

CAUSE NO. 096-297222-18

EXXON MOBIL CORPORATION,

Petitioner.

IN THE DISTRICT COURT OF

TARRANT COUNTY, TEXAS

_____ JUDICIAL DISTRICT

**VERIFIED PETITION FOR PRE-SUIT DEPOSITIONS OF:
MATTHEW F. PAWA, JOHN C. BEIERS, JOHN L. MALTBIE,
JENNIFER LYON, ANDY HALL, SERGE DEDINA, BRIAN WASHINGTON,
MATTHEW HYMEL, BARBARA PARKER, SABRINA B. LANDRETH,
DENNIS HERRERA, EDWARD REISKIN, DANA MCRAE, CARLOS PALACIOS,
ANTHONY P. CONDOTTI, AND MARTÍN BERNAL**

Pursuant to Rule 202 of the Texas Rules of Civil Procedure, Exxon Mobil Corporation (“ExxonMobil”) petitions the Court for an order authorizing it to conduct depositions and obtain documents pertaining to potential claims of abuse of process, civil conspiracy, and violations of ExxonMobil’s constitutional rights. As explained in greater detail below, ExxonMobil has identified Matthew F. Pawa, John C. Beiers, John L. Maltbie, Jennifer Lyon, Andy Hall, Serge Dedina, Brian Washington, Matthew Hymel, Barbara Parker, Sabrina B. Landreth, Dennis Herrera, Edward Reiskin, Dana McRae, Carlos Palacios, Anthony P. Condotti, and Martín Bernal as individuals who are believed to possess evidence that would allow ExxonMobil to investigate claims and perpetuate testimony for use in an anticipated suit.

Through abusive law enforcement tactics and litigation in California, Respondents and others are attempting to stifle ExxonMobil’s exercise, in Texas, of its First Amendment right to participate in the national dialogue about climate change and climate policy. Because California courts lack personal jurisdiction over ExxonMobil, the pending California cases do not provide an appropriate forum to litigate the claims anticipated here. In light of the seriousness of ExxonMobil’s potential claims and the need for further information from these witnesses to

evaluate those claims, permitting the examinations would yield benefits that outweigh any collateral burdens. In addition, repeated efforts by witnesses (and likely co-conspirators) to conceal and possibly destroy evidence potentially relevant to ExxonMobil's claims support pre-suit discovery as a means of preventing a failure or delay of justice. Accordingly, the Court should exercise its discretion to permit investigation and to perpetuate evidence through Rule 202 depositions.

In support of its Petition, ExxonMobil would show the Court the following:

I. INTRODUCTION

1. A collection of special interests and opportunistic politicians are abusing law enforcement authority and legal process to impose their viewpoint on climate change. This conspiracy emerged out of frustration in New York, Massachusetts, and California with voters in other parts of the country and with the federal government for failing to adopt their preferred policies on climate change. But rather than focusing their efforts in the marketplace of ideas and adopting a strategy of persuasion, the members of this conspiracy chose to advance their political objectives by imposing unlawful burdens on perceived political opponents.

2. ExxonMobil finds itself directly in that conspiracy's crosshairs. Even though it has long acknowledged the risks presented by climate change, supported the Paris climate accords, and backed a revenue-neutral carbon tax, ExxonMobil has nevertheless been targeted by state and local governments for pretextual investigations and litigation intended to cleanse the public square of alternative viewpoints.

3. This abuse of government power to impose a uniform perspective on climate policy was hatched over five years ago at a conference of special interests in La Jolla, California. The participants advocated for government investigations and litigation against energy

companies to “pressure” the targets to provide “support for legislative and regulatory responses to global warming.”¹

4. State attorneys general in New York, Massachusetts, and the Virgin Islands eagerly implemented the La Jolla “playbook.” At a March 2016 press conference promoting their actions against ExxonMobil, state officials spoke openly about their use of law enforcement tools to restrict the scope of permissible public debate about climate change.² Eric Schneiderman, the Attorney General of New York, declared there was “no dispute” about climate change policy, only “confusion, and confusion sowed by those with an interest in profiting from the confusion and creating misperceptions in the eyes of the American public that really need to be cleared up.”³ Maura Healey, the Attorney General of Massachusetts, pledged that those who purportedly “deceived” the public—by disagreeing with her about climate change policy—“should be, must be, held accountable.”⁴ Claude Walker, the Attorney General of the Virgin Islands, proclaimed, “We have to look at renewable energy. That’s the only solution.”⁵ All three attorneys general issued burdensome subpoenas or investigatory document demands to ExxonMobil, just as the La Jolla playbook had recommended.

5. Regulating debate over public policy, even when styled as clearing up “confusion” and “deception,” is not a legitimate law enforcement function. That is why fifteen other state attorneys general, including the Texas Attorney General, openly criticized Attorneys

¹ Ex. 1 at App. 28. A copy of Seth Shulman, Union of Concerned Scientists & Climate Accountability Inst., *Establishing Accountability for Climate Change Damages: Lessons from Tobacco Control* (2012) (Exhibit 1) is available at <http://www.climateaccountability.org/pdf/Climate%20Accountability%20Rpt%20Oct12.pdf>.

² A transcript of the AGs United For Clean Power Press Conference, held on March 29, 2016, was prepared by counsel based on a video recording of the event, which is available at <http://www.ag.ny.gov/press-release/ag-schneiderman-former-vice-president-al-gore-and-coalition-attorneys-general-across>. A copy of this transcript is attached as Exhibit 5 at App. 64-83.

³ Ex. 5 at App. 65.

⁴ *Id.* at App. 75.

⁵ *Id.* at App. 79.

General Schneiderman, Healey, and Walker for misusing their law enforcement power to pursue a politicized investigation designed to suppress the free exercise of First Amendment rights.⁶

6. Defending its rights against this improper exercise of state power, ExxonMobil filed civil rights actions against Attorneys General Schneiderman, Healey, and Walker in Texas courts. Attorney General Walker withdrew his subpoena shortly after ExxonMobil brought its challenge. The strength of ExxonMobil's prima facie showing against the other state attorneys general was so powerful that United States District Judge Ed Kinkeade expressed concern that the attorneys general's investigations were means "to further their personal agendas by using the vast power of the government to silence the voices of all those who disagree with them."⁷ ExxonMobil's lawsuit remains pending following a transfer to a federal court in New York.⁸

7. Implementing a different page of the La Jolla playbook, a number of California municipal governments recently filed civil tort claims against ExxonMobil and 17 other Texas-based energy companies.⁹ In those lawsuits, each of the municipalities warned that imminent sea level rise presented a substantial threat to its jurisdiction and laid blame for this purported injury at the feet of energy companies.

8. Notwithstanding their claims of imminent, allegedly near-certain harm, none of the municipalities disclosed to investors such risks in their respective bond offerings, which collectively netted over \$8 billion for these local governments over the last 27 years.¹⁰ To the

⁶ Ex. 9 at App. 118; Ex. 10 at App. 132; Ex. 19 at App. 215; Ex. 54 at App. 1328; Ex. 55 at App. 1331; Ex. 56 at App. 1334. A copy of Press Release, Luther Strange, Ala. Attorney Gen., Attorney General Strange Leads Dear Colleague Letter to Fellow Attorneys General Opposing Use of Subpoenas to Enforce Their Climate Agenda Views (June 16, 2016) (Exhibit 19) is available at <http://environblog.jenner.com/files/letter.pdf>.

⁷ Ex. 12 at App. 171.

⁸ United States District Judge Ed Kinkeade exercised his discretion to transfer ExxonMobil's action to the Southern District of New York, under the name *Exxon Mobil Corp. v. Healey*, No. 17-cv-2301 (S.D.N.Y.). Ex. 12 at App. 178.

⁹ See, e.g., Ex. 40 at App. 927–28.

¹⁰ A chart, created by counsel, comparing statements in municipal bond offerings between 1990 and 2017 against

contrary, some of the disclosures affirmatively denied any ability to measure those risks; the others virtually ignored them. At least two municipal governments reassured investors that they were “unable to predict whether sea-level rise or other impacts of climate change or flooding from a major storm will occur, when they may occur, and if any such events occur, whether they will have a material adverse effect”¹¹

9. The stark and irreconcilable conflict between what these municipal governments alleged in their respective complaints and what they disclosed to investors in their bond offerings indicates that the allegations in the complaints are not honestly held and were not made in good faith. It is reasonable to infer that the municipalities brought these lawsuits not because of a bona fide belief in any tortious conduct by the defendants or actual damage to their jurisdictions, but instead to coerce ExxonMobil and others operating in the Texas energy sector to adopt policies aligned with those favored by local politicians in California. The involvement in this litigation of Matthew Pawa, an architect and promoter of the La Jolla playbook who also served as an advisor to Attorneys General Schneiderman and Healey, provides further support for that inference. A \$30,000 campaign donation that Tom Steyer, an environmental activist who has long lobbied for an investigation of ExxonMobil, made to San Francisco’s late mayor only

core municipality-related climate change allegations made in each of the California tort complaints can be found at Exhibit 103 at App. 1684-87. Counsel identified these bonds through the Municipal Securities Rulemaking Board’s website, the Electronic Municipal Market Access (EMMA), <https://emma.msrb.org/>. Using optical character recognition (OCR), counsel surveyed municipal securities issued by the relevant municipalities and any readily identifiable related entities.

¹¹ Ex. 32 at App. 424; *accord* Ex. 34 at App. 492-93 (“The City is unable to predict when . . . searise or other impacts of climate change . . . could occur, when they may occur, and, if any such events occur, whether they will have a material adverse effect”). A copy of the 2016 San Mateo Refunding Lease Revenue Bond (Exhibit 32) is available at <https://emma.msrb.org/EP904517-EP701084-EP1103033.pdf#page=82>. A copy of the 2017 Oakland General Obligation Bond (Exhibit 34) is available at <https://emma.msrb.org/ES1038046-ES811448-ES1212831.pdf#page=78>.

months before the city filed a tort suit against ExxonMobil, also suggests that there may have been impropriety in bringing the tort litigation.¹²

10. In light of these events, ExxonMobil seeks to investigate potential claims of abuse of process, civil conspiracy, and constitutional violations and to perpetuate testimony for a suit it anticipates filing in Texas in connection with those potential claims. There is scant publicly available information documenting the California municipalities' communications with third-parties about the real purposes of their litigation or the risk disclosures contained in their municipal bonds. Pre-suit discovery of such evidence will allow ExxonMobil to determine whether legal action is warranted and perpetuate evidence for a likely lawsuit in Texas.

11. ExxonMobil has identified a limited number of witnesses likely able to provide documents and testimony shedding light on the motivations and purposes for instituting legal and investigative proceedings against the company in what appears to be an abuse of process and a violation of the First Amendment and other constitutional and statutory provisions.¹³

ExxonMobil seeks only non-privileged information from the following requested witnesses:

- (a) **Matthew F. Pawa.** Mr. Pawa was a featured speaker at the gathering of activists that produced the La Jolla playbook, implemented by certain state attorneys general and apparently by some municipal governments. The morning of the press conference in which state attorneys general promoted their constitutionally infirm investigations of ExxonMobil, Mr. Pawa conducted a closed-door seminar on that topic, which he was instructed to conceal from the press and public.¹⁴ The record also shows Mr. Pawa

¹² Ex. 2 at App. 41. A copy of Alana Goodman, *Billionaire Democratic Donor Funding \$10 Million Campaign to Impeach Trump Is Linked to National Lawsuits Against Oil Companies Through Memo to His Environmental Nonprofit Group*, Daily Mail (Nov. 14, 2017 7:11 AM) (Exhibit 2) is available at <http://www.dailymail.co.uk/news/article-5078897/Wealthy-Democratic-donor-linked-oil-company-lawsuits.html>.

¹³ ExxonMobil seeks discovery from these witnesses on “matter[s] that [are] not privileged and [are] relevant to the subject matter of the [potential] action.” Tex. R. Civ. P. 192.3(a). “[T]he information sought [is] reasonably calculated to lead to the discovery of admissible evidence.” *Id.*

¹⁴ Ex. 7 at App. 96. A copy of the email from Lemuel Srolovic, Bureau Chief, Environmental Protection Bureau, Office of the New York Attorney General, to Matthew Pawa, President, Pawa Law Group, P.C. (Mar. 30, 2016, 9:01 PM) (Exhibit 7) is available at <http://www.washingtonexaminer.com/ny-atty-general-sought-to-keep->

coordinating with the Rockefeller Family Fund and others, to devise and implement an “Exxon campaign” with the express objective of “establish[ing] in [the] public’s mind that Exxon is a corrupt institution.”¹⁵ Mr. Pawa represents two of the municipal governments, San Francisco and Oakland, in their tort claims against Texas-based energy companies, including ExxonMobil.¹⁶

- (b) **John C. Beiers.** As San Mateo County Counsel, Mr. Beiers reviewed municipal bonds issued by the San Mateo County Joint Powers Financing Authority over the last several years.¹⁷ The municipal bond offerings either do not discuss threats posed by sea level rise or state that the county is unable to predict the impact of such threats. In that same role, Mr. Beiers signed the complaint against ExxonMobil and other Texas-based energy companies, asserting various tort claims arising from allegedly rising sea levels.¹⁸
- (c) **John L. Maltbie.** As San Mateo County Manager, Mr. Maltbie signed several of the same bonds that Mr. Beiers reviewed on behalf of the County of San Mateo.¹⁹
- (d) **Jennifer Lyon.** Ms. Lyons’ firm represented the Imperial Beach Redevelopment Agency in certain municipal bond issuances.²⁰ The municipal bond offerings do not contain more than a passing reference to the risk of flooding. As City Attorney for Imperial Beach, Ms. Lyon signed the complaint against ExxonMobil and other Texas-based energy companies, asserting various tort claims arising from allegedly rising sea

lawyers-role-in-climate-change-push-secret/article/2588874#.

¹⁵ Ex. 3 at App. 59; Ex. 4 at App. 61. A copy of the email from Kenny Bruno to Lee Wasserman, Dir., Rockefeller Family Fund, et al. (January 5, 2016, 4:42 PM) (Exhibit 3) is available at <http://freebeacon.com/wp-content/uploads/2016/04/scan0003.pdf>. A copy of Draft Agenda from the ExxonKnew Strategy Meeting in the email from Kenny Bruno to Lee Wasserman et al, (Jan. 5, 2016, 4:42 PM) (Exhibit 4) is available at <http://eidclimate.org/wp-content/uploads/2017/10/Rockefeller-ExxonKnew-Strategy-Meeting-Memo-Jan-2016.pdf>.

¹⁶ Ex. 38 at App. 862; Ex. 39 at App. 916.

¹⁷ *E.g.*, Ex. 32 at App. 412, 431, *available at* <https://emma.msrb.org/EP904517-EP701084-EP1103033.pdf>; Ex. 30 at App. 362, 375-76. A copy of the 2014 San Mateo Lease Revenue Bond (Exhibit 30) is available at <https://emma.msrb.org/EA604100-EA472653-EA869138.pdf>. Ex. 27 at App. 287, 310. A copy of the 2013 San Mateo Lease Revenue Bond (Exhibit 27) is available at <https://emma.msrb.org/ER684998-ER530978-ER933493.pdf>.

