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

In the Matter of the Application of the PEOPLE OF THE STATE OF NEW YORK, by ERIC T. SCHNEIDERMAN, Attorney General of the State of New York, Petitioner, - against – PRICEWATERHOUSECOOPERS LLP and EXXON MOBIL CORPORATION, Respondents.	Index No. 451962/2016 IAS Part 61 Hon. Barry R. Ostrager Motion Sequence No. 4

MEMORANDUM OF LAW IN OPPOSITION TO EXXON'S MOTION TO QUASH AND IN SUPPORT OF THE OFFICE OF THE ATTORNEY GENERAL'S CROSS-MOTION TO COMPEL

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PRELIMINARY STATEMENT

The Office of the Attorney General ("OAG") respectfully submits this memorandum of law in opposition to Exxon Mobil Corporation's ("Exxon") motion to quash and in support of OAG's cross-motion to compel compliance with its subpoena duces tecum dated May 8, 2017, its testimonial subpoena to a fact witness from Exxon's majority-owned subsidiary, Imperial Oil Limited ("Imperial"), and four records witnesses.

OAG is investigating whether Exxon has been making false and misleading statements about specific safeguards it purports to have put in place to protect the company from risks posed by future climate change-related regulations. Specifically, Exxon has repeatedly represented to investors that the company applies a "proxy cost" to greenhouse gas emissions ("GHGs") when it makes investment decisions and performs asset valuations, and that because it does so, it can assure investors that none of Exxon's projects or assets will be materially impacted by future climate change-related regulations. Contrary to Exxon's unsupported assertion that nothing in its production to date justifies OAG's continued investigation into the accuracy of such representations, OAG has uncovered significant evidence of potential materially false and misleading statements by Exxon about its application of a proxy cost of GHGs to its investment and impairment[1] decisions, suggesting that the exercise described to investors may be a sham.

OAG's present subpoenas, which Exxon now seeks to quash, are highly relevant to determining whether Exxon has in fact been misleading investors, as its own documents suggest. The subpoena duces tecum seeks targeted information and documents needed to fill the gaps in the existing document productions concerning Exxon's risk-management practices related to the company's investments and asset valuations. The testimony of the records witnesses is critical to

[1] An impairment is a reduction in the recoverable amount of an asset below its book value. Affirmation of John Oleske, dated June 1, 2017 ("Oleske Aff. ¶ __" or "¶ __") ¶¶ 42-47.

understanding and potentially remedying Exxon's still-unaccounted-for destruction of documents from key custodians, including the company's former Chairman and CEO. The testimony of the fact witness from Imperial is highly relevant to OAG's investigation given that Exxon's documents reflect that he was directed by Exxon not to apply a proxy cost of GHGs to its Canadian oil sands projects. As such, OAG's subpoenas easily meet the well-established legal standard in that they are reasonably related to OAG's investigation. *See Am. Dental Coop., Inc. v. Attorney-General*, 514 N.Y.S.2d 228, 232 (1st Dep't 1987).

Unable to contest the authority of the Attorney General, the factual basis for his investigation, or the relevance of the documents and information sought by the subpoena duces tecum, Exxon resorts to arguing that the subpoenas are unduly burdensome, make improper demands for information, and are preempted by federal law. None of these arguments has merit. Exxon does not even try to make the required showing to establish undue burden, OAG's requests for information are explicitly authorized by statute,[2] and none of OAG's prospective enforcement actions against Exxon under New York's anti-fraud laws are subject to federal preemption. Thus, Exxon falls far short of meeting the legal standard required to quash a subpoena. *See Anheuser-Busch, Inc. v. Abrams*, 71 N.Y.2d 327, 332 (1988) (holding "[a]n application to quash a subpoena [issued by OAG] should be granted only where the futility of the process to uncover anything legitimate is inevitable or obvious or where the information sought is utterly irrelevant to any proper inquiry.").

Exxon's motion to quash is the latest maneuver in its longstanding strategy to avoid and delay the production of documents, information, and testimony directly relevant to OAG's

[2] Gen. Bus. Law. § 352(1) (OAG "may . . . require such other data and information as [it] may deem relevant[.]"); *Anheuser-Busch, Inc. v. Abrams*, 71 N.Y.2d 327, 330 (1988) (holding that OAG's interrogatories were valid).

investigation.[3] Despite Exxon's obstruction and obfuscation, OAG's investigation has persisted, and based on the evidence that Exxon *has* produced, the investigation has gained urgency. That evidence suggests not only that Exxon's public statements about its risk management practices were false and misleading, but also that Exxon may *still* be in the midst of perpetrating an ongoing fraudulent scheme on investors and the public. Accordingly, OAG's cross-motion to compel should be granted and Exxon's motion to quash should be denied in its entirety.

FACTUAL BACKGROUND

A. OAG's Investigation Concerns Exxon's Representations To Its Investors

1. *Exxon's Representations To Investors Regarding Its Proxy Cost Analysis*

OAG is investigating the accuracy of Exxon's representations concerning its risk management practices that purport to address the impact of climate change and climate change regulations on its business and financial reporting. One aspect of OAG's investigation concerns Exxon's numerous representations to investors that in its economic decision-making, including its investment decisions and asset valuations, the company applies a "proxy cost" of GHG emissions that reasonably approximates the range of potential future government actions with respect to climate change. Although the specific language Exxon has used has changed over time, the overall message has remained the same: because Exxon incorporates the added proxy

[3] Since November 2015, Exxon has (i) stonewalled the collection and production of relevant and responsive documents, requiring OAG to seek relief from this Court on five separate occasions; (ii) failed to preserve and consequently destroyed years of responsive documents from more than a dozen key management witnesses, including Exxon's former CEO; (iii) proffered witnesses for testimony who lacked basic knowledge about Exxon's preservation, collection, review, production, and recovery of relevant documents; (iv) commenced an unprecedented lawsuit in federal court to enjoin OAG's enforcement of its original subpoena on the grounds that it violates Exxon's constitutional rights; and (v) obstructed the production of documents from its independent auditor on the grounds of a non-existent privilege.
With respect to the latter, on May 23, 2017, the First Department affirmed this Court's order compelling subpoena compliance by Exxon and its independent auditor on the ground that New York law, which does not recognize any accountant-client privilege, governed the enforcement proceeding. Continuing in its effort to avoid production of these documents from its independent auditor, Exxon has moved for reargument from the First Department and leave to appeal its decision to the Court of Appeals, and has obtained an emergency stay of enforcement during the motion's pendency.

costs of GHGs in its decisions to undertake exploration and development projects, and incorporates these added costs in the valuation of its existing assets, the company can assure investors that none of Exxon's projects or assets will be materially affected by future climate change-related regulations.

