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EXXON MOBIL CORPORATION

13
14 **UNITED STATES DISTRICT COURT**
15 **NORTHERN DISTRICT OF CALIFORNIA**
16 **SAN FRANCISCO DIVISION**

17 THE PEOPLE OF THE STATE OF
CALIFORNIA, acting by and through the
18 Oakland City Attorney BARBARA J. PARKER,
19 Plaintiff and Real Party in Interest,

20 v.

21 BP P.L.C., a public limited company of
England and Wales; CHEVRON
22 CORPORATION, a Delaware corporation;
CONOCOPHILLIPS COMPANY, a Delaware
23 corporation; EXXON MOBIL
CORPORATION, a New Jersey corporation,
24 ROYAL DUTCH SHELL PLC, a public
limited company of England and Wales, and
25 DOES 1 through 10,
26 Defendants.

First Filed Case: No. 3:17-cv-06011-WHA
Related Case: No. 3:17-cv-06012-WHA

THE HONORABLE WILLIAM H. ALSUP
**EXXONMOBIL'S RESPONSE TO
PLAINTIFF'S NOTICE OF PENDENCY
OF OTHER ACTION OR PROCEEDING**

1 THE PEOPLE OF THE STATE OF
2 CALIFORNIA, acting by and through the San
3 Francisco City Attorney DENNIS J. HERRERA,

4 Plaintiff and Real Party in Interest,

5 v.

6 BP P.L.C., a public limited company of England
7 and Wales, CHEVRON CORPORATION, a
8 Delaware corporation, CONOCOPHILLIPS
9 COMPANY, a Delaware corporation, EXXON
10 MOBIL CORPORATION, a New Jersey
11 corporation, ROYAL DUTCH SHELL PLC, a
12 public limited company of England and Wales,
13 and DOES 1 through 10,

14 Defendants.

Case No. 3:17-cv-06012-WHA

THE HONORABLE WILLIAM H. ALSUP

**EXXONMOBIL'S RESPONSE TO
PLAINTIFF'S NOTICE OF PENDENCY
OF OTHER ACTION OR PROCEEDING**

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1 Pursuant to Civil Local Rule 3-13(c), Defendant Exxon Mobil Corporation (“ExxonMobil” or
2 “Defendant”) hereby responds to the Notice of Pendency of Other Action or Proceeding (3:17-cv-
3 6011-WHA, ECF No. 118; 3:17-cv-6012-WHA, ECF No. 101) filed by Plaintiffs on January 22,
4 2018. ExxonMobil joins fully in the response submitted on February 5, 2018 by the Defendants in
5 this action; ExxonMobil submits this response to further rebut Plaintiffs’ claims concerning the action
6 filed by ExxonMobil in Texas state court. ExxonMobil submits this response without waiving any
7 applicable defenses, including ExxonMobil’s anticipated defense of lack of personal jurisdiction.

8 Plaintiffs’ Notice calls the Court’s attention to the recently filed legal proceeding by
9 ExxonMobil in Texas state court pursuant to Rule 202 of the Texas Rules of Civil Procedure, which
10 authorizes pre-suit discovery to preserve evidence and evaluate claims (“202 Petition”). The
11 recitation of the facts in Plaintiffs’ Notice and their characterization of this case is misleading and
12 inaccurate. ExxonMobil therefore offers the following clarifications:

13 202 Petition: ExxonMobil filed this petition on January 8, 2018 in Texas state court to seek
14 discovery as to the motivations and purposes of the public officials who planned and instituted legal
15 and investigative proceedings against ExxonMobil, in potential support of ExxonMobil’s claims of
16 abuse of process, civil conspiracy, and constitutional violations.

17 ExxonMobil’s 202 Petition seeks discovery addressed to years of investigations and
18 litigations directed at ExxonMobil in multiple jurisdictions by numerous participants in what
19 ExxonMobil alleges is a wide-ranging conspiracy. ExxonMobil contends that the instant actions
20 brought by California municipalities—and ExxonMobil’s subsequent filing of the 202 Petition—
21 cannot be viewed in isolation from this broader narrative. For the past twenty-seven months,
22 ExxonMobil has been the subject of politically-motivated investigations by the Attorneys-General of
23 New York, the Virgin Islands, and Massachusetts. Further, there have also been a large number of
24 associated actions in federal and state courts, involving nearly a dozen court appearances. *See Exxon*
25 *Mobil Corp. v. Maura Tracy Healey*, No. 4:16-cv-00469-K, Dkt. 73 (N.D. Tex. Oct. 13, 2016)
26 (Kinkeade, J.) (ordering discovery into motivations of officials who targeted ExxonMobil for
27 investigation); *Exxon Mobil Corp. v. Eric Tradd Schneiderman and Maura Tracy Healey*, No. 1:17-
28 cv-02301-VEC, Dkts. 250, 251, 252 (S.D.N.Y. Jan. 12, 2018) (action transferred from N.D. Tex.)

1 (ExxonMobil’s pending amended complaint alleges that the various litigations launched by California
2 municipalities, including the two actions before this Court, are simply the latest battle of a larger,
3 multi-stage attack against the company that has played out in the courts over the past two and a half
4 years, which ExxonMobil alleges was hatched by conspirators at a conference in 2012 in La Jolla,
5 California).

