No. 02-18-00106-CV

IN THE COURT OF APPEALS OF TEXAS
SECOND JUDICIAL DISTRICT

CITY OF SAN FRANCISCO *et al.*, Appellants
v.
EXXON MOBIL CORPORATION, Appellee

Appeal from Cause No. 096-297222-18
In the 96th District Court of Tarrant County, Texas
The Honorable R.H. Wallace, Jr., Presiding

UNOPPOSED MOTION FOR LEAVE TO FILE APPELLANTS' RESPONSE TO EXXON'S POST-SUBMISSION BRIEF

Pursuant to Local Rule 1(C), Appellants in the above-captioned matter collectively seek leave to file the attached Response to Exxon's Post-Submission Brief, filed on January 10, 2020.

WHEREFORE, Appellants respectfully urge the Court grant leave to file Appellants' Response to Exxon's Post-Submission Brief with attached Appendices.[1]

[1] Appellants filed the attached Response to Exxon's Post-Submission Brief on January 21, 2020, however, Appellants' Unopposed Motion for Leave to File was inadvertently omitted.

Respectfully submitted,

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CERTIFICATE OF CONFERENCE

I hereby certify that, in prior conferences with Ralph Duggins (an attorney for Exxon) concerning Exxon's request for leave to file its Post-Submission Brief, Mr. Duggins told me that Exxon would not oppose appellants' request for leave to file a response. Mr. Duggins announced the same to the Court in his letter of January 9, 2020.

/s/Steven K. Hayes
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CERTIFICATE OF SERVICE

I certify that on the 22nd day of January, 2020, a true and correct copy of the foregoing document was served on counsel of record via e-service as follows:

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No. 02-18-00106-CV

IN THE COURT OF APPEALS OF TEXAS
SECOND JUDICIAL DISTRICT

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Appeal from Cause No. 096-297222-18
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APPELLANTS' RESPONSE TO EXXON'S POST-SUBMISSION BRIEF

This brief is submitted on behalf of all twenty-three appellants in response to the supplemental brief submitted by appellee Exxon Mobil Corp. ("Exxon") on January 10, 2020.

Exxon asks this Court to consider a post-trial decision from a New York state trial court ruling on securities fraud claims against Exxon—a ruling that neither considers, analyzes, nor decides any question of specific personal jurisdiction (the only issues on appeal here), let alone any question remotely related to the disputed jurisdictional issues in *this* case. Additionally, Exxon fails to mention that the New York trial court previously made a series of pretrial rulings that dismissed Exxon's affirmative defenses, rulings that *rejected* the very

same First Amendment argument that Exxon improperly asserts here in an effort to interject merits issues into a dispute over personal jurisdiction.

First, Exxon says that the merits theory underlying the alleged anticipated and potential claims described in its 202 petition—that the appellants had a motive to harm Exxon—is supported by the New York court's reference to "politically motivated statements" by a former New York Attorney General. Exxon Supp. Br. at 3; Exxon Motion at 2. But even if that reference had some bearing on the merits of Exxon's alleged anticipated and potential claims, the controlling case law from the Texas Supreme Court and this Court prohibits consideration of the merits in assessing personal jurisdiction.[1] The Texas Supreme Court has held that it is "[f]ar better that judges should limit their jurisdictional decisions" to the "physical fact" of jurisdictional contacts "rather than involving themselves in trying" "tort liability," which "turns on what the parties thought, said, or intended." *Michiana*

[1] *Old Republic Nat'l Title Ins. v. Bell*, 549 S.W.3d 550, 562 (Tex. 2018) (regardless of "whether the transfers . . . were in fact part of an elaborate conspiracy to defraud …, we limit our inquiry to [the defendant's] contacts with the state of Texas"); *Michiana Easy Livin' Country v. Holten*, 168 S.W.3d 777, 791 (Tex. 2005) (jurisdictional affidavits were "*rightly focused* … on lack of *contacts* rather than lack of *culpability*") (first emphasis added); *OZO Capital, Inc. v. Syphers*, 2018 WL 1531444, at *6, n.9 (Tex. App.—Fort Worth Mar. 29, 2018, no pet. h.) ("we do not address the merits of the tort claims in reviewing the special appearance").

Easy Livin' Country v. Holten, 168 S.W.3d 777, 791 (Tex. 2005).[2] Exxon thus continues to ignore the cardinal rule that what matters for purposes of personal jurisdiction are the actual contacts, if any, with Texas of the *defendants* (or here, of the appellants). Any contacts that another party—*e.g.*, Exxon—might have with the forum are irrelevant to the defendants' minimum contacts under blackletter law.[3] As a result, neither Exxon's alleged injuries in Texas (as to which there is no evidence in any event) nor anyone's alleged *motive* to injure a party that happens to be located in Texas, constitutes a jurisdictional contact by the out-of-state appellants with the State of Texas.[4]

Permitting a court to assert jurisdiction on the basis that Exxon proposes would constitute an extreme version of the "effects jurisdiction" that Texas case law expressly rejects, including case law involving allegedly abusive litigation.

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[2] *Accord Searcy v. Parex Res., Inc.*, 496 S.W.3d 58, 71 (Tex. 2016) ("What we said then [on the *Michiana* 'physical fact' analysis] remains good law and binds us today.").

[3] *Walden v. Fiore*, 571 U.S. 277, 285, 289 (2014) ("our 'minimum contacts' analysis looks to the defendant's contacts with the forum State itself, not the defendant's contacts with persons who reside there"; rejecting lower court's analysis because it "impermissibly allows a plaintiff's contacts with the defendant and forum to drive the jurisdictional analysis"); *TV Azteca v. Ruiz*, 490 S.W.3d 29, 38 (Tex. 2016) (minimum contacts must be based on the defendant's contacts, not the "unilateral" contacts of "another party") (quotation marks omitted).

[4] Exxon wrongly says that personal jurisdiction requires "[n]othing more" than meeting the "fair play and substantial justice" standard. Exxon Supp. Br. at 3. Tellingly, Exxon omits the entire "minimum contacts" requirement.