Exxon has represented that it has been applying a proxy cost of GHGs to its business decisions since 2007. ¶ 13. Exxon further represents that its proxy cost of GHGs increases substantially over time, reaching as high as $80/ton of carbon dioxide equivalent (*i.e.*, CO2 or other GHGs) by 2040. ¶¶ 13-14. Because Exxon's major oil and gas projects often span decades, the proxy cost of GHGs can have a material effect on the long-term profitability of Exxon's projects and the value of its assets. ¶ 20.

On March 31, 2014, Exxon published a report entitled *Energy and Carbon—Managing the Risks* (the "MTR Report") in response to shareholder demands that the company assess the vulnerability of its assets to future climate regulation. Indeed, a shareholder group withdrew a proposed resolution that it intended to submit at the company's 2014 annual shareholders meeting in exchange for Exxon's commitment to publish such a report. ¶ 7. In the MTR Report, Exxon explained its purported use of proxy-cost analysis as follows:

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

> funding for capital investments. *We require that investment proposals reflect the climate-related policy decisions we anticipate governments making during the Outlook period and therefore incorporate them as a factor in our specific investment decisions*.

¶ 10, Ex. 1 (emphasis added). After explaining this purported risk management practice, Exxon claimed that "[b]ased on this analysis, we are confident that none of our hydrocarbon reserves are now or will become 'stranded'" and that "the company does not believe current investments in new reserves are exposed to the risk of stranded assets[.]" ¶ 9, Ex. 1.

Since it published the MTR Report, Exxon has continued to represent to investors in various public filings, publications, and statements that it employs the proxy cost analysis in evaluating investment decisions. ¶¶ 12-17. Even after the issuance of OAG's initial subpoena in November 2015 (the "2015 Subpoena"), which specifically requested documents relating to the MTR Report, Exxon has continued to make such representations to the public and investors. For example, former Chairman and CEO Rex Tillerson told attendees of the company's May 25, 2016 annual shareholders meeting that "everything gets tested" against the purported proxy cost analysis. ¶ 16, Ex. 2. The official notice to shareholders for the same meeting stated that Exxon has been applying the proxy cost analysis to safeguard the company's value since 2007. ¶ 15. Exxon has repeated its proxy cost representations in multiple 10-Ks, multiple submissions to the Carbon Disclosure Project,[4] its annual *Outlook for Energy* public reports, a recent report it issued in March 2017 entitled *2016 Energy and Carbon Summary*, and in materials and statements

[4] The Carbon Disclosure Project ("CDP") is a United Kingdom-based nongovernmental organization that runs a global disclosure system that enables companies and governments to measure and manage their environmental impacts. CDP's data enables its network of investors, supply chain purchasers and policy makers to link environmental integrity, fiduciary duty and public interest to make better-informed decisions on climate action. Thousands of corporations voluntarily report their GHG emissions to the CDP. Each year Exxon submits answers to questions about climate change posed by the CDP.

provided to investors in connection with the company's annual shareholder meeting held on May 31, 2017.[5] ¶¶ 17, 19.

Moreover, Exxon has also represented that, as required by Generally Accepted Accounting Principles ("GAAP"), the company applies the same assumptions when it evaluates its reserves and other assets for impairment as it does in the rest of its business determinations, including decisions on potential investments. ¶ 45, Ex. 12.

2. Exxon's Internal Documents Do Not Support Its Public Representations

OAG's ongoing review of evidence, including the documents produced by Exxon in response to the 2015 Subpoena, has revealed that those documents contradict Exxon's representations about the application of a proxy cost of GHGs to the company's investment and asset valuation decisions may be false and misleading. ¶¶ 20-59.

Internal documents produced by Exxon reveal that from at least 2010 through approximately June 2014, Exxon told its investors it used one set of proxy-cost figures, when in fact the company's internal policies set forth a second set of lower proxy costs (and therefore a less risk-sensitive version) for use in its internal business planning. ¶¶ 21-27. Exxon actually recognized that its secret, internal figures understated the degree to which Exxon was taking into account the risks of climate change regulations, and thus, were not as conservative as its representations to investors suggested when applied to the vast majority of projects emitting GHGs. ¶¶ 23-25, Exs. 3-5. Nonetheless, as it admitted in an internal presentation in May 2014, Exxon continued to represent to investors and the public that it used the higher proxy cost reflected in its public disclosures. ¶ 25, Ex. 5. Exxon's documents show that former Chairman

[5] At the May 31, 2017 shareholder meeting, despite opposition from Exxon's management, the New York Comptroller's shareholder resolution seeking to require the company to publish an annual assessment of the long-term financial impacts of technological advances and climate change policies consistent with the globally agreed upon 2-degree Celsius target passed with a vote of 62.3% for and 37.7% against. ¶ 18.

and CEO Rex Tillerson was specifically informed of, and approved of, this inconsistency. ¶ 24, Ex. 4. Although Exxon ended this practice in 2014, and transitioned to using the publicly-stated proxy cost figures for internal analyses, ¶ 25, Ex. 5, Exxon did not tell investors about its secret internal set of proxy cost formulas when it represented in 2016 that it had been applying the proxy cost analysis since 2007, ¶ 27.

Moreover, it appears that Exxon did not even follow its deficient internal policies. OAG has not identified any documents in Exxon's production reflecting the consistent application of a proxy cost of GHGs to its investment and asset valuation decisions, whether in conformity with Exxon's publicly-stated representations or with its secret internal versions of proxy costs.[6] Rather, as to most such decisions, there appear to be no documents reflecting a proxy cost analysis at all. Indeed, despite OAG specifically asking for such information for nearly a year, Exxon has identified only a single, anomalous example. ¶ 37, Exs. 7-8.[7] In other instances, Exxon applied GHG costs that were a small fraction of the company's publicly disclosed proxy cost figures. For example, with regard to Exxon's oil sands investments in Alberta, Canada, documents show that instead of applying its publicly-stated proxy cost that rises to an endpoint as high as $80/ton in 2040, Exxon applied the much lower GHG taxes then in place in Alberta and held those figures flat indefinitely into the future. This substitution resulted in the alleged proxy cost of GHGs being reduced to a small fraction of what Exxon told investors would be applicable. ¶¶ 29-33. Exxon's use of the lower GHG taxes instead of its publicly-stated proxy costs is particularly telling because Exxon's own documents suggest that if Exxon had applied

[6] Exxon's assertion that it "has produced numerous documents responsive to the Attorney General's prior requests that reflect the actual application of the precise figures used in the policies to company-sponsored projects," Anderson Aff. ¶ 2, is unsupported by a cite to a single document.