¹⁸ Ex. 37 at App. 816.

¹⁹ *E.g.*, Ex. 32 at App. 434, *available at* <https://emma.msrb.org/EP904517-EP701084-EP1103033.pdf#page=92>; Ex. 30 at App. 378, *available at* <https://emma.msrb.org/EA604100-EA472653-EA869138.pdf#page=94>; Ex. 27 at App. 312, *available at* <https://emma.msrb.org/ER684998-ER530978-ER933493.pdf#page=82>.

²⁰ *See, e.g.*, Ex. 26 at App. 276 (“Certain legal matters will be passed on for the Agency by McDougal, Love, Eckis, Boehmer & Foley . . .”). Ms. Lyon is a member of McDougal, Love, Boehmer, Foley, Lyon & Canlas. *See Jennifer M. Lyon, Member, McDougal, Love, Boehmer, Foley, Lyon & Canlas*, <http://www.mcdougallove.com/jennifer-m-lyon/> (last visited Dec. 26, 2017). A copy of the 2010 Imperial Beach Tax Allocation Bond (Exhibit 26) is available at <https://emma.msrb.org/EP480808-EP374955-EP771885.pdf#page=9>.

levels.²¹ Ms. Lyon’s law firm also represents the City of Imperial Beach in that lawsuit.

- (e) **Andy Hall.** As City Manager of Imperial Beach and Executive Director of the Imperial Beach Redevelopment Agency, Mr. Hall has signed municipal bonds issued on behalf of the Imperial Beach Redevelopment Successor Agency.²²
- (f) **Serge Dedina.** As Mayor of Imperial Beach, Dr. Dedina indicated that he was instrumental in authorizing the filing of that city’s complaint against Texas-based energy companies, including ExxonMobil.²³
- (g) **Brian Washington.** As County Counsel for Marin County, Mr. Washington signed the complaint against ExxonMobil and other Texas-based energy companies, asserting various tort claims arising from allegedly rising sea levels.²⁴
- (h) **Matthew Hymel.** As County Administrator of Marin County, Mr. Hymel signed municipal securities issued by Marin County that do not contain more than a passing reference to the risk of flooding.²⁵
- (i) **Barbara Parker.** As City Attorney of Oakland, Ms. Parker reviewed municipal bonds issued by the City of Oakland over the last several years.²⁶ The municipal bonds either do not discuss threats posed by sea level rise or state that the city is unable to predict the impact of such threats. In that same role, Ms. Parker signed the complaint against Texas-based energy companies, including ExxonMobil, asserting a public nuisance claim arising from allegedly rising sea levels.²⁷
- (j) **Sabrina B. Landreth.** As City Administrator of Oakland, Ms. Landreth signed municipal bonds that expressly disclaimed the city’s ability to predict when climate change-related events might occur or whether any event would have a material adverse effect on the city.²⁸ These bonds were reviewed by Ms. Parker.²⁹

²¹ Ex. 35 at App. 594.

²² See, e.g., Ex. 28 at App. 337. A copy of the 2013 Imperial Beach Tax Allocation Bond (Exhibit 28) is available at <https://emma.msrb.org/EP782507-EP606121-EP1007572.pdf#page=71>.

²³ Ex. 67 at App. 1401.

²⁴ Ex. 36 at App. 706.

²⁵ See, e.g., Ex. 25 at App. 266. A copy of the 2010 County of Marin Certificates (Exhibit 25) is available at <https://emma.msrb.org/EA427434-EA332238-EA728082.pdf#page=61>.

²⁶ See, e.g., Ex. 34 at App. 476, 485-86, available at <https://emma.msrb.org/ES1038046-ES811448-ES1212831.pdf>; Ex. 29 at App. 341, 355-56. A copy of the 2014 Oakland Sewer Revenue Refunding Bond (Exhibit 29) is available at <https://emma.msrb.org/ER756774-EP610705-EP1012238.pdf>.

²⁷ Ex. 38 at App. 861.

²⁸ Ex. 34 at App. 489, 492-93, available at <https://emma.msrb.org/ES1038046-ES811448-ES1212831.pdf>.

²⁹ *Id.* at 485-86, available at <https://emma.msrb.org/ES1038046-ES811448-ES1212831.pdf#page=24>.

- (k) **Dennis Herrera.** As City Attorney of San Francisco, Mr. Herrera reviewed municipal bonds issued by the City of San Francisco over the last several years.³⁰ These municipal bonds neither mention global warming nor discuss the risks of sea level rise. In that same role, Mr. Herrera signed the complaint against Texas-based energy companies, including ExxonMobil, asserting a public nuisance claim arising from allegedly rising sea levels.³¹
- (l) **Edward Reiskin.** As Director of Transportation of the San Francisco Municipal Transportation Agency (“SFMTA”), Mr. Reiskin signed municipal bonds that Mr. Herrera reviewed.³²
- (m) **Dana McRae.** As County Counsel for the County of Santa Cruz, Ms. McRae reviewed municipal bonds issued by the County of Santa Cruz.³³ These municipal bonds do not mention climate change or global warming. In that same role, Ms. McRae signed the complaint against ExxonMobil and other Texas-based energy companies, asserting various tort claims arising from allegedly rising sea levels.³⁴
- (n) **Carlos Palacios.** As Assistant County Administrative Officer, Mr. Palacios signed municipal bonds that Ms. McRae reviewed.³⁵
- (o) **Anthony P. Condotti.** As City Attorney for the City of Santa Cruz, Mr. Condotti reviewed municipal bonds issued by the City of Santa Cruz.³⁶ These municipal bonds do not mention climate change or global warming. In that same role, Mr. Condotti signed the complaint against ExxonMobil and other Texas-based energy companies, asserting various tort claims arising from allegedly rising sea levels.³⁷

³⁰ See, e.g., Ex. 33 at App. 472; Ex. 31 at App. 408. A copy of the 2017 San Francisco Municipal Transportation Agency (SFMTA) Bond (Exhibit 33) is available at <https://emma.msrb.org/ES1033088-ES807674-ES1208978.pdf#page=315>. A copy of the 2014 SFMTA Bond (Exhibit 31) is available at <https://emma.msrb.org/EA662296-EA518683-EA914892.pdf#page=271>.

³¹ Ex. 39 at App. 915. See also Ex. 70 at 1411.

³² Ex. 33 at App. 465, available at <https://emma.msrb.org/ES1033088-ES807674-ES1208978.pdf#page=108>; Ex. 31 at App. 403, available at <https://emma.msrb.org/EA662296-EA518683-EA914892.pdf#page=83>.

³³ Ex. 99 at App. 1605, 1622; Ex. 100 at App. 1636, 1655. A copy of the 2017 County of Santa Cruz Tax and Revenue Anticipation Note (2017) (Exhibit 99) is available at <https://emma.msrb.org/EP1003967-EP778253-EP1179969.pdf>. A copy of the 2016 County of Santa Cruz Limited Obligation Improvement Bond (Exhibit 100) is available at <https://emma.msrb.org/EP914121-EP708983-EP1110853.pdf>.

³⁴ Ex. 40 at App. 1053.

³⁵ Ex. 100 at App. 1657, available at <https://emma.msrb.org/EP914121-EP708983-EP1110853.pdf#page=43>.

³⁶ Ex. 63 at App. 1366. A copy of 2017 City of Santa Cruz Refunding Lease Revenue Bond (Ex. 63) is available at <https://emma.msrb.org/EP990879-EP768263-EP1170021.pdf#page=3>.

³⁷ Ex. 41 at App. 1185.

- (p) **Martín Bernal.** As City Manager for the City of Santa Cruz and Executive Director of the City of Santa Cruz Public Financing Authority, Mr. Bernal signed municipal bonds that Mr. Condotti reviewed.³⁸

12. Testimony and documents from these witnesses will allow ExxonMobil to investigate the factual basis for its legal claims and to preserve testimony for its anticipated claims, as contemplated by Rule 202. Granting ExxonMobil's petition will serve the ends of justice by allowing the company to evaluate its claims and the proper defendants to those claims without the need to commence costly litigation and will impose burdens on the witnesses no heavier than those associated with routine civil discovery and which are outweighed, in any event, by the value of the likely evidence. Allowing ExxonMobil to take these depositions will prevent a failure or delay of justice.

II. IDENTITY OF PETITIONER AND RESPONDENTS

13. Petitioner ExxonMobil is a New Jersey corporation with principal offices in the State of Texas. Its corporate headquarters is located at 5959 Las Colinas Boulevard, Irving, Texas 75039.

14. Respondent Matthew Pawa is an individual and a resident of Massachusetts. His work address is 1280 Center Street, Suite 230, Newton Center, MA 02459. Mr. Pawa's work telephone number is (617) 641-9550.

15. Respondent John C. Beiers is the County Counsel of San Mateo County. His work address is County Government Center, 400 County Center, 6th Floor, Redwood City, CA 94063. His work telephone number is (650) 363-4775.

16. Respondent John L. Maltbie is the County Manager of San Mateo County. His work address is County Government Center, 400 County Center, 1st Floor, Redwood City, CA

³⁸ See, e.g., Ex. 63 at 1380, available at <https://emma.msrb.org/EP990879-EP768263-EP1170021.pdf#page=66>.

94063. His work telephone number is (650) 363-4121.

17. Respondent Jennifer Lyon is City Attorney for Imperial Beach and an attorney at the law firm McDougal, Love, Boehmer, Foley, Lyon & Canlas (“McDougal Love”). Her work address is La Mesa Village Plaza, 8100 La Mesa Blvd., Suite 200, La Mesa, CA 91942. Her work telephone number is (619) 440-4444.

18. Respondent Andy Hall is the City Manager of Imperial Beach and Executive Director of the Imperial Beach Redevelopment Agency Successor Agency. His work address is Imperial Beach Redevelopment/Successor Agency, 825 Imperial Beach Boulevard, Imperial Beach, CA 91932. His work telephone number is (619) 423-8615.

19. Respondent Serge Dedina is the Mayor of Imperial Beach. His work address is City of Imperial Beach, Mayor’s Office, 825 Imperial Beach Blvd, Imperial Beach, CA 91932. His work telephone number is (619) 423-8303.

20. Respondent Brian Washington is the County Counsel for Marin County. His work address is 3501 Civic Center Drive, Suite 275, San Rafael, CA 94903. His work telephone number is (415) 473-6117.

21. Respondent Matthew Hymel is the County Administrator of Marin County. His work address is 3501 Civic Center Drive, Suite 325, San Rafael, CA 94903. His work telephone number is (415) 473-6358.

22. Respondent Barbara Parker is the City Attorney of Oakland City. Her work address is City Hall, 1 Frank Ogawa Plaza, 6th Floor, Oakland, CA 94612. Her work telephone number is (510) 238-3601.

23. Respondent Sabrina B. Landreth is the City Administrator of Oakland. Her work address is City Administrator’s Office, 1 Frank Ogawa Plaza, 3rd Floor, Oakland, CA 94612.

Her work telephone number is (510) 238-3301.

24. Respondent Dennis Herrera is the City Attorney of San Francisco. His work address is City Hall, Room 234, 1 Dr. Carlton B. Goodlett Pl., San Francisco, CA 94102. The City Attorney's Office telephone number is (415) 554-4700.

25. Respondent Edward Reiskin is the Director of Transportation of the SFMTA. His work address is San Francisco Municipal Transportation Agency, 1 South Van Ness Avenue, San Francisco, CA 94103. The telephone number for SFMTA is (415) 701-4500.

26. Respondent Dana McRae is the County Counsel for the County of Santa Cruz. Her work address is 701 Ocean Street, Room 505, Santa Cruz, CA 95060. Her work telephone number is (831) 454-2040.

27. Respondent Carlos Palacios is the current Santa Cruz County Administrative Officer. His work address is 701 Ocean Street, Room 520, Santa Cruz, CA 95060. His work telephone is (831) 454-2100.

28. Respondent Anthony P. Condotti is the City Attorney for the City of Santa Cruz and an attorney at the law firm Atchison, Barisone & Condotti, APC. His work address is 333 Church Street, Santa Cruz, CA 95060. His work telephone number is (831) 420-6200.

29. Respondent Martín Bernal is the City Manager of the City of Santa Cruz and the Executive Director of the City of Santa Cruz Public Financing Authority. His work address is 809 Center Street, Room 10, Santa Cruz, CA 95060. His work telephone number is (831) 420-5010.

III. JURISDICTION AND VENUE

30. Rule 202 of the Texas Rules of Civil Procedure authorizes this Court to consider ExxonMobil's petition for pre-suit depositions to evaluate potential claims and to obtain and perpetuate testimony in anticipation of filing suit.

31. This Court has jurisdiction over the subject matter of ExxonMobil's potential claims pursuant to Article V, Section 8 of the Texas Constitution, and Sections 24.007 and 24.008 of the Texas Government Code, because the potential defendants' actions may have violated ExxonMobil's rights under the United States and Texas Constitutions and may constitute an abuse of process under Texas common law.

32. This Court has personal jurisdiction over the potential defendants, pursuant to Section 17.042(2) of the Texas Civil Practice and Remedies Code, because the potential abuse of process, civil conspiracy, and constitutional violations were intentionally targeted at the State of Texas to encourage the Texas energy sector to adopt the co-conspirator's desired legislative and regulatory responses to climate change. ExxonMobil and 17 other Texas-based companies that are named in the California municipalities' lawsuits exercise their First Amendment right in Texas to participate in the national dialogue about climate change.³⁹ The speech and other First Amendment activity of the energy sector in Texas is precisely what the potential defendants have attempted to stifle through their abuse of law enforcement powers and civil litigation.

33. Under Texas Rule of Civil Procedure 202.2(b)(1), a Rule 202 petition may be filed in the court of a county where venue of the anticipated suit may lie. Venue for this petition is proper in Tarrant County under Section 15.002(a)(1) of the Texas Civil Practice and Remedies Code because a substantial part of the events that may give rise to the potential claims occurred in Tarrant County. The potential defendants seek to abuse law enforcement power and civil litigation to influence ExxonMobil's expressive activity in Tarrant County.⁴⁰

³⁹ The 17 defendants are: Anadarko Petroleum Corp., Apache Corp., BP America, Inc., Citgo Petroleum Corp., ConocoPhillips Co., Conoco Phillips, Eni Oil & Gas Inc., Marathon Oil Co., Marathon Oil Corp., Occidental Chemical Corp., Occidental Petroleum Corp., Phillips 66, Respol Energy North America Corp., Respol Trading USA Corp., Shell Oil Products Co. LLC., Total E&P USA Inc., and Total Specialties USA Inc.