See, e.g., City of Oakland Br. at 31-34; Appellants' Reply Br. at 4 n.2 (collecting cases). The New York court's decision does not fix—let alone address—this fundamental defect in Exxon's jurisdictional argument.

Second, not only is the merits-based question of the appellants' motives irrelevant, but Exxon is simply wrong in asserting that the New York court found that "politically motivated state politicians targeted ExxonMobil in a pretextual exercise of state power" in the New York case. Exxon Motion at 2. In pre-trial rulings that Exxon fails to mention, the New York court expressly *rejected* the affirmative defenses pleaded by Exxon in which it alleged that it was wrongfully "targeted" by state officials working in concert with private counsel. *See* App. 1, at 42, ¶ 46 (Exxon Amended Answer).[5]

Exxon originally pleaded five affirmative defenses in the New York case, including defenses based on New York's alleged violations of the First Amendment, official misconduct, selective enforcement, and state and federal due process. *See* App. 2, at 1 (NYAGO brief in support of motion to dismiss defenses, quoting affirmative defenses from Exxon's Answer). Those defenses were based on the same allegations here—in particular, that Exxon was the victim of a conspiracy originating in meetings in La Jolla, California and New York (the same

[5] Appellants attach excerpts of papers from the New York proceedings as Apps. 1 through 6, as listed fully at the end of this brief. "Ex. A" refers to the New York court's post-trial decision, which was attached to Exxon's supplemental brief.

meetings Exxon relies upon here), whose alleged purpose was to suppress Exxon's climate change-related speech. *See* App. 1, at 35-46, ¶¶ 29-59. But the New York court dismissed those affirmative defenses in rulings in June and July 2019.[6] While the New York court referred in dicta in its final ruling in December 2019 to a former New York Attorney General's "politically motivated statements," Ex. A, at 2, the *holding* of the court's prior rulings was that Exxon's First Amendment defenses were nonetheless meritless. The time to appeal all rulings in the New

[6] App. 3, at 35:21–23 ("THE COURT: All of these counterclaims [sic, defenses] with respect to First Amendment, chilling of speech, et cetera, I'm dismissing all of those. The only one that I'm keeping open for the time being is the selective enforcement [defense]."); *id*. at 36:15-18 (Exxon attorney: "[Y]ou're inclined to dismiss the conflict of interest and official misconduct [defenses]? THE COURT: I'm not just inclined to dismiss them; I am dismissing them."); *id*. at 39:16-21 (Exxon attorney: "Well, Judge . . . . you have the authority – the inherent authority to address improper conduct by officials with the state. THE COURT: I haven't seen any yet."); App. 4 (Order June 12, 2019).

At the time of the June 12, 2019 ruling, Exxon had moved to amend its complaint to add substantial detail regarding its theory of a supposed conspiracy by attorney Matthew Pawa and the AGs to target Exxon's free speech rights—the same allegations that Exxon makes here and that were integral to Exxon's remaining affirmative defense of selective enforcement. *See* App. 1, at 46, ¶¶ 55-59; App. 3, at 39:2-3 (Exxon attorney: selective enforcement defense is based on a "motive to suppress speech"); Exxon Reply Brief in Further Support of Its Cross-Motion for Leave to Amend at 3 (April 16, 2019), *available at* https://tinyurl.com/yx48aatg (selective enforcement defense was based upon alleged "intent to inhibit or punish the exercise of constitutional rights, including First Amendment rights") (quotation marks omitted). After dismissing four of Exxon's affirmative defenses, the New York court permitted Exxon to amend, heard argument on June 28, 2019 on this final affirmative defense once again invoking free speech, and dismissed it. *See* App. 5, at 16:2-11 (Transcript June 28, 2019), & App. 6 (Order July 17, 2019).

York case has now expired with no appeal filed by any party; these rulings are thus final.

The New York court's rulings dismissing Exxon's defenses mark the *third* time that a court has rejected the free speech theory that Exxon continues to assert here as the foundational element of its personal jurisdictional theory (a theory that, to repeat, has no bearing on appellants' contacts with Texas).[7]

Finally, Exxon conflates the issues. The New York decision focused on whether Exxon misled investors about how Exxon's value is affected by the way it accounts for carbon regulation. By contrast, the California public entities' lawsuits against Exxon and its co-defendants in California do not allege that Exxon misled investors; instead the California lawsuits allege that Exxon and others contributed to climate change while misleading the public about the physical facts of climate change. 1 CR 863–78 & 946–53. To that point, the New York court expressly stated that "[n]othing in this opinion is intended to absolve ExxonMobil from responsibility for contributing to climate change through the emission of greenhouse gases in the production of its fossil fuel products," and that Exxon "does not dispute" that its operations contribute to climate change. *See* Ex. A, at 3.

[7] *See Exxon Mobil Corp. v. Schneiderman*, 316 F. Supp. 3d 679, 709 (S.D.N.Y. 2018), *appeal pending sub nom. Exxon Mobil Corp. v. Healey*, No. 18-1170 (2d Cir.); *In re Civil Investigative Demand No. 2016-EPD-36*, No. SUCV20161888F, 2017 WL 627305 (Mass. Super. Ct. Jan. 11, 2017), *aff'd*, *Exxon Mobil Corp. v. Attorney Gen.*, 94 N.E.3d 786 (Mass. 2018).

For this reason, the New York court's final decision does not suggest that the California lawsuits are, as Exxon implies, somehow pretextual—which is, in any event, an argument that goes to the merits, not personal jurisdiction.

CONCLUSION

The New York decision is irrelevant to the specific personal jurisdiction issue in this case. This Court should give no weight to this decision or to Exxon's post-submission brief.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the type-volume limitation of Tex. R. App. P. 9.4(i)(2)(C) because it contains 1,640 words, excluding the parts of the brief exempted by Tex. R. App. P. 9.4(i)(1). When combined with the words contained in their prior respective and joint briefs, the parties submitting this brief have submitted fewer than the 27,000 words allowed them by Tex. R. App. P. 9.4(i)(2)(B) for all computer-generated briefs filed in this court. This brief complies with the typeface and type style requirements of Tex. R. App. P. 9.4(e) because it has been prepared in a monospaced typeface using Times New Roman 14-point font in text and Times New Roman 14-point font in footnotes.