[7] In that instance, Exxon applied a proxy cost to a project where Exxon was selling carbon dioxide to other operators, and thus, the application of the proxy cost increased the project's projected profitability. ¶ ¶ 37, Exs. 7-8.

the proxy cost it promised to shareholders, at least one substantial oil sands project may have projected a financial loss, rather than a profit, over the course of the project's original timeline. ¶ 29.[8]

As to Exxon's general policies, OAG has located only one internal summary document published annually that reflects a company mandate to apply a proxy cost analysis to investment and valuation decisions.[9] ¶ 36 (two pages in the company's annual Corporate Plan Dataguide Appendix that does little more than list the purportedly-applicable proxy costs across geographic regions and timeframes). OAG has not located any specific documents in Exxon's production that provide any guidance on the application of this proxy cost policy. Indeed, the evidence indicates a widespread lack of awareness among employees of the proxy cost policy, or how it should be applied. *Id.*

Similarly, although Exxon represents that it applies the same assumptions to impairment decisions as it does with respect to other business decisions, including investment decisions, in accordance with GAAP, the few documents Exxon has produced to date do not reflect any attempt at all to apply a proxy cost analysis to impairment decisions, including as to oil and gas reserves. ¶ 49. Documents produced by Exxon's independent auditor, PricewaterhouseCoopers LLP ("PwC") suggest that Exxon simply did not do what it told investors – it did not apply a proxy cost to its valuation or impairment analyses, including to its evaluation of its reserves and other hydrocarbon assets, prior to 2016. ¶ 50.

[8] In addition, despite representing to investors that the proxy-cost analysis included prospective regulations on emissions caused by the "use" of fossil fuels such as electricity generation or motor-fuel combustion, also known as "Scope 3" emissions, ¶ 38, Exxon's documents indicate that even in the few instances where employees applied some form of a proxy cost analysis, the proxy-cost calculation omitted Scope 3 emissions. *Id.*, Ex. 10. These emissions account for 90% of all fossil-fuel greenhouse gases. ¶ 39.

[9] This is the same document that Exxon references in its motion to quash. Exxon's Brief in Support of Its Motion to Quash and For a Protective Order ("Exxon Br.") at 16.

B. OAG's Additional Subpoenas

On May 8, 2017, OAG issued a second subpoena duces tecum and nine testimonial subpoenas. ¶¶ 107, 117-19.

1. OAG's Second Subpoena Duces Tecum

The subpoena duces tecum includes requests for information ("Interrogatories") and for documents. ¶ 107. The Interrogatories seek details about Exxon's purported application of its proxy cost analysis to its investment decisions and evaluation of assets, along with an identification of individuals assigned to various committees overseeing the company's reserves. ¶ 108. The Interrogatories are targeted to elicit specific information relevant to Exxon's purported application of proxy costs to all of its investment, valuation, and impairment decisions. ¶ 109 (Interrogatory Nos. 1, 3, 4, and 6.) Exxon either took the risk of climate change regulations into account or it didn't. If, as OAG's investigation to date suggests, Exxon did not apply a proxy cost in most instances, there will be no additional details for Exxon to provide in response to these Interrogatories. ¶¶ 109-116. If Exxon did in fact apply a proxy cost analysis to any of these decisions, OAG is entitled to information that would reveal details about whether, for example, Exxon: (i) applied a lower proxy cost than it publicly represented to investors; (ii) applied a proxy cost to only a fraction of GHG emissions from a given project; (iii) applied a proxy cost to only certain GHGs and not others; (iv) applied a proxy cost to only direct emissions as opposed to emissions stemming from end use of the oil and gas; and/or (v) assumed that it could pass-through most or all of the proxy cost to its customers, while unreasonably assuming that such pass-through would have no effect on demand for its products. The documents Exxon has produced to date appear to reflect each of these practices, any one of which could render Exxon's purported proxy-cost analysis a meaningless sham. ¶ 34. OAG's

interrogatories call for information and data that would identify which of these practices were used with respect to any decisions for which Exxon claims that it applied a proxy cost of GHGs. ¶ 110 (Interrogatory Nos. 2, 5, & 7.)

The document requests seek four major categories of documents. First, OAG seeks documents relating to the use and application of a proxy cost of GHGs from the post-November 2015 period. Such documents are relevant to Exxon's continuing proxy-cost-related representations, and any related changes in the company's practices. ¶ 113. Second, OAG seeks documents that Exxon previously produced to the Securities and Exchange Commission ("SEC") relating to impairment decisions, reserves calculations, and climate change, a request that imposes no appreciable burden on Exxon. ¶ 114. Third, OAG seeks documents that were exchanged between Exxon and financial institutions relating to impairment decisions, reserves calculations, and climate change. Such documents would include communications with equity research departments that would form the basis for analyst reports and other information considered by investors in their investment decisions. ¶ 115. Finally, OAG seeks documents related to the company's asset valuation and impairment practices for its long lived assets,[10] particularly its hydrocarbon assets.[11] ¶ 115.

2. OAG's Testimonial Subpoenas

Five of the nine testimonial subpoenas seek testimony from fact witnesses. Four of these are for fact witnesses employed directly by Exxon, ¶ 118, and one is for a fact witness employed

[10] A long lived or fixed asset is any asset that a business expects to retain for at least one year. *See generally* N.Y. State Fin. Law § 2(6-a).