6 The 202 Petition does not involve the same subject matter or “substantially all” of the same
7 parties, and Plaintiffs’ contention that this Court needs to somehow “preclude Exxon’s attempted end
8 run around this Court’s control of and authority over the discovery process” for availing itself of
9 rights afforded to it by the Texas Rules of Civil Procedure is without merit. ExxonMobil’s petition
10 does expose the bad faith and unlawful purpose animating the actions pending before this Court by
11 pointing out Plaintiffs’ assurances to their investors that climate change was not a material risk, at
12 virtually the same moment it was preparing litigation here claiming the opposite. The petition alleges
13 that those assurances cannot be reconciled with the allegations in the complaints filed in this Court
14 that climate change presents an “imminent” and “immediate” threat to their municipalities. *See, e.g.*,
15 3:17-cv-6012-WHA, ECF No. 1-2 (San Francisco Compl.), at ¶¶ 1, 9. For example, in its disclosures
16 regarding the bonds that San Francisco offered the public just months before it filed this action, San
17 Francisco asserted that it “is unable to predict whether sea-level rise or other impacts of climate
18 change . . . will occur, when they may occur, and if any such events occur, whether they will have a
19 material adverse effect.”¹ By contrast, in its complaint, San Francisco asserts that “[g]lobal warming-
20 induced sea level rise is already causing flooding of low-lying areas of San Francisco . . . [and] poses
21 an imminent threat of catastrophic storm surge flooding.” *Id.*, at ¶ 1. There are numerous other
22 examples of this contradictory language. Certain relevant excerpts of Exhibit 103 to the Petition,
23 which is a summary chart contrasting the assurances to investors with the allegations in the
24 complaints, are provided below.

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1 2017 San Francisco General Obligation Bond 12 (2017).

City of Oakland		
Bond Type	Approximate Number of Bonds	Approximate Total Value
<i>Without Climate-Related References</i>	Over 30	Over \$2 billion
Core Municipality-Related Climate Change Allegations		Lack of Comparable Climate Change Disclosures in Sample Municipal Bond
<ul style="list-style-type: none"> ✓ Defendants’ “massive fossil fuel production . . . causes a gravely dangerous rate of global warming” and “cause[s] ongoing and increasingly severe sea level rise harms to Oakland . . .” (¶ 55) ✓ “[B]y 2050, a ‘100-year flood’ in the Oakland vicinity is expected to occur . . . once every 2.3 years . . . and by 2100 . . . once per week.” (¶ 86) ✓ Oakland is projected to have up to “66 inches of sea level rise by 2100,” 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.” (¶ 87) 		<p>“The <i>City is unable to predict when</i> seismic events, fires or other natural events, such as <i>sea rise or other impacts of climate change or flooding from a major storm,</i> could occur, when they may occur, and, <i>if any such events occur, whether they will have a material adverse effect</i> on the business operations or financial condition of the City or the local economy.” (2017 Oakland General Obligation Bonds A-48–49 (2017))</p>
City of San Francisco		
Bond Type	Approximate Number of Bonds	Approximate Total Value
<i>Without Climate-Related References</i>	Over 30	Over \$2 billion
Core Municipality-Related Climate Change Allegations		Lack of Comparable Climate Change Disclosures in Sample Municipal Bond
<ul style="list-style-type: none"> ✓ “Global warming-induced sea level rise is already causing flooding of low-lying areas of San Francisco, increased shoreline erosion, and salt water impacts to San Francisco’s water treatment system. The rapidly rising sea level along the Pacific coast and in San Francisco Bay, moreover, poses an imminent threat of catastrophic storm surge flooding because any storm would be superimposed on a higher sea level.” (¶ 1) ✓ The threat of sea-level rise “is becoming more dire every day as global warming reaches ever more dangerous levels and sea level rise accelerates.” “Nearer-term risks include 0.3 to as much as 0.8 feet of additional sea level rise by 2030 . . .” (¶¶ 1, 8) ✓ “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 expected to] cost \$5 billion.” (¶ 89(a)) 		<p>“The City is <i>unable to predict whether sea-level rise or other impacts of climate change</i> or flooding from a major storm <i>will occur, when they may occur, and if any such events occur, whether they will have a material adverse effect</i> on the business operations or financial condition of the City and the local economy.” (2017 San Francisco General Obligation Bond 12 (2017))</p>

1 While certain evidence sought in the 202 proceeding thus may indeed reflect on the merits of
2 Plaintiffs' claims here, the petition seeks neither a ruling nor evidence on the underlying merits of
3 those claims. The 202 Petition is a limited proceeding to evaluate claims and preserve evidence,
4 rather than a full-scale litigation that will resolve the competing claims of the parties or assign
5 liability. And the potential claims identified in ExxonMobil's petition concern constitutional
6 violations and the abuse of process by government officials, not environmental torts. Whether any of
7 Defendants' conduct amounts to a nuisance for which they may be held liable under governing law is
8 not at issue in the Texas state proceeding and will not be decided there.

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10 Dated: February 5, 2018

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15 By: /s/ Dawn Sestito

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EXXON MOBIL CORPORATION