By: /s/ Benjamin G. Murray
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I certify that on the 22nd day of January, 2020, a true and correct copy of the foregoing document was served on counsel of record via e-service as follows:

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LIST OF APPENDICES

1. Exxon Mobil Corp.'s Verified Amended Answer (June 17, 2019), *People v. Exxon Mobil Corp.*, Supreme Court New York County, No. 452044/2018 (excerpts) (redactions are by Exxon, as per protective order), *available at* https://tinyurl.com/wgofefq.
2. Office of the Attorney General's Memorandum of Law in Support of Motion to Dismiss Affirmative Defenses Pursuant to CPLR § 3211(b), or, in the Alternative, for a Protective Order Pursuant to CPLR § 3103(a) (March 4, 2019), *People v. Exxon Mobil Corp.*, Supreme Court New York County, No. 452044/2018 (excerpts), *available at* https://tinyurl.com/w7mbddc.
3. Transcript (June 12, 2019), *People v. Exxon Mobil Corp.*, Supreme Court New York County, No. 452044/2018 (excerpts), *available at* https://tinyurl.com/t5xodqd.
4. Order (June 12, 2019), *People v. Exxon Mobil Corp.*, Supreme Court New York County, No. 452044/2018, *available at* https://tinyurl.com/wnm6pjf.
5. Transcript (June 28, 2019), *People v. Exxon Mobil Corp.*, Supreme Court New York County, No. 452044/2018 (excerpts), *available at* https://tinyurl.com/wy62ser.
6. Order (July 17, 2019), *People v. Exxon Mobil Corp.*, Supreme Court New York County, No. 452044/2018, *available at* https://tinyurl.com/rrnrbrw.

Appendix 1

Exxon Mobil Corp.'s Verified Amended Answer (June 17, 2019), *People v. Exxon Mobil Corp.*, Supreme Court New York County, No. 452044/2018 (excerpts) (redactions are by Exxon, as per protective order), *available at* https://tinyurl.com/wgofefq.

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

PEOPLE OF THE STATE OF NEW YORK, by LETITA 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 **VERIFIED AMENDED 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.

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.

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 conflict of interest 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.

NYAG and Special Interests Colluded to Suppress ExxonMobil's Speech

30. The New York Attorney General ("NYAG") has colluded for years with private, special interests to use government power to coerce acceptance of their climate policy agenda.

31. A group of special interests developed their strategy for this unlawful agenda at a June 2012 meeting in La Jolla, California, billed as a "Workshop on Climate Accountability, Public Opinion, and Legal Strategies." Peter Frumhoff, the

Director of Science and Policy for the Union of Concerned Scientists, and Naomi Oreskes, a professor of the History of Science and an affiliated professor of Earth and Planetary Sciences at Harvard University and longtime critic of ExxonMobil, conceived of this workshop. (Ex. 1 at 2, 35.) Frumhoff and Oreskes also recruited Matthew Pawa, a litigator who unsuccessfully sued ExxonMobil in 2009 for allegedly causing global warming, to participate as a featured speaker. (*Id.* at 35.) The workshop's aim was to consider "the viability of diverse strategies, including the legal merits of targeting carbon producers (as opposed to carbon emitters) for U.S.-focused climate mitigation." (*Id.* at 31.)

32. In keeping with the workshop's stated focus on "public opinion," the La Jolla attendees discussed strategies for silencing the speech of energy companies considered obstructive to their climate change policy aims. (Ex. 1.) The conference's attendees were "nearly unanimous" regarding "the importance of legal actions, both in wresting potentially useful internal documents from the fossil fuel industry and, more broadly, in maintaining pressure on the industry that could eventually lead to its support for legislative and regulatory responses to global warming." (*Id.* at 27.) Many participants noted that "pressure from the courts offers the best current hope for gaining the energy industry's cooperation in converting to renewable energy." (*Id.* at 27–28.) Recognizing the broad power of state attorneys general, the La Jolla participants observed that even "a single sympathetic state attorney general might have substantial success in bringing key internal documents to light." (*Id.* at 11.)

33. The La Jolla meeting participants also discussed "Strategies to Win Access to Internal Documents" of energy companies, such as ExxonMobil, that could be used to obtain leverage over these companies. (Ex. 1 at 11.) They saw civil litigation as a vehicle for accomplishing their goals, with one commentator observing: "Even if your ultimate goal might be to shut down a company, you still might be wise to start out by asking for compensation for injured parties." (*Id.* at 13.)

34. NYAG began covertly working with those special interests shortly after the La Jolla meeting. In or around June 2015, Professor Oreskes met with NYAG to discuss the purported "history of misinformation" she attributed to ExxonMobil.[1] And in July 2015, Frumhoff boasted to fellow activists that he was exploring "state-based approaches to holding fossil fuel companies legally accountable" and anticipated "a strong basis for encouraging state (e.g., AG) action forward."[2]

35. Pawa also emailed NYAG numerous times in the hope of finding a "sympathetic state attorney general" who could use state power to obtain documents from, and put pressure on, fossil fuel companies such as ExxonMobil, just as he advocated at La Jolla. (Ex. 1 at 11.) [redacted] (Ex. 8 at 2–3.) [redacted]

[1] Katie Brown, *Activists Admit at Friendly Forum They've Been Working with NY AG on Climate RICO Campaign for Over a Year*, Energy in Depth (June 24, 2016), https://eidclimate.org/activists-admit-at-friendly-forum-theyve-been-working-with-ny-ag-on-climate-rico-campaign-for-over-a-year/.
[2] Michael Bastasch, *Emails: Eco-Activists Plotted Oil Industry Lawsuits Before Anti-Exxon Stories*, The Daily Caller (May 16, 2016), https://dailycaller.com/2016/05/16/emails-eco-activists-plotted-oil-industry-lawsuits-before-anti-exxon-stories-released/.