[11] Although PwC produced certain documents on these topics, it is necessary to obtain the requested documents from Exxon because the documents produced to date show that (1) Exxon does not share with PwC all relevant documents on this topic, including many of the cash flow models Exxon uses for impairment-related purposes; (2) in other cases, PwC was shown such documents, but Exxon did not permit PwC to retain them; (3) PwC does not possess drafts of relevant Exxon documents such as impairment memoranda and asset recoverability reviews; and (4) PwC does not possess related internal Exxon communications. ¶¶ 53-54.

by Exxon's majority-owned subsidiary, Imperial Oil Limited ("Imperial") in Canada. ¶ 119. The remaining four testimonial subpoenas are for document custodians.

Confronted with Exxon's failure to preserve subpoenaed documents and the resulting destruction of untold numbers of documents from over a dozen key custodians, this Court ordered Exxon to produce an affidavit from a records custodian detailing Exxon's preservation, collection, production, and recovery of documents from Exxon's Management Committee and other sources of management documents. ¶ 57. Pursuant to this Court's March 23, 2017 order, a senior Exxon Information Technology employee, Connie Feinstein, submitted an affidavit describing the steps taken to preserve and search for Exxon's management documents, the failure to preserve such documents, the consequent destruction of those documents, and data-recovery efforts. *Id.* Exxon also offered the testimony of its outside counsel, Michele Hirshman, in response to an OAG subpoena concenring compliance with the 2015 Subpoena. *Id.*

The testimony of Ms. Feinstein and Ms. Hirshman made clear that Exxon failed to take the required steps to locate, preserve, and recover critical electronically-stored information from key custodians, including former Chairman and CEO Rex Tillerson. ¶¶ 55-65, 72-86, 99-106. For example, during Ms. Hirshman's testimony, she testified that she knew in "early 2016" about the second email address for Rex Tillerson – the Wayne Tracker email address –and that she did not disclose that email address to OAG, stating that it would "be an *interesting test* of whether the Attorney General's office is reading the documents." ¶ 76, Ex. 16 (Hirshman Tr.) at 134 (emphasis added). Ms. Hirshman further testified that neither she nor her firm made any attempt to look further into the preservation, collection or production of documents of the Wayne Tracker email address at that time. The consequence of this failure was months of automatic destruction of relevant correspondence involving Mr. Tillerson. *Id*. at 141-42.

When OAG took the testimony of Ms. Feinstein about the information in her affidavit, it quickly became apparent that she knew little about Exxon's preservation, collection, production, and recovery of the management documents. ¶¶ 99-105. However, during the course of her testimony, she identified four records witnesses who were likely to have information relevant to OAG's questions. *Id.*[12] These four witnesses are the subject of four of OAG's nine testimonial subpoenas.

C. Exxon's Motion to Quash

After serving these subpoenas, OAG attempted to engage in a meet-and-confer call with Exxon's counsel to discuss the company's compliance with the subpoenas. ¶ 121. During that meet-and-confer, Exxon refused to discuss complying with *any* of the requests in the subpoena duces tecum. ¶ 125.[13] When OAG asked whether Exxon would consider responding to narrowed requests, Exxon stated that it would only discuss production on more limited requests if OAG withdrew its subpoena. ¶ 128. Exxon also stated that the records witness subpoenas were unnecessary because the testimony of Ms. Feinstein and Ms. Hirshman provided sufficient information about Exxon's subpoena compliance, despite the fact that the testimony of both

[12] Ms. Feinstein was unable to provide any specifics for any of six of the topics in the subpoena and for which Exxon proffered her as a witness. Instead, in response to almost every request for specific information on the six topics, Ms. Feinstein identified other individuals as responsible for those areas. She testified that (i) Ms. Helble was responsible for the creation of the Wayne Tracker alias account; (ii) Mr. Lauck was responsible for the identification and preservation of Management Committee documents, and the completely different manner Exxon used to collect those documents; (iii) Ms. Leong was responsible for the automatic deletion "file sweep" tool, as well as the email servers and back up locations needed for forensic recovery of Wayne Tracker emails; and (iv) Mr. Bolia has personal knowledge of the matters set out in 29 of the 60 paragraphs in Ms. Feinstein's affidavit, including those concerning the implementation of the different search protocols employed for Management Committee custodians, implementation of the first, second, third, and fourth searches of Management Committee records, the discovery of Exxon's failure to exempt the Wayne Tracker email account from the "file sweep" tool, and attempts to remediate the loss of Wayne Tracker emails. ¶¶ 99-105.

[13] When OAG pointed out that Interrogatory No. 9 asked only for a list of names of individuals on indisputably relevant internal committees, Exxon refused to discuss complying with even that request, citing "overarching fundamental concerns." ¶ 126. When OAG also pointed out that document request No. 5 would require Exxon to do nothing more than provide OAG with a copy of a previous production made to the SEC, Exxon again declined, on the same basis. ¶ 127.

revealed their lack of knowledge of key aspects of the preservation, collection, and production process, and Ms. Feinstein identified other individuals who were more directly involved in the process. ¶ 129.

Rather than engage in a good faith effort to address any objections relating to undue burden, over breadth, or relevance, Exxon instead filed its motion to quash the subpoena duces tecum and the four records witness subpoenas. Since filing its motion, Exxon has also asserted that it will not comply with the subpoena for testimony of the witness from Imperial on the purported ground that it lacks sufficient control over Imperial to compel the witness's attendance – despite the fact that Exxon produced documents from Imperial and this witness, many of which are highly relevant to whether Exxon applied a lower GHG tax as compared to the higher, publicly-stated, proxy cost of GHGs to its Canadian oil sands projects. ¶¶ 29-33.

ARGUMENT

The Court of Appeals has held that "[a]n application to quash a subpoena [issued by OAG] should be granted only where the futility of the process to uncover anything legitimate is inevitable or obvious or where the information sought is *utterly irrelevant* to any proper inquiry." *Anheuser-Busch, Inc. v. Abrams*, 71 N.Y.2d 327, 332 (1988) (emphasis added) (internal citations, quotation marks, and brackets omitted); *see also id.* (where there is uncertainty about the legality of the conduct being investigated, the Attorney General has authority to issue a subpoena "unless the legality of the . . . practice is so well established . . . as to be free from doubt."); *Hogan v. Cuomo*, 888 N.Y.S.2d 665, 668 (3d Dep't 2009) (even "where legality of

underlying conduct is arguable, [Attorney General's] power to investigate possible violations must be sustained").[14] Exxon falls far short of meeting this standard.[15]

A. Exxon Should Be Compelled To Comply With OAG's Second Subpoena *Duces Tecum*

OAG's subpoena duces tecum was carefully tailored to obtain the information and documents relevant to the apparent contradictions between Exxon's public representations concerning its risk-management practices and its actual internal practices. Exxon's conclusory arguments that OAG's requests for information and documents have no factual basis, are unduly burdensome and disproportionate, and are preempted by federal law are meritless.

