identify” to the extent it calls for information neither relevant to any party’s claims or defenses in this action, nor reasonably calculated to lead to the discovery of admissible evidence. Plaintiff further objects to Definition No. 16 to the extent it calls for information not within Plaintiff’s possession, custody, or control. Plaintiff further objects to Definition No. 16 to the extent it calls for information beyond what is called for by Rule 11-a(b) of the Commercial Division of the Supreme Court.

5. Plaintiff objects to Definition No. 26 regarding “Proxy Cost” or “proxy cost of carbon” as it is vague, ambiguous, and concerning a contested issue in this case. To the extent that Plaintiff uses the term “proxy cost” in Plaintiff’s responses to these Interrogatories, that term shall mean any implied, imputed, shadow, or proxy cost, price, fee or tax on GHG emissions, however denominated (whether as proxy costs, GHG costs, GHG planning bases, or otherwise), including any such cost, price, fee, or tax applied as a proxy for potential policies that might be adopted by any government or regulatory body over time to help stem GHG emissions. To the extent that Plaintiff uses the term “publicly represented proxy cost” in Plaintiff’s responses to these Interrogatories, that term shall mean the costs that ExxonMobil publicly represented it includes in economic projections as a proxy for the increasing future costs resulting from increasingly stringent climate regulations.

6. Plaintiff objects to Definition No. 28 regarding “You” and “Your” to the extent that it mischaracterizes the identity of the Plaintiff as the Attorney General of New York, rather

than the People of the State of New York. Plaintiff further objects to this definition as calling for privileged information that is protected from disclosure by virtue of the attorney work product privilege, deliberative process privilege, public interest privilege, law enforcement privilege, attorney-client privilege, common interest privilege, or any other applicable privileges, immunities, or protections from disclosure. Finally, any responses that Plaintiff provides to the Interrogatories below are subject to the corrected definition of “You” or “Your” as referring solely to the Plaintiff as the People of the State of New York.

### **GENERAL OBJECTIONS**

Plaintiff makes the following general objections, which form a part of, and are hereby incorporated into, each specific response to the individual Interrogatories set forth below:

1. Plaintiff objects to the “Definitions,” “Instructions” and each of the individual Interrogatories to the extent that they seek privileged information compiled, created, or obtained by attorneys of a law enforcement agency and their agents in the course of an investigation and in anticipation of litigation. The “Definitions,” “Instructions,” and each of the individual Interrogatories seek information that would reveal mental impressions, legal theories, and legal strategies of the attorneys at the OAG and those working on their behalf.

2. Plaintiff objects to the “Definitions,” “Instructions,” and each of the individual Interrogatories to the extent that they seek information that is protected from disclosure by virtue of CPLR § 3101, the attorney work product privilege, deliberative process privilege, public interest privilege, law enforcement privilege, attorney-client privilege, common interest privilege, or any other applicable privileges, immunities, or protections from disclosure. Nothing contained in Plaintiff’s response is intended to be, or shall be construed to be, a waiver of any such applicable privilege, immunity, or protection.



3. Plaintiff objects to the “Definitions,” “Instructions,” and each of the individual Interrogatories to the extent that they purport to impose any discovery obligations or requirements inconsistent with or in addition to those set forth in the CPLR, the Commercial Division Rules, the Court’s Preliminary Conference Order that the Court may make, or New York State law.

4. Plaintiff objects to the “Definitions,” “Instructions,” and each of the individual Interrogatories to the extent that they are vague, ambiguous, overbroad, or unduly burdensome.

5. Plaintiff objects to the “Definitions,” “Instructions,” and each of the individual Interrogatories to the extent that they call information that is not in Plaintiff’s possession, custody, or control.

6. Plaintiff objects to the “Definitions,” “Instructions,” and each of the individual Interrogatories to the extent that they call for information that is (1) already in Defendant’s possession, custody, or control, including information Defendant previously produced to Plaintiff; (2) equally available to Defendant or attainable by Defendant from another source that is more convenient, less burdensome, or less expensive; or (3) publicly available.

7. Plaintiff objects to the “Definitions,” “Instructions,” and each of the individual Interrogatories as premature to the extent that they call for production of expert reports or documents reviewed or relied upon by testifying experts. Plaintiff shall provide expert witness disclosure at the appropriate time pursuant to CPLR § 3101, Rule 13 of the Commercial Division Rules, and the Court’s Preliminary Conference Order.

8. Plaintiff objects to the “Definitions,” “Instructions,” and each of the individual Interrogatories to the extent that they call for expert opinion.

9. Plaintiff objects to the “Definitions,” “Instructions,” and each of the individual

Interrogatories to the extent that they require Plaintiff to form or accept a legal conclusion in order to respond.

10. These responses and objections herein are based on Plaintiff's present knowledge and Plaintiff's failure to object to any of the individual Interrogatories on a particular ground shall not be construed as a waiver of its right to object on any additional grounds. Plaintiff reserves the right to supplement or amend these responses and objections as necessary.

11. Plaintiff's objections and responses to the Interrogatories do not constitute, and shall not be interpreted as, Plaintiff's agreement with or admission as to the truth or accuracy of any legal or factual characterization or allegation stated or implied in the Interrogatories.

12. Plaintiff objects to each of the Interrogatories to the extent that it seeks information concerning other individuals, organizations, state agencies, or other entities that is not in the possession, custody or control of Plaintiff.

13. Plaintiff objects to these Interrogatories to the extent that they are duplicative of other disclosure in this matter to which Plaintiff has already provided a response.

14. Inadvertent production by Plaintiff of any document or information which is privileged, was prepared in anticipation of litigation, or is otherwise immune from discovery, shall not constitute a waiver of any privilege or of another ground for objecting to discovery with respect to that document or any other document, or its subject matter, or the information contained therein, or of Plaintiff's right to object to the use of any such document or the information contained therein during any proceeding in this litigation or otherwise.

### **SPECIFIC OBJECTIONS AND RESPONSES**

Without waiving the foregoing objections to Objections to Instructions, Objections to

Definitions or General Objections, each of which Plaintiff incorporates into each of its responses below, Plaintiff responds and specifically objects as follows:

**Interrogatory No. 1:** Identify the factual basis Concerning Your contention in paragraph 8 of the Complaint that ExxonMobil's Proxy Costs "more accurately reflect[] the risk of future climate change regulation" than ExxonMobil's GHG Costs.