[redacted] (Ex. 9 at 1.)

36. [redacted] (Ex. 10 at 1.) [redacted] (Ex. 11 at 1.)

37. The Rockefeller Family Fund also contacted then–New York Attorney General Eric Schneiderman before NYAG commenced its investigation of ExxonMobil to express "concern" about ExxonMobil's statements on climate change, and was "encouraged by Schneiderman's interest" in the matter.[3] NYAG and the Rockefeller Family Fund exchanged at least a dozen emails concerning the "activities of specific companies regarding climate change." (Ex. 16 at 2–7.)

38. In January 2016, the Rockefeller Family Fund hosted a sequel to the La Jolla conference at its offices in New York City, which was attended by La Jolla participants Pawa and Sharon Eubanks. (Ex. 15 at 1.) The purpose of the meeting was to further solidify the "[g]oals of an Exxon campaign." (*Id.*)

[3] Katie Brown, *The Rockefellers and Pay-To-Play Journalism*, Energy in Depth (Dec. 7, 2016), https://eidclimate.org/pay-to-play-journalism/.

According to the meeting's agenda, those goals included: (i) "[t]o drive divestment from Exxon," (ii) "[t]o delegitimize [ExxonMobil] as a political actor," (iii) "[t]o establish in [the] public's mind that Exxon is a corrupt institution that has pushed humanity (and all creation) toward climate chaos and grave harm," and (iv) "[t]o force officials to disassociate themselves from Exxon, their money, and their historic opposition to climate progress, for example by refusing campaign donations, refusing to take meetings, calling for a price on carbon, etc." (Ex. 2 at 1.) The attendees considered "AGs" as one of the "the main avenues for legal actions & related campaigns" for "creating scandal" and "getting discovery." (*Id.* at 1–2.)

39. [redacted] (*See* Ex. 12.) [redacted] (*Id.* at 1.) [redacted] (*Id.*) [redacted] (*Id.*)

NYAG Used State Power Against ExxonMobil for Allegedly Being a "Climate Change Denier"

40. NYAG's participation in this campaign against ExxonMobil was not publicly revealed until March 29, 2016, when Attorney General Schneiderman hosted a press conference with a collection of state attorneys general—self-styled the "AGs United for Clean Power." (*See* Ex. 3.)

41. At the press conference, NYAG promoted "clean power" from renewable sources as the only legitimate response to climate change. (Ex. 3 at 19–20.) Attorney General Schneiderman insisted: "We have to change conduct" to "mov[e] more rapidly towards renewables." (*Id.*) He denounced the "highly aggressive and morally vacant forces that are trying to block every step by the federal government to take meaningful action," and asserted that "today, we're sending a message that, at least some of us—actually a lot of us—in state government are prepared to step into this battle with an unprecedented level of commitment and coordination." (*Id.* at 4.) Vowing "to step into th[e] [legislative] breach" and unleash his law enforcement powers against perceived enemies, Attorney General Schneiderman declared that there could be "no dispute" about his climate policy proposals, only "confusion" and "misperceptions in the eyes of the American public" "sowed by those with an interest in profiting from the [so-called] confusion" "that really need to be cleared up." (*Id.* at 2–4.)

42. Attorney General Schneiderman boasted that his office already "had served a subpoena on ExxonMobil," and declared presumptively that ExxonMobil has engaged in unlawful conduct, even though he had not yet completed his fact gathering. (Ex. 3 at 3.) He faulted ExxonMobil for "know[ing] how fast the ice

sheets are receding," while supposedly simultaneously telling "the public for years there were 'no competent models.'" (*Id.* at 3.) He later reported to *The New York Times* that there "may be massive securities fraud" at ExxonMobil based on its estimation of proved reserves and the valuation of its assets.[4]

43. After the press conference, NYAG endeavored to conceal the involvement of the La Jolla architects who were lurking in the background. Mere hours before the March 2016 press conference, Pawa and Frumhoff led secret workshops for assembled members of the attorneys general's offices. (*See* Ex. 7.) While the contents of the activists' presentations remain shielded from public scrutiny, publicly disclosed documents reveal that Pawa delivered a presentation on "climate change litigation," and Frumhoff delivered a presentation on the "imperative of taking action now on climate change." (*Id.* at 2.) When a reporter contacted Pawa shortly after the press conference to inquire about his role, Pawa reached out to the Chief of the Environmental Protection Bureau at the New York Attorney General's Office. (Ex. 4 at 1.) The NYAG official told Pawa: "My ask is if you speak to the reporter, to not confirm that you attended or otherwise discuss the event." (*Id.*)

44. Following the press conference, the deputy chief of the Environmental Protection Bureau signed a "Climate Change Coalition Common Interest Agreement," designed to shield "information shared at and after the March 29 meeting." (Ex. 5 at 1.) That agreement memorialized the coalition's "common interest" of

[4] John Schwartz, *Exxon Mobil Fraud Inquiry Said to Focus More on Future Than Past*, N.Y. Times (Aug. 19, 2016), https://www nytimes.com/2016/08/20/science/exxon-mobil-fraud-inquiry-said-to-focus-more-on-future-than-past.html.

"limiting climate change" and "ensuring the dissemination of *accurate* information about climate change." (*Id.* at 1 (emphasis added).) In this litigation, NYAG has invoked the common interest privilege to withhold documents. (Ex. 14 at 5.)

