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11 BEFORE THE STATE PERSONNEL BOARD
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16 **IN THE MATTER OF:**

Case No. 23-0052(b)-PSC

17 **REQUEST FOR REVIEW OF PERSONAL SERVICE**
18 **CONTRACT BY CALIFORNIA DEPARTMENT OF**
19 **JUSTICE AND LIEFF, CABRASER, HEIMANN &**
20 **BERNSTEIN, LLP**

CALIFORNIA DEPARTMENT OF
JUSTICE'S RESPONSE TO REQUEST
FOR REVIEW OF PERSONAL SERVICE
CONTRACT

21 **CONTRACT No. 23-0279U**
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MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

The action that is the subject of this response may be one of the defining lawsuits of our age. The Department of Justice (“DOJ”) appropriately contracted with Lieff, Cabraser, Heimann & Bernstein, LLP (“Lieff Cabraser”) to assist it in prosecuting *People of the State of California ex rel. Rob Bonta, Attorney General of California v. Exxon Mobil Corporation et al.* (the “Lawsuit”), a lawsuit targeting five of the largest oil companies in the world, Exxon Mobil, Shell, BP, ConocoPhillips, and Chevron, and their powerful trade group, the American Petroleum Institute. Lieff Cabraser is a law firm that specializes in litigation against the largest and most powerful industries in the world. The contract with Lieff Cabraser (the “Contract”) is authorized by Government Code section 19130 because it provides specialized knowledge and services that are simply not available within the civil service. The Lawsuit alleges that the fossil fuel companies enriched themselves by lying to the public. Despite being well aware of the link between fossil fuels and catastrophic climate change, oil companies suppressed climate change information and actively spread disinformation to delay climate action that would have reduced their profits. Even now, oil companies promote themselves as “green” despite primarily investing in fossil fuel products.

The effects have already been devastating. Climate change has polluted the air, wreaked havoc on California’s water cycle, decimated California’s forests, and contaminated California’s land. California has spent tens of billions of taxpayer dollars in response—while oil companies have reaped massive profits. In addition to damages for past harms, California seeks to create a fund that would be used to pay for recovery from extreme weather and other climate change-related events that will occur in the future, and for mitigation and adaptation efforts across the State.

The stakes could not be higher. The New York Times describes the Lawsuit as the “most significant lawsuit to target oil, gas and coal companies over their role in causing climate change.” (Gelles, *California Sues Giant Oil Companies, Citing Decades of Deception*, N.Y. Times (Sept. 15, 2023), available at <https://www.nytimes.com/2023/09/15/business/california-oil->

1 [lawsuit-newsom.html](https://www.sos.ca.gov/newsroom/news/2023/09/18/this-is-a-big-big-deal-climate-leaders-praise-californias-lawsuit-to-hold-big-oil-accountable/) [as of Jan. 16, 2024].) The Center for Climate Integrity agrees, stating,
2 “California’s case is the most significant, decisive, and powerful climate action directed against
3 the oil and gas industry in U.S. history.” (*Id.*) Outside commentators describe this litigation as a
4 “monster” of a case, and applaud DOJ for “showing some guts by taking on the biggest oil
5 companies.” (Office of the Governor, “‘*This is a Big Big Deal*’: Climate Leaders Praise
6 California’s Lawsuit to Hold Big Oil Accountable (Sept. 19, 2023) available at
7 [https://www.gov.ca.gov/2023/09/18/this-is-a-big-big-deal-climate-leaders-praise-californias-](https://www.gov.ca.gov/2023/09/18/this-is-a-big-big-deal-climate-leaders-praise-californias-lawsuit-to-hold-big-oil-accountable/)
8 [lawsuit-to-hold-big-oil-accountable/](https://www.gov.ca.gov/2023/09/18/this-is-a-big-big-deal-climate-leaders-praise-californias-lawsuit-to-hold-big-oil-accountable/) [collecting responses to the Lawsuit].) Environmental author
9 and educator Bill McKibben summed up DOJ’s case succinctly: “This is a big big deal.” (*Id.*) The
10 fossil fuel companies are sure to mount a proportionate defense.

11 To successfully prosecute this “monster” of a case, DOJ has hired Lieff Cabraser to assist it
12 in meeting its obligations to adequately represent the interests of the People of the State of
13 California in this ground-breaking lawsuit against the oil companies and their industry trade
14 group. DOJ has staffed the Lawsuit with skilled litigators and committed civil servants. But just
15 as the oil companies are sure to bring in an armada of large law firms with unlimited resources,
16 DOJ needs assistance from its own expert support team. DOJ’s Contract with Lieff Cabraser
17 provides that necessary expert support. Lieff Cabraser is uniquely qualified to play this role, as it
18 has the type of massive and complex litigation experience this suit will require. The firm has deep
19 experience bringing wide-ranging lawsuits against industries, and has recovered billions of
20 dollars in damages from large companies, including ExxonMobil, Chevron, and BP. It brings a
21 specialized knowledge and experience in litigating these sorts of cases, has the expertise and
22 resources to manage wide-ranging discovery and the tens of millions of documents that will be
23 produced, has an ability to surge attorneys and staff as necessary to meet the challenges of this
24 type of litigation, and has an outside perspective and deep experience on managing and resolving
25 these industry-wide lawsuits.

26 California has proudly taken a leading role in enforcing laws designed to protect our State’s
27 health, welfare, and natural resources. The State Personnel Board has supported DOJ’s leading
28

1 role in litigation, yet it has long recognized that extraordinary cases require specialized expert
2 support beyond the civil service. This is one of those extraordinary cases.