**Objections and Responses to Interrogatory No. 1:**

Plaintiff objects to this Interrogatory to the extent it seeks information that is protected from disclosure by virtue of CPLR § 3101, the attorney work product privilege, law enforcement privilege, deliberative process privilege, attorney-client privilege, or any other applicable privileges, immunities, or protections from disclosure. Plaintiff further objects to this Interrogatory as overbroad and unduly burdensome to the extent that it seeks information based on documents that are outside of Plaintiff's, but within Defendant's, possession, custody or control. Plaintiff further objects to this Interrogatory to the extent that it uses Defendant's definitions of "Proxy Cost" and "GHG Cost," neither of which appear in paragraph 8 of the Complaint and to which Plaintiff has objected above.

Additionally, Plaintiff objects to this Interrogatory as it selectively excerpts from the last sentence of paragraph 8 of the Complaint the phrase "more accurately reflect[] the risk of future climate change regulation." The full sentence states: "Yet despite this knowledge, and despite the recognition that the publicly disclosed proxy costs more accurately reflect the risk 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." Plaintiff's response to this Interrogatory therefore is based on the meaning of the term "more accurately

reflect[] the risk of future climate change regulation” within the context of the entire sentence.

Subject to and without waiving Plaintiff’s general and specific objections, as stated in the Complaint, Plaintiff contends ExxonMobil did not disclose to investors that there was a significant deviation between the publicly disclosed proxy cost and the lower proxy cost set forth in ExxonMobil’s undisclosed Corporate Plan Dataguide. Plaintiff also contends that the alignment of the long-term values of those proxy costs for OECD countries did not occur until 2014. Plaintiff further contends that ExxonMobil internally recognized that the higher proxy costs described to investors in its *Outlooks for Energy* and other publications and disclosures were a more realistic projection of future costs associated with GHG emissions than the lower costs found in its undisclosed internal guidance.

In support of these contentions, Plaintiff relies upon ExxonMobil’s publicly available statements and publications, including but not limited to:

1. ExxonMobil’s *Outlook for Energy* publications from 2007 through 2017;
2. *ExxonMobil and the Carbon Tax* and other publications on the “Energy Factor” feature of ExxonMobil’s website;
3. Transcripts of ExxonMobil’s shareholder meetings, meetings with financial analysts, and earnings calls, including but not limited to ExxonMobil’s 2nd Quarter 2015 earnings call, ExxonMobil’s 2nd Quarter 2016 earnings call, and ExxonMobil’s 2016 shareholder meeting;
4. ExxonMobil’s annual responses to the Carbon Disclosure Project Climate Change questionnaire from 2010 through 2017; and
5. ExxonMobil’s *Energy and Climate* and *Energy and Carbon – Managing the Risks* reports from 2014.

In addition, Plaintiff relies upon the documents produced by ExxonMobil in this litigation and the investigation that preceded it, including but not limited to:

1. All drafts and final versions of ExxonMobil's Corporate Plan Dataguides and their respective Appendices from 2007 through 2017, whether produced by ExxonMobil or its auditors, PricewaterhouseCoopers, LLP ("PwC");
2. All internal and external presentations and all speaker's notes and backup data prepared with those presentations relating to the ExxonMobil's application of its proxy costs;
3. All internal communications, presentations and other documents concerning ExxonMobil's decision in 2014 to align the long-term values of its publicly disclosed proxy cost and its internal undisclosed proxy costs for OECD countries, including but not limited to documents stamped Beginning Bates Nos. EMC 000539920 and EMC 000539921;
4. All internal communications reflecting ExxonMobil's statement that the Energy Outlook proxy cost was "more realistic" than the undisclosed internal proxy cost in the Corporate Plan, including but not limited to EMC 000339155, EMC 000539921 and EMC 000354827;
5. The deposition and investigative testimony<sup>2</sup> of:
  - a. Mark Shores, including but not limited to transcript pages 42-46, 70-76, 115-118, and 358-373;
  - b. Guy Powell, including but not limited to transcript pages 183-184, and 261-

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<sup>2</sup> Plaintiff has provided limited citations to specific sections of the transcripts of witness testimony for convenience only and expressly reserves the right to use any and all portions of the transcripts of each witness' testimony in support of its claims, whether specifically cited herein or not.

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- c. Todd Onderdonk, including but not limited to transcript pages 230-255, 491-492;
- d. William Colton, including but not limited to transcript pages 165-186; and
- e. Thomas Eizember, including but not limited to transcript pages 63-66, 99-100, and 112-113.

**Interrogatory No. 2:** Identify the factual basis, including Your methods of calculation, Concerning Your contention in paragraph 12 of the Complaint that ExxonMobil understated projected undiscounted costs of GHG emissions at fourteen oil sands Projects in Alberta, Canada “by approximately \$30 billion CAD (Canadian dollars), or more than \$25 billion USD (U.S. dollars)” and at a Kearn Investment “by as much as 94% – approximately \$14 billion CAD (\$11 billion USD).”

**Objections and Responses to Interrogatory No. 2:**

Plaintiff objects to this Interrogatory to the extent it seeks information that is protected from disclosure by virtue of CPLR § 3101, the attorney work product privilege, law enforcement privilege, deliberative process privilege, attorney-client privilege, or any other applicable privileges, immunities, or protections from disclosure. Plaintiff further objects to this interrogatory on the grounds that it is more appropriately the subject of expert reports and testimony.

Without limiting the forthcoming expert analysis, however, Plaintiff states that the calculation that was made in Paragraph 12 of the Complaint was based on an analysis of the cash flow models of fourteen oil sands projects. Those fourteen oil sands projects and the documents

on which the calculation was based are as follows:

#	Project	Beginning Bates
1	Aspen Ph1	EMC 003697673
2	Clarke Creek Ph1	EMC 003697597
3	Clarke Creek Ph2	EMC 003697587
4	Clarke Creek Ph3	EMC 003697588
5	Clyden Ph1	EMC 003697598
6	Clyden Ph2	EMC 003697573
7	Clyden Ph3	EMC 003697575
8	Corner Ph1	EMC 003697599
9	Corner Ph2	EMC 003697579
10	Corner Ph3	EMC 003697581
11	Grand Rapids	EMC 003697600
12	Grand Rapids Ph2	EMC 003697601
13	Kearl	EMC 003697717
14	Nabiye	EMC 004046570

To arrive at the alleged understatement of projected undiscounted costs of GHG emissions of the fourteen oil sands projects, including the alleged understatement attributed specifically to the Kearl Investment, Plaintiff aggregated values representing the difference of the sum of undiscounted GHG emissions costs for each project using the cash flow model as produced and the sum of undiscounted GHG emissions costs for each project using the cash flow model as modified, where the modification was to replace the GHG emissions cost basis values in the as-produced model with the GHG emissions cost basis values used in Exxon's *Outlook for Energy*.<sup>3</sup>

In addition to the above, Plaintiff relies on support from additional cash flow and other economic models produced by ExxonMobil as well as internal correspondence among ExxonMobil employees regarding the effects of the application of a proxy cost in economic modeling, including but not limited to documents stamped Beginning Bates Nos. EMC

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<sup>3</sup> The values in row 2 of "Sheet 1" of Beginning Bates EMC 002919920.