⁴⁰ Because California courts lack personal jurisdiction over ExxonMobil, the pending litigation in California does

IV. RELEVANT FACTS

34. For years, special interests and opportunistic politicians identified disfavored speech about climate change as an obstacle to their political agenda and conspired to use state power and civil litigation to suppress viewpoints unaligned with their own. They identified ExxonMobil as a primary target and have worked with state attorneys general and other politicians to commence investigations and litigation against ExxonMobil for the improper purpose of coercing the company to parrot their perspective on the risks of, and appropriate policy responses to, climate change. Appearing to be following this playbook, five California municipalities have filed tort complaints against ExxonMobil and others for harms caused by alleged sea level rise, even though these same municipalities' bond disclosures are silent or express uncertainty about any such harms. The disconnect between allegations made in the lawsuit and the risks disclosed in the bond offerings suggests that these lawsuits were filed for an improper purpose and not because of a bona fide belief in the harm alleged. ExxonMobil respectfully requests pre-suit discovery to uncover the municipalities' motives and to determine whether legal action in Texas is warranted, as well as to perpetuate testimony for an anticipated suit in Texas.

A. Special Interests Devise a Playbook to Limit Political Debate by Abusing Law Enforcement Powers and Civil Litigation.

35. In June 2012, a collection of special, private interests gathered in La Jolla, California, to participate in a "Workshop on Climate Accountability, Public Opinion, and Legal Strategies."⁴¹ Peter Frumhoff,⁴² the Director of Science and Policy for the Union of Concerned

not provide an appropriate forum to litigate the claims anticipated in this Petition.

⁴¹ Ex. 1 at App. 2.

⁴² Frumhoff has tried to pressure ExxonMobil to change its climate policy since at least 2007, when he contributed to a publication promoting strategies for "[p]utting the [b]rakes" on ExxonMobil's alleged "[d]isinformation [c]ampaign" on climate change. Ex. 43 at App. 1227.

Scientists, and Naomi Oreskes, then a professor at the University of California, San Diego, “conceived” of this workshop and invited Matthew Pawa, a prominent environmental lawyer, to be a featured speaker.⁴³ During the conference, attendees criticized energy companies, including ExxonMobil, for “attempting to manufacture uncertainty about global warming”⁴⁴ and discussed a wide variety of legal strategies to combat the industry’s alleged “efforts to defeat action on climate change.”⁴⁵

36. The La Jolla workshop attendees gravitated toward using law enforcement powers and civil litigation to “maintain[] pressure on the industry that could eventually lead to its support for legislative and regulatory responses to global warming.”⁴⁶ Some participants noted that “pressure from the courts offers the best current hope for gaining the energy industry’s cooperation in converting to renewable energy.”⁴⁷ The attendees concluded that “a single sympathetic state attorney general might have substantial success in bringing key internal documents to light” that could be used to coerce companies to change their positions on climate change.⁴⁸ They also 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.”⁴⁹

⁴³ Ex. 1 at App. 3, 13, 33.

⁴⁴ *Id.* at App. 6-7. It is particularly objectionable for these activists to claim that ExxonMobil has misled the public about the challenges presented by climate change. For more than a decade, ExxonMobil has publicly acknowledged that climate change presents significant risks that could affect its business. For example, ExxonMobil’s 2006 Corporate Citizenship Report recognized that “the risk to society and ecosystems from rising greenhouse gas emissions could prove to be significant” and reasoned that “strategies that address the risk need to be developed and implemented.” Ex. 50 at App. 1307-08.

⁴⁵ Ex. 1 at App. 7.

⁴⁶ *Id.* at App. 28.

⁴⁷ *Id.* at App. 28-29.

⁴⁸ *Id.* at App. 12.

⁴⁹ *Id.* at App. 14.

37. At La Jolla, Mr. Pawa recounted his representation of the plaintiffs in *Kivalina v. ExxonMobil Corp.*, a lawsuit against ExxonMobil and 23 other energy companies for allegedly contributing to global warming and flooding.⁵⁰ Mr. Pawa had hoped the lawsuit would serve as “a potentially powerful means to change corporate behavior.”⁵¹ The court rebuffed Mr. Pawa’s gambit, however, holding that the regulation of greenhouse gas emissions is “a political rather than a legal issue that needs to be resolved by Congress and the executive branch rather than the courts.”⁵²

38. In January 2016, Mr. Pawa and a group representing special, private interests met at the Rockefeller Family Fund offices to discuss the “[g]oals of an Exxon campaign”⁵³ that Mr. Pawa had promoted at the La Jolla conference. The goals included:

- “To 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.”
- “To delegitimize [ExxonMobil] as a political actor.”
- “To 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.”
- “To drive divestment from Exxon.”
- “To drive Exxon & climate into [the] center of [the] 2016 election cycle.”⁵⁴

⁵⁰ *Native Vill. of Kivalina v. ExxonMobil Corp.*, 663 F. Supp. 2d 863, 869 (N.D. Cal. 2009), *aff’d*, 696 F.3d 849 (9th Cir. 2012).

⁵¹ Ex. 1 at App. 13.

⁵² *Id.*

⁵³ Ex. 3 at App. 59.

⁵⁴ *Id.*; see also Ex. 15 at App. 198-99 (discussing this meeting and agenda). A copy of Alana Goodman, *Memo Shows Secret Coordination Effort Against ExxonMobil by Climate Activists, Rockefeller Fund*, Wash. Free Beacon (Apr. 14, 2016, 5:00 PM) (Exhibit 15) is available at <http://freebeacon.com/issues/memo-shows-secret-coordination-effort-exxonmobil-climate-activists-rockefeller-fund>.

These expressly political goals with the stated purpose of interfering with ExxonMobil's freedoms of speech and association are not legitimate objectives of any bona fide government-directed investigation or litigation.

39. At the meeting, the activists also discussed “the main avenues for legal actions & related campaigns,” including “AGs,” “DOJ,” and “Torts.”⁵⁵ Among these options, they considered which had the “best prospects” for (i) “successful action,” (ii) “getting discovery,” and (iii) “creating scandal.”⁵⁶

40. Shortly after this meeting, Pawa attempted to implement the “AGs” plan. At least twice, he emailed the Vermont Attorney General’s Office news articles criticizing ExxonMobil for purportedly deceiving the public about the effects of climate change, including an opinion piece written by a member of the Rockefeller family where she explains why she donated her inherited ExxonMobil stock to combat global warming.⁵⁷

41. In December 2016, the President and Director of the Rockefeller Family Fund admitted, after initially denying the connection, that the fund had financed the so-called investigative journalism that would later provide a pretext for the attorneys general’s improper investigations of ExxonMobil.⁵⁸

B. “Sympathetic” State Attorneys General Adopt the La Jolla Playbook.

42. The La Jolla ringleaders eagerly sought to implement their playbook. In June 2015, Dr. Oreskes (one of the principal organizers of the La Jolla conference) met with New York Attorney General Eric Schneiderman to discuss the purported “history of misinformation”

⁵⁵ Ex. 4 at App. 61.

⁵⁶ *Id.* at App. 62.

⁵⁷ Ex. 86 at App. 1536 (sending a copy of Ex. 88 at App. 1540-41); Ex. 87 at App. 1538; Ex. 89 at App. 1543 (sending a copy of Ex. 90 at App. 1545-46).

⁵⁸ Ex. 77 at 1444-52; *see also* Ex. 78 at 1454-56; Ex. 79 at 1458-61.

of the energy industry.⁵⁹ Meanwhile, Dr. Frumhoff (another principal organizer of the La Jolla conference) assured 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.”⁶⁰ Likewise, the Rockefeller Family Fund “informed [unnamed] state attorneys general of [its] concern” about ExxonMobil’s statements on climate change and was “encouraged by [Attorney General] Schneiderman’s interest.”⁶¹

43. These efforts paid off when Attorney General Schneiderman issued a subpoena to ExxonMobil regarding climate change in November 2015. Within hours of the subpoena’s issuance, the press reported its contents. An article in *The New York Times* reported that the subpoena “demand[ed] extensive financial records, emails and other documents” and that the “focus” of the investigation was on “the company’s own long running scientific research” on climate change.⁶²

44. Other state attorneys general also adopted the La Jolla playbook. Appearing at a press conference on March 29, 2016, a coalition of attorneys general promoted a plan to regulate speech they considered an obstacle to their “Clean Power” agenda.⁶³ They were joined by

⁵⁹ Ex. 20 at App. 225. A similar meeting with the Massachusetts Attorney General’s office occurred the following year. *Id.* A copy of 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, 7:07 AM) (Exhibit 20) is available at <https://energyindepth.org/national/activists-admit-at-friendly-forum-theyve-been-working-with-ny-ag-on-climate-rico-campaign-for-over-a-year>.

⁶⁰ Ex. 17 at App. 205. A copy of Michael Bastasch, *Emails: Eco-Activists Plotted Oil Industry Lawsuits Before Anti-Exxon Stories Released*, Daily Caller (May 16, 2016, 1:10 PM) (Exhibit 17) is available at <http://dailycaller.com/2016/05/16/emails-eco-activists-plotted-oil-industry-lawsuits-before-anti-exxon-stories-released>.

⁶¹ Ex. 22 at App. 231 (emphasis omitted). A copy of Katie Brown, *Rockefellers: Not Only Did We Pay for #ExxonKnew, We Were the Ones Who Pulled in NY AG*, Energy in Depth (December 7, 2016, 2:02 PM) (Exhibit 22) is available at <https://www.energyindepth.org/national/rockefellers-not-only-did-we-pay-for-exxonknew-we-were-the-ones-who-pulled-in-ny-ag/>. In February 2015, the New York Attorney General’s Office exchanged a dozen emails with the Fund concerning the “activities of specific companies regarding climate change.” Ex. 62 at 1357-62.

⁶² Ex. 49 at App. 1298.

⁶³ Ex. 5 at App. 65.

former Vice President Al Gore,⁶⁴ who is also an investor in alternative energy companies that compete with conventional energy companies. For the attorneys general, the public policy debate on climate change was settled and any perceived dissent was intolerable. Attorney General Schneiderman declared that there could be “no dispute” about climate change policy, only “confusion” and “misperceptions in the eyes of the American public that really need to be cleared up.”⁶⁵ Attorney General Healey likewise considered the public’s failure to embrace her climate change policies to be the result of speech that caused “many to doubt whether climate change is real and to misunderstand and misapprehend the catastrophic nature of its impacts.”⁶⁶

45. To impose their views on climate change policy, the attorneys general vowed to unleash their law enforcement powers against perceived dissenters. Attorney General Schneiderman blamed any departure from his prescribed orthodoxy on those “with an interest in profiting from the [so-called] confusion” about public policy and denounced the “morally vacant forces that are trying to block every step by the federal government to take meaningful action” on climate change.⁶⁷ Lamenting the perceived “gridlock in Washington,” Attorney General Schneiderman also expressed the coalition’s intent “to step into this [legislative] breach,” by “battl[ing]” perceived political opponents.⁶⁸ Directly linking his investigation of ExxonMobil to those concerns, he boasted that he “had served a subpoena on ExxonMobil” as part of his efforts to promote a clean energy agenda.⁶⁹

46. Attorney General Healey likewise asserted that those who purportedly “deceived” the public—by disagreeing with her about climate change policy—“should be, must be, held

⁶⁴ *Id.* at App. 64.

⁶⁵ *Id.* at App. 65.

⁶⁶ *Id.* at App. 75.

⁶⁷ *Id.* at App. 65, 67.

⁶⁸ *Id.* at App. 66-67.

⁶⁹ *Id.* at App. 66.

accountable.”⁷⁰ In the next breath, Attorney General Healey declared that she too had “joined in investigating the practices of ExxonMobil.”⁷¹ Revealing the prejudgment tainting her investigation, Attorney General Healey claimed—before she had received a single document from ExxonMobil—that she had already found a “troubling disconnect between what Exxon knew . . . and what the company and industry chose to share with investors and with the American public.”⁷² In a thinly veiled reference to ExxonMobil, she then promised “quick, aggressive action” to “hold[] accountable those who have needed to be held accountable for far too long.”⁷³

47. The case was similarly closed for Attorney General Walker, who declared, “We have to look at renewable energy. That’s the only solution.”⁷⁴ Attorney General Walker stated that “the American people . . . have to do something transformational” because “[w]e cannot continue to rely on fossil fuel.”⁷⁵ Earlier, Attorney General Walker had bragged about obtaining a settlement from an energy company as compensation to the Virgin Islands after the company closed its operations there.⁷⁶ He did not explore the disconnect between his words at the press conference and his previous actions in office.

48. Mr. Gore urged the coalition of state attorneys general to investigate his business competitors for “slow[ing] down this renewable revolution” by “trying to convince people that renewable energy is not a viable option.”⁷⁷ He denounced those he accused of “deceiving the

⁷⁰ *Id.* at App. 75.

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.* at App. 76.

⁷⁴ *Id.* at App. 79.

⁷⁵ *Id.*

⁷⁶ Ex. 53 at App. 1323.

⁷⁷ Ex. 5 at App. 72.

American people . . . about the reality of the climate crisis and the dangers it poses to all of us.”⁷⁸

The assembled attorneys general had nothing but praise for Mr. Gore, whose personal financial interests aligned with their political agenda. Attorney General Schneiderman enthused that “there is no one who has done more for this cause” than Mr. Gore, who recently had been “traveling internationally, raising the alarm,” and “training climate change activists.”⁷⁹ Attorney General Healey praised Mr. Gore for explaining so “eloquently just how important this is, this commitment that we make,” and she thanked him for his “inspiration” and “affirmation.”⁸⁰ Attorney General Walker hailed the former Vice President as one of his “heroes.”⁸¹

49. The overtly political nature of the March 29 press conference drew a swift and sharp rebuke from other state attorneys general who criticized the use of law enforcement power to constrain free and open discussion of climate change. On June 15, 2016, attorneys general from thirteen states wrote a letter to their “Fellow Attorneys General,” in which they explained that the Green 20’s effort “to police the global warming debate through the power of the subpoena is a grave mistake” because “[u]sing law enforcement authority to resolve a public policy debate undermines the trust invested in our offices and threatens free speech.”⁸² The 13 attorneys general further described the investigations as “far from routine” because (i) they “target[] a particular type of market participant,” namely conventional energy companies; (ii) the Green 20 had aligned itself “with the competitors of [its] investigative targets,” and (iii) “the

⁷⁸ *Id.* at App. 69.

⁷⁹ *Id.* at App. 68.

⁸⁰ *Id.* at App. 75.

⁸¹ *Id.* at App. 78.

⁸² Ex. 19 at App. 217; *see also* Ex. 18 at App. 208-13. A copy of Letter from Lamar Smith, Chairman, House Committee on Science, Space, and Technology, et al. to Eric Schneiderman, Attorney General of New York (May 18, 2016) (Exhibit 18) is available at <https://science.house.gov/sites/republicans.science.house.gov/files/documents/05.18.16%20SST%20Letter%20to%20CA%20AG.pdf>.

investigation implicates an ongoing public policy debate.”⁸³ They urged their fellow attorneys general to “[s]top policing viewpoints.”⁸⁴

C. The Attorneys General Conceal Their Coordination with Activists and Each Other.

50. On the day of the press conference, Mr. Pawa and Dr. Frumhoff (architects of the La Jolla playbook) were lurking in the background, leading workshops for the attorneys general that were not only closed to the public but also meant to be concealed from the public. During those secret meetings, Mr. Pawa delivered a secret presentation on “climate change litigation,”⁸⁵ and Dr. Frumhoff delivered a presentation on the “imperative of taking action now on climate change.”⁸⁶ It is unknown whether Mr. Pawa disclosed to the public officials in attendance that he stood to profit from any private litigation made possible by documents procured through the attorney general-led investigations of ExxonMobil.