3 **FACTUAL BACKGROUND**

4 **I. CALIFORNIA FILES A HISTORIC LAWSUIT ALLEGING OIL COMPANIES MISLED THE** 5 **PUBLIC TO INCREASE PROFITS AND DELAY CLIMATE ACTION.**

6 On September 15, 2023, the California Attorney General filed the Lawsuit, which alleges
7 decades of misconduct by oil companies that are household names. Oil companies have known
8 since the 1950's that climate change would lead to catastrophic climate impacts. (See Ex. 2,
9 Complaint, ¶ 3.)¹ Since at least the 1960's, oil companies were aware that their products produce
10 carbon dioxide and other greenhouse gases that would lead to climate change, and that there was
11 only a narrow window of time in which communities and governments could take action. (See
12 *ibid.*)

13 Rather than warn consumers, the public, and governments, however, the oil companies
14 named in the Lawsuit mounted a disinformation campaign to discredit the burgeoning scientific
15 consensus on climate change. (See *id.*, at ¶ 4.) That campaign was designed to sow doubt in the
16 minds of consumers, the media, policymakers, and the public about the reality and consequences
17 of the impacts of burning fossil fuels, and to delay the necessary transition to a lower-carbon
18 future. (See *id.*, at ¶ 5.) The climate deception campaign by oil companies unduly and
19 substantially inflated and sustained the market for fossil fuels while misrepresenting and
20 concealing the hazards of the industry's products. (See *ibid.*)

21 Fossil fuels have now caused enormous, foreseeable, and avoidable increases in greenhouse
22 gas emissions, and have accelerated global warming. (See *ibid.*) The defendants' products have
23 brought upon California extreme heat, droughts, severe wildfires, intense storms, degraded air
24 and water, agricultural damage, sea level rise, and habitat and species loss. (See *id.*, at ¶ 6.) As a
25 result, California has spent billions of dollars already to (1) recover from climate change-induced
26 superstorms and wildfires; (2) allocate and manage dwindling water supplies; (3) fortify state

27 _____
28 ¹ All exhibits and declarations are attached to the concurrently-submitted Compendium of
Evidence.

1 infrastructure against sea level rise; and (4) protect California's people, infrastructure, and natural
2 resources from extreme heat and other climate change hazards. (See *id.*, at ¶ 5.)

3 **II. THE LAWSUIT SEEKS TO HOLD FOSSIL FUEL COMPANIES ACCOUNTABLE FOR**
4 **DECEIVING THE PUBLIC.**

5 The Lawsuit represents a monumental step forward in the global push to hold oil companies
6 accountable for their role in exacerbating climate change. The State has sued Exxon Mobil, Shell,
7 Chevron, ConocoPhillips, BP, and their affiliated subsidiaries, and the American Petroleum
8 Institute. (See Ex. 2, Complaint, at p. 1.) These six defendants include five of the largest oil and
9 gas companies in the world, and a national oil and gas industry trade association. (See *id.*, at ¶
10 10.) The 135-page Complaint details how the misrepresentations and disinformation campaigns
11 of these oil and gas companies constituted false advertising, fraudulent business practices, and a
12 public nuisance. (See *id.*) For example, the Complaint details that the defendant companies
13 conducted significant internal research to understand the dangers of fossil fuel products. (See *id.*,
14 at pp. 36-52.) Nonetheless, the defendant companies concealed the harms they knew their fossil
15 fuel products were causing, slowed the development of alternative energy sources, and
16 discouraged concerted action to reduce greenhouse gas emissions. (See *id.*, at pp. 52-80, 92-94.)
17 To this day, the defendant companies misrepresent themselves as "climate-friendly," and obscure
18 their role in causing climate change. (See *id.*, at pp. 80-92.) In doing so, the defendant oil and gas
19 companies have contributed to climate change and caused billions of dollars in damage to the
20 State of California. (See *id.*, at pp. 96-120.)

21 Rather than continue to require taxpayers to foot the bill while the defendant companies
22 reap record profits, the State seeks not only damages for past harms, but equitable relief relating
23 to future harms. (See *id.*, at ¶ 8.) This includes the creation of a fund that the oil companies would
24 pay into to help the State recover from future extreme weather and other climate-related events,
25 and help protect the State, its resources, and its residents from the further effects of climate
26 change. (See *ibid.*)

27 Attorney General Rob Bonta and Governor Gavin Newsom have both issued statements
28 highlighting the importance of the Lawsuit. (See Cal. Office of the Attorney General, Press