002101506 and EMC 001851060. Plaintiff also relies on support from the investigative testimony of Jason Iwanika, including but not limited to transcript pages 154-191, and the deposition testimony of Daniel Hoy.<sup>4</sup>

**Interrogatory No. 3:** Identify the factual basis for Any Corrective Disclosure or Materialization of Risk You assert occurred, along with a detailed explanation Concerning Any attendant Prior Representation and Any loss that was caused by said Corrective Disclosure or Materialization of Risk.

**Objections and Responses to Interrogatory No. 3:**

Plaintiff objects to this Interrogatory to the extent it seeks information that is protected from disclosure by virtue of CPLR § 3101, the attorney work product privilege, law enforcement privilege, deliberative process privilege, attorney-client privilege, or any other applicable privileges, immunities, or protections from disclosure. Plaintiff also objects to this Interrogatory as it is more appropriately the subject of expert reports and testimony.

Subject to and without waiving Plaintiff's general and specific objections, Plaintiff responds that Plaintiff's contentions as to any corrective disclosures and the effects of those disclosures will be set forth in Plaintiff's expert report(s), which will be submitted when expert disclosure is made pursuant to the Preliminary Conference Order. That report will identify the documents and witness testimony upon which the expert witnesses will rely in formulating their opinion. In general, Corrective Disclosures consist of (1) specific events related to the dissemination of news information regarding OAG's investigation into ExxonMobil's public statements concerning its climate change risk management; and (2) news events regarding other

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<sup>4</sup> References to specific sections of the transcript will be provided upon receipt of a finalized version of the Hoy transcript.



government investigations into ExxonMobil's public statements about its climate change risk management.

**Interrogatory No. 4:** Identify the factual basis, including the identity of All Persons with knowledge, Concerning Your contention in paragraph 50 of the Complaint that “numerous state, municipal, and other pension funds”—Including (i) the New York State Common Retirement Fund, (ii) New York State Teachers Retirement System, and (iii) New York City Pension Funds—were harmed as a result of ExxonMobil's purported misrepresentations.

**Objections and Responses to Interrogatory No. 4:**

Plaintiff objects to this Interrogatory to the extent it seeks information that is protected from disclosure by virtue of CPLR § 3101, the attorney work product privilege, law enforcement privilege, deliberative process privilege, attorney-client privilege, or any other applicable privileges, immunities, or protections from disclosure.

Plaintiff also objects to this Interrogatory as it misstates Paragraph 50 of the Complaint which merely identifies the holdings of ExxonMobil stock by “numerous state, municipal, and other pension funds.” However, subject to and without waiving Plaintiff's general and specific objections, and limiting Plaintiff's response to the allegations of Paragraph 50, Plaintiff states that the factual bases for the statements of ExxonMobil shareholdings were found in publicly available data such as that found at Yahoo! Finance and Bloomberg, as well as ExxonMobil's own data as contained in the transcript of its 2018 Annual Shareholder Meeting. In addition, Plaintiff states that, by letter dated April 5, 2019, it provided ExxonMobil with a list of third party individuals who may have discoverable information that Plaintiff may use to support its claims, including the names and contact information of those individuals as well as the potential

area or areas of discoverable information.

To the extent that this Interrogatory seeks the factual basis for Plaintiff's contention that investors were harmed by ExxonMobil's conduct, those bases will be set forth in Plaintiff's expert report, which will be submitted when expert disclosure is made pursuant to the Preliminary Conference Order.

**Interrogatory No. 5:** Identify the factual basis Concerning Your contention in paragraphs 155-56 of the Complaint that ExxonMobil's purported "deviation" from its public representations Concerning Proxy Costs at Alberta was "willful" and "directed by Exxon[Mobil] management."

**Objections and Responses to Interrogatory No. 5:**

Plaintiff objects to this Interrogatory to the extent it seeks information that is protected from disclosure by virtue of CPLR § 3101, the attorney work product privilege, law enforcement privilege, deliberative process privilege, attorney-client privilege, or any other applicable privileges, immunities, or protections from disclosure.

Subject to and without waiving Plaintiff's general and specific objections, with respect to the specific contentions identified in this Interrogatory, Plaintiff contends that ExxonMobil's senior management was aware that there was a difference between the publicly disclosed proxy cost and the lower undisclosed proxy cost found in its Corporate Plan Dataguide. Moreover, Plaintiff contends that ExxonMobil's management expressly directed planners to apply proxy costs that were lower than those publicly disclosed to investors. This direction was evident in ExxonMobil's decisions with respect to its Canadian assets, such as Kearl, where it directed planners to apply a lower legislated cost, rather than the publicly disclosed proxy cost.

Support for these contentions is described, in part and in detail, in Plaintiff's responses to

Interrogatories No. 1 and 2 that are expressly incorporated by reference herein. In addition, in support of these contentions, Plaintiff relies upon the documents produced by ExxonMobil or ExxonMobil's subsidiary, Imperial Oil Limited ("IOL"), in the course of the investigation and in connection with this litigation, including but not limited to:

1. All internal communications between and among ExxonMobil and IOL in 2015 and 2016 regarding the application of a proxy cost in business planning and other business processes, or regarding the use of an "alternate methodology" involving the application of lower legislated costs, including but not limited to documents stamped Beginning Bates Nos. EMC 001427013, EMC 001427003, EMC 002880885, EMC 001850584, EMC 001850439, EMC 001098246, EMC 002786549, EMC 002875747, EMC 002879540, EMC 002881265, EMC 003010467, EMC 003680301, EMC 002879490, EMC 001850648, IMO\_00000120, IMO\_00006482, IMO\_00003540, IMO\_00004599, IMO\_00000008, IMO\_00000065, IMO\_00008118, IMO\_00000106, and IMO\_00000135.
2. All cash flow or economic models, whether in draft or final form, produced by ExxonMobil, IOL or PwC regarding the application of a proxy cost in business planning and other business processes, including but not limited to the fourteen cash flow models listed in response to Interrogatory No. 2, and the 2012 Kearn cash flow model found at document stamped Beginning Bates No. EMC 004046561;
3. The cash flow models listed in Appendix A to Plaintiff's Rule 11-f Notice of deposition served upon ExxonMobil on February 27, 2019; and
4. Deposition and investigative testimony of;
  - a. Kirsten Bannister, including but not limited to transcript pages 508-518;

- b. Jason Iwanika, including but not limited to transcript pages 154-190;
- c. Daniel Hoy,<sup>5</sup>
- d. William Colton, including but not limited to transcript pages 177-198, and 222-223;
- e. Robert Bailes, including but not limited to transcript pages 194-196;
- f. Thomas Eizember, including but not limited to transcript pages 35-38; and
- g. Richard DuCharme, including but not limited to transcript pages 142-153.

