UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EXXON MOBIL CORPORATION, Plaintiff, -against- ERIC TRADD SCHNEIDERMAN, Attorney General of New York, in his official capacity, and MAURA TRACY HEALEY, Attorney General of Massachusetts, in her official capacity, Defendants.	No. 17-CV-2301 (VEC) (SN) ECF Case

REPLY IN FURTHER SUPPORT OF
ATTORNEY GENERAL HEALEY'S RENEWED MOTION TO DISMISS

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I. INTRODUCTION

After eighteen months of litigation, three versions of its complaint, and six briefs opposing dismissal of this lawsuit (four in Texas, and now two before this Court), Exxon still fails to allege facts sufficient to state any plausible or cognizable claim. As explained below and in Attorney General Healey's prior briefs, this Court should grant her renewed motion to dismiss this action under Federal Rule of Civil Procedure 12(b)(6) or on the other threshold grounds that mandate dismissal.[1]

Exxon asserts that its allegations in its First Amended Complaint are sufficient, but its opposition to dismissal (Doc. No. 249; "Opp.")—in a seeming act of desperation—relies as much or more on its newly proposed Second Amended Complaint, which is not even properly before the Court while Exxon's motion to amend is pending.[2] In any event, the Second Amended Complaint adds no further facts regarding Attorney General Healey. Exxon's allegations as to Attorney General Healey still boil down to only three facts: (i) she attended a March 2016 event in New York where she made remarks about the grave threats of climate change and mentioned her investigation of Exxon; (ii) her office joined other state attorneys general in a common interest and confidentiality agreement; and (iii) she issued a civil investigative demand ("CID") to Exxon in April 2016. These facts do not plausibly support Exxon's claims that Attorney General Healey is involved in any vast or malicious conspiracy to deprive Exxon of its rights, nor are Attorney General Healey's actions improper in any way.

[1] *See* Doc Nos. 217 & 233. *See also* Supplemental Memorandum of Law in Support of Attorney General Healey's Renewed Motion to Dismiss, Doc. No. 246 ("Mem.").

[2] While the proposed Second Amended Complaint is not properly before the Court, all of Attorney General Healey's arguments for dismissal apply to it as well, as explained in Section II.D *infra*.

Exxon's invention of a nefarious motive for Attorney General Healey's investigation finds no support in any of Exxon's factual allegations. Indeed, the First Amended Complaint (and proposed Second Amended Complaint) and Exxon's brief opposing dismissal do nothing more than deploy baseless innuendo in an effort to paint as malicious persecution and conspiracy a state law investigative effort by Attorney General Healey that is based on her good faith belief that Exxon has violated the Massachusetts Consumer Protection Act, Mass. Gen. Laws ch. 93A, § 1 *et seq.*, and was found to be proper and lawful in a final decision of the Massachusetts Superior Court weighing the same allegations of unconstitutional intent, bias, and overbreadth that Exxon advances here.[3] As Attorney General Healey has explained, that finding now precludes Exxon from relitigating the issues of alleged bias and improper motive (and all claims arising from those allegations) before this Court. *See* Doc. No. 217 at 8-14; Doc. No. 233 at 2-6 (citing, *inter alia*, *Temple of the Lost Sheep, Inc. v. Abrams*, 930 F.2d 178, 183 (2d Cir. 1991)).

In the end, this case is exactly the type of flimsy litigation against a public official that the Supreme Court found forbidden in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). A failure to dismiss here would embolden any company under state investigation to follow Exxon's lead and run to federal court with wholly baseless, conclusory allegations of unlawful persecution, demanding, as Exxon does here, to investigate the investigators *before the investigation has even begun*. Exxon's move is plainly a transparent attempt to avoid, at all cost, any scrutiny of its own conduct, however potentially fraudulent or harmful to the people of the Commonwealth, whose interests Attorney General Healey is charged with protecting. Exxon's bluster aside, its pleadings

[3] *See In re Civil Investigative Demand No. 2016-EPD-36*, No. SUCV20161888F, 2017 WL 627305 (Mass. Super. Ct. Jan. 11, 2017) (Doc. No. 218-1). As discussed in Attorney General Healey's principal brief, Exxon's allegations of a scheme to silence Exxon's "opposing views" also are incoherent in light of its repeated statements that it now accepts climate science and favors policy and business responses to climate change, *see* Mem. at 6; Opp. at 13, as well as by recent events, including Exxon's own decision to change its climate-risk disclosure practices in response to the 2017 vote of a majority of its shareholders, *see* Mem. at 5 & 10 n.10.

fail to satisfy the minimum standards of Federal Rule of Civil Procedure 8 (a)(2), and this action should be dismissed.