45. NYAG also refused to produce records concerning the coalition's activities in response to a public record request. That resulted in a firm judicial rebuke from the New York Supreme Court, which awarded attorney fees and costs because NYAG "lacked a reasonable basis" for its refusal.[5]

46. NYAG's subpoena likewise demonstrated its intent to cleanse the climate policy debate of disfavored viewpoints. For example, the subpoena also demanded ExxonMobil's communications with trade associations and industry groups that promote oil and gas, such as the American Petroleum Institute, but not groups that support alternative fuels or advocate for polices favored by the Attorney General. (Ex. 20 at 8.) In the 2017 movie *An Inconvenient Sequel*, Attorney General Schneiderman repeatedly targeted these same industry groups for their purported "propaganda" which had allegedly "cripple[d]" "mankind's ability [] to respond to" climate change. (Ex. 13 at 1.) These sentiments echoed those made by NYAG within a week of issuing the subpoena, when Attorney General Schneiderman appeared on a *PBS NewsHour* segment, entitled "Has Exxon Mobil misled the public about its climate change research?" During that appearance, he stated the investigation extended to ExxonMobil's "funding [of] organizations," including American Enterprise Institute, the American Legislative Exchange

[5] *Competitive Enter. Inst.* v. *Attorney General of N.Y.*, 53 Misc. 1216(A) (Sup. Ct., Albany Cty., Nov. 21, 2016).

Council, and the American Petroleum Institute.[6] Attorney General Schneiderman made plain his intent to target such groups based on their positions on climate change, deriding them as "climate change deniers" and "climate denial organizations."[7]

47. The subpoena also targeted ExxonMobil's speech and associational activities, including its speech on climate policy in investor filings, the "*Outlook For Energy* reports," the "*Energy Trends, Greenhouse Gas Emissions, and Alternative Energy* reports," and the "*Energy and Carbon - Managing the Risks* Report." (Ex. 20 at 8.)

48. On October 24, 2018, NYAG filed this civil enforcement action.

NYAG solicited and Received Financial Benefits from Pursuing Perceived Opponents of "Clean Energy"

49. Public records indicate that special interests have sought to influence NYAG through financial donations. For example, in March 2016, Attorney General Schneiderman allegedly tried to arrange a meeting with Tom Steyer, a California billionaire and environmental activist.[8] According to an internal record obtained from Steyer by the *New York Post*, this communication reads, "Eric Schneiderman would like to have a call with Tom regarding support for his race for governor . . . regarding Exxon case."[9] Attorney General Schneiderman and Steyer also exchanged emails just days after Schneiderman issued a subpoena to

[6] *Has Exxon Mobil Misled the Public About Its Climate Change Research?*, PBS NewsHour (Nov. 10, 2015), https://www.pbs.org/newshour/show/exxon.
[7] *Id.*
[8] Isabel Vincent, *Schneiderman Tried to Contact Eco-Tycoon Amid Exxon Probe*, N.Y. Post (Sept. 11, 2016), https://nypost.com/2016/09/11/schneiderman-tried-to-contact-eco-tycoon-amid-exxon-probe/.
[9] *Id.*

ExxonMobil, when Steyer's scheduler emailed NYAG in order to "[f]ollow[] up on conversation re: company specific climate change information."[10]

50. To this day, NYAG continues to allow special interests to provide financial benefits to the office to support a climate agenda. In August 2017, New York University ("NYU") launched the State Energy and Environmental Impact Center (the "Center"), after receiving a $6 million donation from Bloomberg Philanthropies.[11] According to its website, the Center seeks to influence state attorneys general to "defend[] and promot[e] clean energy, climate and environmental laws and policies" and to assist them with this political mission.[12] The Center recruits and funds lawyer "fellows," who are staffed in the offices of attorneys general.[13] Participating attorneys general accept these "fellows," who they agree to use only for preferred agenda selected by the Center and its donors.[14]

51. In January 2018, NYAG accepted two fellows from the Center and entered into a secondment agreement with NYU governing their arrangement. (Ex. 6 at 1.) The agreement requires NYAG to (i) assign the fellows to work "on matters relating to clean energy, climate change, and environmental matters of regional and national importance," (ii) provide reports to the Center regarding the fellows and their

[10] Katie Brown, *After Even Deeper Collusion with Schneiderman Revealed, #ExxonKnew Campaign Tries to Change the Subject*, Energy in Depth (Mar. 14, 2017), https://eidclimate.org/after-even-deeper-collusion-with-schneiderman-revealed-exxonknew-campaign-tries-to-change-the-subject/.
[11] Thomas Kassahun, *DOJ Urges Appeals Court to Throw Out NYC's Global Warming Lawsuit*, Legal NewsLine (Mar. 15, 2019), https://legalnewsline.com/stories/512294396-doj-urges-appeals-court-to-throw-out-nyc-s-global-warming-lawsuit.
[12] NYU School of Law: State & Energy Environmental Impact Center, https://www.law nyu.edu/centers/state-impact (last visited Mar. 25, 2019).
[13] NYU School of Law: State & Energy Environmental Impact Center, *NYU Law Fellow Program*, https://www.law.nyu.edu/centers/state-impact/fellows-program (last visited Mar. 25, 2019).
[14] *Id.*

work, and (iii) collaborate with the Center on public announcements relating to the fellows' work. (Ex. 17 at 5, 7.) The Center is permitted to terminate its secondment agreement with NYAG if it does not provide the required reports to the Center or does not assign the fellows to work on matters consistent with the Center's agenda. (*Id.* at 5.) At least one of the two fellows that are currently placed in the NYAG's office has worked on the investigation that purportedly led to this enforcement action against ExxonMobil, and the other fellow signed an amicus brief opposing ExxonMobil in an action filed by New York City against various energy companies.[15]

52. The fellows program creates a financial incentive for NYAG to pursue and prioritize investigations and enforcement actions in line with the Center's agenda. (Ex. 17 at 5.) The Center can also reward NYAG with renewal or expansion of its participation in the fellows program if the Center is pleased with NYAG's performance.

53. NYAG's decision to allow at least one of the fellows to work on this matter creates an additional conflict of interest and appearance of impropriety in violation of the Due Process Clause.

54. NYAG has otherwise injected a personal interest, political, financial, or otherwise into its prosecutorial decisions.

[15] *See*, *e.g.*, Motion by the States of New York, California, New Jersey and Washington for Leave to File an Amicus Curiae Brief in Support of Plaintiff's Opposition to Motion to Dismiss at 4, *City of New York* v. *BP P.L.C.*, No. 18-cv-182-JFK (S.D.N.Y. June 11, 2018), ECF No. 141; Amicus Curiae Brief of the States of New York, California, New Jersey and Washington in Support of Plaintiff's Opposition to Motion to Dismiss at 14, *City of New York* v. *BP P.L.C.*, No. 18-cv-182-JFK (S.D.N.Y. June 11, 2018), ECF No. 141-1.