1 Release Attorney General Bonta Announces Lawsuit Against Oil and Gas Companies for
2 Misleading Public About Climate Change - California becomes the largest geographic area and
3 the largest economy to sue giant oil companies (Sept. 16, 2023), available at
4 [https://oag.ca.gov/news/press-releases/attorney-general-bonta-announces-lawsuit-against-oil-and-](https://oag.ca.gov/news/press-releases/attorney-general-bonta-announces-lawsuit-against-oil-and-gas-companies)
5 [gas-companies](https://oag.ca.gov/news/press-releases/attorney-general-bonta-announces-lawsuit-against-oil-and-gas-companies) [as of Jan. 16, 2024].) According to Attorney General Bonta, with this Lawsuit,
6 “California becomes the largest geographic area and the largest economy to take these giant oil
7 companies to court.” (*Id.*) According to Governor Newsom, “With this lawsuit, California is
8 taking action to hold big polluters accountable and deliver the justice our people deserve.” (*Id.*)
9 News outlets and climate activists reporting on the Lawsuit unanimously agree on the
10 historic nature of the Lawsuit. The New York Times describes the Lawsuit as “the latest and most
11 significant lawsuit to target oil, gas and coal companies over their role in causing climate
12 change.” (Gelles, *California Sues Giant Oil Companies, Citing Decades of Deception*, *supra*
13 [online].) The Center for Climate Integrity, a nonprofit organization that tracks climate litigation,
14 states that “California’s case is the most significant, decisive, and powerful climate action
15 directed against the oil and gas industry in U.S. history.” (*Id.*) NPR states that California’s lawsuit
16 is “forcing fossil fuel companies to defend themselves against the largest economy in the U.S.”
17 (Kim & Copley, *California’s lawsuit says oil giants downplayed climate change. Here’s what to*
18 *know*, NPR (Sept. 17, 2023), available at [https://www.npr.org/2023/09/16/1199974919/california-](https://www.npr.org/2023/09/16/1199974919/california-oil-lawsuit-climate-change)
19 [oil-lawsuit-climate-change](https://www.npr.org/2023/09/16/1199974919/california-oil-lawsuit-climate-change) [as of Jan. 16, 2024].) CNN states that DOJ filed a “head-turning
20 lawsuit,” and CBS News called the Lawsuit “a game changer.” (Nilsen, *California seals its*
21 *reputation as a climate juggernaut with a wave of legislation and head-turning lawsuit*, CNN
22 (Sept. 24, 2023), available at [https://www.cnn.com/2023/09/24/us/california-climate-lawsuits-](https://www.cnn.com/2023/09/24/us/california-climate-lawsuits-bills/index.html)
23 [bills/index.html](https://www.cnn.com/2023/09/24/us/california-climate-lawsuits-bills/index.html) [as of Jan. 20, 2024]; Darrow, *California Lawsuit Claims Big Oil Deceived*
24 *Public on Climate Change*, CBS News (Sept. 17, 2023), available at
25 [https://www.cbsnews.com/sanfrancisco/news/california-lawsuit-claims-big-oil-deceived-public-](https://www.cbsnews.com/sanfrancisco/news/california-lawsuit-claims-big-oil-deceived-public-climate-change/)
26 [climate-change/](https://www.cbsnews.com/sanfrancisco/news/california-lawsuit-claims-big-oil-deceived-public-climate-change/) [as of Jan 20, 2024].)

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1 **A. DOJ Determined It Needed Support Not Available Through the Civil**
2 **Service to Litigate a Case of This Historic Magnitude and Importance.**

3 DOJ does not have the specialized expertise and resources to fight a lawsuit of this
4 historical magnitude alone. (See Declaration of Edward Ochoa [“Ochoa Decl.”], at ¶ 9.) This is
5 not an issue of understaffing. DOJ’s Environment Section has appropriately staffed this Lawsuit
6 with highly experienced and skilled environmental litigators. (See *id.*, at ¶ 4; Declaration of Mari
7 Mayeda [“Mayeda Decl.”], at ¶¶ 3, 4.) The Environment Section continues to recruit and hire
8 similarly impressive candidates. (See Ochoa Decl., at ¶ 14.)

9 However, DOJ unequivocally cannot effectively litigate a lawsuit of this magnitude without
10 additional resources. (See Ochoa Decl., at ¶ 13; Mayeda Decl., at ¶¶ 5, 7.) Litigation surges in this
11 case will involve discovery occurring in many locations simultaneously, tens of millions of
12 documents, and multiple simultaneous motions necessitating quick synthesis of the contents of
13 those millions of documents. (See Ochoa Decl., at ¶ 7; Mayeda Decl., at ¶ 7.) Litigation surges
14 will occur suddenly and sometimes unexpectedly and will require enormous resources. (See *ibid.*)
15 At times, the Lawsuit may require as many as 40 additional attorneys, if not more—representing
16 more than the entire budgeted strength of the rank-and-file attorneys in the Environment Section.
17 (See Ochoa Decl., at ¶¶ 9, 11.) Those attorneys will no longer be needed once the surges wane.
18 (See *id.*)

19 Recruiting for litigation surges is impossible. (See Ochoa Decl., at ¶ 13.) Litigation surges
20 will require immediate access to attorneys familiar with the complex factual and legal issues at
21 play in this Lawsuit. (See Ochoa Decl., at ¶¶ 9, 11; Mayeda Decl., at ¶ 7.) It would take years for
22 the Environment Section to recruit, develop, and train the necessary support team, by which time
23 the surges will be over and the support no longer needed. (See Ochoa Decl., at ¶ 11.)

24 Other sections within DOJ will not be able to adequately assist the Environment Section
25 during surges. (See *id.*, at ¶¶ 9, 13.) The other sections within DOJ that have experience with
26 environmental litigation, the Natural Resources Law Section and the Land Use and Conservation
27 Section, are unable to provide the number of attorneys this Lawsuit will occasionally require.
28 (See *id.*, at ¶ 13.) Furthermore, most attorneys from non-environmental sections do not have the

1 required expertise and experience to effectively respond to the litigation anticipated here. (See
2 *ibid.*) Put simply, DOJ will not have time or resources to rapidly train attorneys from other
3 sections—who maintain their own active caseloads—to meet sudden surges in need in the midst
4 of a lawsuit of this historical size and significance. (See *ibid.*) Instead, to be effective, DOJ
5 requires a pool of attorneys available at a moment’s notice with deep knowledge of the facts of
6 this case, environmental law, and complex plaintiffs’-side litigation; that is precisely what Lieff
7 Cabraser provides. (See *id.*, at ¶ 8-9; Mayeda Decl., at ¶¶ 5-6.)