II. ARGUMENT

A. EXXON'S COMPLAINT DOES NOT PLAUSIBLY ALLEGE ACTS OR A CONSPIRACY TO PUNISH EXXON FOR ITS VIEWPOINT.

The First Amended Complaint alleges that Attorney General Healey "took official action against [Exxon] because [she] disagreed with the company's perspective on climate change and climate policy," Opp. at 16, and that this action was part of a conspiracy to punish Exxon for its views and suppress its speech on climate policy, Opp. at 25-26. As in *Iqbal*, this Court will search in vain to find any "factual content" in Exxon's pleadings (or referenced in Exxon's opposition to dismissal) that "nudg[es]" Exxon's account of "purposeful discrimination 'across the line from conceivable to plausible.'" *Iqbal*, 556 U.S. at 683 (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

To support its viewpoint discrimination claim, Exxon's latest brief resorts to yet more "'naked assertions' devoid of 'further factual enhancement.'" *Id.* at 678 (quoting *Twombly*, 550 U.S. at 557). No matter how many times Exxon repeats the allegation, it is a textbook insufficient "conclusory statement," *id.*, that Attorney General Healey "launched [an] investigation[] on the thinnest of pretexts to impose costs and burdens on [Exxon] for having spoken" about climate change. Opp. at 1. Exxon's brief is riddled with such spin, describing Attorney General Healey's remarks at the New York press conference as "announc[ing] a plan to regulate speech," "to unleash [her] law enforcement powers against perceived dissenters," and to hold accountable "those disagreeing with her about climate change policy." *Id.* at 3-4. Of course, these are Exxon's "labels and conclusions," *Iqbal*, 556 U.S. at 678, not Attorney General

Healey's actual words, and Attorney General Healey said no such thing, as any direct reading of Exxon's own transcript of the remarks reveals. Doc. No. 101, Ex. B, App. 020-021.

Likewise, Exxon points to language in the common interest agreement regarding the shared interest of the participating attorneys general in promoting "accurate information about climate change," Opp. at 17-18, a goal that is not plausibly insidious and is instead appropriate and fully consistent with state laws governing investor and consumer disclosures. Finally, Exxon points to the CID, identifying one of its thirty-eight requests for documents as raising speech concerns, *id*. at 18, and ignoring the "obvious alternative explanation," *Iqbal*, 556 U.S. at 682 (quoting *Twombly*, 550 U.S. at 567), that the requests seek *Exxon's* communications with industry-aligned groups it funded or with which it coordinated, to discern whether *Exxon* enlisted them to disseminate fraudulent or deceptive information to the public (including consumers and investors) in violation of state law.[4]

In a sign of the "[t]hreadbare" quality of Exxon's account of Attorney General Healey's motives, *Iqbal*, 556 U.S. at 678, Exxon's proposed amendment of its complaint seeks to delete the allegations in its First Amended Complaint that Attorney General Healey is trying to "silence, intimidate, and deter" political viewpoints. *E.g.*, Redline of Proposed Second Amended Complaint, Doc. No. 252-20, at 2, 31, 57, 62, 65. In its place, Exxon now says that Attorney

[4] This possibility directly arises from recently-disclosed documents and journalistic accounts of Exxon's conduct. *See* Doc. No. 43-3 at App. 457 ("Exxon used the American Petroleum Institute [and] right-wing think tanks . . . to push a narrative that climate science was too uncertain to necessitate cuts in fossil fuel emissions."); Doc. No. 43-5 at App. 519 ("[I]n 1998 Exxon also helped create the Global Climate Science Team, an effort involving Randy Randol, the company's top lobbyist, and Joe Walker, a public relations representative for the [American Petroleum Institute]. Their memo, leaked to The New York Times, asserted that it is 'not known for sure whether (a) climate change actually is occurring, or (b) if it is, whether humans really have any influence on it.' . . . The memo declared: 'Victory will be achieved when average citizens "understand" (recognize) uncertainties in climate science,' and when 'recognition of uncertainty becomes part of the "conventional wisdom."'"); *id.* at App. 521 (noting Exxon's funding of at least 39 organizations that may have been involved in company's disinformation campaign). These statements appear to be in sharp contrast with Exxon's internal understanding of climate change and its causes, as set forth in numerous memoranda prepared by Exxon scientists in the 1970s and 1980s and circulated to Exxon management and also disclosed as part of that reporting.

