UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

BOCA RATON POLICE and FIRE FIGHTERS' RETIREMENT SYSTEM, Plaintiff, v. EXXON MOBIL CORPORATION, a New Jersey Corporation, Defendant.	Case No. 3:25-cv-18060-ZNQ-TJB **Motion Day: March 2, 2026** **ORAL ARGUMENT REQUESTED**

PLAINTIFF'S MEMORANDUM OF LAW IN
OPPOSITION TO DEFENDANT'S MOTION TO TRANSFER

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PRELIMINARY STATEMENT

Defendant Exxon is a New Jersey corporation.[1] As detailed in the Complaint, Exxon—with the assistance of New York-based counsel—developed the unlawful Automatic Voting Program to secure perpetual proxies to be voted in favor of the Board's recommendations. The Program violates both federal and New Jersey law.

Plaintiff has properly sued Exxon in New Jersey, its state of incorporation, and Plaintiff's federal and New Jersey statutory claims raise no issues of Texas law.

Nonetheless, in an attempt to delay this action and prevent a timely ruling on the Program's legality, Exxon now seeks transfer to the Southern District of Texas.

Exxon's motion should be denied because transfer would not serve the "interest of justice" or the "convenience of parties and witnesses." 28 U.S.C. § 1404(a). Indeed, Exxon fails to demonstrate that ***any*** of the relevant factors support transfer—particularly since Exxon is a New Jersey corporation; Exxon fails to identify any non-party witnesses who would be unavailable for trial in this District; and Exxon fails to identify any Texas interest in this case, which exclusively involves federal and New Jersey law.

Further, Exxon's conclusory assertion that the "locus of operative facts" is in Texas—which is just one of twelve transfer factors—is premature, disputed, and

[1] "¶"citations refer to the Complaint (ECF 1); capitalized terms have the meanings stated therein. Emphasis is added and citations are omitted unless otherwise noted.

undercut by Exxon's incorporation in New Jersey, its illegal proxy solicitation (including in New Jersey) in violation of New Jersey and federal law, and the role of Exxon's New York-based counsel in developing the unlawful Program.

Moreover, Exxon's argument that this action must tag along with any future transfer of *City of Hollywood Police Officers' Retirement System v. Woods*, No. 3:25-cv-16633 ("*Hollywood*"), is wrong. Indeed, Exxon's arguments for transfer here are even weaker than in *Hollywood*. For one thing, Exxon argues that *Hollywood* was improperly filed in this District. Here, however, Exxon does not dispute that venue in this District is proper under 28 U.S.C. § 1391(b)(1) because the only defendant is Exxon—a New Jersey corporation. Further, *Hollywood* asserts claims against twelve Exxon directors, including four with alleged Texas citizenship. By contrast, Plaintiff has solely sued one New Jersey corporation. There is no basis for transfer.

BACKGROUND

Plaintiff incorporates the facts set forth in Plaintiff's separate opposition to Exxon's motion to dismiss, filed concurrently herewith.

As relevant to Exxon's transfer motion, Exxon omits relevant facts and tries to exaggerate the Program's purported connections to Texas, based largely on a conclusory declaration from Ashley Wittrig (the "Wittrig Declaration," ECF 14-2).

First, Exxon relies heavily on the Wittrig Declaration to argue that the Program was "primarily" developed in Texas, but Ms. Wittrig—identified as an

Exxon "Product Manager"—appears to have no personal knowledge of the Program. Her Declaration does not state, for example, that she had any role in developing the Program, attended any of the Board or committee meetings she purports to describe, or is responsible for maintaining Exxon's Program-related documents. (ECF 14-2.)

Second, Exxon's brief omits the fact that the Program was developed with Exxon's New York-based counsel at Davis Polk, who signed Exxon's request for an SEC no-action letter. (ECF 1-3.)

Third, Exxon fails to disclose that it is using a New York-based vendor to conduct its worldwide proxy solicitation for the Program. Exxon's assertion that its "solicitation communications . . . came from ExxonMobil's headquarters in Spring, Texas" is misleading. Exxon merely cites the Texas return address on a form letter to be sent to registered owners. However, Exxon fails to mention that its solicitation communications to beneficial owners—who hold the overwhelming majority of Exxon shares in "street name"—are sent from Brentwood, New York. (ECF 1-5 at 4 & 6 of 11.) The vendor operating the Program, Broadridge Financial Solutions Inc., is based in Brentwood, New York. *See id.*[2]

[2] The "P.O. Box 1310, Brentwood, NY 11717" address on Exxon's emails and letters to beneficial owners is regularly used by Broadridge to conduct proxy solicitations. *See, e.g.*, https://www.sec.gov/Archives/edgar/data/1178697/000121390025063201/ea0248708-dfan14a_ajphold.htm (proxy solicitation listing "Broadridge Financial Solutions Inc. P.O. Box 1310, Brentwood, NY 11717").