Thirtieth Defense

55. 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.

56. ExxonMobil incorporates by reference each and every allegation contained in paragraphs 30–54, as though set forth herein in full.

57. NYAG has selectively treated ExxonMobil differently from others who are similarly situated because NYAG seeks to inhibit ExxonMobil's exercise of its constitutional rights.

58. NYAG has selectively treated ExxonMobil differently from others who are similarly situated because of NYAG's malicious and bad faith intent to injure ExxonMobil.

59. NYAG has singled out a subset of messages related to climate policy for disfavor based on disagreement with the particular views expressed or with the effects those viewpoints have on the public's perception of climate policy.

Thirty-First Defense

60. 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

61. The claims purportedly asserted by Plaintiff are preempted, in whole or in part, by federal laws and regulations.

Appendix 2

Office of the Attorney General's Memorandum of Law in Support of Motion to Dismiss Affirmative Defenses Pursuant to CPLR § 3211(b), or, in the Alternative, for a Protective Order Pursuant to CPLR § 3103(a) (March 4, 2019), *People v. Exxon Mobil Corp.*, Supreme Court New York County, No. 452044/2018 (excerpts), *available at* https://tinyurl.com/w7mbddc.

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 Motion Sequence No. 2

OFFICE OF THE ATTORNEY GENERAL'S MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS AFFIRMATIVE DEFENSES PURSUANT TO CPLR § 3211(b) OR, IN THE ALTERNATIVE, FOR A PROTECTIVE ORDER PURSUANT TO CPLR § 3103(a)

The Office of the Attorney General of the State of New York ("OAG") respectfully submits this memorandum of law in support of its motion to dismiss certain defenses asserted by Exxon Mobil Corporation ("ExxonMobil") pursuant to CPLR § 3211(b), or, in the alternative, for a protective order pursuant to CPLR § 3103(a).

PRELIMINARY STATEMENT

In its Answer (Docket No. 44), ExxonMobil pleads five defenses—Twenty-Nine, Thirty, Thirty-Four, Thirty-Five, and Thirty-Six—that allege that the OAG committed prosecutorial misconduct in commencing and conducting the underlying investigation of ExxonMobil. The defenses read in full as follows:

> Twenty-Ninth Defense: "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: "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."
>
> Thirty-Fourth Defense: "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: "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: "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."

These defenses, unadorned by any factual allegations, are conclusory and should be dismissed for that reason alone. And even if those assertions are paired with the other unfounded

allegations made by ExxonMobil in other proceedings, they are still without merit and fail to state a defense to the claims asserted by the OAG. The crux of ExxonMobil's defense theory – which we can only infer from assertions made outside of this forum – seems to be that former Attorney General Eric Schneiderman decided to investigate ExxonMobil because of his activist agenda on climate-change. But as the U.S. District Court for the Southern District of New York has already persuasively explained, that assertion, even if true, would not support the theory of prosecutorial misconduct underpinning the challenged defenses here.

To be sure, the OAG has previously asserted in federal court—in response to ExxonMobil's collateral attack on the OAG's investigation—that this Court is the appropriate forum to decide all issues related to the case, including any defenses that ExxonMobil might wish to raise. But the OAG did not concede that ExxonMobil's prosecutorial-misconduct defenses have any merit; it instead explained that New York State courts are the appropriate forum for resolving such issues in the first instance. And while ExxonMobil has now asserted its defenses in the proper forum, those defenses fail on the merits. Dismissal by this Court should therefore follow.

The OAG will endure significant and undue burdens if the Court entertains ExxonMobil's efforts to use those infirm defenses as a platform for a fishing expedition into communications with a long list of third parties that are unrelated to proving or disproving the claims in the Complaint or to any other valid defense. ExxonMobil has rejected the OAG's offer to produce all factual non-privileged material relevant to the allegations in the OAG's Complaint that can be located after a reasonable search. Instead, ExxonMobil requests broad discovery into a wide range of extraneous topics related only to the five infirm defenses. That discovery includes demands that the OAG search the files of dozens of current and former employees who worked on the

Appendix 3

Transcript (June 12, 2019), *People v. Exxon Mobil Corp.*, Supreme Court New York County, No. 452044/2018 (excerpts), *available at* https://tinyurl.com/t5xodqd.

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK : CIVIL DIV. : PART 61

PEOPLE OF THE STATE OF NEW YORK, by LETITIA JAMES, Attorney General of the State of New York,	:	
Plaintiff,	:	
- against -	:	Index No. 452044/18
EXXON MOBIL CORPORATION,	:	
Defendant.	:	
	:	MOTION

60 Centre Street
New York, New York
June 12, 2019

B E F O R E :

HON. BARRY R. OSTRAGER,
Justice

(Appearances on the following page.)

ROBERT PORTAS, R.P.R., C.R.R.
SENIOR COURT REPORTER

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available to you via communications sent by Mr. Schneiderman to his official account.

MR. ANDERSON: Or through a search of the Gmail account. Either forward it or he'll do a search to find -- the Attorney General's office will do a search to find whatever wasn't forwarded.

THE COURT: The Attorney General is going to make a representation to you that anything that referred or related to this investigation that was on Mr. Schneiderman's personal email account has been made available to you.

MR. ANDERSON: That's what we're seeking, Judge. We want confidence that if there's evidence that we have it --

THE COURT: That's what you're entitled to and that's what you're going to get.

MR. MONTGOMERY: May I respond, Your Honor?

THE COURT: Yes.

MR. MONTGOMERY: We are right back where we were in this other district. These are the exact same claims that Exxon made in front of Judge Caproni. And what they're trying to do is use this press conference as the link between a third-party and say, "This third-party's agenda, these communications which may have been unsolicited, we have no evidence that that they were --

there was outgoing communication between these third-parties, but somehow this press conference provides the link." And they give you a slide, as they've done in the past, that takes certain snippets from the press conference.