General Healey wishes to "coerce [Exxon] into embracing [her] viewpoint," again without any supporting factual allegations whatsoever. *Id.* at 2; *see also id.* at 31, 57, 65. This shift again confirms that, despite its First Amendment posturing, Exxon's lawsuit complains only that it faces demands for documents and does not actually allege any chilling or impairment of the company's protected speech. *See* Mem. at 8 n.9. Attorney General Healey's document demands to Exxon, one of the world's wealthiest corporations, are reasonable, as the Massachusetts Superior Court found, and Exxon's attempt to analogize the harm it faces to that alleged by plaintiffs in cases such as *Tabbaa v. Chertoff*, is, frankly, ludicrous. 509 F.3d 89 (2d Cir. 2007) (reviewing, and ultimately, sanctioning detention and interrogations of Muslims exercising their First Amendment associational rights).

Exxon is correct that the complaint in *Iqbal* did not allege facts directly connecting former Attorney General Ashcroft and FBI Director Mueller to the asserted conspiracy. Opp. at 18. But this was far from the only deficiency of the *Iqbal* complaint. *Iqbal*, 556 U.S.at 680-84. Exxon's brief tellingly fails to address *Iqbal*'s unequivocal holding that Rule 8(a)(2) requires more than bald assertions of unconstitutional discrimination and motive bereft of supporting factual allegations, a bar that Exxon's complaint—in any of its iterations—has failed to meet. *Id.* at 681 ("conclusory nature of . . . allegations . . . disentitles them to the presumption of truth"). In *Iqbal*, as here, the complaint contains assertions of motive but "does not contain any factual allegation sufficient to plausibly suggest" that Attorney General Healey spoke or acted out of a "discriminatory state of mind." *Id.* at 683; *see id.* at 681 (finding that "given more likely explanations," allegations "do not plausibly establish this purpose").

As to Exxon's conspiracy claim, it remains deficient on its face.[5] Exxon nowhere explains how its potentially fraudulent statements to investors and consumers in the marketplace endow it with a "political affiliation" or other protected classification. Black-letter Second Circuit law requires such an allegation. *See Gleason v. McBride*, 869 F.2d 688, 695 (2d Cir. 1989) ("[T]hose who are in political and philosophical opposition to [the defendants], and who are, in addition, outspoken in their criticism of the [defendants'] political and governmental attitudes and activities do not constitute a cognizable class under section 1985.") (internal quotation marks omitted); Mem. at 11 n.11.

Like its viewpoint claim, Exxon's conspiracy claim also cannot withstand scrutiny under *Iqbal*. Exxon only ties Attorney General Healey to the supposed unlawful conspiracy through the March 2016 meeting and press conference, her office's participation in the common interest agreement, and issuance of the CID.[6] Whatever agreements those facts may suggest, there is no factual allegation in the First Amended Complaint that even suggests that there was an agreement to infringe Exxon's rights. Nor is there any reasonable inference of impropriety, let alone unconstitutional conspiracy, from state attorneys general working together to investigate potential fraud that violates state laws, protecting privileged materials that are exchanged during those investigations, or receiving information from academics, lawyers, and experts, or, for that matter, ordinary citizens, who are concerned about potential illegal conduct by others. *See, e.g.*,

[5] Although Exxon protests that it has plead all the elements of a conspiracy claim under 42 U.S.C. § 1985(3), it has not done so clearly, to the extent that it cannot cite the relevant paragraphs or language of either its First or Second Amended Complaint. Opp. at 26 n.25.

[6] The principal case cited by Exxon to support its conspiracy allegations, *Anderson News, LLC v. Am. Media, Inc.*, 680 F.3d 162 (2d Cir. 2012), involved a wholly different cause of action—a private party's allegations of an antitrust conspiracy within the wholesale magazine industry to eliminate competitors. And the allegations in the amended complaint in that case, found sufficient by the Second Circuit to withstand dismissal, were far more numerous, detailed, and specific than the three factual allegations involving Attorney General Healey in Exxon's complaints. *Id.* at 186-89.