8 **III. FOSSIL FUEL AND ENERGY COMPANIES HAVE VIGOROUSLY DEFENDED**
9 **THEMSELVES IN PRIOR LAWSUITS SEEKING TO HOLD THEM ACCOUNTABLE FOR**
10 **CLIMATE CHANGE.**

11 Fossil fuel and energy companies have demonstrated that they can and will vigorously
12 defend themselves in lawsuits seeking to hold them accountable for their role in exacerbating the
13 climate crisis. For example, in the late 2000’s, California joined a coalition of states and New
14 York City in a lawsuit against the largest emitters of carbon dioxide in the nation. (See *American*
15 *Electric Power Co., Inc. v. Connecticut* (2011) 564 U.S. 410 [*“American Electric”*].) The plaintiff
16 governments alleged that the carbon dioxide produced by those polluters interfered with their
17 citizens’ public rights in violation of federal common law. (*Id.*) Such companies, backed by
18 myriad high-powered law firms including Jones Day, Sidley Austin, and Hunton & Williams,
19 took the coalition’s complaint to the Supreme Court and won, preventing the states from capping
20 their carbon emissions. (*Id.*)

21 Since then, the effects of climate change have only become more apparent and urgent. Also
22 brought to light have been the efforts fossil fuel companies have made to misrepresent to the
23 public the role they have played in contributing to worsening climate change. As a result,
24 municipalities have begun to file complaints seeking to hold fossil fuel companies accountable for
25 their actions. For example, the City of Oakland and the City and County of San Francisco filed
26 complaints in state court in September 2017 against a number of oil companies. (See *City of*
27 *Oakland v. BP PLC* (9th Cir. 2020) 969 F.3d 895, 902 [*“Oakland v. BP”*]; see also *County of San*
28 *Mateo v. Chevron Corporation* (9th Cir. 2022) 32 F.4th 733.) The oil companies defending those
actions enlisted an armada of high-profile law firms, including the following: (1) Gibson, Dunn &

Crutcher; (2) Susman Godfrey; (3) Paul, Weiss, Rifkind, Wharton & Garrison; (4) O'Melveny & Myers; (5) Munger, Tolles & Olson; (6) Arnold & Porter; and (7) King & Spalding. (See *Oakland v. BP*, *supra*, 969 F.3d 895.) Collectively, those firms represent approximately 10,000 of the brightest and most aggressive attorneys in the country, as well as a nearly limitless pool of resources. Those firms unleashed their resources through, among other things, aggressive motion practice that has reached the U.S. Supreme Court and has delayed the municipalities' efforts to seek justice. (See, e.g., *BP p.l.c. v. Mayor & City Council of Baltimore*, 141 S. Ct. 1532 (2021); *Oakland v. BP*, *supra*, 969 F.3d 895, cert. den. (2021) 141 S.Ct. 2776.) Finally, however, government lawsuits, including those supported by the California Attorney General, seeking to hold fossil fuel companies accountable have prevailed in a battle of briefs and begun to move forward. (See e.g., *Minnesota by Ellison v. American Petroleum Institute* (8th Cir. 2023) 63 F.4th 703, cert. den. (2024) __S.Ct.__, 2024 WL 72389 [*"Minnesota v. APP"*].) Notably, nearly all other government plaintiffs have hired private law firms to assist in these critical lawsuits.² (See *ibid.* [hiring Sher Edling LLP]; see also *Oakland v. BP*, *supra*, 969 F.3d 895 [hiring Sher Edling LLP and Altshuler Berzon LLP]; see also Ochoa Decl., ¶5.)

IV. LIEFF CABRASER BRINGS SPECIALIZED KNOWLEDGE, EXPERIENCE, AND RESOURCES TO THIS MASSIVE AND CRITICALLY IMPORTANT LAWSUIT.

DOJ needs an outside perspective to prosecute a lawsuit of this magnitude. (See Ochoa Decl., at ¶ 10; Mayeda Decl., at ¶ 8.) Given the importance of this lawsuit to the State and the future of its residents, an outside perspective will be essential for all major issues that will arise during litigation, including coordination with other lawsuits, discovery, and litigation strategies. (See *ibid.*)

Lieff Cabraser will provide the necessary outside perspective and resources without which DOJ will be unable to effectively litigate the Lawsuit. (See Ochoa Decl., at ¶¶ 6, 7.) Lieff Cabraser is one of the very few law firms with experience handling this type of mammoth

² Indeed, like the oil companies, which have been represented by multiple large firms, and like the City of Oakland, which is represented by its City Attorney's office plus two outside law firms, this case is so massive and unique that the Attorney General here may seek to retain a second outside firm with specialized experience and knowledge relevant to this case.

1 plaintiffs'-side litigation. (See Ochoa Decl., at ¶ 8; Mayeda Decl., at ¶¶ 5-6.) Among other
2 matters, the firm has successfully obtained billions of dollars in litigation relating to the
3 following: (1) the BP oil spill, (2) the opioid epidemic, (3) false advertising in the tobacco
4 industry, (4) environmental losses due to massive wildfires, and (5) false claims that
5 Volkswagen's diesel vehicles qualified as "clean." (See Ochoa Decl., at ¶ 8.) Twenty-five of Lieff
6 Cabraser's lawsuits have been resolved for more than \$1 billion, and 55 for more than \$100
7 million—all the result of the firm's experience in handling extremely large and complex cases.
8 (See Declaration of Robert J. Nelson ["Nelson Decl.,"] at ¶ 6.) For example, Lieff Cabraser
9 effectively led what was described as "the most significant antitrust employment case in recent
10 history," alleging that the major Silicon Valley firms, including Adobe, Apple, Google, Intel,
11 Intuit, Lucasfilm, and Pixar, conspired to suppress employee salaries. (See *id.*, at ¶ 8.) That
12 lawsuit was settled for hundreds of millions of dollars. (See *ibid.*) The firm has had similar
13 success in high-stakes environmental litigation. (See *id.*, at ¶ 9.)