**Interrogatory No. 6:** Identify the factual basis Concerning Your contention in paragraphs 185 and 246 of the Complaint that ExxonMobil did not adjust natural gas price projections to account for the impact of its Pass-Through Assumption.

**Objections and Responses to Interrogatory No. 6:**

Plaintiff objects to this Interrogatory as overbroad and unduly burdensome to the extent that it seeks information based on documents that are outside of Plaintiff's, but within Defendant's, possession, custody or control. Plaintiff further objects to this Interrogatory as it misstates Plaintiff's contentions as stated in paragraphs 185 and 246 of the Complaint. Specifically, with respect to the incorporation of ExxonMobil's pass-through assumptions in paragraph 185, the Complaint states: "However, Exxon did not factor the impact of its pass-through assumption into its price projections for natural gas in 2016 or earlier." Paragraph 246 of the Complaint likewise states: "Exxon did not incorporate its pass-through assumption into its natural gas demand or price projections in 2016." Plaintiff will therefore respond to this

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<sup>5</sup> References to specific sections of the transcript will be provided upon receipt of a finalized version of the Hoy transcript.

Interrogatory based on the contentions as they appear in the Complaint and not as misstated by ExxonMobil.

Subject to and without waiving the foregoing general and specific objections, Plaintiff responds that the factual basis for the contentions as stated above are contained in documents produced by ExxonMobil and its auditor, PwC, during the investigation, as well as testimony by witnesses in the investigation and this litigation, including but not limited to:

1. All cash flow or economic models produced by ExxonMobil or IOL;
2. All cash flow models, economic models, sensitivity analyses, or input files produced by PwC or for PwC by ExxonMobil that were created or used during the 2015 or 2016 audit of ExxonMobil by PwC;
3. All Asset Recoverability Review presentations, GHG planning presentations, and all other presentations that discussed or reflected ExxonMobil's pass-through assumptions concerning market recovery of proxy costs), either in draft or final form, that were produced by PwC, ExxonMobil or both, including but not limited to EMC 003141349, EMC 003219910, EMC 002863297, EMC 002887246, EMC 003142533, EMC 002570970, PNYAG0330371, PYNAG0543790, and PNYAG0590087
4. Internal ExxonMobil communications and communications between ExxonMobil and PwC regarding ExxonMobil's pass-through assumptions concerning market recovery of proxy costs, including but not limited to EMC 003179783 and EMC 002871205
5. Investigative testimony of:
  - a. Mark Shores, including but not limited to transcript pages 38-40;
  - b. Guy Powell, including but not limited to transcript pages 342-383;
  - c. Stephen Littleton, including but not limited to transcript pages 167-192; and

- d. Richard Auter, including but not limited to transcript pages 165-180, 268-277, and 289-292.

**Interrogatory No. 7:** Identify the factual basis Concerning Your contention in paragraphs 186-90 of the Complaint that ExxonMobil was required to disclose its Pass-Through Assumption to the public and that such disclosures would have been material to investors.

**Objections and Responses to Interrogatory No. 7:**

Plaintiff objects to this Interrogatory as a misstatement of paragraphs 186 through 190 of the Complaint. Paragraphs 186 through 188 describe ExxonMobil's practices with respect to pass-through assumptions, including its decision in 2017 to change its prior pass-through assumption "at least for the purposes of conducting impairment evaluations." Paragraph 189 states that "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." Additionally, paragraph 190 contends that, by using its undisclosed pass-through assumption, ExxonMobil avoided internalizing proxy costs associated with GHG emissions in its North American assets, an approach that was contrary to its stated risk management practices. Plaintiff will therefore respond to this Interrogatory based on the contentions as they appear in the Complaint and not as misstated by ExxonMobil.

Subject to and without waiving the foregoing general and specific objections, Plaintiff responds that the documents and testimony identified in Plaintiff's response to Interrogatory No. 6 provide factual support for Plaintiff's contentions in paragraphs 186 through 190, and are expressly incorporated by reference herein.

In addition, Plaintiff relies upon ExxonMobil's publicly available disclosures, statements

and publications, including but not limited to:

1. ExxonMobil's *Outlook for Energy* publications from 2007 through 2017;
2. Exxon Mobil's Forms 10-K filed with the U.S. Securities and Exchange Commission from 2007 through 2017;
3. Transcripts of ExxonMobil's shareholder meetings, meetings with financial analysts, and earnings calls, including but not limited to ExxonMobil's 2nd Quarter 2015 earnings call, ExxonMobil's 2nd Quarter 2016 earnings call, and ExxonMobil's 2016 shareholder meeting;
4. *ExxonMobil and the Carbon Tax* and other publications on the "Energy Factor" feature of ExxonMobil's website;
5. ExxonMobil's annual responses to the Carbon Disclosure Project Climate Change questionnaire from 2010 through 2017;
6. ExxonMobil's publications entitled *Energy and Climate* and *Energy and Carbon – Managing the Risks* from 2014;
7. All presentations to shareholders concerning ExxonMobil's climate-related policies and practices, including but not limited to all PowerPoint slide decks, notes or other materials presented or distributed to shareholders, financial analysts, the media or any other investors.

Moreover, Plaintiff relies upon documents produced by ExxonMobil in this litigation and the investigation that preceded it, including but not limited to:

1. ExxonMobil's internal communications reflecting communication with shareholders pertaining to any of the disclosures, presentations or statements listed above;
2. ExxonMobil's draft and final versions, including speaker notes and backup data, of

- presentations concerning ExxonMobil's climate-related policies and practices delivered to shareholders, shareholder representatives, financial analysts, the media or any other investors;
3. Notes, reports and all other documentation prepared by ExxonMobil of ExxonMobil's communications concerning ExxonMobil's climate-related policies and practices with shareholders, shareholder representatives, financial analysts or any other investors or members of the investment community concerning ExxonMobil's climate-related policies and practices, including but not limited to documents stamped Beginning Bates Nos. EMC 000538146, EMC 000537954, EMC 003593767, and EMC 003593768;
  4. Notes, reports and all other documentation of ExxonMobil's communications concerning ExxonMobil's climate-related policies and practices with shareholders prepared by third-party shareholders, shareholder representatives, financial analysts or any other investors or members of the investment community, including but not limited to documents stamped Beginning Bates ARJ-000000020, JPMS00005559, BOA-NYAG-EXXON-000000843, EMC 003191478, VGI1204, VGI0938, BOA-NYAG-EXXON-000002199, WFS000001, SSC\_NYAG\_0001948, and SSC\_NYAG\_0002206.