Transcript of November 30, 2017 Oral Argument ("Tr."; Doc. No. 244, citation to expedited copy) at 75.

Once again, without resort to the text of Attorney General Healey's actual remarks or any other facts, Exxon declares that Attorneys General Healey and Schneiderman jointly "announced their intent to suppress speech on climate policy using law enforcement tools," met with "special interests" who have criticized and litigated against Exxon, and "acted in conformity with the aims of those special interests by launching pretextual investigations" of Exxon. Opp. at 25. As with its other constitutional claims against Attorney General Healey, these are "naked assertion[s]" rather than factual allegations sufficient to state a claim of conspiracy to violate Exxon's rights. *Iqbal*, 558 U.S. at 678. And in a close parallel to the failing of the *Iqbal* complaint that Exxon does acknowledge in its brief, Opp. at 18, none of the other facts Exxon tries to piece together in its First Amended Complaint regarding third parties and alleged concealment (or in its Second Amended Complaint, which it cites for this purpose) has any connection to Attorney General Healey whatsoever. *See id*. at 25-26. For these reasons, the Court should apply *Iqbal* and dismiss the core claims of Exxon's pleadings as to Attorney General Healey.

B. THE COURT SHOULD NOT CREDIT EXXON'S IMPLAUSIBLE NARRATIVE AS AGAINST PLAINLY LEGITIMATE SCRUTINY OF ITS POTENTIALLY UNLAWUL AND HARMFUL CONDUCT.

Exxon's complaints in this action feign outrage and spin out an ever-expanding conspiracy theory regarding its critics. But this account is fatally implausible not only because it is built on baseless innuendo; it does not follow from the actual underlying facts that are reflected in the allegations and documents Exxon itself has presented to the Court. *See Iqbal*, 556 U.S. at 682 ("[o]n the *facts* respondent alleges the arrests Mueller oversaw were likely lawful and justified by his nondiscriminatory intent") (emphasis added). Even through the smokescreen

of Exxon's "debunk[ing]" (Opp. at 10-12), it appears from Exxon's own internal documents that Exxon knew the potential for the normal use of its chief products—fossil fuels—to cause "catastrophic" climate change and that Exxon may have misled the public, including consumers and investors, about what it knew. *See* Mem. at 7-8 n.7 (describing internal Exxon documents and journalistic reports); *id.* at 10 (noting pertinent exhibits attached to First Amended Complaint). "It should come as no surprise," *Iqbal*, 556 U.S. at 682, that Exxon is facing inquiries by Attorneys General Healey and Schneiderman as well as the U.S. Securities and Exchange Commission, or that it is now confronting a mounting tide of legal action from its own shareholders and local governments related to climate change disclosure and damages. *See* Mem. at 5, 10; Proposed Second Amended Complaint, Doc. No. 252-1, ¶ 49.[7]

Where governments are facing threats from climate change that endanger their residents and may cost billions of public dollars to address, it follows that some are actively seeking to investigate or take action against those fossil fuel companies, like Exxon, that are widely recognized to be responsible for a major share of the world's carbon dioxide pollution.[8] It is this