14 DOJ lacks the same degree of experience in lawsuits at the scale of the Lawsuit. (See
15 Ochoa Decl., at ¶ 7; Mayeda Decl., at ¶ 7 ["document production in this case will far exceed
16 anything I have faced in my career"].) The size of the Lawsuit is unique, covering damage from
17 many decades of burning petroleum and other fossil fuels. (See Ochoa Decl., at ¶ 7.) Unlike the
18 Environment Section, Lieff Cabraser has recently seen lawsuits of this scale—many times—and
19 has won. (See Nelson Decl., at ¶¶ 6-9.) The Contract will provide DOJ with access to Lieff
20 Cabraser's extensive expertise in complex environmental litigation as DOJ shapes and reshapes
21 its litigation strategy throughout the Lawsuit. (See Ochoa Decl., at ¶ 10; see also Nelson Decl., at
22 ¶¶ 10-24.)

23 Furthermore, Lieff Cabraser can make instantly available the dozens of attorneys trained in
24 the type of complex litigation that the Lawsuit will require. (See Ochoa Decl., at ¶¶ 9, 11; Nelson
25 Decl., at ¶ 5.) As such, Lieff Cabraser has the resources to immediately scale up DOJ's litigation
26 arsenal in response to the surges anticipated in this type of enormous lawsuit. (See Ochoa Decl.,
27 at ¶ 11; Mayeda Decl., at ¶ 7.) For example, in one day, Lieff Cabraser was able to serve 216
28 copies of a Judicial Council coordination petition, the notice of submission of the petition, the

1 memorandum of points and authorities, and a declaration in support, on DOJ's behalf. (See
2 Mayeda Decl., at ¶ 9.) DOJ would not have been able to accomplish that task in such a timely
3 manner, which was necessary from a strategic standpoint, without Lieff Cabraser's assistance.
4 (See *ibid.*)

5 Lieff Cabraser also has specialized discovery and document management capabilities that
6 exceed DOJ's current resources. The firm has the ability to manage, absorb, and synthesize tens
7 of millions of documents in time to meet quick litigation deadlines. (See Ochoa Decl., at ¶¶ 9, 11;
8 Nelson Decl., at ¶¶ 26-27; Mayeda Decl., at ¶ 7.) This includes technological capabilities and
9 coding techniques currently unavailable within the State. (See Nelson Decl., at ¶¶ 26-27.)
10 Furthermore, the firm has the resources to conduct multiple simultaneous depositions across the
11 country. (See Nelson Decl., at ¶ 25.) This level of discovery resources will be necessary to
12 contend with the legion of major defense firms and their attorneys that DOJ will face. (See Ochoa
13 Decl., at ¶¶ 11, 13.)

14 DOJ notified CASE of the Contract with Lieff Cabraser on or about September 15, 2023.
15 (See Ex. 4.) The Department of General Services approved the Contract on or about October 27,
16 2023. (See Ex. 3.) DOJ provided CASE with a copy of the Contract on or about December 18,
17 2023. (See Ex. 5.)

18 ARGUMENT

19 Lieff Cabraser offers the resources and outside perspective DOJ needs to successfully
20 litigate the most significant climate action lawsuit in U.S. history. Removing Lieff Cabraser's
21 support would be a death knell to the Lawsuit. As such, Government Code section 19130,
22 subdivisions (b)(3), (b)(5), (b)(8), and (b)(10), each authorize the Contract.

23 **I. DOJ COULD NOT EFFECTIVELY LITIGATE THIS CASE WITHOUT LIEFF CABRASER** 24 **AS SUPPORT COUNSEL (GOVERNMENT CODE, § 19130(B)(3)).**

25 The Contract meets the requirements of subdivision (b)(3) of Government Code section
26 19130. Government Code section 19130, subdivision (b)(3), authorizes personal services
27 contracts where the contracted services are (1) not available within the civil service; (2) cannot be
28 performed satisfactorily by civil service employees; or (3) are of such a highly specialized or

1 technical nature that the necessary expert knowledge, experience, and ability are not available
2 through the civil service system. As discussed below, Lieff Cabraser brings special knowledge,
3 expertise, and resources to the handling of this unique, industry-wide Lawsuit that are not
4 available within the civil service.

5 **A. Lieff Cabraser Provides Specialized Resources and Experience**
6 **Unavailable at DOJ.**

7 Lieff Cabraser specializes in handling massive lawsuits against powerful industries. The
8 Lawsuit has been described as “the most significant, decisive, and powerful climate action
9 directed against the oil and gas industry in U.S. history.” (See Gelles, *California Sues Giant Oil*
10 *Companies, Citing Decades of Deception, supra* [online].) The Lawsuit names five of the largest
11 oil companies operating in the world. (See Ex. 2, Complaint, at p. 1.) DOJ is the lead counsel for
12 this historic case. (See Ochoa Decl., at ¶¶ 4, 14.) However, because of the Lawsuit’s size and
13 significance, DOJ needs support in the form of expert knowledge, experience, and ability
14 unavailable within the civil service to enable it to prevail. (See Ochoa Decl., at ¶¶ 6-7; Mayeda
15 Decl., at ¶¶ 5-8.)