51. Following the March 29 press conference, Mr. Pawa and Dr. Frumhoff continued to press for state-based investigations and litigations against the energy industry.⁸⁷ Mere days after the press conference, Mr. Pawa took the lead in mobilizing the coalition of attorneys general and created an email list of “AG Folks” in order to “pass along information that may be of interest to AGs on the issue of our time: climate change.”⁸⁸ In March and April 2016, Mr.

⁸³ Ex. 19 at App. 217.

⁸⁴ *Id.* at App. 220. Twelve state attorneys general have filed an amicus brief in support of ExxonMobil’s position in federal court. *See* Exhibits 9 & 10.

⁸⁵ Ex. 6 at App. 86. A copy of the email from Wendy Morgan, Chief of Public Protection, Office of the Vermont Attorney General, to Michael Meade, Director, Intergovernmental Affairs Bureau, Office of the New York Attorney General (Mar. 18, 2016, 6:06 PM) (Exhibit 6) is available at <http://eelegal.org/wp-content/uploads/2016/04/Development-of-Agenda.pdf>.

⁸⁶ *Id.*

⁸⁷ Ex. 91 at App. 1548-49; Ex. 92 at App. 1551.

⁸⁸ Ex. 92 at App. 1551.

Pawa circulated news articles discussing how sea level rise might threaten coastal cities and ExxonMobil's purportedly early knowledge of the global warming problem.⁸⁹

52. The attorneys general recognized that the participation of Mr. Pawa and Dr. Frumhoff in the closed-door meetings before the conference, if reported, could expose the special, private interests urging the improper use of law enforcement's coercive tools to limit political discourse. Unsurprisingly, the New York Attorney General's Office attempted to conceal their involvement from the public. When a reporter contacted Mr. Pawa shortly after the March 29 press conference and inquired about the press conference, the Chief of the Environmental Protection Bureau of the New York Attorney General's Office, Lem Srolovic, advised Mr. Pawa, "My ask is if you speak to the reporter, to not confirm that you attended or otherwise discuss the event."⁹⁰ That same day, Mr. Srolovic sent Dr. Frumhoff a link to ExxonMobil's press statement responding to the press conference.⁹¹

53. In an effort to prevent further evidence from being unearthed, the attorneys general also executed a so-called "Climate Change Coalition Common Interest Agreement" that memorialized their efforts to promote one side of a political debate while restricting speech on the other side.⁹² That agreement describes the coalition's "common legal interests" as "limiting climate change" and "ensuring the dissemination of accurate information about climate change."⁹³ With these purported goals in mind, the attorneys general appointed themselves arbiters of accuracy when it comes to speech about climate policy and confirmed the coalition's

⁸⁹ *Id.* (sending a copy of the New York Times article in Ex. 93 at App. 1553-61); Ex. 94 at App. 1563 (sending a copy of the article reproduced in an email in Ex. 95 at App. 1565-70).

⁹⁰ Ex. 7 at App. 96.

⁹¹ Ex. 97 at App. 1574.

⁹² Ex. 8 at App. 97-116.

⁹³ *Id.* at App. 98.

willingness to violate First Amendment rights to carry out an agenda that has nothing to do with law enforcement.

54. Attorney General Schneiderman's efforts to conceal records concerning that agreement in response to a public-records request have already resulted in a firm judicial rebuke. The New York Supreme Court recently awarded attorney's fees and costs against the Attorney General for "lack[ing] a reasonable basis" for refusing to produce documents related to the Common Interest Agreement.⁹⁴ Nevertheless, the Attorney General continues to resist requests for communications with the Rockefeller Family Fund related to his investigation of ExxonMobil.⁹⁵

55. Another member of the coalition has gone so far as to concede the political motives behind the coalition's selective disclosures. The Vermont Attorney General's Office recently admitted that it conducts research into those seeking records about the coalition's activities, and upon learning of the requester's affiliation with "coal or Exxon or whatever," the office "give[s] this some thought . . . before we share information with this entity."⁹⁶

⁹⁴ Ex. 13 at App. 180-81.

⁹⁵ Ex. 23 at App. 238; Ex. 98 at App. 1576-601.

⁹⁶ Ex. 14 at App. 191. A copy of Transcript of Oral Argument, *Energy & Env'tl. Legal Inst. v. Attorney Gen. of Vt.*, No. 558-9-16 (Mar. 28, 2017) (Exhibit 14) is available at https://eelegal.org/wp-content/uploads/2017/04/VTWNCVA15563_3-28-2017.pdf.

D. ExxonMobil Files Suit to Protect Its Constitutional Rights.

56. In light of the evidence showing that state attorneys general had abused their law enforcement powers in an effort to curtail ExxonMobil's constitutional rights, ExxonMobil filed suit in state and federal court in Texas.⁹⁷ A few months after ExxonMobil commenced legal action against Attorney General Walker, he withdrew his subpoena.⁹⁸

57. The allegations in ExxonMobil's lawsuit against Attorneys General Schneiderman and Healey were sufficiently compelling that United States District Judge Ed Kinkeade initially ordered discovery on the bad faith of the attorneys general.⁹⁹ Explaining that decision, Judge Kinkeade expressed "concern" that "the anticipatory nature of Attorney General Healey's remarks" at the March 29 press conference "about the outcome of the Exxon investigation" and "Attorney General Healey's actions leading up to the issuance of the [civil investigative demand]" present the question of whether Attorney General Healey exhibited "bias or prejudgment about what the investigation of Exxon would discover."¹⁰⁰ Judge Kinkeade reaffirmed that conclusion in a subsequent order, where he expressed concern that the investigations conducted by Attorneys General Schneiderman and Healey may be means "to further their personal agendas by using the vast power of the government to silence the voices of all those who disagree with them."¹⁰¹

58. In early 2017, ExxonMobil's lawsuit was transferred to New York City—the venue of the March 2016 press conference—with Judge Kinkeade's conclusion that "[t]he merits

⁹⁷ *Exxon Mobil Corp. v. Claude Earl Walker*, No. 017-284890-16 (April, 13, 2016); *Exxon Mobil Corp. v. Maura Tracy Healey*, 4:16-cv-00469-A (N.D. Tex. June 15, 2016).

⁹⁸ Joint Stipulation of Dismissal, *Exxon Mobil Corp. v. Claude Earl Walker*, No. 4:16-cv-00364-K, Dkt. 40 (N.D. Tex. June 29, 2016).

⁹⁹ Ex. 11 at App. 159-65. In December 2016, this order was stayed pending briefing on the issue of personal jurisdiction. In March 2017, the federal judge transferred the action to the Southern District of New York. Since then, discovery has been stayed indefinitely.

¹⁰⁰ *Id.* at App. 162-63.

¹⁰¹ Ex. 12 at App. 171.

of each of Exxon’s claims involve important issues that should be determined by a court.”¹⁰²
The case remains pending.

E. Municipal Governments File Suit Against ExxonMobil and Others in an Apparent Effort to Restrict Speech.

59. A series of lawsuits recently filed by municipal governments in California appear to follow the La Jolla playbook already implemented by the state attorneys general. These lawsuits complain of imminent sea level rise and allege that ExxonMobil and other Texas-based energy companies bear responsibility for the resulting harm. But these allegations against ExxonMobil and other Texas-based energy companies cannot be credited. In municipal bond offerings by these same municipalities, including offerings that use a Texas-based underwriter, fiscal agent, paying agent, escrow agent, or trustee,¹⁰³ none of the municipalities disclosed to investors such risks.

60. The disconnect between the allegations in their complaints and the disclosures in their bond offerings indicates that the plaintiff municipal governments do not actually believe the allegations in their complaints and that the allegations were not made in good faith. It therefore appears that these lawsuits have been brought to achieve the improper goals of “delegitimiz[ing ExxonMobil] as a political actor”¹⁰⁴ and coercing ExxonMobil and other Texas-based energy companies to adopt the climate change policies favored by special interests and their allies in

¹⁰² *Id.* at App. 168.

¹⁰³ Imperial Beach, Oakland, and San Mateo have each issued bonds with a Texas-based underwriter, paying agent, fiscal agent, or trustee. 2003 Imperial Beach Tax Allocation Revenue Bond, *available at* <https://emma.msrb.org/MS215422-MS190730-MD370323.pdf> (Texas underwriter); 2000 Oakland General Obligation Bond, *available at* <https://emma.msrb.org/MS169822-MS145130-MD281905.pdf> (Texas fiscal agent); 2001 Oakland Pension Obligation Bond, *available at* <https://emma.msrb.org/MS184756-MS160064-MD309539.pdf> (Texas trustee); 2017 Jefferson Elementary Sch. Dist. General Obligation Bond (San Mateo, California), *available at* <https://emma.msrb.org/EP1020630-EP790869-EP1192491.pdf> (Texas paying agent and escrow agent); 2007 City of Santa Cruz Lease Revenue Bond (Texas underwriter), *available at* <https://emma.msrb.org/MS266382-MS241690-MD471860.pdf#page=50>.

¹⁰⁴ Ex. 3 at App. 59.

municipal government. Mr. Pawa’s direct involvement in two of these lawsuits provides further cause for concern that this litigation was brought for the very same improper purpose Mr. Pawa endorsed at La Jolla, developed further with the Rockefeller Family Fund, and secretly explained to the state attorneys general prior to their March 2016 press conference.

61. Mr. Pawa described this legal strategy in a 2015 memorandum to NextGen America, an organization used by California billionaire Tom Steyer to promote his political agenda.¹⁰⁵ In that memorandum, Mr. Pawa claimed “to know that certain fossil fuel companies (most notoriously ExxonMobil), have engaged in a campaign and conspiracy of deception and denial on global warming.”¹⁰⁶ Acknowledging the ulterior purpose motivating proposed litigation against energy companies, Mr. Pawa wrote, “simply proceeding to the discovery phase of a global warming case would be significant Just as obtaining such documents gave the Tobacco litigation an unstoppable momentum, here too obtaining industry documents would be a remarkable achievement that would advance the case and the cause.”¹⁰⁷

62. It is no surprise that Mr. Pawa made these candid disclosures to Mr. Steyer, who has long bankrolled campaigns targeting the energy sector.¹⁰⁸

63. Mr. Steyer personally donated \$30,000 to San Francisco’s late mayor at the end of 2016, only a few months before San Francisco filed suit against ExxonMobil and other Texas-based energy companies, as described below.¹⁰⁹ Three former officials from that mayor’s administration currently face corruption charges for “pay-to-play” activities.¹¹⁰

¹⁰⁵ Ex. 2 at App. 49; Ex. 76 at App. 1438; Ex. 75 at App. 1435.

¹⁰⁶ Ex. 2 at App. 49.

¹⁰⁷ *Id.* at App. 55.

¹⁰⁸ Ex. 75 at App. 1435. *See also* Ex. 16 at App. 202; Ex. 48 at App. 1292-94; Ex. 57 at App. 1338; Ex. 58 at App. 1340; Ex. 60 at App. 1346-47; Ex. 69 at App. 1407; Ex. 80 at App. 1476-77; Ex. 81 at App. 1495-97; Ex. 82 at App. 1501; Ex. 83 at App. 1506.

¹⁰⁹ Ex. 2 at App. 41.

¹¹⁰ Ex. 51 at App. 1310-12.

64. Evidence also suggests that Mr. Steyer communicated with New York Attorney General Schneiderman about campaign support in connection with that state’s investigation of ExxonMobil.¹¹¹ Attorney General Schneiderman’s office emailed Mr. Steyer’s scheduler, Erin Suhr, five days after Mr. Schneiderman subpoenaed ExxonMobil’s climate change research to follow up “on conversation re: company specific climate change information.”¹¹² In March 2016, four months after announcing the ExxonMobil investigation, Attorney General Schneiderman also allegedly tried to arrange a meeting with Mr. Steyer. The *New York Post* reports that this communication reads, “Eric Schneiderman would like to have a call with Tom regarding support for his race for governor . . . regarding Exxon case.”¹¹³

San Mateo County

65. On July 17, 2017, the County of San Mateo filed a complaint on behalf of itself and the People of the State of California against ExxonMobil and 36 other energy companies, including 17 other Texas-based energy companies (the “San Mateo Complaint”), asserting claims of public and private nuisance, strict liability, negligence, and trespass in part because, purportedly, the defendants, “through their extraction, promotion, marketing, and sale of their fossil fuel products, caused” a substantial portion of global sea level rise.¹¹⁴ According to the San Mateo Complaint, which was served on ExxonMobil’s registered agent in Texas, the county was “particularly vulnerable to sea level rise,” which could “inundate thousands of acres of

¹¹¹ Ex. 23 at App. 238-40. A copy of Katie Brown, *After Even Deeper Collusion with Schneiderman Revealed, #ExxonKnew Campaign Tries to Change the Subject*, Energy in Depth (March 14, 2017) (Exhibit 23) is available at <http://eidclimate.org/after-even-deeper-collusion-with-schneiderman-revealed-exxonknew-campaign-tries-to-change-the-subject>.

¹¹² Ex. 24 at App. 244. A copy of Spencer Walrath, *Secret Memo Reveals Tom Steyer May Be Behind #ExxonKnew Climate Lawsuits*, Energy in Depth (Nov. 14, 2017) (Exhibit 24) is available at <http://eidclimate.org/secret-memo-reveals-tom-steyer-may-be-behind-exxonknew-climate-lawsuits>.

¹¹³ Ex. 21 at App. 227 (ellipsis in *New York Post* article). A copy of Isabel Vincent, *Schneiderman Tried to Contact Eco-Tycoon Amid Exxon Probe*, N.Y. Post (Sept. 11, 2016, 6:18 AM) (Exhibit 21) is available at <https://nypost.com/2016/09/11/schneiderman-tried-to-contact-eco-tycoon-amid-exxon-probe>.

¹¹⁴ Ex. 37 at App. 714, 751 ¶ 75.

County land, breach flood protection infrastructure, and swamp San Francisco International Airport (located within the County), among other impacts.”¹¹⁵

66. San Mateo County alleged that the risk of flooding caused by sea level rise was substantial and imminent—a near certainty. As set forth in the San Mateo Complaint,

[T]here is a 93% chance that the County experiences a devastating three-foot flood before the year 2050, and a 50% chance that such a flood occurs before 2030. Average sea level rise along the County’s shores are expected to rise by almost three feet by the year 2100, causing multiple, predictable impacts, and exacerbating the impacts of extreme events.¹¹⁶

67. Notwithstanding these dire warnings, nearly all of the disclosures San Mateo provided to investors in its bond offerings contain no reference to the risk of rising sea levels.¹¹⁷

68. Even more troubling, those few disclosure statements in San Mateo’s bond offerings that reference sea level rise disclaim any ability to predict whether a rise in sea level or any other climate change impact might occur.¹¹⁸ In 2014 and 2016, San Mateo County’s bond offerings provided the following assurance to investors:

The County is **unable to predict whether sea-level rise or other impacts of climate change** or flooding from a major storm **will occur**, when they may occur, and if any such events occur, whether they will have a material adverse effect on the business operations or financial condition of the County and the local economy.¹¹⁹

This disclosure appeared in a section of the bond offering with the heading “Risk of Sea Level Changes and Flooding.”¹²⁰

¹¹⁵ *Id.* at App. 749 ¶ 68, 750 ¶ 70 (internal quotation marks and footnotes omitted).