[7] 2017 was the costliest year on record for natural disasters in the United States, with total damages reaching $306 billion; it has already been shown that climate change played a significant role in several of those events and similar disasters in 2016. *See* Chris Mooney and Brady Dennis, *Extreme hurricanes and wildfires made 2017 the most costly U.S. disaster year on record*, The Washington Post, Jan. 08, 2018, *at* https://www.washingtonpost.com/news/energy-environment/wp/2018/01/08/hurricanes-wildfires-made-2017-the-most-costly-u-s-disaster-year-on-record/?utm_term=.f4048411645e; Adam B. Smith, *2017 U.S. billion-dollar weather and climate disasters: a historic year in context*, NOAA - Climate.gov, Jan. 08, 2018, *at* https://www.climate.gov/news-features/blogs/beyond-data/2017-us-billion-dollar-weather-and-climate-disasters-historic-year; Henry Fountain, *Scientists Link Hurricane Harvey's Record Rainfall to Climate Change*, The New York Times, Dec. 13, 2017, *at* https://www.nytimes.com/2017/12/13/climate/hurricane-harvey-climate-change.html; Brad Plumer & Nadja Popovich, *How Global Warming Fueled Five Extreme Weather Events*, The New York Times, Dec. 14. 2017, *at* https://www.nytimes.com/2017/12/14/climate/climate-extreme-weather-attribution.html. Hundreds if not thousands have died, and tens of thousands have been displaced—Hurricane Harvey alone displaced 30,000 people. *See* Ann. M Simmons, *The impact of Harvey's wrath, by the numbers*, Los Angeles Times, Aug. 30, 2017, *at* http://www.latimes.com/nation/la-na-hurricane-harvey-by-the-numbers-20170830-htmlstory.html. Hurricane Maria devastated Puerto Rico, and in late December, three months after it made landfall there, about fifty percent of the island was still without power. *See* Danica Coto, *3 months after Maria, barely half of Puerto Rico has power*, Chicago Tribune, Dec. 30, 2017, *at* http://www.chicagotribune.com/news/nationworld/ct-puerto-rico-power-20171229-story.html.

[8] *See also* Editorial, *Another Day of Reckoning for Big Oil's Role in Climate Change*, New York Times, Jan. 15,

pollution that now appears to be driving or intensifying unprecedented storms, floods, sea level rise, forest fires, droughts, and mudslides across the country. It would indeed be unusual if, given these risks and Exxon's and others' alleged roles in deliberately misrepresenting them over the years, state and local governments were *not* considering and pursuing investigations and legal actions. As the Court intimated at argument, these actions are similar to states' successful efforts to protect their residents from the human and economic costs wrought by the tobacco industry's lies. Tr. at 56.

Where evidence suggests, as Exxon's own documents do here, that a company has unlawfully misled consumers and investors and continued business practices that put them at risk, a state attorney general has the authority to protect her constituents' interests by investigating potential wrongdoing by that company. That Attorney General Healey's investigation seeks to get to the bottom of Exxon's apparent misstatements on a matter of grave public concern affecting us all—climate change—makes the inquiry all the more reasonable and important. Under the teaching of *Iqbal*, this is the "obvious alternative explanation," not the fever dream of "purposeful, invidious discrimination" and conspiracy that Exxon "asks [the Court] to infer" in its papers. 556 U.S. at 682. The Court should dismiss this lawsuit and reject Exxon's effort to use the federal courts to evade the scrutiny the company's alleged misconduct warrants.

2018, *at* https://mobile.nytimes.com/2018/01/15/opinion/big-oil-climate-change-nyc.html (lauding New York City lawsuit against Exxon and other oil companies for climate-related damages); David Kravets, *Oil Companies Sued to Pay for Cost of Rising Sea Levels, Climate Change*, ars Technica, Sept. 21, 2017, *at* https://arstechnica.com/tech-policy/2017/09/oil-companies-sued-to-pay-for-cost-of-rising-sea-levels-climate-change (describing California municipalities' lawsuits).

C. EXXON'S OTHER CLAIMS SHOULD BE DISMISSED.

Exxon's other claims do not present cognizable causes of action, and its arguments opposing their dismissal are wholly without merit.

Exxon's Dormant Commerce Clause claim fails because, among its other problems, the company now has conceded that subpoenas like the CID are *not* "instrument[s] of direct regulation of speech," an essential element of the claim. Opp. at 22; *see* Mem. at 17. Exxon's only effort to defeat dismissal of this claim is to repackage it with the same theory as its flawed viewpoint-discrimination claim, without any legal authority. Opp. at 37 ("While subpoenas and CIDs might not necessarily constitute regulations on speech, when they are used to target and burden disfavored viewpoints, as alleged here, they become tools of impermissible speech regulation."). Exxon's Dormant Commerce Clause claim now lacks even a "[t]hreadbare recital" of a cause of action. *Iqbal*, 556 U.S. at 678.

Exxon's preemption claim fares no better. Exxon's most recent brief again provides *no law* supporting the notion that federal regulations regarding oil and gas reserves preempt state investor protection laws, citing only an inapt case applying a federal statute expressly barring some securities-related class actions. Opp. at 40 (citing *Romano v. Kazacos*, 609 F.3d 512, 519 (2d Cir. 2010)). Indeed, Exxon's citation of a law expressly preempting a delineated type of private civil lawsuit illustrates the general rule applicable here: state laws protecting investors are not preempted by federal securities rules. Mem. at 18 (citing cases).