16 As discussed above, Lieff Cabraser has unique, highly specialized resources that are not
17 available within the civil service. Lieff Cabraser has the staffing to immediately respond to
18 litigation surges of the scale anticipated here. (See Ochoa Decl., at ¶¶ 7, 9; Mayeda Decl., at ¶ 7.)
19 Lieff Cabraser has technological capabilities and coding techniques that allow it to quickly and
20 accurately review tens of millions of documents in time to meet court deadlines. (See Nelson
21 Decl., at ¶¶ 26-27.) It can make instantly available dozens of attorneys trained in complex
22 litigation at critical litigation junctures to maintain a tactical advantage. (See Ochoa Decl., at ¶¶ 9,
23 11; Nelson Decl., at ¶ 5.)

24 Furthermore, the Lawsuit will require unique litigation strategies and knowledge
25 unavailable within DOJ. (See Ochoa Decl., at ¶¶ 6, 7, 9, 10; Mayeda Decl., at ¶ 7 [“Lieff brings
26 experience and an understanding of the ebb and flow of this type of litigation”].) Few attorneys in
27 DOJ, even those with decades of experience, have experience reviewing tens of millions of
28 documents or responding to the scale of surge litigation expected in this matter. (See Mayeda

Decl., at ¶ 7 [“document production in this case will far exceed anything I have faced in my career”].) Lieff Cabraser, on the other hand, has experience with successfully prosecuting these types of mega-lawsuits. (See Nelson Decl., at ¶¶ 6-9.) Lieff Cabraser knows how to quickly and efficiently scale up litigation in response to surges, or synthesize massive numbers of documents. (See Ochoa Decl., at ¶¶ 9, 11; Nelson Decl., at ¶¶ 5, 25-27.)

B. Lieff Cabraser Provides an Essential Outside Perspective.

Lieff Cabraser also offers something else necessarily unavailable within the State—an outside perspective. Lawsuits with stakes this high require outside perspectives to test legal arguments and question litigation strategy. (See Ochoa Decl., at ¶¶ 6, 7; Mayeda Decl., at ¶ 8.) Lieff Cabraser has litigated some of the highest-profile cases in recent history. (See Nelson Decl., at ¶¶ 6, 8.) Its attorneys include some of the preeminent, high-stakes plaintiffs’ litigators in the country. (See *id.*, at ¶¶ 10-24.) Their perspective on DOJ’s litigation strategies will be invaluable. Importantly, Lieff Cabraser is unique in that it has specialized experience—gained over decades of litigation against large companies—in achieving highly complex and high-value settlements that maximize the recovery for its clients. (See Nelson Decl., ¶ 29.) This will help ensure that DOJ obtains the best possible result for the People of the State of California.

C. Lieff Cabraser Brings Resources and Knowledge Unavailable Within DOJ.

CASE argues that DOJ can litigate this historic Lawsuit unassisted because DOJ attorneys prepared the Complaint.³ (See CASE, Request for Contract Review, at p. 2.) That view is inconsistent with the importance of this Lawsuit and the necessities of litigating large, complex cases, and it is inconsistent with the understanding of the rank-and-file attorneys within the Environment Section of DOJ. (See Mayeda Decl., at ¶¶ 5, 11 [“our DAG team wishes our union had contacted us before filing the CASE petition . . . [this case] will be one of the biggest and most important cases that I have worked on in my decades-long legal career.”].)

Lieff Cabraser provides specialized expertise, skills, and resources that are not available at DOJ. It is not possible for DOJ to simply substitute in-state attorneys for Lieff Cabraser. An

³ Attorney-client privilege, litigation privilege, and the attorney work product doctrine prohibit the Department of Justice from revealing the strategic discussions underpinning its Complaint and other aspects of the Lawsuit. (See Mayeda Decl., at ¶ 13.)

1 outside perspective is not something that can be replicated with in-state attorneys. (See Ochoa
2 Decl., at ¶ 10; Mayeda Decl., at ¶8.) Furthermore, even DOJ does not have the resources to
3 adequately respond to the type of litigation surges anticipated in this large a lawsuit. (See Ochoa
4 Decl., at ¶ 9; Mayeda Decl., at ¶ 7.) The periodic surges in activity that will typify this Lawsuit
5 will likely, at times, require the immediate assistance of a number of attorneys exceeding the
6 entire budgeted strength of the rank-and-file attorneys in the Environment Section. (See Ochoa
7 Decl., at ¶¶ 9.) Other sections in DOJ with experience in environmental litigation are unavailable
8 to assist on this matter. (See *id.*, at ¶ 13.) Given the magnitude and importance of this case, DOJ
9 cannot rely on attorneys in other sections without environmental litigation experience and without
10 knowledge of the facts of the case. (See *id.*) Occasional assistance from attorneys dragooned from
11 other sections to handle this or that discrete task will not suffice for this type of litigation. DOJ
12 needs a team with specialized skills focused on getting the best results possible. This is because
13 all members of the team will need to be able to, for example, recognize and capitalize on an
14 important fact that might be mentioned in an apparently less important deposition or buried in a
15 production of millions of pages of documents.

16 This is a lawsuit that will require highly-skilled attorneys with experience in litigating
17 industry-wide lawsuits, such as Elizabeth J. Cabraser, one of the country's most decorated
18 plaintiff's attorneys, a law school lecturer who prosecuted *In re National Prescription Opiate*
19 *Litigation*, and Robert Nelson, an equally-decorated attorney who settled the *Southern California*
20 *Gas Leak Cases* for \$1.8 billion in 2023. (See Nelson Decl., at ¶¶ 10-15.) It will also need the
21 junior partners, associates, staff attorneys, and information technology staff (and resources) that
22 Lieff Cabraser offers, and all of whom are geared to litigate this type of case. (See Nelson Decl.,
23 at ¶¶ 24-28; Ochoa Decl., at ¶¶ 9, 11, 13.)