¹¹⁶ *Id.* at App. 791 ¶ 170.

¹¹⁷ *See, e.g.*, Ex. 27 at App. 285-311, *available at* <https://emma.msrb.org/ER684998-ER530978-ER933493.pdf>.

¹¹⁸ *See, e.g.*, Ex. 32 at App. 424, *available at* <https://emma.msrb.org/EP904517-EP701084-EP1103033.pdf#page=82>; Ex. 30 at App. 373, *available at* <https://emma.msrb.org/EA604100-EA472653-EA869138.pdf#page=79>.

¹¹⁹ Ex. 32 at App. 424, *available at* <https://emma.msrb.org/EP904517-EP701084-EP1103033.pdf#page=82> (emphasis added); Ex. 30 at App. 373, *available at* <https://emma.msrb.org/EA604100-EA472653-EA869138.pdf#page=79> (emphasis added).

¹²⁰ Ex. 32 at App. 424, *available at* <https://emma.msrb.org/EP904517-EP701084-EP1103033.pdf#page=82>.

69. These disclosures—and lack of disclosures—cannot be reconciled with the allegations in the San Mateo Complaint.

70. Respondent John C. Beiers, County Counsel of San Mateo County, is well-positioned to address the discrepancies between the complaint and the bond offerings. Mr. Beiers signed the San Mateo Complaint and “passed upon” the disclosures contained in the bond offerings discussed above.¹²¹

71. Respondent John L. Maltbie, County Manager of San Mateo County, also appears to possess knowledge of the irreconcilable positions on sea level rise the county has taken. Mr. Maltbie’s signature appears on each of the bond offerings discussed above.¹²² In addition, as County Manager, Mr. Maltbie has broad oversight for “the proper and efficient administration of the County government,” which would appear to encompass litigation filed on behalf of the county.¹²³

City of Imperial Beach

72. On July 17, 2017, the City of Imperial Beach filed a complaint on behalf of itself and the People of the State of California that was similar in all material respects to the San Mateo Complaint (the “Imperial Beach Complaint”).¹²⁴ It asserts claims against ExxonMobil and other energy companies, including 17 other Texas-based energy companies. The Imperial Beach Complaint, which was served on ExxonMobil’s registered agent in Texas, alleges “significant and dangerous sea level rise” due to “unabated greenhouse gas emissions” and describes the resulting economic harm in concrete terms: “Economic vulnerability associated with erosion’s

¹²¹ *Id.* at App. 431, available at <https://emma.msrb.org/EP904517-EP701084-EP1103033.pdf#page=89>; Ex. 30 at App. 375, available at <https://emma.msrb.org/EA604100-EA472653-EA869138.pdf#page=91>; Ex. 27 at App. 310, available at <https://emma.msrb.org/ER684998-ER530978-ER933493.pdf#page=80>.

¹²² Ex. 32 at App. 434, available at <https://emma.msrb.org/EP904517-EP701084-EP1103033.pdf#page=92>; Ex. 30 at App. 378, available at <https://emma.msrb.org/EA604100-EA472653-EA869138.pdf#page=94>; Ex. 27 at App. 312, available at <https://emma.msrb.org/ER684998-ER530978-ER933493.pdf#page=82>.

¹²³ Ex. 45 at App. 1274-75.

impact on real property is valued at over \$106 million. Coastal flooding **will impact** 1,538 parcels, and **cause** over \$38 million in damages, primarily to residential and commercial buildings.”¹²⁵

73. Imperial Beach has never warned investors in its bonds of any such “vulnerability,” let alone quantified it in such direct and precise terms. Its 2013 bond offering contains nothing but a boilerplate disclosure that “earthquake . . . , flood, fire, or other natural disaster, could cause a reduction in the Tax Revenues securing the Bonds. . . .”¹²⁶ A 2010 bond offering does not even bother to mention flooding.¹²⁷

74. Respondent Jennifer Lyon, City Attorney for Imperial Beach and a member of the law firm McDougal Love, is well-positioned to provide information about the facts and circumstances surrounding the irreconcilable claims in the Imperial Beach Complaint and the disclosures in the city’s bond offerings. During Ms. Lyon’s tenure as City Attorney, Imperial Beach issued the 2010 and 2013 bonds described above, and the 2010 bond offering discloses Ms. Lyon’s law firm as counsel on the offering.¹²⁸ Ms. Lyon signed the Imperial Beach Complaint and her law firm represents Imperial Beach in the tort litigation.¹²⁹

75. It is also likely that Respondent Andy Hall, City Manager of Imperial Beach, can provide evidence about this discrepancy and the reasons for it. Mr. Hall’s signature appears on the 2013 bond offering described above.¹³⁰ In addition, Mr. Hall is responsible for all aspects of

¹²⁴ Ex. 35 at App. 494-594.

¹²⁵ *Id.* at App. 570 ¶¶ 168, 170 (emphasis added).

¹²⁶ Ex. 28 at App. 329, available at <https://emma.msrb.org/EP782507-EP606121-EP1007572.pdf#page=56>.

¹²⁷ Ex. 26 at App. 267-83, available at <https://emma.msrb.org/EP480808-EP374955-EP771885.pdf>.

¹²⁸ Ex. 26 at App. 268, available at <https://emma.msrb.org/EP480808-EP374955-EP771885.pdf>.

¹²⁹ Ex. 35 at App. 594.

¹³⁰ Ex. 28 at App. 337, available at <https://emma.msrb.org/EP782507-EP606121-EP1007572.pdf#page=71>.

day-to-day operations of the city in accordance with City Council directives and policies, which presumably includes litigation initiated by the city.¹³¹

76. Respondent Serge Dedina, who was elected Mayor of Imperial Beach in 2014, is well-positioned to provide information about the stark divergence between the dire allegations in the Imperial Beach Complaint and the risk disclosures in Imperial Beach’s municipal bond offerings. On July 20, 2017, three days after Imperial Beach filed its lawsuit against ExxonMobil, Dr. Dedina explained in an article published by the *San Diego Union-Tribune* why he filed the Imperial Beach complaint.¹³² Dr. Dedina claims that ExxonMobil “did not warn the public or policymakers about the threat [of climate change]. Instead, they embarked on a multimillion-dollar campaign, taken straight from the tobacco industry’s playbook, to sow uncertainty around both the science and the impacts to put off regulation of their CO₂ pollution for as long as possible.”¹³³ He also lists a litany of climate change risks that were notably absent from Imperial Beach’s municipal bond offerings. For example, Dr. Dedina states, “[l]ike many other coastal communities, rising seas are threatening our beaches and parks, roads, water and sewage infrastructure, homes and businesses.”¹³⁴ He goes on to complain of “increased coastal flooding, excessive year-round beach erosion and record king tides that put our portion of the Bayshore Bikeway underwater.”¹³⁵ Dr. Dedina then highlights the economic injury caused by climate change in Imperial Beach, lamenting how the city is “faced with rising seas and mounting cost projections to protect our residents and businesses.”¹³⁶ To drive home this claimed financial hardship, Dr. Dedina adds, “[w]e are already incurring tremendous costs from

¹³¹ Ex. 71 at App. 1421.

¹³² Ex. 67 at App. 1398-1401.

¹³³ *Id.* at App. 1400.

¹³⁴ *Id.* at App. 1399.

¹³⁵ *Id.* at App. 1400.

¹³⁶ *Id.*

coastal flooding that keeps the south end of Seacoast Drive covered in water most of the winter.”¹³⁷ These “tremendous costs” are noticeably absent from Imperial Beach’s disclosures for its municipal bond offerings.

Marin County

77. Marin County also filed a complaint, on behalf of itself and the People of the State of California, on July 17, 2017, similar in all material respects to those filed by San Mateo County and the City of Imperial Beach (the “Marin Complaint”), including listing ExxonMobil and 17 other Texas-based energy companies as defendants.¹³⁸ The Marin Complaint, which was served on ExxonMobil’s registered agent in Texas, alleges dire effects of a rising sea level that, “even with the minimum anticipated sea level rise, would inundate thousands of acres of County land.”¹³⁹ According to the complaint, it was a near certainty that Marin County would experience significant economic harm from rising sea levels:

[T]here is a 99% risk that the County experiences a devastating three-foot flood before the year 2050, and a 47% chance that such a flood occurs before 2030. Within the next 15 years, the County’s Bay-adjacent coast **will endure** multiple, significant impacts from sea level rise. The San Rafael and Southern Marin shoreline communities are most at risk from tidal and storm surge flooding. Regular tidal flooding **will adversely impact** San Rafael east of US Highway 101, Bayfront Belvedere and Tiburon, Greenbrae, Waldo Point, and Paradise Cay. Storm surge flooding could impact North Novato at Gness Field, Black Point on the Petaluma River, lower Santa Venetia, Belvedere around the lagoon, Bayfront Corte Madera, Bayfront Mill Valley, Marinship in Sausalito, Tamalpais Valley, and Almonte, in addition to the communities vulnerable to tidal flooding.¹⁴⁰

78. None of these dire—and specific—warnings of the risks presented by sea level rise appear in the disclosures provided to investors in Marin County’s bond offerings.

79. A 2010 certificate offering discloses “natural or manmade disaster[s], such as

¹³⁷ *Id.* at App. 1400-01.

¹³⁸ Ex. 36 at App. 603-713.

¹³⁹ *Id.* at App. 638-39 ¶ 70.

¹⁴⁰ *Id.* at App. 680-81 ¶¶ 170-71 (footnotes omitted) (emphasis added).

earthquake, flood, fire, terrorist activities, [and] toxic dumping” as potential risks.¹⁴¹ But nowhere in that list or elsewhere in the bond disclosures did the county provide any warning about sea levels or climate change, nor did it highlight “a 99% risk” of “devastating” flooding.

80. Respondent Brian Washington, County Counsel for Marin County, is well-positioned to provide further information about the discrepancy between the allegations in the Marin County Complaint and the risk disclosures contained in its bond offerings. In addition to having signed the complaint on behalf of Marin County,¹⁴² Mr. Washington is responsible for “providing legal advice to the County, so should have knowledge of the materiality of certain risks.

81. Respondent Matthew Hymel, County Administrator of Marin, is also likely to possess information about this disconnect. Mr. Hymel’s signature appears on the county’s bond offerings, including the 2010 offering described above.¹⁴³ As County Administrator, Mr. Hymel must “[a]dminister, supervise, direct and control the administration of all county offices, departments and institutions, elective or appointive, in such matters that are the concern and responsibility of the board of supervisors,” which presumably includes initiating litigation on behalf of the county.¹⁴⁴

City of Oakland

82. On September 19, 2017, the City of Oakland, on behalf of the People of the State of California, filed a complaint against ExxonMobil and four other energy companies (the “Oakland Complaint”), including Texas-based ConocoPhillips, alleging that the defendants’ “massive fossil fuel production . . . causes a gravely dangerous rate of global warming” and

¹⁴¹ Ex. 25 at App. 257, *available at* <https://emma.msrb.org/EA427434-EA332238-EA728082.pdf#page=43>.

¹⁴² Ex. 36 at App. 705.

¹⁴³ Ex. 25 at App. 266, *available at* <https://emma.msrb.org/EA427434-EA332238-EA728082.pdf#page=61>.

¹⁴⁴ Ex. 72 at App. 1424.

“cause[s] ongoing and increasingly severe sea level rise harms.”¹⁴⁵ Mr. Pawa represents Oakland in this matter.¹⁴⁶

83. According to the Oakland Complaint, “Global warming has caused and continues to cause accelerated sea level rise in San Francisco Bay and the adjacent ocean with severe, and potentially catastrophic, consequences for Oakland.”¹⁴⁷ The complaint describes this risk in concrete, quantifiable terms: “[B]y 2050 a ‘100-year flood’ in the Oakland vicinity is expected to occur . . . once every 2.3 years . . . by 2100. . . almost once per week.”¹⁴⁸ Moreover, the complaint projects that, by 2100, Oakland will have up to “66 inches of sea level rise,” which, along with flooding, will imminently threaten Oakland’s sewer system and threaten property with a “total replacement cost of between \$22 and \$38 billion.”¹⁴⁹

84. None of these catastrophic and concrete warnings about the risks presented by sea level rise appear in the disclosures provided to investors in Oakland’s bond offerings. To the contrary, many state expressly that Oakland cannot predict the impacts of sea level rise, directly contradicting the allegations in the Oakland Complaint.

85. In the “Natural Hazard Risks” section of a 2017 bond offering, Oakland denied any ability to predict the likelihood or consequences of sea level rise:

The City is **unable to predict when** seismic events, fires or other natural events, such as **searise or other impacts of climate change** or flooding from a major storm, **could occur**, when they may occur, and, if any such events occur, whether they will have a material adverse effect on the business operations or financial condition of the City or the local economy.¹⁵⁰

86. A 2014 bond offering failed to even mention climate change or a rising sea level

¹⁴⁵ Ex. 38 at App. 842 ¶¶ 52, 55.

¹⁴⁶ *Id.* at App. 862.

¹⁴⁷ *Id.* at App. 855 ¶ 85.

¹⁴⁸ *Id.* at App. 856 ¶ 86 (emphasis omitted).

¹⁴⁹ *Id.* at App. 856 ¶ 87.

¹⁵⁰ Ex. 34 at App. 492-93, available at <https://emma.msrb.org/ES1038046-ES811448-ES1212831.pdf#page=78> (emphasis added).

when contemplating a bondholder's risks.¹⁵¹

87. Respondent Barbara Parker, City Attorney for Oakland, is well-positioned to provide information about the stark divergence between the dire allegations in the Oakland Complaint and the disclosures Oakland made to investors in its bond offerings. Ms. Parker signed the Oakland Complaint and “passed upon” the contents of the disclosures in the 2014 and 2017 bond offerings described above.¹⁵² Mr. Pawa, one of the architects of the La Jolla playbook for using government investigations to violate First Amendment rights and commencing litigation for the improper purpose of coercing perceived political opponents, also signed the Oakland Complaint and can be expected to have evidence about the reasons for including allegations in the Oakland Complaint that contradicted the disclosures in Oakland's bond offerings. It is also likely that Sabrina B. Landreth, City Administrator of Oakland, possesses information about this disconnect. As City Administrator, Ms. Landreth “directs City agencies and departments to ensure the goals and policy directives of the Mayor and City Council are implemented,” which presumably includes oversight of litigation brought on the city's behalf.¹⁵³ Ms. Landreth also signed the 2017 bond offering described above.¹⁵⁴

City of San Francisco

88. On September 19, 2017, the City of San Francisco, also represented by Mr. Pawa, filed a lawsuit on behalf of the People of the State of California similar in all material respects to

¹⁵¹ Ex. 29 at App. 348-53, *available at* <https://emma.msrb.org/ER756774-EP610705-EP1012238.pdf#page=34>

¹⁵² Ex. 38 at App. 861; Ex. 34 at App. 476, 86, *available at* <https://emma.msrb.org/ES1038046-ES811448-ES1212831.pdf>; Ex. 29 at App. 339, *available at* <https://emma.msrb.org/ER756774-EP610705-EP1012238.pdf>. The 2017 bond offering also states that “the City Attorney undertake[s] no responsibility for the accuracy, completeness or fairness of this Official Statement.” Ex. 34 at App 486, *available at* <https://emma.msrb.org/ES1038046-ES811448-ES1212831.pdf#page=24>.