Fourth, Exxon overstates this action's similarity to *Hollywood*. Unlike *Hollywood*—a putative class action that only asserts breach of fiduciary duty claims—this individual, non-class action asserts claims for Exxon's violations of Exchange Act Section 14(a) and the New Jersey proxy voting statute. *Hollywood* also asserts claims against twelve Exxon directors, while here, Plaintiff has sued only Exxon itself.

ARGUMENT

Exxon seeks transfer pursuant to Section 1404(a), which provides: "For the convenience of the parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought." 28 U.S.C. § 1404(a).

Importantly, under Section 1404(a), Exxon bears the burden "to establish that a balancing of proper interests weighs in favor of the transfer." *Shutte v. Armco Steel Corp.*, 431 F.2d 22, 24 (3d Cir. 1970); *see also Jumara v. State Farm Ins. Co.*, 55 F.3d 873, 879 (3d Cir. 1995) ("The burden of establishing the need for transfer still rests with the movant[.]").

I. TRANSFER IS NOT WARRANTED

Exxon fails to carry its burden to justify transferring this action to the Southern District of Texas. Indeed, Exxon's transfer arguments are even weaker than in *Hollywood*, since unlike in *Hollywood*, (1) Plaintiff has not sued any individual

defendants with purported Texas citizenship or ties to Texas, and (2) as a result, it is undisputed that Section 1391 authorizes venue in this District.

A. There Is No Dispute That Venue Is Proper in This District

Unlike in *Hollywood*, in this action, Exxon does not—and cannot—dispute that venue is proper in the District of New Jersey.

Section 1391 authorizes venue in "a judicial district in which any defendant resides, if all defendants are residents of the State in which the district is located." 28 U.S.C. § 1391(b)(1). Here, Exxon is the only defendant and—as a New Jersey corporation—is a New Jersey resident. Thus, Section 1391(b)(1) clearly authorizes venue in this District. Exxon concedes the point.

B. No Private Interest Factors Favor Transfer

None of the six private interest factors favors transfer to the Southern District of Texas.

1. Plaintiff's Choice of Forum Should Not Be Disturbed

Plaintiff's choice of the New Jersey forum is a "paramount consideration" that "should not be lightly disturbed." *Shutte*, 431 F.2d at 25.

Exxon tries to avoid this result by pointing out that Plaintiff is a Florida entity, but that is no basis to discount Plaintiff's forum choice.

To start, Exxon itself is a New Jersey corporation. Exxon's choice to incorporate in New Jersey counsels against transfer, since the Court "cannot lightly conclude that [Exxon] effectively may claim that its state of incorporation is an

inconvenient forum for it to litigate." *Ezaki Glico Kabushiki Kaisha v. Lotte Int'l Am. Corp.*, 2017 WL 404893, at *5 (D.N.J. Jan. 30, 2017) (denying New Jersey corporation's transfer motion).

None of Exxon's cases change that result. At most, they merely point out that a defendant's state of incorporation is not "dispositive" in the transfer analysis. *See Tang v. Eastman Kodak Co.*, 2021 WL 2155057, at *5 (D.N.J. May 27, 2021). And *In re Exxon Mobil Corp. Derivative Litigation*, 2020 WL 5525537, at *4 (D.N.J. Sept. 15, 2020), simply transferred an action under the first-filed rule because earlier-filed actions were already pending in Texas. No such facts exist here, where the only actions challenging the Program were both filed in this District.

2. Exxon's Preference Does Not Favor Transfer

Exxon's statement that it would prefer to litigate in the Southern District of Texas should be disregarded. After being sued in its state of incorporation—which Exxon concedes is an appropriate venue under Section 1391—Exxon cannot complain that Texas is a more convenient forum. By seeking transfer, Exxon merely seeks to delay the determination of the Program's validity until after its 2026 annual meeting. Moreover, Exxon's assertions about the reasons for its purported "preference" for Texas are based solely on the deficient Wittrig Declaration.