24 DOJ's need for assistance from Lieff Cabraser is not a matter of understaffing. We need
25 look no further than the actions of the other parties in these cases to establish that lawsuits of this
26 magnitude are not handled by one group of attorneys. Most other government entities have
27 employed private law firms to assist them in lawsuits targeting fossil fuel companies. (See
28 *Minnesota v. API*, *supra*, 63 F.4th 703, cert. den. (2024) __ S.Ct. __, 2024 WL 72389 [hiring

1 Sher Edling LLP]; see also *Oakland v. BP*, *supra*, 969 F.3d 895 [hiring Sher Edling LLP and
2 Altshuler Berzon LLP]; Ochoa Decl., ¶ 5.) Similarly, oil companies hired nearly a dozen high-
3 powered law firms with collectively 10,000 attorneys in similar but less high-profile cases. (See
4 e.g. *Oakland v. BP*, *supra*, 969 F.3d 895.) They will likely enlist a similar number of law firms to
5 defend this case.

6 **D. SPB Precedent Allows State Agencies to Contract with Private Law Firms**
7 **to Effectively Litigate Large, Complex, and Important Matters.**

8 The State Personnel Board (the “Board”) has recognized the necessity for additional
9 support from private law firms in other precedent-setting litigation by the State. For example, the
10 Board authorized outside counsel for the California Department of Food and Agriculture in its
11 defense of a claim that the department’s regulations violated the U.S. Constitution’s Commerce,
12 Equal Protection, and Privileges and Immunities clauses. (See *In re CDFG*, PSC No. 03-01.) The
13 Board rejected arguments by CASE that DOJ’s attorneys did not need support from private law
14 firms to defend itself in a case involving complex constitutional issues. (*Id.*, at p. 6.) Instead, the
15 Board held that “expert knowledge, experience, and ability that [is] ‘useful’ to the OAG in order
16 for it to effectively and thoroughly prosecute [] ongoing, highly technical and complex litigation”
17 satisfies Government Code section 19130, subdivision (b)(3). (*Id.*, at p. 7; accord *In re DHS*, PSC
18 No. 05-01 at pp. 6-7 [authorizing the Department of Health Services to hire outside counsel to
19 advise on complex and novel regulatory issues].) Similarly, this case will involve extensive
20 scientific and technical evidence; the Attorney General has specifically noted “[w]e will need
21 experts, scientists” for this litigation. (Brandham & Hastings, *California sues oil companies for*
22 *exacerbating climate change*, PBS News Hour (Sept. 20, 2023), available at
23 [https://www.pbs.org/newshour/show/california-sues-oil-companies-for-exacerbating-climate-](https://www.pbs.org/newshour/show/california-sues-oil-companies-for-exacerbating-climate-change)
24 [change](https://www.pbs.org/newshour/show/california-sues-oil-companies-for-exacerbating-climate-change) [as of Jan. 20, 2024].)

25 The Lawsuit is one of gargantuan proportions, historic importance, and historic
26 implications. DOJ is leading the way with this case, but even DOJ cannot effectively pursue this
27 lawsuit alone. (See Ochoa Decl., at ¶¶ 9, 11, 13.) This is why the Contract is authorized under
28 Government Code section 19130, subdivision (b)(3).

1 **II. LIEFF CABRASER HAS RESOURCES UNAVAILABLE IN THE STATE THAT ARE**
2 **NECESSARY TO ACCOMPLISH THE STATE’S CLIMATE JUSTICE GOALS**
3 **(GOVERNMENT CODE, §§ 19130(B)(5) AND (B)(8)).**

4 The Contract is also authorized by subdivisions (b)(5) and (b)(8) of section 19130.

5 Government Code section 19130, subdivision (b)(5), authorizes contracts where the State’s “legal
6 goals” cannot be accomplished through the regular civil service system, including where there is a
7 need “to ensure independent and unbiased findings in cases where there is a clear need for a
8 different, outside perspective.” Similarly, Government Code section 19130, subdivision (b)(8),
9 authorizes contracts for services “that could not feasibly be provided by the state in the location
10 where the services are to be performed.” Both subdivisions apply here.

11 The Lawsuit is critical to the legal goals of the State, which is “to hold big polluters
12 accountable and deliver the justice our people deserve.” (See Cal. Office of the Attorney General,
13 Press Release, *Attorney General Bonta Announces Lawsuit Against Oil and Gas Companies for*
14 *Misleading Public About Climate Change - California becomes the largest geographic area and*
15 *the largest economy to sue giant oil companies, supra* [online]; see also Mayeda Decl., at ¶ 11;
16 Ochoa Decl., at ¶ 4.) The Lawsuit seeks to recover a climate abatement fund which the Attorney
17 General describes as follows: “[w]hen it comes to wildfires, that can be forest management or
18 increased wildfire response...When it comes to drought, there can be water storage and water
19 distribution. When it comes to sea rise, there can be sea walls built. For extreme heat, cooling
20 centers. We’re asking fossil fuel companies for the abatement plan to pay for it instead of doing
21 what they’re doing now, which is forcing Californians to bear those costs.” (Nilsen, *California*
22 *seals its reputation as a climate juggernaut with a wave of legislation and head-turning lawsuit,*
23 *supra* [online].) However, as explained above, DOJ would not be able to effectively litigate
24 without the support of Lieff Cabraser. (See Ochoa Decl., at ¶ 9; Mayeda Decl., at ¶¶ 5-8.) Lieff
25 Cabraser has resources and experience unavailable within the state civil service, including, for
26 example: experience successfully prosecuting large, complex lawsuits simultaneously against
27 multiple corporations with virtually unlimited resources; the ability to conduct multiple
28 depositions simultaneous in different locations at the scale likely to occur in this Lawsuit; and the

1 knowledge and resources to quickly scale up large-scale litigation or discovery. (See Ochoa
2 Decl., at ¶¶ 8, 10; Nelson Decl., at ¶¶ 5-9, 25-27.)

