

# EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

JOHN DOE I, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civ. No. 01-1357 (LFO/AK)
	)	
EXXON MOBIL CORPORATION, et al.,	)	
	)	
Defendants.	)	

**DEFENDANTS' SURREPLY IN OPPOSITION  
TO PLAINTIFFS' MOTION TO COMPEL**

In their reply in support of their Motion to Compel (the "Reply," Docket No. 343), Plaintiffs for the first time submit three exhibits purporting to demonstrate that Defendants' redactions for irrelevance rendered certain information incomprehensible. Pursuant to their motion for leave to file a surreply, Defendants briefly discuss these exhibits and respectfully submit that Plaintiffs' motion should be denied.<sup>1</sup>

As set forth below, Plaintiffs' Exhibits A, B, and C do not support Plaintiffs' belated attempt to force Defendants to recreate their document production at great cost and burden for the sole purpose of revealing to Plaintiffs materials that have no relevance to the issues in this litigation.<sup>2</sup>

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<sup>1</sup> Defendants limit discussion in this surreply to Plaintiffs' newly-filed exhibits, but do not concede that any other arguments in the Reply – e.g., Plaintiffs' explanation of the timing of their motion, Plaintiffs' reading of Defendants' cases, Plaintiffs' discussion of Defendants' burden in recreating the disputed documents, *etc.* – have merit.

<sup>2</sup> Although the parties agree that an *in camera* review of the documents at issue in Plaintiffs' motion is unnecessary, Defendants are prepared to submit the complete, unredacted versions of Plaintiffs' Exhibits A-C upon request of the Court.

### **Plaintiffs' Exhibit C**

As Plaintiffs now admit, Plaintiffs' original Exhibit C is misassembled. (Docket No. 354.)<sup>3</sup> The entire document produced to Plaintiffs (Docket No. 354 at Ex. C) is a portion of a binder maintained by an Exxon Mobil attorney consisting of several individual documents. The binder was created after June 2004. Nevertheless, Defendants searched the binder for responsive documents and produced documents in this binder responsive to Plaintiffs' requests – a December 8, 2000 third-party (United Nations) document regarding labor practices that was not included elsewhere in the production (*id.* at CA0001090903), and a May 7, 2001 document regarding firearms on company premises (*id.* at CA0001090915).<sup>4</sup> Because the responsive documents originated from a binder, Defendants disclosed via a cover page that other non-responsive and non-responsive and privileged pages had been omitted from the “document” (*i.e.*, the binder). The omitted and irrelevant documents from this binder – which significantly postdate the relevant period for discovery – are entirely distinct from the two relevant documents, which were produced *in toto*.

### **Plaintiffs' Exhibit A**

Plaintiffs' Exhibit A is an excerpt of the former Mobil Corporation Chief Executive Officer's handwritten notes relating to the proposed merger of Mobil

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<sup>3</sup> Plaintiffs in their Errata attempt to shift blame for this error to Defendants. (Docket No. 354 at 2.) Plaintiffs alone are responsible for the accuracy of their Court submissions, and this is not the first time Plaintiffs have misstated such facts to the Court. (Docket No. 330 (Plaintiffs' acknowledgment of misstatement regarding Defendants' privilege log invocations); Docket No. 315 at 1-2 (Plaintiffs' acknowledgment of misassembled exhibits caused by Plaintiffs' vendor's error).) Plaintiffs' criticism is ironic given that Defendants brought the error to Plaintiffs' attention before notifying the Court, just as Plaintiffs complained Defendants ought to have done in a similar prior episode. (Docket No. 315 at 4.)

<sup>4</sup> Although the latter document is ostensibly dated October 2003, which would ordinarily have made it beyond the relevant period, Defendants included the document in the production because it appears to have been originally dated May 7, 2001 (within the relevant period).

Corporation with Exxon Corporation. Because it is not clear from the pages of handwritten notes where this “document” ends or begins, Defendants cautiously treated all the pages as one document and produced only those materials potentially responsive to Plaintiffs’ document requests – those relating to operations in Indonesia. The omitted pages relate to general merger considerations and are not relevant to this lawsuit.

**Plaintiffs’ Exhibit B**

Defendants’ document produced as Plaintiffs’ Exhibit B is a proposed organization chart for Indonesian operations, also generated in connection with the proposed merger of Exxon Corporation and Mobil Corporation. A series of approximately 30 unattached pages were found accompanying this chart, and it was not possible for Defendants to determine whether these pages constituted a single “document.” Erring on the side of caution, Defendants treated these separate pages as a single combined document and produced only the individual document relating to Indonesia, *i.e.*, potential redundancies and savings for Indonesian operations that could be achieved with the proposed merger. The omitted pages, which may or may not be part of the same “document,” and which discuss operations in other countries, would not aid Plaintiffs in the assessment of the produced pages. Moreover, Plaintiffs do not even attempt to argue that information regarding merger-related staff and facilities’ redundancy for countries other than Indonesia is relevant to this lawsuit.

**CONCLUSION**

Plaintiffs’ newly-filed exhibits do not demonstrate any errors in Defendants’ document production or prejudice warranting an order of the Court directing Defendants to reassemble hundreds of redacted documents Plaintiffs’ had in their possession for

many months without complaint. For the foregoing reasons, and those stated in Defendants' opposition to Plaintiffs' motion to compel, Defendants respectfully request that Plaintiffs' motion be denied.

Washington, DC  
July 30, 2008

Respectfully submitted,

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