3. The Location of Exxon's Misconduct Does Not Favor Transfer

Contrary to Exxon's assertion, it is not "indisputabl[e]" that the "locus of

operative facts" is in the Southern District of Texas. The Program concerns proxy voting for a New Jersey corporation; Exxon is illegally soliciting shareholders in New Jersey; and Plaintiff alleges that the Program violates New Jersey law. Further, as explained above, the Program was developed with Exxon's New York-based counsel at Davis Polk (ECF 1-3), and the vendor operating the Program is based in Brentwood, New York (ECF 1-5 at 4 & 6 of 11).

The Wittrig Declaration does not change that result. For one thing, because Ms. Wittrig appears to have no personal knowledge of the Program—for example, she does not claim to have participated in developing it or attending any related meetings—the Wittrig Declaration cannot be considered. *See* Fed. R. Evid. 602. Stripped of the Wittrig Declaration, Exxon merely offers "unsubstantiated arguments made in briefs," which "are not evidence to be considered by this Court." *Versarge v. Twp. of Clinton N.J.*, 984 F.2d 1359, 1370 (3d Cir. 1993).

In all events, consistent with Ms. Wittrig's lack of personal knowledge about the Program, the Declaration's statements are vague, conclusory, and insufficient.

For example, Ms. Wittrig declares that "[t]he personnel principally responsible for planning, developing, and implementing the Retail Voting Program also work from ExxonMobil's corporate headquarters and live in Texas" (ECF 14-2 ¶9), but she does not identify any of those individuals, much less provide a complete description of how many individuals worked on the Program and their locations.

Ms. Wittrig also purports to describe the location of Exxon Board meetings "in 2025 that involved a discussion of the Retail Voting Program" (*id.* ¶8), but she omits the location and format of any other meetings about the Program, including meetings with management, Exxon's New York-based outside counsel, and/or the SEC.

Exxon's citation to *Tang*, 2021 WL 2155057, at *7, is readily distinguishable. The *Tang* court *sua sponte* transferred a securities class action to the Western District of New York, where defendant Kodak was headquartered, since there was "no dispute" that the defendants had "hatched and conceived the very fraudulent scheme described in the Complaint in WDNY." *Id.*

Here, by contrast, the locations where Exxon created and implemented the Program are in dispute—especially before any discovery has occurred. And in all events, Exxon's assertions about the "center of gravity" cannot overcome Exxon's incorporation in New Jersey, Plaintiff's choice of the New Jersey forum, and other relevant factors. *See NCR Credit Corp. v. Ye Seekers Horizon*, 17 F. Supp. 2d 317, 322 (D.N.J. 1998) (denying transfer to Texas, notwithstanding defendant's arguments that "all of the events that give rise to the claims occurred in Texas").

4. The Convenience of the Parties Does Not Favor Transfer

Exxon fails to show any inconvenience—much less any so extreme as to warrant transfer—from litigating in New Jersey.

For one thing, depositions can be conducted in Texas or other locations. With

respect to trial, Exxon's claim that it would be inconvenient for its personnel to travel to New Jersey rings hollow, since Exxon chose to incorporate there. In any event, Exxon "merely provides conclusory, unsubstantiated assertions of economic hardship," which "is insufficient to justify a transfer, particularly where a transfer merely shifts the burden of litigating in a distant forum to the plaintiff." *NCR Credit Corp.*, 17 F. Supp. 2d at 322. Exxon faces no inconvenience from litigating in New Jersey, especially since both parties already have New Jersey- and New York-based counsel. By contrast, no Texas attorneys have appeared.

5. The Convenience of Witnesses Does Not Favor Transfer

The Third Circuit has made clear that "the convenience of the witnesses" supports transfer "***only*** to the extent that the witnesses may actually be unavailable for trial." *Jumara*, 55 F.3d at 877.

Exxon makes no attempt to meet this controlling standard.

First, while Exxon suggests that it may call unspecified Exxon executives and attorneys located outside New Jersey as trial witnesses, Exxon identifies only ***party*** witnesses under its own control—such as Exxon in-house counsel David Kern and unspecified Exxon executives and directors.[3] Crucially, "the relative convenience

[3] Exxon tries to manufacture a Texas connection by pointing out that the *Hollywood* plaintiff unsuccessfully sought discovery from Mr. Kern and Exxon directors "based in Texas." But that was a different plaintiff in a different case. Plaintiff has not sought any discovery from Texas-based witnesses.

of such witnesses carries little weight" because "[p]arty witnesses are presumed to be willing to testify in either forum despite any inconvenience." *Liggett Grp. Inc. v. R.J. Reynolds Tobacco Co.*, 102 F. Supp. 2d 518, 534 n.19 (D.N.J. 2000).