1. OAG's Subpoena Is Reasonably Related To Its Investigation

Courts apply a presumption that the Attorney General is acting in good faith when commencing an investigation and issuing a subpoena. *See, e.g.*, *Anheuser-Busch*, 71 N.Y.2d at 332; *Roemer v. Cuomo*, 888 N.Y.S.2d 669, 671 (3d Dep't 2009); *Abrams v. Thruway Food Mkt. & Shopping Ctr., Inc.*, 541 N.Y.S.2d 856, 858 (2d Dep't 1989); *Am. Dental Coop., Inc. v. Attorney-General*, 514 N.Y.S.2d 228, 232 (1st Dep't 1987). "[A]ll that the Attorney-General

[14] This standard, rather than any rule of proportionality, governs the enforceability of OAG's subpoenas, and the cases cited by Exxon, *see* Exxon Br. at 15, are not to the contrary. *See Airbnb, Inc. v. Schneiderman*, 44 Misc. 3d 351, 356 (Sup. Ct. Albany Cnty. 2014) (New York courts will limit a subpoena only to the extent requests are unrelated to the statute under which State was investigating); *Myerson v. Lentini Bros. Moving & Storage Co.*, 33 N.Y.2d 250, 258 (1973) (agency issuing subpoena is not "required to establish a strong and probative basis for investigation, let alone probable cause"); *A'Hearn v. Comm. on Unlawful Practice of Law*, 23 N.Y.2d 916, 919 (1969) (subpoena enforceable if there is "reasonable ground to believe that there was illegal" conduct); *Horn Constr. Co. v. Fraiman*, 309 N.Y.S.2d 377, 379 (1st Dep't 1970) (even "after extensive examination of witnesses," State need only show a "reasonable relationship" between subsequent document requests and objective of investigation). Here, the subpoena *duces tecum* is reasonably related to determining whether Exxon, consistent with its public statements, applied a proxy cost of GHGs to its investment and impairment decisions and its internal reserve estimates.

[15] All that is required to grant OAG's cross-motion to compel and deny Exxon's motion to quash is an OAG affirmation regarding its ongoing investigation, Here, OAG additionally presents certain of its investigative findings in this memorandum and accompanying affirmation to demonstrate the extent to which Exxon's assertion that there is no basis for OAG's investigation is entirely baseless. In fact, Exxon's own documents make clear that there is good reason for OAG to continue to investigate whether Exxon is engaged in an ongoing fraud.

need show in support of his subpoena . . . is his authority, the relevance of the items sought, and some factual basis for his investigation." *Id.*[16]

Here, there can be no question that the Attorney General has the authority to investigate violations of New York law,[17] and that misrepresentations by Exxon to the public and investors about Exxon's application of a proxy cost analysis may violate New York law, including the Martin Act and the Executive Law. Moreover, the subpoena duces tecum is reasonably related to OAG's investigation. OAG's investigation of Exxon, which was initiated as a result of Exxon's representations to the investing public about how it is managing the risks posed by climate change-related regulations to its business, has revealed substantial inconsistencies between Exxon's public statements and its internal practices. OAG's requests were carefully crafted to obtain specific information and documents relevant to those inconsistencies.

The fact that OAG has already obtained documents from Exxon and others does not alter this standard, as New York courts continue to apply the same principles in evaluating follow-on subpoenas issued in ongoing investigations. For example, in *Mustaphalli Capital Partners Fund, LP v. People,* Index No. 650845/14, 2014 WL 2417523 (Sup. Ct. N.Y. Cnty. May 23, 2014), the court applied this standard and enforced a second subpoena for documents in an ongoing Martin Act investigation, notwithstanding the recipient's claim that OAG already had sufficient information to determine whether there had been any actionable violations.[18]

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[16] Notably, probable cause that an illegal act was committed is not required. *See, e.g., Roemer*, 888 N.Y.S.2d at 670 (Attorney General need only show "some factual basis for his investigation"); *Thruway Food Mkt.*, 541 N.Y.S.2d at 858 (Attorney General "is not required to establish the existence of probable cause" to issue a subpoena).

[17] Exxon does not dispute OAG's authority to issue the subpoenas.

[18] *See also City of Albany Indus. Dev. Agency v. N.Y. State Comm'n on Gov't Integrity,* 144 Misc. 2d 342, 344-45 (Sup. Ct. Albany Cnty. 1989) (refusing to quash State commission's subpoena, which required "searching through 'hundreds of thousands' of documents," with respect to an investigation that was already "well underway"; holding that the State had "satisfactorily established that the documents sought in each of the challenged paragraphs are reasonable in breadth and relevant and material to the issues under inquiry").

2. OAG's Subpoena Is Not Unduly Burdensome

Unable to challenge the authority of the Attorney General, the factual basis for his investigation, or the relevance of the documents and information sought by the subpoena, Exxon resorts to objecting to the subpoena on the ground that it imposes an undue burden, without setting forth any facts supporting such objection. The cases are clear that a subpoena recipient cannot simply make general claims that the subpoena is unduly burdensome, but rather must substantiate these claims. *Alfred E. Mann Living Tr. v. ETIRC Aviation S.a.r.L*, Misc. 3d 1211(A), 2010 N.Y. Slip Op. 52476(U), at *5 (Sup. Ct. N.Y. Cnty. June 24, 2010) (motion to quash denied where petitioner's "vague and conclusory assertions that the Subpoena is vastly overbroad and burdensome is not persuasive."); *N.Y. State Joint Comm'n on Pub. Ethics v. Campaign for One N.Y., Inc.*, 53 Misc. 3d 983, 1000 (Sup. Ct. Albany Cnty. 2016) ("Notwithstanding [petitioner's] complaints about the breadth of the subpoena, it has not made any showing compliance would present to [petitioner] an undue burden of time or money."); *Airbnb, Inc. v. Schneiderman*, 44 Misc. 3d 351, 359 (Sup. Ct. Albany Cnty. 2014) (holding that petitioner "failed to demonstrate that the subpoena is unduly burdensome" because it "failed to establish, other than via conclusory assertion, that [requested] information is not collected by petitioner or readily accessible by petitioner").[19]