**Interrogatory No. 8:** Identify the factual basis Concerning Your contention in paragraph 235 of the Complaint that ExxonMobil represented to investors that it applied GHG Costs to impairment assessments.

**Objections and Responses to Interrogatory No. 8:**



Plaintiff objects to this Interrogatory as it is a misstatement of Plaintiff's contentions in paragraph 235 of the Complaint. Rather, paragraph 235 states: "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." Plaintiff will therefore respond to this Interrogatory based on the contention as it appears in paragraph 235 of the Complaint and not as misstated by ExxonMobil.

Subject to and without waiving the foregoing general and specific objections, Plaintiff relies upon:

1. ExxonMobil's publicly available statements and publications, including but not limited to:
  - a. ExxonMobil's *Outlook for Energy* publications from 2007 through 2017 ;
  - b. *ExxonMobil and the Carbon Tax* and other publications on the "Energy Factor" feature of ExxonMobil's website;
  - c. Transcripts of ExxonMobil's shareholder meetings, meetings with financial analysts, and earnings calls, including but not limited to ExxonMobil's 2nd Quarter 2015 earnings call, ExxonMobil's 2nd Quarter 2016 earnings call, and ExxonMobil's 2016 shareholder meeting;
  - d. ExxonMobil's annual responses to the Carbon Disclosure Project Climate Change questionnaire from 2010 through 2017; and
  - e. ExxonMobil's *Energy and Climate* and *Energy and Carbon – Managing the Risks* reports from 2014.
2. Statements ExxonMobil made about its impairment assessment process and its

- adherence to U.S. GAAP requirements in its annual SEC Form 10-K filings,  
including but not limited to its Form 10-K filings for 2015 and 2016;
3. The transcript of the statements made by then-CEO Rex Tillerson to shareholders at ExxonMobil's 2016 shareholder meeting;
  4. Audit memoranda produced by PwC during the investigation that preceded this litigation, including a document stamped Beginning Bates No. PNYAG0598577;
  5. Financial Accounting Standards Board, Accounting Standards Codification 360;
  6. Investigative testimony of:
    - a. Joseph Horne, including but not limited to transcript pages, 87, 100-104, 177-179;
    - b. Stephen Littleton, including but not limited to transcript pages 61-64, 70-75, 135-137, 150-151;
    - c. Richard Auter, including but not limited to transcript pages 82-98, 183-184;
    - d. Kyle Liner, including but not limited to transcript pages 82-83; and
    - e. Michael O'Riordan, including but not limited to transcript pages 100-103; and
    - f. Robert Wright, including but not limited to transcript pages 328-335.
  7. Deposition testimony of David Rosenthal, including but not limited to transcript pages 171-175.

**Interrogatory No. 9:** Identify the factual basis Concerning Your contention in paragraph 236 of the Complaint that ExxonMobil “failed to act in a manner consistent with ... GAAP requirements” when conducting its impairment assessments.

**Objections and Responses to Interrogatory No. 9:**

Plaintiff objects to this Interrogatory to the extent it seeks information that is protected from disclosure by virtue of CPLR § 3101, the attorney work product privilege, law enforcement privilege, deliberative process privilege, attorney-client privilege, or any other applicable privileges, immunities, or protections from disclosure. Plaintiff further objects to this interrogatory on the grounds that it is more appropriately the subject of expert reports and testimony.

Subject to and without waiving the foregoing general and specific objections, Plaintiff relies, in part, on the factual support described in detail in Plaintiff's response to Interrogatory No. 8 which is expressly incorporated by reference herein.

In addition, Plaintiff relies upon the documents produced by ExxonMobil and its auditor, PwC, during the litigation and the preceding investigation, including but not limited to:

1. All ExxonMobil cash flow models, economic models, sensitivity analyses, and input files created or used in ExxonMobil's impairment assessment process from 2010 through 2017;
2. All cash flow models, economic models, sensitivity analyses, and input files created by PwC or for PwC by ExxonMobil that were used during PwC's audits of ExxonMobil's impairment assessment process from 2010 through 2017;
3. All Asset Recoverability Review presentations and all other presentations prepared by ExxonMobil to be presented to PwC or to ExxonMobil's Management Committee in connection with ExxonMobil's impairment assessment process from 2010 through 2017;
4. Internal ExxonMobil communications and communications between ExxonMobil and PwC regarding PwC's audits of ExxonMobil from 2010 through 2017;

5. PwC's internal communications concerning its audits of ExxonMobil's impairment assessments from 2010 through 2017;
6. Investigative testimony of Stephen Littleton, including but not limited to transcript pages 61-64, 70-75; and
7. Deposition testimony of David Rosenthal, including but not limited to transcript pages 170-193.

**Interrogatory No. 10:** Identify the factual basis Concerning Your contention in paragraph 240 of the Complaint that ExxonMobil was required to include GHG Costs in its impairment assessments prior to 2016.

**Objections and Responses to Interrogatory No. 10:**

Plaintiff objects to this Interrogatory to the extent it seeks information that is protected from disclosure by virtue of CPLR § 3101, the attorney work product privilege, law enforcement privilege, deliberative process privilege, attorney-client privilege, or any other applicable privileges, immunities, or protections from disclosure. Plaintiff objects to ExxonMobil's use of the term "GHG Costs" for the reasons set forth in Plaintiff's Objections to Definitions.

In addition, Plaintiff objects to this Interrogatory to the extent that it misstates paragraph 240 of the Complaint, which states: "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." Plaintiff will therefore respond to this Interrogatory based on the contention as it appears in paragraph 240 of the Complaint and not as misstated by ExxonMobil.

Subject to and without waiving the foregoing general and specific objections, Plaintiff

responds that the factual basis for this Interrogatory is contained in Plaintiff's response to Interrogatory Nos. 8 and 9, the responses of which are incorporated by reference herein as if stated in full.

**Interrogatory No. 11:** Identify the factual basis Concerning Your contention in paragraphs 258-64 of the Complaint that ExxonMobil's management allegedly "failed to implement internal controls or processes to ensure consistent application" of its Proxy Costs.

**Objections and Responses to Interrogatory No. 11:**

Plaintiff objects to this Interrogatory as it misstates paragraphs 258 through 264 of the Complaint to the extent that the quoted language appears only in paragraph 258 of the Complaint. As ExxonMobil has failed to specify any contentions in the other listed paragraphs, Plaintiff will respond to the contention as stated in paragraph 258 of the Complaint only.