I would urge this Court to review the entirety of that press conference, and I think you will reach the same conclusion that Judge Caproni did, that read in its entirety, in context, it does not support that link, and it actually shows that Eric Schneiderman expressed a legitimate concern that Exxon may have misled investors. In other words, that he had a basis for investigating Exxon for the very activity that forms the basis of this litigation.

THE COURT: What is the concern here? I said I'm not ordering a forensic review of former Attorney General Schneiderman's emails.

MR. MONTGOMERY: I'm sorry, I was speaking to the merits of the -- the email -- the evidentiary value of the emails and the press conference that that they discussed.

THE COURT: All of these counterclaims with respect to First Amendment, chilling of speech, et cetera, I'm dismissing all of those. The only one that I'm keeping open for the time being is the selective enforcement counterclaim.

MR. MONTGOMERY: Respectfully, Your Honor, the selective enforcement claim is based on this allegation of an attempt to chill speech.

THE COURT: It's not a catchall for everything, it's a separate counterclaim that may go by the wayside. It's not a counterclaim, it's an affirmative defense. But it may go by the wayside once you provide them with the certification with respect to the Schneiderman emails. I think there's just an open issue there that has to be closed.

MR. MONTGOMERY: Understood, Your Honor.

MR. ANDERSON: Judge, with respect to the selective enforcement defense that we wish to raise here: The Court's ruling is that we can proceed on than defense, but you're inclined to dismiss the conflict of interest and official misconduct?

THE COURT: I'm not just inclined to dismiss them; I am dismissing them.

MR. ANDERSON: May I be heard on --

THE COURT: Make your record as you wish.

MR. ANDERSON: -- those two claims?

Judge, first of all, the standard that has been identified by the Attorney General, this idea that we need to negate all bases for their conduct other than the nefarious bases, is not supported by any precedent that

they've identified or that actually exists.

The cases that they reference are taken well out of their context. Like, for instance, Mr. Montgomery kept referring to Hartman against Moore. That's a Bivens suit that was brought against postal inspectors for -- for selective prosecution. The reason the Supreme Court said that there couldn't be -- that there had to be an absence of probable cause is because the agents didn't make the decision to bring the case, the prosecutor did. But the prosecutor has absolute immunity. None of that is relevant here. So Justice Suiter wrote in his decision, that's why, because you don't have the person who made the decision is the defendant in the case. So the idea that that would be the standard that would apply in a civil case where there is no absolute immunity and the people who made the decision are currently employed by the office and were the most senior members of the office, is simply inapplicable, and that decision should be set aside, it's not relevant here.

The same thing with Armstrong. Armstrong is a criminal case about what you have to do to get additional discovery beyond what the federal rules of criminal procedure provide for in a case. That could not be further removed. Discovery of the prosecutor in a criminal case is cabined, it's narrow and it's limited to

certain categories of information that are identified in the rule. That is totally opposite of what happens in a civil case where there is discovery on both sides of any information that's material and relevant. Those standards don't apply.

The other case they cited in their brief was Gaynor, which I don't think Mr. Montgomery referenced here, but in that case, that was a suit in the '60s where the -- where African Americans challenged the state's hiring practices because they kept giving -- the state kept giving work to unions that excluded African Americans. And the Court of Appeals denied that claim because they said, "Well, the entity that's doing the discrimination is the unions, not the state, so the state can't be held responsible here."

These are the cases they're relying on.

We cited to you this case, Kramer, from 2012, which is very similar to the case we have here. It's a civil suit where the state took an action related to issuing a permit and it denied the request for a permit. The applicant for the permit said in his allegation that that was selective enforcement, it was discriminatory, because they were retaliating against him for speech that he had made.

The Court in that case said there are basically

two elements of this, disparate impact, disparate treatment and an improper motive, including a motive to suppress speech. Those are the two elements. There was nothing about you need to show the absence of probable cause or there can't be any other -- any other factor that might have gone into that decision. If that were the requirement there would never be a selective enforcement defense because after three years of investigation you find something --

THE COURT: Hold on. We haven't stricken your selective enforcement defense. What we are striking is the assertion that the Attorney General can't bring a Martin Act claim when it particularizes in ninety paragraphs claims against Exxon Mobil, that in the aggregate, they claim, constitute a Martin Act violation.

MR. ANDERSON: Well, Judge, it is in your power to fashion an appropriate remedy. You -- you are the supervisor of this case, you have the authority -- the inherent authority to address improper conduct by officials with the state.

THE COURT: I haven't seen any yet.

MR. ANDERSON: Let me address the conflict of interest, Judge.

There are two employees of private parties who are currently working in the Attorney General's Office.

Appendix 4

Order (June 12, 2019), *People v. Exxon Mobil Corp.*, Supreme Court New York County, No. 452044/2018, *available at* https://tinyurl.com/wnm6pjf.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

BARRY R. OSTRAGER
JSC

PRESENT: _____ **PART** 61
Justice

Index Number : 452044/2018
PEOPLE OF THE STATE OF NEW
vs.
EXXON MOBIL CORPORATION
SEQUENCE NUMBER : 002
DISMISS AFFIRMATIVE DEFENSES

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____

The following papers, numbered 1 to ____, **were read on this motion to/for** _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | **No(s).** _____
Answering Affidavits — Exhibits _____ | **No(s).** _____
Replying Affidavits _____ | **No(s).** _____

Upon the foregoing papers, it is ordered that this motion is and cross-motion are determined in accordance with the decision on the record on June 12, 2019. The Court grants Exxon's cross-motion to efile an Amended Answer and also grants the motion of the Office of the Attorney General to dismiss affirmative defenses relating to an alleged conflict of interest and official misconduct allegedly committed by the Office of the Attorney General. Decision is reserved on the defense of selective enforcement pending receipt of additional submissions within one week.