Similarly, here, Exxon has made only conclusory allegations that the subpoena is overly broad and unduly burdensome, without providing any factual support for such allegations. Moreover, contrary to Exxon's claim that OAG is seeking records for "every oil and gas investment decision it has made over the last 12 years," OAG has limited its request to instances

[19] "The judicial remedy for an attack upon an overly broad subpoena . . . is not to quash the subpoena in its entirety, but to modify it so that the materials demanded are reasonably within the agency's subpoena power." *N.Y. State Comm'n on Gov't Integrity v. Congel*, 142 Misc. 2d 9, 16 (Sup. Ct. N.Y. Cnty. 1988).

relating to Exxon's decision to apply proxy costs to its investment and impairment decisions. OAG expects that Exxon's responses to the Interrogatories will narrow, rather than expand, the need for additional documents because OAG's investigation to date indicates that there are few instances in which Exxon actually applied proxy costs to its investment or impairment decisions. ¶ 28. In any event, OAG has conveyed to Exxon that it is willing to narrow its document requests if Exxon identifies a more efficient means of responding to the subpoena. Accordingly, Exxon should be compelled to comply with OAG's subpoena duces tecum.[20]

3. OAG Is Authorized To Issue Requests For Information or Interrogatories

Exxon's claim that OAG lacks the authority to issue interrogatories is unavailing. OAG has the express statutory authority to request information from subpoena recipients. The Martin Act provides that, in addition to the Attorney General's power to require testimony and the production of books and records, OAG "may . . . require such other data and information as [it] may deem relevant[.]" Gen. Bus. Law § 352(1). It further provides that OAG may require a potential violator to file "a statement in writing . . . as to all the facts and circumstances concerning the subject matter, and for that purpose may prescribe forms upon which such statements shall be made."[21] *Id.* Executive Law § 63(12) likewise authorizes OAG to "take proof and make a determination of the relevant facts." In *Am. Dental Co-op., Inc. v. Attorney General*, the First Department, citing Executive Law § 63(12) and General Business Law § 343 (the "Donnelly Act"), confirmed that OAG's "investigatory power includes the right to issue

[20] Recognizing that it cannot satisfy the high legal standard for quashing OAG's subpoenas, Exxon moves, in the alternative, for a protective order limiting the subpoenas. Exxon's request for such relief also should be denied because it has failed to put forth any facts that support its claim of undue burden and it has failed to meet-and-confer in good faith to attempt to narrow the scope of the Subpoena.

[21] Whether Exxon's prospective responses are considered written testimony or responses to interrogatories, the result is the same: Exxon is legally obligated under the Martin Act to answer in writing the questions posed by OAG.

subpoenas and serve interrogatories." 514 N.Y.S.2d at 279.[22] The court in *People v. Thain* reached the same conclusion with respect to a Martin Act subpoena. 24 Misc. 3d 377, 389-90 (Sup. Ct. N.Y. Cnty. 2009) (holding that recipient of subpoena was required to compile and provide a list containing employee bonus-related information to OAG).

Courts have long upheld OAG's authority to issue interrogatories under its investigative powers, including subpoenas that include interrogatories with specific instructions designed to elicit written responses that address precisely the matter that OAG is investigating. *See, e.g.*, *Anheuser-Busch*, 71 N.Y.2d at 330 (holding that OAG's interrogatories were valid); *Grandview Dairy, Inc. v. Lefkowitz*, 76 A.D.2d 776, 777 (1st Dep't 1980) (holding that detailed instructions accompanying Donnelly Act interrogatories were "essential if interrogatories are to serve as a useful tool for gathering evidence against a corporate entity" and noting that "[w]ithout the instructions the interrogatories might well be stripped of all efficacy through evasiveness and nonresponsiveness by the corporate officer answering the interrogatories"); *Airbnb*, 44 Misc. 3d at 359 (holding that OAG's interrogatories, issued pursuant to Executive Law § 63(12), about numerous Airbnb hosts and specific rentals were not unduly burdensome); *In re Kushner*, 108

[22] The Donnelly Act, which sets out OAG's antitrust investigatory authority, includes the same language as the Martin Act authorizing OAG to require the production of "a statement in writing . . . as to all the facts and circumstances concerning the subject matter" and "such other data and information as he may deem relevant[.]" This language first appeared in the Martin Act when it was enacted in 1921, and was added to the Donnelly Act in 1933 for the express purpose of enlarging OAG's subpoena power to the extent provided for in the Martin Act. The Martin Act is thus at least as broad as the Donnelly Act in this respect. *See* Public Papers of Governor Lehman, Aug. 15, 1933, at 160-61 (¶ 136, Ex. 29) (including recommendation by Governor Lehman to the Legislature that the Donnelly Act be amended "to enlarge the power of subpoena, examination and prosecution by the Attorney-General in the same manner as now provided in the Martin Act," to enable OAG "to conduct adequate investigations to ascertain the underlying facts concerning violations of the Donnelly Act"); Annual Report of the Attorney-General, 1934, at 51 (*Id.*, Ex. 30) (noting that the Donnelly Act amendment of the prior year "was patterned after the Martin Act").

Misc. 2d 329, 332 (Sup. Ct. N.Y. Cnty. 1981) (upholding the validity of OAG subpoena with interrogatories, which are "a useful tool for gathering evidence against a corporate entity").[23]

Exxon ignores this overwhelming authority and instead argues that it cannot be compelled to create new documents to comply with the subpoena. However, all but two of the cases it cites in support of this proposition (Exxon Br. at 18-19) pertain to civil discovery obligations and do not involve investigative subpoenas from government agencies. In the remaining two cases, the statute pursuant to which the subpoena was issued did not specifically authorize interrogatories and requests for information at the time the subpoena was issued.[24]

4. OAG's Subpoena Is Not Preempted By Federal Law

Contrary to Exxon's contention, OAG's subpoena is not preempted by federal law. Any preemption analysis is "guided by the starting presumption that Congress does not intend to supplant state law unless its intent to do so is clear and manifest." *People v. Applied Card Sys., Inc.*, 11 N.Y.3d 105, 113 (2008) (internal quotation marks omitted). This presumption is particularly strong with respect to state blue-sky laws such as the Martin Act, because federal securities laws "presuppose an important role for state Attorneys General in investigating fraud and bringing civil actions to enjoin wrongful conduct, vindicate the rights of those injured thereby, deter future fraud, and maintain the public trust." *People v. Greenberg*, 946 N.Y.S.2d 1, 5 (1st Dep't 2012).