Subject to and without waiving the foregoing general and specific objections, Plaintiff relies on ExxonMobil's publicly available documents that contain representations and disclosures as to its application of the publicly disclosed proxy costs and its business planning processes including but not limited to:

1. The publicly available documents identified in response to Interrogatory No. 1; and
2. ExxonMobil's 2016 publication entitled *Energy & Carbon Summary*, and  
ExxonMobil's 2018 publication entitled *Energy & Carbon Summary*.

Plaintiff also relies on internal communications within and among ExxonMobil's various business units indicating a lack of awareness by ExxonMobil and/or IOL employees that projected costs of GHG emissions were to be used in investment decision-making, business planning, and other business processes. These documents include, but are not limited to,

documents stamped Beginning Bates Nos. EMC 001851067, EMC 003973940 and EMC 003415423.

In addition, Plaintiff relies on the investigative testimony of:

1. Todd Onderdonk, including but not limited to transcript pages 113-114;
2. Peter Trelenberg, including but not limited to transcript pages 305-306;
3. Robert Bailes, including but not limited to transcript pages 186-188; and
4. Norma Fisk, including but not limited to transcript pages 448-456, 512-513.

**Interrogatory No. 12:** Identify the factual basis Concerning Your contention in paragraph 309 of the Complaint that “[i]nvestors in Exxon[Mobil’s] equity and debt securities” relied on ExxonMobil’s alleged representations and “were harmed, and are still being harmed,” as a result of said reliance.

**Objections and Responses to Interrogatory No. 12:**

Plaintiff objects to this Interrogatory to the extent it seeks information that is protected from disclosure by virtue of CPLR § 3101, the attorney work product privilege, law enforcement privilege, deliberative process privilege, attorney-client privilege, or any other applicable privileges, immunities, or protections from disclosure. Plaintiff further objects to this Interrogatory as vague, overbroad and calling for Plaintiff’s attorneys’ mental impressions, conclusions, opinions or legal theories. Plaintiff also objects to this Interrogatory as overbroad to the extent that the cited paragraph encompasses allegations raised throughout the Complaint and potentially asks Plaintiff to identify the factual basis for most, if not all, of its claims.

Plaintiff also objects to the Interrogatory to the extent that it misstates paragraph 309 of the Complaint which reads: “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." As such, Plaintiff will respond to this Interrogatory based on the contentions as set forth in the Complaint and not as they are misstated by ExxonMobil.

Subject to and without waiving the foregoing general and specific objections, Plaintiff responds that the factual basis for this contention as to the harm to ExxonMobil's investors will be set forth in Plaintiff's expert report(s), which will be submitted when expert disclosure is made pursuant to the Preliminary Conference Order. In addition, and in the interim, Plaintiff expressly incorporates by reference its responses to Interrogatory Nos. 1 through 11, and Interrogatory No. 16 below, as well as the documents and witness testimony identified in Plaintiff's Preliminary Exhibit List, produced to ExxonMobil on February 1, 2019.

**Interrogatory No. 13:** Identify the factual basis Concerning Your contention in paragraph 311 of the Complaint that ExxonMobil's Investments and Assets are riskier than investors were led to believe as a result of purportedly not applying Proxy Costs to Investment Decisions.

**Objections and Responses to Interrogatory No. 13:**

Plaintiff objects to this Interrogatory to the extent it seeks information that is protected from disclosure by virtue of CPLR § 3101, the attorney work product privilege, law enforcement privilege, deliberative process privilege, attorney-client privilege, or any other applicable privileges, immunities, or protections from disclosure. Plaintiff further objects to this Interrogatory as vague and calling for Plaintiff's attorneys' mental impressions, conclusions, opinions or legal theories. Plaintiff likewise objects to the Interrogatory as it misstates paragraph 311 of the Complaint, which states: "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 assessments, impairment evaluations, and demand and price projections in a manner consistent with its representations.”

Additionally, Plaintiff also objects to this interrogatory as overbroad to the extent that the cited paragraph encompasses allegations raised throughout the Complaint and potentially asks Plaintiff to identify the factual basis for most, if not all, of its claims.

Subject to and without waiving the foregoing general and specific objections, Plaintiff responds that the factual basis for this contention as to the harm to ExxonMobil’s investors will be set forth in Plaintiff’s expert report(s), which will be submitted when expert disclosure is made pursuant to the Preliminary Conference Order. In addition, and in the interim, Plaintiff expressly incorporates by reference its responses to Interrogatories Nos. 1 through 11, and Interrogatory No. 16 below, as well as the documents and witness testimony identified in Plaintiff’s Preliminary Exhibit List, produced to ExxonMobil on February 1, 2019.

**Interrogatory No. 14:** Identify the factual basis Concerning Your contention in paragraph 312 of the Complaint that ExxonMobil “faced and continues to face greater risk associated with a two degree scenario that it represented to investors.”

**Objections and Responses to Interrogatory No. 14:**

Plaintiff objects to this Interrogatory to the extent it seeks information that is protected from disclosure by virtue of CPLR § 3101, the attorney work product privilege, law enforcement privilege, deliberative process privilege, attorney-client privilege, or any other applicable privileges, immunities, or protections from disclosure. Plaintiff further objects to this Interrogatory as vague, overbroad and calling for Plaintiff’s attorneys’ mental impressions,



conclusions, opinions or legal theories.

Subject to and without waiving the foregoing general and specific objections, Plaintiff responds that the factual basis for Plaintiff's contentions is set forth in paragraphs 286 through 308 in the Complaint and the documents referenced therein or which form the factual basis thereof, including but not limited to:

1. ExxonMobil's 2014 publication entitled *Energy and Carbon – Managing the Risks*;
2. All third-party scientific, academic, governmental, or other publications and international agreements concerning a climate 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, known as the "two degree," "450 ppm," or "low carbon" scenario. These publications include but are not limited to:
  - a. UNFCCC, Copenhagen Accord of 18 December 2009, Beginning Bates No. AG-PublicReports-00000084;
  - b. Intergovernmental Panel on Climate Change, *Climate Change 2014 Synthesis Report Summary for Policymakers*, Beginning Bates No. AG-PublicReports-00000045;
  - c. UNFCCC, 2015 Paris Agreement, Beginning Bates No. AG-PublicReports-00000071, Beginning Bates No. AG-PublicReports-00000086;
  - d. Carbon Tracker Initiative, *Unburnable Carbon – Are the world's financial markets carrying a carbon bubble?* (Nov. 2011), Beginning Bates No. AG-PublicReports-00000080;
  - e. International Energy Agency, *Perspectives for the Energy Transition Investment needs for a Low-Carbon Energy System*, Beginning Bates No. AG-

PublicReports-00000064;

f. U.S. Climate Change Science Program, Synthesis and Assessment Product

2.1A, “Scenarios of Greenhouse Gas Emissions and Atmospheric Concentrations.”<sup>6</sup>