Second, given party witnesses' presumed availability in New Jersey, "the most relevant consideration is the location of ***non-party*** witnesses." *Ezaki Glico*, 2017 WL 404893, at *5. But Exxon fails to identify ***any*** non-party witnesses—much less demonstrate that any such witnesses "may actually be unavailable for trial," as the Circuit requires. *Jumara*, 55 F.3d at 877.

Exxon's own citation to *Denmark v. Pilot Travel Centers, LLC*, 2019 WL 2353644, at *5 (D.N.J. June 4, 2019), confirms why the convenience of witnesses does not support transfer here. Exxon cites language from *Denmark* stating that the defendant had "not yet affirmatively identified any witnesses local to South Carolina [the transferee forum] whose testimony will be needed at trial," but misleadingly omits that the defendant had explained "that it likely will seek the testimony of [non-party] paramedics or healthcare providers at McLeod Medical Center who treated Plaintiff." *Id.* Those "potential witnesses presumably reside[d] in South Carolina and, therefore, [were] outside the subpoena power of [the] Court." *Id.*

Here, Exxon identifies no such non-party witnesses. And while that failure alone is enough, Exxon also fails to show that any such non-parties "would be key—or even relevant—witnesses." *Ezaki Glico*, 2017 WL 404893, at *6. For both

reasons, the convenience of witnesses does not favor transfer.

6. Access to Evidence Does Not Favor Transfer

Exxon's conclusory assertion that the "significant majority of documentary and witness evidence in this case is located in Texas" also falls flat. To start, the Wittrig Declaration does not say that. Instead, it vaguely asserts that an unspecified volume of "documents and communications" are "kept in hard copy or electronic form" in Texas. (ECF 14-2 ¶13.) That statement (made with no apparent personal knowledge) does not establish that a "significant majority" of evidence is located in Texas, much less demonstrate that any evidence is uniquely available there.

In all events, the location of electronic data is irrelevant, and this is not "the unusual case where . . . physical transfer of voluminous records will be necessary." *Ezaki Glico*, 2017 WL 404893, at *7. Indeed, Exxon admits that "[r]ecent technological advances have reduced the weight of this factor to virtually nothing," making it "essentially neutral."

C. The Public Interest Factors Counsel Against Transfer

None of the public interest factors support transfer.

1. "Practical and Administrative Considerations" Do Not Favor Transfer

Exxon correctly does not argue that factors such as the enforceability of the judgment or the Court's familiarity with local law support transfer, and they do not. *See, e.g.*, *NCR Credit Corp.*, 17 F. Supp. 2d at 323 ("Obviously this Court has more

familiarity with New Jersey law than a district court in Texas.").

Instead, Exxon claims that (1) practical considerations make a trial easier in Texas, (2) Texas courts are less congested, and (3) Texas has a stronger "local interest" in deciding this case. All three arguments fail.

First, there is no impediment to a trial in this Court. As noted above, both parties have engaged New Jersey counsel, and Exxon has failed to identify (as required) any witnesses who are unavailable for trial in this District.

Second, the "relative congestion of the respective courts' dockets is not a factor of great importance in this type of motion." *Yocham v. Novartis Pharm. Corp.*, 565 F. Supp. 2d 554, 560 (D.N.J. 2008). This Court is fully equipped to advance the litigation promptly, as the proceedings to date have demonstrated. Moreover, the time and effort the Court has already invested in these proceedings counsel against transferring to a different district and making another court start from scratch.

Third, Exxon fails to identify any Texas interest in this case. Plaintiff alleges that Exxon violated New Jersey and federal law, and it is undisputed that there are no issues of Texas law. New Jersey has a strong local interest in deciding a New Jersey corporation's violations of New Jersey law.

2. Public Policy Does Not Favor Transferring *Hollywood* and This Action

Finally, Exxon suggests that if *Hollywood* is transferred to the Southern District of Texas, this action "must" automatically follow. That is wrong. There is

no reason to excuse Exxon from satisfying the Section 1404(a) factors in this case if *Hollywood* is transferred. To do so would effectively penalize Plaintiff for properly suing Exxon in the jurisdiction where it chose to incorporate. And neither this action nor *Hollywood* raises any issue of Texas law or implicates any Texas interest.

CONCLUSION

For the reasons above, the Court should deny Exxon's motion to transfer.

Dated: February 16, 2026

Respectfully submitted,

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