[23] *See also All-Waste Sys., Inc. v. Abrams*, 547 N.Y.S.2d 77, 78 (2d Dep't 1989) (holding that OAG's interrogatories were valid under the Donnelly Act).

[24] *Liberty Mut. Ins. Co. v. N.Y. Comm'n on Human Rights*, 332 N.Y.S.2d 971 (1st Dep't 1972) (decision concerning authority of City of New York Commission on Human Rights under former N.Y.C. Admin. Code § B1-5.0, *see* ¶ 137, Ex. 31); *Application of Slipyan*, 208 Misc. 515 (Sup. Ct. N.Y. Cnty. 1955) (decision concerning authority of Commissioner of Investigation under former Executive Law § 11, *see* ¶ 138, Ex. 32).

Any potential claims by OAG, including those related to asset impairment, do not come close to conflicting with the federal regulations that Exxon cites, which concern the calculation and disclosure of proved reserves under a formula specified by the SEC. As Exxon's own spokesperson highlighted in a recent earnings call, reserves reporting pursuant to SEC rules is distinct from evaluation of assets for potential impairment.[25] Notably, although SEC rules require companies to report proved reserves in light of existing conditions (*see* 17 C.F.R. §§ 210.4-10, 229.1202), estimates of future cash flows for purposes of impairment testing "shall incorporate the entity's own assumptions . . . and shall consider all available evidence." ¶ 47, Ex. 11 (Financial Accounting Standards Board, Accounting Standards Codification 360-10-35-30).

Exxon represents to investors and to the public that it follows this rule of consistency in evaluating whether its assets are impaired.[26] But as set forth above, it appears that Exxon's impairment evaluations did not incorporate its publicly-touted assumptions about a proxy cost of GHGs prior to 2016. Any claims stemming from Exxon's inconsistency in this respect would have little or nothing to do with SEC reserve reporting regulations, let alone conflict with such regulations.[27] Indeed, the subpoena duces tecum specifies that OAG is not requesting

[25] *See* ¶ 139, Ex. 33 (Transcript of Earnings Call, Exxon Mobil Corp. Q4 2016 Results), at 23 ("I want to make sure that everybody's very clear that there is a separation between proved reserves reporting under the SEC rules and then the whole issue of asset impairments.") (remarks of Jeff Woodbury, Vice President of Investor Relations, Exxon).

[26] *See, e.g.*, ¶ 44, Ex. 12 (Exxon Mobil Corp., Form 10-K, 2015), at 57 ("Cash flows used in recoverability assessments are based on the Corporation's assumptions which are developed in the annual planning and budgeting process, and are consistent with the criteria management uses to evaluate investment opportunities.").

[27] Moreover, state and federal law on this point could not conflict even in theory, because the federal regulations that Exxon cites make clear that companies may disclose estimates of oil and gas resources other than the reserves calculations mandated by those regulations if such disclosure is required by state law. Instruction to 17 C.F.R. § 229.1202 (Item 1202).

information about Exxon's SEC reserves reporting process. (Anderson Aff. Ex. T at Interrogatory Nos. 6 & 7).[28]

Furthermore, OAG has not filed a complaint; thus far, it has only issued subpoenas, rendering Exxon's preemption argument premature in any event. *See Oncor Commc'ns v. State*, 636 N.Y.S.2d 176, 178 (3d Dep't 1996) (holding that, absent claims asserted in a complaint, "there can be no meaningful consideration of the preemption issue"); *Cuomo v. Dreamland Amusements, Inc.*, No. 08 Civ. 7100 (JGK), 2008 WL 4369270, at *8 (S.D.N.Y. Sep. 22, 2008) (holding that preemption issue could not be resolved because the potential claim that may have been preempted was "only one of several bases" for OAG's investigation); *Cuomo v. Dreamland Amusements, Inc.*, 22 Misc. 3d 1107(A), 2009 N.Y. Slip. Op. 50062(U), at *6-7 (Sup. Ct. N.Y. Cnty. Jan. 6, 2009) (same).[29]

B. This Court Should Compel the Testimony of the Records Witnesses

There can be no question that OAG has the right to ensure that responsive documents are preserved, collected, and produced in the course of the its investigation, and furthermore, to investigate any failures in that process as well as obstruction or frustration of its investigation.[30] Here, Exxon and its outside counsel have failed to observe basic requirements for the preservation, collection, production, and recovery of electronically-stored information.

[28] These requests concern Exxon's *internal* reserves estimates, which are not based on the SEC formula, but rather on Exxon's own assumptions, and which feed into its impairment decisions.

[29] The cases Exxon cites with respect to raising preemption as a defense to a subpoena (*see* Exxon Br. at 20-21) are inapposite. *Gobeille v. Liberty Mut. Ins. Co.*, 136 S. Ct. 936 (2016), did not involve investigatory subpoenas at all, but rather concerned reporting requirements in addition to those specified by ERISA. In *Cuomo v. Clearing House Ass'n, L.L.C.*, 557 U.S. 519, 535-36 (2009), the Court addressed whether state authority to issue subpoenas was preempted by federal law limiting visitorial powers over national banks. By contrast, Exxon does not assert a general immunity from state subpoenas, but only that OAG's potential claims may be preempted.

[30] *See* Gen. Bus. Law § 352(4); *see also People v. Forsyth*, 109 Misc. 2d 234, 237 (Sup. Ct. N.Y. Cnty. 1981) (upholding jury verdict that failing to obey a Martin Act subpoena violated § 352(4) because, inter alia, defense of impossibility is not a reasonable cause for failure to obey a subpoena "[w]here the defendant is responsible for his inability to comply").

¶¶ 57-106. These failures directly resulted in the destruction of months, and in many cases, more than a year's worth, of emails and other electronic documents belonging to key custodians including the company's top management and reserves analysts. ¶¶ 72-92. The testimony of Ms. Feinstein and Ms. Hirshman has revealed that, despite being proffered by Exxon as knowledgeable on these topics, they lack knowledge about many of the relevant details, including, crucially, information about Exxon's data-backup processes and its recovery efforts to date. ¶¶ 101-06. Despite being proffered as a witness on the six topics in OAG's subpoena, on almost 200 occasions, Ms. Feinstein testified that she did not know the requested details, and nothing in Ms. Hirshman's testimony provides further elucidation on these points. ¶¶ 103, 106. Thus, OAG subpoenaed the four Exxon witnesses identified by Ms. Feinstein as being knowledgeable on such details. ¶ 117.