3. ExxonMobil documents concerning the analysis of climate studies, including but not limited to EMC 000341454;
4. All communications between ExxonMobil and third parties concerning the graphic that appears on page 9 of ExxonMobil’s 2014 publication, *Energy and Carbon – Managing the Risks*, including but not limited to EMC 001189007;
5. All documents and internal ExxonMobil communications reflecting external presentations given by ExxonMobil that contain the graphic that appears on page 9 of ExxonMobil’s 2014 publication, *Energy and Carbon – Managing the Risks*, or the surrounding material on pages 8 and 9 of that report, including but not limited to documents stamped Beginning Bates Nos. PNYAG0245665, and EMC 002982601;
6. All third-party documents that discuss the graphic that appears on page 9 of ExxonMobil’s 2014 publication, *Energy and Carbon – Managing the Risks*, the surrounding material on pages 8 and 9 of that report, or any analysis of ExxonMobil’s assessment of its risks related to a two-degree scenario, including but not limited to BOA-NYAG-EXXON-000000843 and VGI1204;
7. Investigative testimony of:
  - a. Peter Trelenberg, including but not limited to transcript pages 350-381, 440-442; and

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<sup>6</sup> Available at: [https://science.energy.gov/~media/ber/pdf/Sap\\_2\\_1a\\_final\\_all.pdf](https://science.energy.gov/~media/ber/pdf/Sap_2_1a_final_all.pdf)

b. William Colton, including but not limited to transcript pages 298-316.

**Interrogatory No. 15:** Identify the factual basis Concerning Your contention in paragraph 313 of the Complaint that ExxonMobil's "securities are overvalued, and investors purchased or held Exxon[Mobil] securities at artificially inflated prices."

**Objections and Responses to Interrogatory No. 15:**

Plaintiff objects to this Interrogatory to the extent it seeks information that is protected from disclosure by virtue of CPLR § 3101, the attorney work product privilege, law enforcement privilege, deliberative process privilege, attorney-client privilege, or any other applicable privileges, immunities, or protections from disclosure. Plaintiff further objects to this Interrogatory as seeking information more appropriately the subject of expert reports and testimony. Plaintiff also objects to this Interrogatory as vague, overbroad and calling for Plaintiff's attorneys' mental impressions, conclusions, opinions or legal theories. Plaintiff also objects to this Interrogatory as overbroad to the extent that the cited paragraph encompasses allegations raised throughout the Complaint and potentially asks Plaintiff to identify the factual basis for most, if not all, of its claims.

Subject to and without waiving the foregoing general and specific objections, Plaintiff responds that the factual basis for this contention as to the harm to ExxonMobil's investors will be set forth in Plaintiff's expert report(s), which will be submitted when expert disclosure is made pursuant to the Preliminary Conference Order.

**Interrogatory No. 16:** Identify the factual basis Concerning Your contention in paragraphs 322-23 of the Complaint that ExxonMobil's alleged misrepresentations were made "intentionally,

knowingly, or recklessly” and that investors relied on said alleged misrepresentations.

**Objections and Responses to Interrogatory No. 16:**

Plaintiff objects to this Interrogatory to the extent it seeks information that is protected from disclosure by virtue of CPLR § 3101, the attorney work product privilege, law enforcement privilege, deliberative process privilege, attorney-client privilege, or any other applicable privileges, immunities, or protections from disclosure. Plaintiff further objects to this Interrogatory as vague, overbroad, calling for Plaintiff’s attorneys’ mental impressions, conclusions, opinions or legal theories. Plaintiff also objects to this Interrogatory as premature to the extent that the cited paragraph encompasses allegations raised throughout the Complaint and potentially asks Plaintiff to identify the factual basis for most, if not all, of its claims.

Subject to and without waiving the foregoing general and specific objections, Plaintiff expressly incorporates by reference its responses to Interrogatory Nos. 1 through 15 as well as the documents and witness testimony identified in Plaintiff’s Preliminary Witness and Exhibit lists, produced to ExxonMobil on February 1, 2019. Documents further supporting Plaintiff’s contentions include, but are not limited to:

1. All internal communications concerning presentations of the *Outlooks for Energy*, the Corporate Plan Dataguides and their respective Appendices, and/or any proxy cost-related content of the *Outlooks for Energy* or the Corporate Plan Dataguides and their respective Appendices to ExxonMobil’s Management Committee, Board of Directors or any individual ExxonMobil Management Committee members, ExxonMobil officers, or ExxonMobil directors from 2007 through 2017, including but not limited to documents stamped Beginning Bates Nos. EMC 004067549 and EMC 003203466;

2. All documents reflecting presentations of the *Outlooks for Energy*, the Corporate Plan Dataguides and their respective Appendices, and/or any proxy cost-related content of the *Outlooks for Energy* or the Corporate Plan Dataguides and their respective Appendices to ExxonMobil's Management Committee, Board of Directors or any individual ExxonMobil Management Committee members, ExxonMobil officers, or ExxonMobil directors from 2007 through 2017;
3. All internal communications and other documents concerning the awareness and approval by ExxonMobil's senior management and other ExxonMobil employees of the differences between the publicly disclosed proxy cost and the internal undisclosed proxy costs, including but not limited to documents stamped Beginning Bates Nos. EMC 004067549, EMC 000339155, EMC 000354827, EMC 000539920 and EMC 000539921;
4. All internal communications, presentations and other documents concerning ExxonMobil's decision in 2014 to align the long-term values of its publicly disclosed proxy cost and its internal undisclosed proxy costs for OECD countries, including but not limited to documents stamped Beginning Bates Nos. EMC 000539920 and EMC 000539921;
5. Documents produced by ExxonMobil or PwC that reflect ExxonMobil's awareness of the interest of shareholders and financial analysts in climate change disclosures, including but not limited to documents stamped Beginning Bates Nos. EMC 000512976; EMC 002431186; EMC 001210321, EMC 001366101, EMC 001267947, EMC 001267941, EMC 001321767, EMC 003420200, EMC 000392104; EMC 000412330, EMC 002431186, EMC 000396200, PNYAG0245665, EMC 000537954;

EMC 003593767, EMC 000704920, EMC001698429, EMC000693361, EMC 000538036, and EMC001080416;

6. Documents evidencing the various entity signatories to the UN Principles of Responsible Investment;
7. All publications by ExxonMobil's investors, financial analysts and auditors regarding climate change disclosures and carbon pricing in investment decision-making from 2007 through 2017, including but not limited to:
  - a. Credit Suisse Equity Research Report (Mar. 24, 2014), Beginning Bates No. WMC-00001660\_0001;
  - b. JP Morgan Chase & Co. Environmental and Social Policy Framework (Apr. 2014), Beginning Bates No. AG-PublicReports-00000066;
  - c. J.P. Morgan Asset Management, *Sustainable Investing, Investment Perspectives on Corporate Engagement & Proxy Voting* (2017), Beginning Bates No. AG-PublicReports-00000065;
  - d. Morgan Stanley, *A Changing Climate: The Fossil Fuel Debate*, (Jan. 2016), Beginning Bates No. AG-PublicReports-00000067;
  - e. Morgan Stanley, *Climate Change and Fossil Fuel Aware Investing: Risk, Opportunities and a Roadmap for Investors* (2016), Beginning Bates No. AG-PublicReports-00000068;
  - f. State Street Global Advisors, Inc., *SSGA's Perspective on Effective Climate Change Disclosure I* (Aug. 7, 2017), Beginning Bates No. AG-PublicReports-00000078;
  - g. HSBC, *Stranded assets: what's next?* (Apr. 16, 2015), Beginning Bates No.