Also without merit is Exxon's contention that the Eleventh Amendment does not bar its Texas state law claims because Attorney General Healey is acting outside her legal authority. Under *Pennhurst State School and Hospital v. Halderman*, the "narrow" *ultra vires* exception to the Eleventh Amendment bar against federal courts hearing state law claims against state officials applies only if the state official is acting "without any authority whatsoever." 465 U.S.

89, 101 n.11, 116 (1984); *see also Minotti v. Lensink*, 798 F.2d 607, 609 (2d Cir. 1986). That is not the case here, where Attorney General Healey indisputably issued the CID pursuant to a specific provision of Massachusetts law, Mass. Gen. Laws ch. 93A, § 6(1). *See Pennhurst*, 465 U.S. at 101 n.11 ("[A]n *ultra vires* claim rests on 'the officer's lack of delegated power. A claim of error in the exercise of that power is therefore not sufficient.'") (citation omitted). Thus, the reasoning of *Pennhurst* applies with full force, and the Eleventh Amendment bars Exxon's state law claims.

D. EXXON'S PROPOSED AMENDMENT WOULD NOT CHANGE THE ANALYSIS.

Facing dismissal, Exxon now seeks to amend its complaint for a second time to "simply . . . provide additional factual allegations" without asserting any new claims. Opp. at 2 n.3; *see also* Doc. No. 251 at 4 n.2, 9 n.4. In a tacit admission that its First Amended Complaint is insufficient, Exxon's brief extensively references and improperly relies on its proposed Second Amended Complaint, which is not technically before the Court. It is telling that Exxon waited to move to amend on the day it was due to file a brief with this Court defending the First Amended Complaint's sufficiency.

Exxon's deficient proposed amendment should not be allowed and would be futile because Exxon's Second Amended Complaint would add nothing to cure the fatal defects of Exxon's claims against Attorney General Healey.[9] The Second Amended Complaint contains,

[9] *See Ruotolo v. City of New York*, 514 F.3d 184, 191 (2d Cir. 2008) (amendment "may properly be denied for 'undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc.'") (quoting *Foman v. Davis*, 371 U.S. 178, 182 (1962)); *Health–Chem Corp. v. Baker*, 915 F.2d 805, 810 (2d Cir. 1990) ("where . . . there is no merit in the proposed amendments, leave to amend should be denied"); *Prospect Funding Holdings, LLC v. Vinson*, 256 F. Supp. 3d 318, 323 (S.D.N.Y. 2017) ("Leave to amend may be denied on the basis of futility if the proposed claims would not withstand a Rule 12(b)(6) motion to dismiss.").

according to Exxon's own description of the changes, no additional facts about her specifically. Doc. 251 at 2-3, 8-9. Indeed, Exxon's proposed amendment principally concerns the conduct of persons and entities that are not parties to this litigation and additional details about the irrelevant events that are already covered in its earlier complaints, many of which predate Attorney General Healey's investigation and some of which even occurred before she took office in 2015. *Id.*[10] Attorney General Healey had no personal involvement in these events, and as in *Iqbal, Exxon has not specifically alleged that she did*. *See* 556 U.S. at 683. In this context, Attorney General Healey's fully-briefed arguments for dismissal apply equally to the Second Amended Complaint, and the Court should dismiss without further briefing, whether or not amendment is allowed. *See BHC Interim Funding, L.P. v. Finantra Capital, Inc.*, 283 F. Supp. 2d 968, 972 (S.D.N.Y. 2003) (granting motions to dismiss where "amended complaint was already filed following receipt of the motions" and was "treated as the operative pleading" without need for further motions).

III. CONCLUSION

The Court should grant Attorney General Healey's renewed motion to dismiss and dismiss the First Amended Complaint.

[10] It bears noting that Attorney General Healey receives only passing mention in Exxon's most recent papers and that many of Exxon's allegations about "the Attorneys General" do not apply to her: for example, the justification for her investigation has not shifted, Opp. at 31, nor could it, since Exxon's various lawsuits have precluded it from even beginning.

Respectfully submitted,

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