Unable to contest the relevance of the testimony of these witnesses, Exxon contends that their testimony is cumulative, speculative, and unduly burdensome. None of these objections has merit given that Ms. Feinstein did not know the answers to many of OAG's questions, and identified these four record custodians as likely to know the answers to such questions. ¶¶ 99-105. Moreover, any undue burden to Exxon is outweighed by OAG's need for this relevant information about the full scope of Exxon's document destruction and ensuring the recovery of the destroyed documents. Because OAG has established that (i) Ms. Feinstein was unable to provide certain information; (ii) the four newly-noticed witnesses are likely to provide the information that Ms. Feinstein was unable to provide; and (iii) the testimony of such witnesses is relevant to the investigation, this Court should compel Exxon to produce these witnesses for testimony.

C. This Court Should Compel the Testimony of Jason Iwanika, An Imperial Oil Limited Witness

Despite having produced over 670 documents from the custody of Jason Iwanika, an employee of Exxon's majority-owned subsidiary, Imperial, based in Canada, Exxon now refuses to produce Mr. Iwanika for testimony in this investigation, contending for the first time that it lacks control over its majority-owned subsidiary from which it has been producing documents for months. ¶¶ 84, 120, 132-33. Mr. Iwanika's testimony is highly relevant to OAG's investigation given that documents produced by Exxon indicate that he was directed by Exxon not to apply a proxy cost to Exxon's Canadian oil sands projects. ¶¶ 29-33.

Under New York law, a parent corporation can be required to produce documents or testimony from subsidiaries. For example, in *Grande Prairie Energy LLC v. Alstom Power, Inc.*, the court held that "a parent company . . . can be compelled to produce for deposition an employee of its foreign subsidiary," and required an American company to produce for testimony an employee of a Swiss affiliate. 5 Misc. 3d 1002(A), 2004 N.Y. Slip Op. 51156(U), at *3 (Sup. Ct. N.Y. Cnty. Oct. 4, 2004). Likewise, in *Bank of Tokyo–Mitsubishi, New York Branch v. Kvaerner*, the court held that "if a [company] subject to the court's *in personam* jurisdiction controls a foreign corporate entity the [company], by virtue of its control, should be obligated to produce any and all appropriate discovery under its aegis, including that under the control of its subsidiary, wherever the subsidiary may be located." 175 Misc. 2d 408, 411 (Sup. Ct. N.Y. Cnty. 1998) (requiring defendant to produce documents in the possession of its wholly-owned foreign subsidiary).[31]

[31] This principle applies equally to a majority-owned subsidiary that is, for relevant purposes, under the control of the parent corporation. *See Standard Fruit & S.S. Co. v. Waterfront Comm'n of N.Y. Harbor*, 43 N.Y.2d 11, 15 (1977) ("[s]o long as the person who participated in the questioned corporate activity is an officer or employee of the corporation, or is under its control or direction, it is the corporation's responsibility to produce that person pursuant to a subpoena served upon the corporation" even if that person is located in a foreign jurisdiction).

Having spent months producing Mr. Iwanika's documents, Exxon now claims, implausibly, that it has no control over Imperial or Mr. Iwanika. Exxon's baseless assertion is refuted by Exxon's own documents, including those produced from Mr. Iwanika's files. Exxon's Corporate Plan documents, in which the company sets out corporate-level assumptions for the proxy cost of GHGs, include sub-sections for the Canadian provinces where Imperial operates. ¶¶ 33, 36. Numerous documents reflect that Mr. Iwanika sought direction and guidance from Exxon employees concerning how to apply this portion of the Exxon Corporate Plan in the course of his work. *See, e.g.*, ¶ 26, Ex. 6; ¶¶ 29-33. In certain instances, those Exxon employees advised Mr. Iwanika not to apply the proxy cost of GHGs that appears in the Corporate Plan, and instead, to apply only the much lower actual cost of carbon under existing Alberta law. ¶ 33. The documents produced by Exxon reveal that Mr. Iwanika pushed back and questioned those instructions, expressing his belief that he was bound to follow Exxon's Corporate Plan guidance. *Id*. Nonetheless, it appears that Mr. Iwanika relented and complied with Exxon's instructions to deviate from the company's internal policies. *Id*. These and other documents confirm that Exxon controls Imperial[32] and Mr. Iwanika with respect to matters at the core of OAG's investigation, and as such, Exxon cannot now refuse to produce Mr. Iwanika for testimony simply because he is located outside New York.

Additionally, Mr. Iwanika appears on Exxon's privilege logs, including for a communication he sent that purportedly contained legal advice. ¶ 133. Other Imperial employees appear on Exxon's privilege logs as well. *Id*.[33] Exxon's apparent contention that Mr.

[32] Besides this substantial document production, other indicia of Exxon's control over Imperial include the following: (i) Exxon produced documents from a second Imperial employee, Susan Swan, Oleske Aff. ¶ 133; (ii) Exxon's Law Department conducted custodial interviews of both Ms. Swan and Mr. Iwanika, *id.*; and (iii) at least 28 Imperial employees were placed on litigation hold by Exxon's Law Department, *id*.

[33] In addition to Iwanika, 27 other Imperial employees have been placed on preservation hold by Exxon's Law Department. ¶ 133.

Iwanika's presence on a document does not break privilege is an implicit acknowledgment that he is under Exxon's control. *Grande Prairie Energy*, 5 Misc. 3d 1002(A), 2004 N.Y. Slip Op. 51156(U), at *3 (holding that party "cannot have it both ways" in this respect).

Accordingly, this Court should compel Exxon to produce Mr. Iwanika for testimony in response to OAG's subpoena.

CONCLUSION

For the reasons set forth above, Exxon's motion to quash should be denied in its entirety, and OAG's cross-motion to compel compliance with OAG's subpoena duces tecum, its four subpoenas for the testimony of record custodians, and its subpoena for the testimony of Mr. Iwanika should be granted in its entirety.

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