- AG-PublicReports-00000062;
- h. HSBC Global Research, *Oil & carbon revisited* (Jan. 25, 2013), Beginning Bates No. AG-PublicReports-00000063;
  - i. PwC, *Sustainability goes mainstream: Insights into investor views* (May 2014), Beginning Bates No. AG-PublicReports-00000076;
  - j. Brigham McNaughton, PwC, *Exxon Agrees to Disclose Its 'Carbon Risk.'* (WSJ Today), Beginning Bates No. PNYAG0022401;
  - k. Wells Fargo, *Potential Climate Risk Exposure: Discussion on conducting a broader portfolio assessment* (Dec. 15, 2014), Beginning Bates No. PNYAG0195186;
  - l. Wells Fargo research reports, Beginning Bates No. WFS000001;
8. All notes, memoranda, agenda, summaries, research compilations, and communications by ExxonMobil's investors, financial analysts, and auditors regarding climate change disclosures and carbon pricing in investment decision-making from 2007 through 2017, including but not limited to documents stamped Beginning Bates Nos. BOA-NYAG-EXXON-E-000000598; BOA-NYAG-EXXON-000000843; BLK-EXXON-000363, VGI1204; VGI0938; BOA-NYAG-EXXON-000002199, SSC\_NYAG\_0001948, SSC\_NYAG\_0002206, and VGI1658/1920<sup>7</sup>;
9. All documents concerning climate-related shareholder proxy proposals at ExxonMobil from 2010 through 2017, including but not limited to:
- a. All climate-related shareholder proxy proposals from 2010 through 2017 including but not limited to documents stamped Beginning Bates Nos. EMC

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<sup>7</sup> This document contains two Bates-stamp numbers: VGI1658 and VGI1920.

- 00525249, EMC 000525250, EMC 000538030, and EMC 000538032;
- b. All internal ExxonMobil notes, memoranda, and communications regarding climate-related shareholder proxy proposals, including but not limited to EMC 000537379, EMC 000525219, EMC 001407076, and EMC 003191529;
  - c. ExxonMobil's 2014 *Energy and Climate* and *Energy and Carbon – Managing the Risks* reports, and all drafts, notes, or internal communications relating thereto, including but not limited to EMC 001698273, EMC 001698293, EMC 000627685, EMC 000627730, EMC 001698394, EMC 001698395, EMC 000510880, EMC 001698612, EMC 001698614, EMC 001698775, EMC 001698777, EMC 000628888, and EMC 000628889;
  - d. All communications between ExxonMobil and shareholders or shareholder advocates regarding climate-related shareholder proxy proposals, including but not limited to EMC 000525195, EMC 001198080, EMC 001698181, EMC 001755188; EMC 001080425, EMC 003192106, EMC 003192107, EMC 003192128, EMC 001080417, EMC 01080419, EMC 001080266, EMC 001080267, and EMC 001080297;
  - e. All documents reflecting discussions or negotiations between ExxonMobil and shareholders or shareholder advocates relating to withdrawing climate-related shareholder proxy proposals, including but not limited to EMC 001080390, EMC 001080327, EMC 001080362, EMC 0003191529, EMC 001755188, and EMC 00108042;
  - f. All presentations by ExxonMobil to shareholders and shareholder advocates concerning ExxonMobil's climate-related policies and practices, including but



not limited to EMC 000538171, EMC 000538146, and EMC 002402090;

- g. All documents evidencing communications between ExxonMobil and its representatives and the Securities and Exchange Commission relating to climate-related shareholder proxy proposals;

10. Investigative testimony of:

- a. Mark Shores, including but not limited to transcript pages 42-46, 70-76, 115-118, 358-373;
- b. Guy Powell, including but not limited to transcript pages 183-184, and 261-286;
- c. Todd Onderdonk, including but not limited to transcript pages 230-255, 491-492;
- d. William Colton, including but not limited to transcript pages 165-186;
- e. Robert Bailes, including but not limited to transcript pages 419-427;
- f. Robert Luetgen, including but not limited to transcript pages 40-52, 87-91, 301-303, 315-336; and
- g. Peter Trelenberg, including but not limited to transcript pages 120-129, 343-346, 350-381, 390-393.

11. Deposition testimony of David Rosenthal, including but not limited to transcript pages 14-15, 25-38, 58-78, and 94-113.

Dated: May 1, 2019  
New York, New York

LETITIA JAMES  
Attorney General of the State of New York

By: Kevin Wallace

Kevin Wallace  
Deputy Bureau Chief  
Investor Protection Bureau

28 Liberty Street  
New York, New York 10005  
(212) 416-8222

*Counsel for People of the State of New York*

STATE OF NEW YORK     )  
                                      ) ss:  
COUNTY OF NEW YORK )

KEVIN WALLACE, being duly sworn, deposes and says:

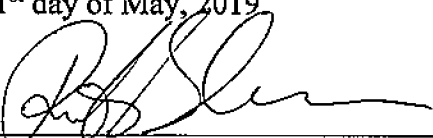
I am the Deputy Bureau Chief of the Investor Protection Bureau in the Office of the Attorney General of the State of New York, and am duly authorized to make this statement.

I have read the foregoing Response to Defendant's First Set of Contention Interrogatories and know the contents thereof, which are, to my knowledge, true, based upon the investigation of the Attorney General's office.

The reason this statement is not made by Plaintiff is that Plaintiff is the People of the State of New York and the Attorney General is their duly authorized representative.

  
\_\_\_\_\_  
KEVIN WALLACE

Sworn to before me this  
1<sup>st</sup> day of May, 2019

  
\_\_\_\_\_

RENATA BODNER  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01BO6250373  
Qualified in Kings County  
My Commission Expires October 24, 2019