¹⁵³ Ex. 73 at App. 1427.

¹⁵⁴ Ex. 34 at App. 489, *available at* <https://emma.msrb.org/ES1038046-ES811448-ES1212831.pdf#page=27>.

the one filed by Oakland (the “San Francisco Complaint”).¹⁵⁵ Like the Oakland lawsuit, the San Francisco Complaint lists two Texas-based energy companies as defendants, including ExxonMobil.¹⁵⁶ The San Francisco Complaint contains panicked allegations about the “imminent threat of catastrophic storm surge flooding” that global warming purportedly poses to San Francisco.¹⁵⁷ It states, “Global warming-induced sea level rise is already causing flooding of low-lying areas of San Francisco,” among other alleged harms.¹⁵⁸ The complaint ominously claims that the threat “is becoming more dire every day as global warming reaches ever more dangerous levels and sea level rise accelerates” and anticipates “0.3 to as much as 0.8 feet of additional sea level rise by 2030.”¹⁵⁹ In response to these imminent dangers, the complaint promises that “San Francisco is planning to fortify its Seawall to protect itself from sea-level rise. . . . Short-term seawall upgrades are expected to cost more than \$500 million. Long-term upgrades . . . are projected to cost \$5 billion.”¹⁶⁰

89. Despite these catastrophic and concrete warnings about the risks presented by global warming and a rising sea level, the disclosures provided to investors in San Francisco’s bond offerings consistently reassured investors that the effects of global warming on San Francisco are uncertain.

90. In the “Risks of Sea Level Changes and Flooding” section of a 2017 bond offering, San Francisco denied any ability to predict the likelihood or consequences of sea level rise:

¹⁵⁵ Ex. 39 at App. 874-925.

¹⁵⁶ *Id.* at App. 876. These defendants are ConocoPhillips Co. and ExxonMobil. *Id.*

¹⁵⁷ *Id.* at App. 876 ¶ 1.

¹⁵⁸ *Id.*

¹⁵⁹ *Id.* at App. 876 ¶ 1, 879 ¶ 10 (footnote omitted).

¹⁶⁰ *Id.* at App. 909 ¶ 89(a) (footnote omitted).

The City is **unable to predict whether sea-level rise or other impacts of climate change or flooding from a major storm will occur**, when they may occur, and if any such events occur, whether they will have a material adverse effect on the business operations or financial condition of the City and the local economy.¹⁶¹

91. In 2014 and 2017, San Francisco circulated bond offerings for its Municipal Transportation Agency that do not even contain the words “global warming” or “climate change.”¹⁶² The word “flood” appears only once in these bond offerings—to disclose the absence of “insurance policies covering earthquake, flood, environmental pollution or other, similar risks.”¹⁶³ Even though these bonds have maturity dates well beyond 2030, investors were not advised of San Francisco’s purported expectation of “0.3 to as much as 0.8 feet of additional sea level rise by 2030,” as alleged in the San Francisco Complaint.¹⁶⁴ Even in those bond offerings where San Francisco acknowledged the risks of climate change, the offerings nevertheless generally reassure investors that the impact of climate change cannot be predicted.¹⁶⁵

92. Respondent Dennis Herrera, City Attorney of San Francisco, is well-positioned to provide information about the stark divergence between the dire allegations in the San Francisco Complaint and the disclosures San Francisco made to investors in its bonds. Mr. Herrera signed the San Francisco Complaint and approved the 2014 and 2017 bonds described above.¹⁶⁶

¹⁶¹ Ex. 102 at App. 1671. A copy of 2107 San Francisco General Obligation Bond (Exhibit 102) is available at <https://emma.msrb.org/ER1017638-ER797023-ER1198238.pdf#page=20>.

¹⁶² Ex. 31, 33.

¹⁶³ Ex. 33 at App. 447, *available at* <https://emma.msrb.org/ES1033088-ES807674-ES1208978.pdf#page=90>; Ex. 31 at App. 379-408, *available at* <https://emma.msrb.org/EA662296-EA518683-EA914892.pdf>.

¹⁶⁴ *See* Ex. 33 at App. 437 (maturing as late as 2047), *available at* <https://emma.msrb.org/ES1033088-ES807674-ES1208978.pdf#page=2>; Ex. 31 at App. 379 (maturing as late as 2044), *available at* <https://emma.msrb.org/EA662296-EA518683-EA914892.pdf#page=2>.

¹⁶⁵ *See, e.g.*, Ex. 102 at App. 1671, *available at* <https://emma.msrb.org/ER1017638-ER797023-ER1198238.pdf#page=20>.

¹⁶⁶ Ex. 39 at App. 915; Ex. 33 at App. 472, *available at* <https://emma.msrb.org/ES1033088-ES807674-ES1208978.pdf#page=315>; Ex. 31 at App. 408, *available at* <https://emma.msrb.org/EA662296-EA518683-EA914892.pdf#page=271>.

Mr. Pawa—one of the architects of the La Jolla playbook who advocated the use of government investigations to violate First Amendment rights and commenced litigation for the improper purpose of altering speech of perceived political opponents—also signed the San Francisco Complaint, and can be expected to have evidence about the reasons for including allegations in the San Francisco Complaint that contradicted the disclosures in San Francisco’s bond offerings.¹⁶⁷ It is also likely that Respondent Edward Reiskin, Director of Transportation of the San Francisco Municipal Transportation Agency, will possess information regarding this disconnect. Mr. Reiskin’s duties include overseeing the municipal railway, parking, traffic engineering, pedestrian planning, bicycle implementation, accessibility and taxi regulation, which presumably would be affected by the alleged harms set forth in the San Francisco Complaint.¹⁶⁸ In addition, Mr. Reiskin’s signature appears on the 2014 and 2017 bonds described above.¹⁶⁹

County and City of Santa Cruz

93. On December 20, 2017, the County of Santa Cruz and the City of Santa Cruz, on behalf of themselves and the People of the State of California, each filed a suit similar to those filed by San Mateo County, Marin County, and the City of Imperial Beach (the “Santa Cruz City Complaint” and “Santa Cruz County Complaint”).¹⁷⁰ The suits assert claims of public and private nuisance, strict liability, negligence, and trespass against 29 energy companies, including ExxonMobil and 17 other Texas-based energy companies, for their alleged role in “global warming, rising atmospheric and ocean temperatures, ocean acidification, melting polar ice caps

¹⁶⁷ Ex. 39 at 916.

¹⁶⁸ Ex. 74 at App. 1431-1433.

¹⁶⁹ Ex. 33 at App. 465, *available at* <https://emma.msrb.org/ES1033088-ES807674-ES1208978.pdf#page=108>; Ex. 31 at App. 403, *available at* <https://emma.msrb.org/EA662296-EA518683-EA914892.pdf#page=83>.

¹⁷⁰ Ex. 40 at App. 927-1061; Ex. 41 at 1063-193.

and glaciers, more extreme and volatile weather, drought, wildfire, and sea level rise.”¹⁷¹ According to the Santa Cruz City and County Complaints, Santa Cruz is “particularly vulnerable to sea level rise, water shortages, and increased wildfire risks”¹⁷² and will see increased “[d]isruptions to weather cycles, extreme precipitation and drought, increased frequency and magnitude of wildfires, and associated consequences.”¹⁷³

94. In both complaints, Santa Cruz describes in specific detail the imminent risks associated with sea level rise. The Santa Cruz County Complaint cautions that there is “a 98% chance that the County experiences a devastating three-foot flood before the year 2050, and a 22% chance that such a flood occurs before 2030.”¹⁷⁴ The county further states that, “[w]ith 0.3 feet of sea level rise, anticipated by 2030, the County will endure extensive coastal flooding,” which will affect private residences, roads and highways, the sewer system, and emergency services buildings, among other facilities.¹⁷⁵ The economic value of the property at risk is “approximately \$742 million.”¹⁷⁶ The Santa Cruz City Complaint similarly states that the city is “particularly vulnerable to the impacts of sea level rise.”¹⁷⁷ The city warns that the “increased flooding and severe storm events associated with climate change will result in significant structural and financial losses in the City’s low-lying downtown.”¹⁷⁸

95. Both complaints also describe in specific detail how Santa Cruz will experience “more frequent and severe wildfires” as a result of changes in Santa Cruz’s “hydrologic

¹⁷¹ Ex. 40 at App. 931 ¶ 1; Ex. 41 at App. 1067 ¶ 1.

¹⁷² Ex. 41 at App. 1070 ¶ 8.

¹⁷³ *Id.*; Ex. 40 at App. 934 ¶ 8.

¹⁷⁴ Ex. 40 at App. 1014-15 ¶ 210.

¹⁷⁵ *Id.* at App. 1015 ¶ 211.

¹⁷⁶ *Id.*

¹⁷⁷ Ex. 41 at App. 1150 ¶ 209.

¹⁷⁸ *Id.* at App. 1152 ¶ 210.

regime.”¹⁷⁹ The Santa Cruz County Complaint states, “Due to the increase in temperature and decrease in moisture availability in Santa Cruz County, the frequency and intensity of wildfires is increasing.”¹⁸⁰ The county further advises that thousands of residences, several schools, highways, and other property are at risk of wildfire and that “over a billion dollars of improvements” are required in the areas most at risk.¹⁸¹ Similarly, the Santa Cruz City Complaint states that “there are 6,026 people and 1,270 parcels with 1,084 structures located within the wildfire hazard zone” and that the estimated “value of property in the wildfire hazard area” is “several hundreds of millions of dollars.”¹⁸²

96. None of these dire and specific warnings of climate change-induced sea level rise or wildfires appear in the disclosures provided to investors in Santa Cruz City and County bond offerings. Indeed, their disclosures lack any express reference to climate change, global warming, or changes in Santa Cruz’s hydrologic regime.

97. The county even disclaimed the ability to predict the effects of weather. A 2016 Santa Cruz County bond disclosure states that areas within the county “may be subject to **unpredictable climatic conditions**, such as **flood**, droughts and destructive storms.”¹⁸³ The same bond referenced wildfires only once, merely to note that the value of property within the county “can be adversely affected by” them.¹⁸⁴

98. While a 2017 county bond offering states that the county includes areas that “are located in a 100-year flood plain” where there is “high or extreme danger of wildfires,” the bond

¹⁷⁹ Ex. 40 at App. 963-64 ¶ 83; Ex. 41 at App. 1099-1100 ¶ 82. The complaints define “hydrologic cycle” as the “temporal and spatial movement of water through oceans, land, and the atmosphere.” Ex. 40 at App. 961 ¶ 74 (footnote omitted); Ex. 41 at App. 1097 ¶ 73 (footnote omitted).

¹⁸⁰ Ex. 40 at App. 1023 ¶ 221.

¹⁸¹ *Id.* at App. 1023 ¶ 222.

¹⁸² Ex. 41 at App. 1158 ¶ 234.

¹⁸³ Ex. 100 at App. 1648, available at <https://emma.msrb.org/EP914121-EP708983-EP1110853.pdf#page=33>.

¹⁸⁴ *Id.* at App. 1647, available at <https://emma.msrb.org/EP914121-EP708983-EP1110853.pdf#page=32>.

offering never ties this harm to global warming, climate change, or sea level rise.¹⁸⁵ Even though the bond offering discusses the county’s long-term debt obligations past 2030, the county fails to disclose that it anticipates 0.3 feet of sea level rise by 2030, which would lead to extensive flooding and hundreds of millions of dollars in property damage.¹⁸⁶

99. Recently issued city bond offerings are similarly lacking. A 2017 city bond offering has a boilerplate message that, “[f]rom time to time, the City is subject to natural calamities,” including flood and wildfire.¹⁸⁷ The bond offering also notes particular parts of the city that may be affected. However, these risks are not tied to global warming, climate change, or the hydrologic cycle.¹⁸⁸ Nor does the bond offering indicate that the city will suffer millions of dollars in property damage.

100. Respondent Dana McRae, County Counsel for the County of Santa Cruz, is well-positioned to provide further information about the discrepancy between the allegations in the County of Santa Cruz Complaint and the risk disclosures contained in its bond offerings. In addition to having signed the complaint on behalf of the County of Santa Cruz, Ms. McRae is responsible for “pass[ing] upon” the content of bond offerings, so should have knowledge of the materiality of certain risks.¹⁸⁹

101. It is also likely that Respondent Mr. Palacios, current County Administrative Officer, can provide evidence about this discrepancy and the reasons for it. Mr. Palacios signed the 2016 county bond described above¹⁹⁰ and “is responsible for the preparation and supervision of the County’s budget, . . . oversight of all departmental functions,” and “management, review,

¹⁸⁵ Ex. 99 at App. 1619, available at <https://emma.msrb.org/EP1003967-EP778253-EP1179969.pdf#page=72>.

¹⁸⁶ *Id.* at App. 1631, available at <https://emma.msrb.org/EP1003967-EP778253-EP1179969.pdf#page=192> (discussing obligations until 2046).

¹⁸⁷ Ex. 63 at App. 1376, available at <https://emma.msrb.org/EP990879-EP768263-EP1170021.pdf#page=58>.

¹⁸⁸ *Id.* at 1376-77.

¹⁸⁹ Ex. 99 at App. 1607, available at <https://emma.msrb.org/EP1003967-EP778253-EP1179969.pdf#page=5>.

¹⁹⁰ Ex. 100 at App. 1657, available at <https://emma.msrb.org/EP914121-EP708983-EP1110853.pdf#page=43>.

and recommendations related to the Board of Supervisor’s weekly meeting agendas.”¹⁹¹ Such work is likely to include review of litigation initiated by the county.

102. Respondent Anthony P. Condotti, City Attorney for the City of Santa Cruz, is well-positioned to provide further information about the discrepancy between the allegations in the City of Santa Cruz Complaint and the risk disclosures contained in its bond offerings. In addition to having signed the complaint on behalf of the City of Santa Cruz, Mr. Condotti is responsible for “pass[ing] on” the content of bond offerings, so should have knowledge of the materiality of certain risks.¹⁹²

103. It is also likely that Respondent Martín Bernal, City Manager of the City of Santa Cruz and Executive Director of the City of Santa Cruz Public Financing Authority, can provide evidence about this discrepancy and the reasons for it. Mr. Bernal “is responsible for the overall administration of the City and for seeing that City Council policies are carried out,” which presumably includes litigation initiated by the city.¹⁹³ In addition, Mr. Bernal’s signature appears on the 2017 city bond offering described above.¹⁹⁴

F. The Allegations in the Municipal Lawsuits Cannot Be Reconciled with California’s Zealous Protection of its Profit-Sharing with Energy Companies.