Dated: June 12, 2019

Barry R. Ostrager, J.S.C.
BARRY R. OSTRAGER
JSC

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

1. **CHECK ONE:** ..... ☐ **CASE DISPOSED** ☒ **NON-FINAL DISPOSITION**
2. **CHECK AS APPROPRIATE:** .....**MOTION IS:** ☐ **GRANTED** ☐ **DENIED** ☒ **GRANTED IN PART** ☐ **OTHER**
3. **CHECK IF APPROPRIATE:** ..... ☐ **SETTLE ORDER** ☐ **SUBMIT ORDER**
☐ **DO NOT POST** ☐ **FIDUCIARY APPOINTMENT** ☐ **REFERENCE**

Appendix 5

Transcript (June 28, 2019), *People v. Exxon Mobil Corp.*, Supreme Court New York County, No. 452044/2018 (excerpts), *available at* https://tinyurl.com/wy62ser.

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 LETITIA JAMES, Attorney General of the
State of New York,

Plaintiff, Index No.
452044/2018

-against-

EXXON MOBIL CORPORATION,

Defendant.

----------X

MOTION PROCEEDINGS

60 Centre Street
New York, New York
June 28, 2019

B E F O R E:

HONORABLE BARRY OSTRAGER,

Supreme Court Justice

A P P E A R A N C E S:

STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL
LETITIA JAMES
Attorneys For the Plaintiff
28 Liberty Street
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BY: KEVIN WALLACE, ESQ.
KIM BERGER, ESQ.
MARC E. MONTGOMERY, ESQ.

(Whereupon, appearances continued on the following page.)

Senior Court Reporter Cheryl-Lee Lorient

(Continued appearances ....)

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JUSTIN ANDERSON, ESQ.
NORA AHMED, ESQ.
DAN TOAL, ESQ.

ALSO PRESENT:
PATRICK J. CONLON
Coordinator of Compliance Litigation and Investigations
Exxon Mobil Corporation

CHERYL-LEE LORIENT
SENIOR COURT REPORTER

Now, with respect to the affirmative defense, I have some questions. Is it the position of Exxon that the affirmative defense of selective enforcement is a complete defense to the Martin Act claim or is this, simply, a vehicle for you to provide local color into the Court or to assure it about meetings with Mr. Pawa and meetings with other attorney generals and meetings with the Rockefeller Foundation?

MR. ANDERSON: Your Honor, the defense would be a complete defense to the charges. They would be a basis for dismissing the complaint in its entirety, because of the impropriety in which the investigation was commenced and because of the improper purposes for which the complaint was filed.

However, it would also be in the Court's discretion to fashion whatever remedy it considered appropriate in light of the violation falling short of outright dismissal of the complaint.

THE COURT: Okay. I don't think that's responsive to the question that I asked, if it's Exxon's position that this affirmative defense is a complete defense to the Martin Act claims that the attorney general has filed.

I've read Judge Caproni's decision, in the Southern District, where you raised these similar

claims. And, she dismissed them.

I've read the proceedings in Texas and Massachusetts where these same type of issues were teed up. And, it's not, in my judgment, a complete defense to the case.

So, I think, based on what you've told me, I'm going to grant the Attorney General's motion to dismiss this affirmative defense. But, I am not going to preclude you, at trial, from questioning people about, within reasonable constraints, the motivation for the filing of the complaint. Understood?

MR. ANDERSON: Yes, Judge. It would be appropriate to inquire with third-party witnesses, and other witness that might be called, as to why the complaint was filed while the investigation was undertaken.

THE COURT: Within narrow bounds, yes.

MR. ANDERSON: Your Honor, may I have just a moment?

THE COURT: Yes.

(Pause in proceedings.)

MR. ANDERSON: Thank you, Judge. We understand the Court's ruling.

THE COURT: All right. Anything from the AG?

Appendix 6

Order (July 17, 2019), *People v. Exxon Mobil Corp.*, Supreme Court New York County, No. 452044/2018, *available at* https://tinyurl.com/rrnrbrw.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. BARRY R. OSTRAGER** **PART** **IAS MOTION 61EFM**

Justice

----------X

INDEX NO. 452044/2018

PEOPLE OF THE STATE OF NEW YORK, by LETITIA JAMES, Attorney General of the State of New York,

MOTION DATE N/A

MOTION SEQ. NO. 002

Plaintiff,

- v -

EXXON MOBIL CORPORATION,

SUPPLEMENTAL DECISION + ORDER ON MOTION

Defendant.

----------X

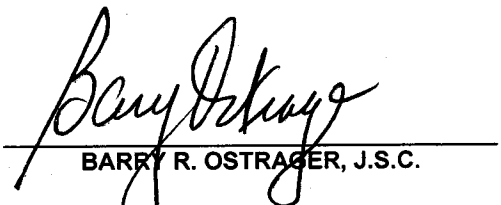
The following e-filed documents, listed by NYSCEF document number (Motion 002) 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 83, 113, 114, 115, 116, 117, 119, 130, 131, 132, 133, 134, 135, 136, 137, 138, 144, 145, 146, 147, 237, 283, 286, 287

were read on this motion to/for DISMISS DEFENSE.

OSTRAGER, BARRY R., J.S.C.:

The decision and order granting plaintiff's motion in part and reserving decision in part (NYSCEF Doc. No. 237) is hereby supplemented based on the Court's review of additional submissions and further proceedings on the record on June 28, 2019, and defendant's defense of selective enforcement be and hereby is dismissed in accordance with the transcript of proceedings dated June 28, 2019.

7/17/2019
DATE



BARRY R. OSTRAGER, J.S.C.

BARRY R. OSTRAGER
JSC

CHECK ONE:	[ ]	**CASE DISPOSED**		[X]	**NON-FINAL DISPOSITION**		
	[X]	**GRANTED**	[ ] **DENIED**	[ ]	**GRANTED IN PART**	[ ]	**OTHER**
APPLICATION:	[ ]	**SETTLE ORDER**		[ ]	**SUBMIT ORDER**		
CHECK IF APPROPRIATE:	[ ]	**INCLUDES TRANSFER/REASSIGN**		[ ]	**FIDUCIARY APPOINTMENT**	[ ]	**REFERENCE**