104. The State of California has recently taken legal action to protect its share of profits generated by the very same energy companies allegedly causing harm to the state. On October 17, 2017, California sued the federal government for allegedly shortchanging California taxpayers of the fair market value of the fossil fuels extracted from the state’s public lands.¹⁹⁵

The complaint boasts that California is “a leading state in terms of oil extraction on public lands,

¹⁹¹ Ex. 101 at App. 1659.

¹⁹² Ex. 41 at App. 1186; Ex. 63 at App. 1366, *available at* <https://emma.msrb.org/EP990879-EP768263-EP1170021.pdf#page=3>.

¹⁹³ Ex. 96 at App. 1572.

¹⁹⁴ Ex. 63 at App. 1380, *available at* <https://emma.msrb.org/EP990879-EP768263-EP1170021.pdf#page=66>.

¹⁹⁵ Complaint ¶¶ 2-5, 21, 29, *California v. U.S. Dep’t of Interior*, 3:17-cv-05948 (N.D. Cal. Oct. 17, 2017).

producing about 15 million barrels annually, and also produces approximately 7 billion cubic feet of natural gas.”¹⁹⁶ Estimating “an average of \$82.5 million annually in royalties from federal mineral extraction within the state,” the complaint describes California’s substantial economic interests in these oil-and-gas fields.¹⁹⁷ To ensure that California residents do not “receive inadequate returns from the extraction” of oil and gas, California seeks declaratory and equitable relief that will raise its share of the profit from extraction activities.¹⁹⁸

105. In this lawsuit, California has expressed an unambiguous financial interest in the continued development of the state’s natural energy resources, and it has acted zealously to protect that financial interest. Far from seeking to bar energy companies from continuing to operate in the state, California endeavors to increase the share of profits it receives from those operations. As a matter of official policy, California supports continued extraction of fossil fuel from within the state because it provides benefits to the state that exceed any perceived costs.

106. The position California has taken in the federal royalty litigation casts further doubt on whether the dire allegations set forth in the municipal complaints, which are purportedly brought on behalf of the “People of the State of California,” are honestly held. California’s unmistakable intention to profit from fossil fuel extraction, joined with the municipalities’ uniform failure to warn investors of the harms alleged in the complaints, suggest that the municipalities have commenced legal process against ExxonMobil and other energy companies to obtain an improper and unlawful objective, including to coerce ExxonMobil to change its perceived opposition to the municipalities’ preferred climate change policy.

¹⁹⁶ *Id.* ¶ 10.

¹⁹⁷ *Id.*

¹⁹⁸ *Id.* ¶ 22.

G. The Municipal Governments Fail to Acknowledge the Greenhouse Gas Emissions Attributable to Their Own Policies, Practices, and Preferences.

107. In 2015, California reported that it emitted 440.4 metric tons of carbon dioxide equivalent,¹⁹⁹ of which at least 37% was caused by transportation.²⁰⁰

108. The seven municipalities suing energy companies are not only eager consumers of energy, enjoying the benefits of the lifestyle it facilitates, but they also emit substantial quantities of greenhouse gases generated by activities promoted by state and local government. Each of the municipalities emits substantial quantities of greenhouse gases each year:

- (a) San Mateo estimates that its residents and those who work in the county emitted 5.4 million metric tons of carbon dioxide equivalents in 2013.²⁰¹
- (b) Imperial Beach, as one of five member cities that oversees the Port of San Diego, is responsible for at least some of the over 800,000 metric tons of carbon dioxide that the Port generates annually.²⁰²
- (c) Marin County noted in a 2006 report that it was responsible for emitting 68,076 tons of carbon monoxide pollution and 12,588 tons of particulate matter annually.²⁰³ A large portion of these emissions come from cars, as there were 249,314 registered cars and trucks in Marin County in 2016.²⁰⁴ Some portion of the county's emissions also comes from the San Rafael Rock Quarry, a project that Marin County approved despite concerns that it would cause significant environmental impact and emit greenhouse gases.²⁰⁵
- (d) Oakland reported that it emitted 2,768,150 metric tons of greenhouse gas in 2013, due in large part to vehicle emissions.²⁰⁶ In addition, according to the environmental non-profit Earthjustice, Oakland's diesel emissions are up to 90 times higher than California's average.²⁰⁷

¹⁹⁹ Ex. 66 at App. 1394.

²⁰⁰ Ex. 65 at App. 1392; Ex. 66 at App. 1394.

²⁰¹ Ex. 59 at App. 1343.

²⁰² Ex. 46 at App. 1280.

²⁰³ Ex. 42 at App. 1197.

²⁰⁴ Ex. 61 at App. 1354.

²⁰⁵ Ex. 44 at App. 1267-69.

²⁰⁶ Ex. 52 at App. 1318.

²⁰⁷ Ex. 64 at App. 1383.

- (e) San Francisco reported that it emitted 4.4 million metric tons of carbon dioxide equivalent in 2015.²⁰⁸ The San Francisco International Airport alone emitted 10.5 million metric tons of greenhouse gas in a single year.²⁰⁹
- (f) The County of Santa Cruz reported that government operations were responsible for 34,267 metric tons of its carbon dioxide equivalent emissions in 2009.²¹⁰ The county also reported that its transportation sector emitted 481,787 metric tons of carbon dioxide equivalent in 2009.²¹¹
- (g) The City of Santa Cruz reported that it emitted 351,321 tons of carbon dioxide equivalent in 2008.²¹² A large portion of these emissions came from the city's transportation sector, which included vehicle traffic on the city's local roads and highways.²¹³ The city itself reported that it was responsible for 10,261 metric tons of the 2008 emissions.²¹⁴

109. The California municipal governments have elected to pursue policies and practices that cause substantial quantities of greenhouse gases to be emitted. These policies and practices cast further doubt on whether the allegations in the complaint about the dire effects of greenhouse gases and the alleged role of energy companies are truly held by the municipal plaintiffs or whether the lawsuits were filed in bad faith.

V. NATURE OF POTENTIAL CLAIMS

110. The facts currently in the public record suggest that one or more of the municipalities, operating in isolation or in a conspiracy with others, are abusing legal process to apply pressure on ExxonMobil and 17 other Texas-based energy companies, to change their perceived positions on climate change policy. It is improper under the United States and Texas Constitutions for municipal governments to restrict the range of permissible viewpoints by

²⁰⁸ Ex. 68 at App. 1405.

²⁰⁹ Ex. 47 at App. 1289.

²¹⁰ Ex. 85 at App. 1531.

²¹¹ *Id.* at App. 1533.

²¹² Ex. 84 at App. 1517.

²¹³ *Id.*

²¹⁴ *Id.*

bringing lawsuits against those identified with disfavored policy positions. Such viewpoint discrimination is unambiguously prohibited by the First Amendment to the United States Constitution and by Article I, section 8 of the Texas Constitution.

111. It is equally improper under Texas common law for litigants to misuse legal process for an objective other than the one for which the process is intended. It appears that the potential defendants are misusing process to apply pressure on perceived political opponents to alter their views on a matter of public concern. For example, at the 2012 La Jolla conference, Mr. Pawa expressed his desire to maintain pressure on energy companies, including through litigation, to extract their support for Mr. Pawa's preferred responses to climate change.²¹⁵ Similarly, at the January 2016 Rockefeller meeting which sought to "delegitimize" ExxonMobil, attendees, including Mr. Pawa, discussed how to use tort litigation to "creat[e] scandal"—not to resolve legal disputes.²¹⁶ Such conduct constitutes an abuse of process in violation of the common law of Texas.

112. Participation in a conspiracy in furtherance of either objective (constitutional violations and abuse of process) is unlawful in its own right.

113. ExxonMobil's potential and anticipated claims for constitutional torts, abuse of process, and civil conspiracy arise under Section 1983 of Title 42 of the United States Code, the Texas Constitution, and Texas common law.

VI. TESTIMONY AND DOCUMENTS REQUESTED BY EXXONMOBIL

114. Over five years ago, a group of special interests, including Mr. Pawa, decided to abuse law enforcement tools and litigation to coerce energy companies, including ExxonMobil, to change their viewpoints on a matter of public policy. In a coordinated and well-funded

²¹⁵ Ex. 1 at App. 13.

²¹⁶ Ex. 4 at App. 61-62.

campaign, involving the Rockefeller Family Fund among others, these activists sought out “sympathetic” state attorneys general to implement their playbook. Three attorneys general accepted that invitation and launched investigations of ExxonMobil based on readily rebutted pretexts. ExxonMobil filed suit to protect its rights, and one of those attorneys general withdrew his subpoena. ExxonMobil’s case against the other two attorneys general remains pending, with at least one federal judge expressing concern that the attorneys general may be “further[ing] their personal agendas by using the vast power of the government to silence the voices of all those who dare to disagree with them.”²¹⁷

115. It now appears that a collection of municipal governments, two of which are represented by Mr. Pawa, are implementing another section of the La Jolla playbook. Despite having made stark claims in their respective complaints of near certain injury to their jurisdictions because of climate change and rising sea levels, none of the municipalities have made disclosures to investors remotely similar to the dire allegations in their complaints. Moreover, the State of California has taken affirmative steps to protect its share of profits derived from the very activity the municipal governments claim is harming the state. These facts provide good reason to doubt that the allegations in the municipal complaints are honestly held, and to suspect that the lawsuits are instead brought for a purpose other than to resolve a good-faith legal dispute. The direct involvement of Mr. Pawa in two of those lawsuits provides further cause for concern that the litigations were instituted for an improper purpose.

116. To investigate its potential claims and prevent a failure or delay of justice, ExxonMobil requests an order authorizing it to obtain non-privileged testimony and documents from the named respondents. The irreconcilable differences between the allegations in the

²¹⁷ Ex. 12 at App. 171.

municipalities' tort complaints and the disclosures in the municipal bond offerings suggest that an improper motive or undue influence might have caused the municipalities to include allegations in their complaints that were not honestly held. The current public record fails to resolve this issue. As a result, the facts and circumstances should be further examined in pre-suit discovery, which would allow ExxonMobil to consider whether a suit should be brought to vindicate its rights, and to perpetuate testimony for an anticipated suit.

117. ExxonMobil seeks to obtain testimony and documents from Respondent Pawa about a variety of topics, including, but not limited to: (i) Mr. Pawa's attendance at the La Jolla conference; (ii) Mr. Pawa's communications with third parties about his March 2015 memorandum to NextGen; (iii) Mr. Pawa's January 2016 meeting at the Rockefeller Family Fund; (iv) Mr. Pawa's communications with climate change activists, including, but not limited to, Drs. Frumhoff and Oreskes; (v) Mr. Pawa's attendance at the March 29, 2016 press conference during which state attorneys general pledged to use law enforcement power to impose their viewpoint on climate policy and closed-door meetings held before the conference; (vi) Mr. Pawa's communications with various attorneys general, including with the New York and Massachusetts Attorneys General; (vii) Mr. Pawa's discussions with third parties about the filing of July 2017 and September 2017 lawsuits in California.

118. ExxonMobil seeks to obtain testimony and documents from Respondent Beiers about a variety of topics, including, but not limited to: (i) Mr. Beiers's role in the decision to file the San Mateo Complaint, including, but not limited to, his discussions with third parties to ensure the accuracy of the statements contained therein; (ii) Mr. Beiers's communications with third parties, including, but not limited to, Mr. Pawa, Dr. Frumhoff, Dr. Oreskes, and state attorneys general, concerning the filing of the San Mateo Complaint; (iii) Mr. Beiers's role in

ensuring the accuracy of the statements made in the 2013, 2014, and 2016 San Mateo bond offerings; (iv) Mr. Beiers's communications with third parties about the risk disclosures contained in the 2013, 2014, and 2016 San Mateo bond offerings; and (v) the discrepancy between statements made in the San Mateo Complaint and the 2013, 2014, and 2016 San Mateo bond offerings.

119. ExxonMobil seeks to obtain testimony and documents from Respondent Maltbie about a variety of topics, including, but not limited to: (i) Mr. Maltbie's role in the decision to file the San Mateo Complaint, including, but not limited to, his discussions with third parties to ensure the accuracy of the statements contained therein; (ii) Mr. Maltbie's communications with third parties, including, but not limited to, Mr. Pawa, Dr. Frumhoff, Dr. Oreskes, and state attorneys general, concerning the filing of the San Mateo Complaint; (iii) Mr. Maltbie's role in ensuring the accuracy of the statements made in the 2013, 2014, and 2016 San Mateo bond offerings; (iv) Mr. Maltbie's communications with third parties about the risk disclosures contained in the 2013, 2014, and 2016 San Mateo bond offerings; and (v) the discrepancy between statements made in the San Mateo Complaint and the 2013, 2014, and 2016 San Mateo bond offerings.

120. ExxonMobil seeks to obtain testimony and documents from Respondent Lyon about a variety of topics, including, but not limited to: (i) Ms. Lyon's and her law firm's role in the decision to file the Imperial Beach Complaint, including, but not limited to, her discussions with third parties to ensure the accuracy of the statements contained therein; (ii) Ms. Lyon's and her law firm's communications with third parties, including, but not limited to, Mr. Pawa, Dr. Frumhoff, Dr. Oreskes, and state attorneys general, concerning the filing of the Imperial Beach Complaint; (iii) Ms. Lyon's and her law firm's role in ensuring the accuracy of the statements

made in the 2010 and 2013 Imperial Beach bond offerings; (iv) Ms. Lyon's and her law firm's communications with third parties about the risk disclosures contained in the 2010 and 2013 Imperial Beach bond offerings; and (v) the discrepancy between statements made in the Imperial Beach Complaint and the 2010 and 2013 Imperial Beach bond offerings.

121. ExxonMobil seeks to obtain testimony and documents from Respondent Hall about a variety of topics, including, but not limited to: (i) Mr. Hall's role in the decision to file the Imperial Beach Complaint, including, but not limited to, his discussions with third parties to ensure the accuracy of the statements contained therein; (ii) Mr. Hall's communications with third parties, including, but not limited to, Mr. Pawa, Dr. Frumhoff, Dr. Oreskes, and state attorneys general, concerning the filing of the Imperial Beach Complaint; (iii) Mr. Hall's role in ensuring the accuracy of the statements made in the 2013 Imperial Beach bond offerings; (iv) Mr. Hall's communications with third parties about the risk disclosures contained in the 2013 Imperial Beach bond offerings; and (v) the discrepancy between statements made in the Imperial Beach Complaint and the 2013 Imperial Beach bond offerings.

122. ExxonMobil seeks to obtain testimony and documents from Respondent Dedina about a variety of topics, including, but not limited to: (i) Dr. Dedina's role in the decision to file the Imperial Beach Complaint, including, but not limited to, his discussions with third parties to ensure the accuracy of the statements contained therein; (ii) Dr. Dedina's communications with third parties, including, but not limited to, Mr. Pawa, Dr. Frumhoff, Dr. Oreskes, and state attorneys general, concerning the filing of the Imperial Beach Complaint; (iii) Dr. Dedina's knowledge of the statements made in the 2010 and 2013 Imperial Beach bond offerings; (iv) Dr. Dedina's communications with third parties about the risk disclosures contained in the 2010 and 2013 Imperial Beach bond offerings; and (v) the discrepancy between statements made

in the Imperial Beach Complaint and the 2010 and 2013 Imperial Beach bond offerings.

123. ExxonMobil seeks to obtain testimony and documents from Respondent Washington about a variety of topics, including, but not limited to: (i) Mr. Washington's role in the decision to file the Marin Complaint, including, but not limited to, his discussions with third parties to ensure the accuracy of the statements contained therein; (ii) Mr. Washington's communications with third parties, including, but not limited to, Mr. Pawa, Dr. Frumhoff, Dr. Oreskes, and state attorneys general, concerning the filing of the Marin Complaint; (iii) Mr. Washington's knowledge of the statements made in the 2010 Marin County bond offerings; (iv) Mr. Washington's communications with third parties about the risk disclosures contained in the 2010 Marin County bond offerings; and (v) the discrepancy between statements made in the Marin Complaint and the 2010 Marin County bond offerings.

124. ExxonMobil seeks to obtain testimony and documents from Respondent Hymel about a variety of topics, including, but not limited to: (i) Mr. Hymel's role, if any, in the decision to file the Marin Complaint; (ii) Mr. Hymel's communications, if any, with third parties, including, but not limited to, Mr. Pawa, Dr. Frumhoff, Dr. Oreskes, and state attorneys general, concerning the filing of the Marin Complaint; (iii) Mr. Hymel's role in ensuring the accuracy of the statements made in the 2010 Marin County bond offering; (iv) Mr. Hymel's communications, if any, with third parties about the risk disclosures contained in the 2010 Marin County bond offering; and (v) the discrepancy between statements made in the Marin Complaint and the 2010 Marin County bond offering.

125. ExxonMobil seeks to obtain testimony and documents from Respondent Parker about a variety of topics, including, but not limited to: (i) Ms. Parker's role in the decision to file the Oakland Complaint, including, but not limited to, her discussions with third parties to ensure

the accuracy of the statements contained therein; (ii) Ms. Parker's communications with third parties, including, but not limited to, Mr. Pawa, Dr. Frumhoff, Dr. Oreskes, and state attorneys general, concerning the filing of the Oakland Complaint; (iii) Ms. Parker's role in ensuring the accuracy of the statements made in the 2014 and 2017 Oakland bond offerings; (iv) Ms. Parker's communications with third parties about the risk disclosures contained in the 2014 and 2017 Oakland bond offerings; and (v) the discrepancy between statements made in the Oakland Complaint and the 2014 and 2017 Oakland bond offerings.

126. ExxonMobil seeks to obtain testimony and documents from Respondent Landreth about a variety of topics, including, but not limited to: (i) Ms. Landreth's role in the decision to file the Oakland Complaint, including, but not limited to, her discussions with third parties to ensure the accuracy of the statements contained therein; (ii) Ms. Landreth's communications with third parties, including, but not limited to, Mr. Pawa, Dr. Frumhoff, Dr. Oreskes, and state attorneys general, concerning the filing of the Oakland Complaint; (iii) Ms. Landreth's role in ensuring the accuracy of the statements made in the 2017 Oakland bond offering; (iv) Ms. Landreth's communications with third parties about the risk disclosures contained in the 2017 Oakland bond offering; and (v) the discrepancy between statements made in the Oakland Complaint and the 2017 Oakland bond offering.

127. ExxonMobil seeks to obtain testimony and documents from Respondent Herrera about a variety of topics, including, but not limited to: (i) Mr. Herrera's role in the decision to file the San Francisco Complaint, including, but not limited to, his discussions with third parties to ensure the accuracy of the statements contained therein; (ii) Mr. Herrera's communications with third parties, including, but not limited to, Mr. Pawa, Dr. Frumhoff, Dr. Oreskes, and state attorneys general, concerning the city's filing of the San Francisco Complaint; (iii) Mr. Herrera's

role in ensuring the accuracy of the statements made in the 2014 and 2017 SFMTA Bonds; (iv) Mr. Herrera's communications with third parties about the risk disclosures contained in 2014 and 2017 SFMTA Bonds; and (v) the discrepancy between statements made in the San Francisco Complaint and the 2014 and 2017 SFMTA Bonds.

128. ExxonMobil seeks to obtain testimony and documents from Respondent Reiskin about a variety of topics, including, but not limited to: (i) Mr. Reiskin's role, if any, in the decision to file the San Francisco Complaint; (ii) Mr. Reiskin's communications, if any, with third parties, including, but not limited to, Mr. Pawa, Dr. Frumhoff, Dr. Oreskes, and state attorneys general, concerning the filing of the San Francisco Complaint; (iii) Mr. Reiskin's role in ensuring the accuracy of the statements made in the 2014 and 2017 San Francisco bond offerings; (iv) Mr. Reiskin's communications with third parties about the risk disclosures contained in the 2014 and 2017 San Francisco bond offerings; and (v) the discrepancy between statements made in the San Francisco Complaint and the 2014 and 2017 San Francisco bond offerings.

129. ExxonMobil seeks to obtain testimony and documents from Respondent McRae about a variety of topics, including, but not limited to: (i) Ms. McRae's role in the decision to file the County of Santa Cruz Complaint, including, but not limited to, her discussions with third parties to ensure the accuracy of the statements contained therein; (ii) Ms. McRae's communications with third parties, including, but not limited to, Mr. Pawa, Dr. Frumhoff, Dr. Oreskes, and state attorneys general, concerning the filing of the County of Santa Cruz Complaint; (iii) Ms. McRae's role in ensuring the accuracy of the statements made in 2017 and 2016 county bond offerings; (iv) Ms. McRae's communications with third parties about the risk disclosures contained in 2017 and 2016 county bond offerings; and (v) the discrepancy between

statements made in the County of Santa Cruz Complaint and the 2017 and 2016 County bond offerings.

130. ExxonMobil seeks to obtain testimony and documents from Respondent Palacios about a variety of topics, including, but not limited to: (i) Mr. Palacios's role in the decision to file the County of Santa Cruz Complaint, including, but not limited to, his discussions with third parties to ensure the accuracy of the statements contained therein; (ii) Mr. Palacios's communications with third parties, including, but not limited to, Mr. Pawa, Dr. Frumhoff, Dr. Oreskes, and state attorneys general, concerning the filing of the County of Santa Cruz Complaint; (iii) Mr. Palacios's role in ensuring the accuracy of the statements made in a 2016 County of Santa Cruz bond offering; (iv) Mr. Palacios's communications with third parties about the risk disclosures contained in a 2016 County of Santa Cruz bond offering; and (v) the discrepancy between statements made in the County of Santa Cruz complaint and a 2016 County of Santa Cruz bond offering.

131. ExxonMobil seeks to obtain testimony and documents from Respondent Condotti about a variety of topics, including, but not limited to: (i) Mr. Condotti's role in the decision to file the City of Santa Cruz Complaint, including, but not limited to, his discussions with third parties to ensure the accuracy of the statements contained therein; (ii) Mr. Condotti's communications with third parties, including, but not limited to, Mr. Pawa, Dr. Frumhoff, Dr. Oreskes, and state attorneys general, concerning the filing of the City of Santa Cruz Complaint; (iii) Mr. Condotti's role in ensuring the accuracy of the statements made in 2017 Santa Cruz City bond offerings; (iv) Mr. Condotti's communications with third parties about the risk disclosures contained in the 2017 Santa Cruz City bond offerings; and (v) the discrepancy between statements made in the Santa Cruz City complaint and 2017 Santa Cruz City bond offerings.

132. ExxonMobil seeks to obtain testimony and documents from Respondent Bernal about a variety of topics, including, but not limited to: (i) Mr. Bernal's role in the decision to file the City of Santa Cruz Complaint, including, but not limited to, his discussions with third parties to ensure the accuracy of the statements contained therein; (ii) Mr. Bernal's communications with third parties, including, but not limited to, Mr. Pawa, Dr. Frumhoff, Dr. Oreskes, and state attorneys general, concerning the filing of the City of Santa Cruz Complaint; (iii) Mr. Bernal's role in ensuring the accuracy of the statements made in a 2017 City of Santa Cruz bond offering; (iv) Mr. Bernal's communications with third parties about the risk disclosures contained in a 2017 City of Santa Cruz bond offering; and (v) the discrepancy between statements made in the City of Santa Cruz complaint and a 2017 City of Santa Cruz bond offering.

VII. GRANTING THE PETITION FURTHERS THE OBJECTIVES OF RULE 202.

133. The likely benefit of the discovery requested by ExxonMobil outweighs the burden or expense of the procedure. Permitting ExxonMobil to obtain the requested discovery will aid its evaluation of what claims, if any, should be brought. For example, to prove an abuse of process, ExxonMobil must show, in part, that a potential defendant had an ulterior motive in exercising an improper use of process.²¹⁸ In addition, to prove civil conspiracy under Texas law, ExxonMobil must show, in part, that a potential defendant agreed to engage in unlawful activity.²¹⁹ The discovery ExxonMobil seeks concerning the municipal respondents' conversations with third parties would allow ExxonMobil to identify potential defendants who may have participated in a conspiracy to commence litigation for the ulterior motive of coercing ExxonMobil to adopt preferred policy responses to climate change. At present, ExxonMobil lacks sufficient information to identify all the California municipal officials who might have

²¹⁸ *Lozano v. Tex-Paint, Inc.*, 606 S.W.2d 40, 43 (Tex. Civ. App. 1980).

²¹⁹ *First United Pentecostal Church of Beaumont v. Parker*, 514 S.W.3d 214, 222 (Tex. 2017).

participated in a potential conspiracy to violate ExxonMobil's rights. The discovery ExxonMobil seeks is limited in subject matter, not burdensome, and could alleviate the need for further litigation, which would benefit all potential parties and witnesses.

134. In seeking this testimony and documents, ExxonMobil seeks only non-privileged information and communications with third parties.

135. Allowing ExxonMobil to take the requested depositions will also prevent a failure or delay of justice. The information ExxonMobil seeks cannot be obtained from public sources or from individuals willing to cooperate with ExxonMobil's inquiry. ExxonMobil has reason to believe that the state attorneys general, climate activists, and potentially the municipal officials from whom ExxonMobil seeks testimony and documents have engaged in a campaign to conceal and potentially even destroy evidence that may be relevant to ExxonMobil's claims. As noted above, a New York court recently awarded attorney's fees and costs against the New York Attorney General for failing to produce documents related to the common interest agreement of the coalition of attorneys general. Additionally, the Office of the Vermont Attorney General admitted that, before it responds to public records requests, it researches whether the requestor has any potential connection with ExxonMobil. A New York state official even instructed Mr. Pawa to mislead the press about his involvement in the state's investigations. In light of these efforts to conceal, there is a serious risk that relevant evidence will not be preserved for anticipated litigation. Furthermore, municipal officials leave their positions from time to time. ExxonMobil must act quickly to ensure that evidence relevant to its claims is preserved.

136. Without further discovery, it is distinctly possible that evidence of abuse of process, civil conspiracy, and a violation of ExxonMobil's constitutional rights might remain hidden from public view. Allowing municipal governments to abuse process and engage in

viewpoint discrimination with impunity would constitute a miscarriage of justice. These benefits outweigh the burden and expense of providing the requested depositions and documents, which are narrowly tailored, and no more burdensome than would occur in the context of routine civil litigation. ExxonMobil should be allowed to conduct discovery so that justice is not denied.

VIII. NOTICE REQUIREMENT

137. In accordance with Texas Rule of Civil Procedure 202.3 and 21a, ExxonMobil will serve the petition and a notice of the hearing on all persons ExxonMobil seeks to depose, which includes those against whom suit is anticipated. ExxonMobil anticipates having interests adverse to Matthew Pawa, John C. Beiers, Serge Dedina, Jennifer Lyon, Brian Washington, Barbara Parker, Dennis Herrera, Dana McRae, and Anthony Condotti. *See infra* Section II (listing names, addresses, and telephone numbers). ExxonMobil also anticipates having interests adverse to San Mateo County, Marin County, the City of Oakland, the City of Imperial Beach, the City of San Francisco, the City of Santa Cruz, and the County of Santa Cruz; the addresses and telephone numbers of the relevant legal contact for these entities are listed as follows:

- (a) The address of the office of the County Counsel for the County of San Mateo is 400 County Center, 6th Floor, Redwood City, CA 94063. The office's telephone number is (650) 363-4250.
- (b) The address of the County Counsel for Marin County is 3501 Civic Center Drive, Suite 275, San Rafael, CA 94903. The office's telephone number is (415) 473-6117.
- (c) The address of the Oakland City Attorney is City Hall, 6th Floor, 1 Frank Ogawa Plaza, Oakland, California 94612. The office's telephone number is (510) 238-3601.
- (d) The address of the Mayor and Council office of the City of Imperial Beach is 825, Imperial Beach Blvd., Imperial Beach, CA 91932. The office's telephone number is (619) 423-8615.
- (e) The address of the office of the City Attorney for the City of San Francisco is City Hall, Room 234, 1 Dr. Carlton B. Goodlett Pl., San Francisco, CA 94102. The office's telephone number is (415) 554-4700.

- (f) The address of the City Council of the City of Santa Cruz is 809 Center Street, Room 10, Santa Cruz, CA 95060. The office's telephone number is (831) 420-5020.
- (g) The address of the County Counsel of the County of Santa Cruz is 701 Ocean Street, Room 505, Santa Cruz, CA 95060. The office's telephone number is (831) 454-2040.

IX. PRAYER FOR RELIEF

WHEREFORE, for the reasons stated above, Petitioner ExxonMobil respectfully requests the following:

1. That the Court schedule a hearing on this Petition after the Petition is served on the Respondents;
2. That the Court find that the likely benefit of allowing ExxonMobil to take the requested depositions to investigate its potential claims of abuse of process and constitutional torts, and to perpetuate testimony for a suit it anticipates filing in Texas in connection with those claims outweighs the burden or expense of the procedure and would prevent a failure or delay of justice;
3. That the Court issue an order authorizing the requested depositions and document requests; and
4. That the Court grant all other and further relief, in law or equity, that the Court deems proper.

Dated: January 8, 2018

EXXON MOBIL CORPORATION

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VERIFICATION

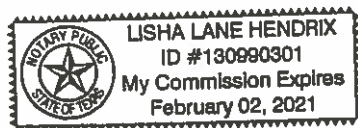
STATE OF TEXAS §
 §
COUNTY OF TARRANT §


BEFORE ME, the undersigned authority, personally appeared Patrick J. Conlon, who on oath, declares and states that he is over twenty-one years of age, of sound mind and duly authorized to sign this Verification on behalf of Exxon Mobil Corporation. He further states, on behalf of Exxon Mobil Corporation, that the factual statements contained in Exxon Mobil Corporation's Verified Petition for Pre-Suit Depositions are true and accurate based on his personal knowledge or information obtained from other persons.



Patrick J. Conlon

SWORN TO AND SUBSCRIBED before me this 8 day of January 2018.





Notary Public, State of Texas
Commission Expires on 2/2/2021