3 Furthermore, legal actions of the scale and importance of the Lawsuit require outside
4 perspectives to assist with legal strategies. (See Ochoa Decl., at ¶ 10; Mayeda Decl., at ¶ 8.) This
5 includes advice as to whether and when to engage in settlement discussions. (See Nelson Decl., ¶
6 29.) Those outside perspectives cannot be provided within the civil service. (See Ochoa Decl., at
7 ¶ 10; Mayeda Decl., at ¶ 8.) Instead, just as the defendant oil companies will use multiple law
8 firms to help them devise their legal strategies, DOJ requires an outside perspective to assist with
9 effectively litigating a case of this magnitude. (See *ibid.*) Lieff Cabraser’s highly-experienced
10 attorneys will provide this much needed, invaluable, impartial perspective as the Lawsuit
11 progresses.

12 **III. LIEFF CABRASER PROVIDES SERVICES THAT ARE URGENTLY NEEDED AND ARE**
13 **ALSO TEMPORARY: DOJ WILL NOT NEED THESE SPECIALIZED SERVICES ONCE THE**
14 **LAWSUIT ENDS (GOVERNMENT CODE, § 19130(B)(10)).**

15 The Contract is also authorized under Government Code section 19130, subdivision
16 (b)(10), which allows urgent, temporary, and occasional contracts such that “the delay incumbent
17 in their implementation would frustrate their very purpose.” DOJ needs Lieff Cabraser’s
18 specialized expertise and resources now as it litigates the Lawsuit. DOJ does not have the luxury
19 of spending years to try to develop this expertise and resources within the civil service. As noted
20 by the Sierra Club, DOJ’s lawsuit comes at a “pivotal time for the climate-change accountability
21 effort,” and “could mark a turning point in the effort for climate change accountability.” (Mark,
22 *California’s Fossil Fuel Lawsuit Could Mark a Turning Point in the Effort for Climate Change*
23 *Accountability*, Sierra Magazine (Oct. 26, 2023), available at
24 [https://www.sierraclub.org/sierra/california-s-fossil-fuel-lawsuit-could-mark-turning-point-effort-](https://www.sierraclub.org/sierra/california-s-fossil-fuel-lawsuit-could-mark-turning-point-effort-climate-change)
25 [climate-change](https://www.sierraclub.org/sierra/california-s-fossil-fuel-lawsuit-could-mark-turning-point-effort-climate-change) [as of Jan. 20, 2024].) The Los Angeles Times noted that DOJ’s case marks a
26 “watershed moment in the rapidly expanding fight to hold major polluters accountable for
27 decades of climate lies.” (Sahagún, *California sues five major oil companies for ‘decades-long*
28 *campaign of deception’ about climate change*, L.A. Times (Sept. 16, 2023), available at
<https://www.latimes.com/california/story/2023-09-16/california-sues-five-major-oil-companies->

1 [for-lying-about-climate-change](#) [as of Jan. 20, 2024].) Moreover, the need for these services is
2 temporary. This is unique litigation and the need for Lieff Cabraser’s services will end with the
3 resolution of the Lawsuit.

4 Active litigation is a prime example of the type of urgent service necessitating contracts
5 with private law firms. (See *People ex re. Department of Fish & Game v. Attransco, Inc.* (1996)
6 50 Cal.App.4th 1926, 1936 [“Attransco”].) As noted by the *Attransco* court, “Litigation is full of
7 short deadlines which need urgent, often intensive responses, and every lawyer knows that it is a
8 fact of life that a lawsuit can be won or favorably settled if the opposition cannot respond quickly
9 enough to a hefty motion.” (*Ibid.*) Indeed, litigation delays necessarily frustrate “the very purpose
10 of the agency in needing those services in the first place” because “such delay could have meant
11 the loss of an important lawsuit.” (*Id.*, at pp. 1936-1937; see also *Mannino v. Superior Court*
12 (1983) 142 Cal.App.3d 776, 778 [noting that discovery, “like a cancerous growth . . . [could]
13 destroy a meritorious case or defense”].)

14 The Board has also recognized that “extreme time constraints and lack of available legal
15 staff” may necessitate support from outside counsel under Government Code section 19130,
16 subdivision (b)(10). (See *In re Secretary of State*, PSC No. 05-04, at pp. 8-9.) Such is the case
17 here.

18 The type of litigation anticipated in the Lawsuit will involve highly complex legal issues
19 and voluminous discovery with tight, overlapping deadlines. (See Mayeda Decl., at ¶ 7.)
20 Defendant oil companies will likely use a strategy of litigation surges involving multiple complex
21 motions and tens of millions of documents to divert DOJ’s resources and force the State to
22 contend with multiple competing deadlines. (See Mayeda Decl., at ¶ 7; Ochoa Decl., at ¶¶ 7, 9,
23 11.) These litigation surges will come quickly and unexpectedly and may require the immediate
24 assistance of more attorneys than the entire budgeted staff of the rank-and-file attorneys in the
25 Environment Section. (See Ochoa Decl., at ¶¶ 9, 11.) These surges will require attorneys who are
26 immediately available and well-versed in both complex large-scale litigation and environmental
27 litigation. (See *id.*, at ¶ 12.) Then the surges will dissipate and additional attorneys will no longer
28 be necessary. (See *id.*, at ¶ 11.) DOJ does not have a sufficient number of attorneys available to

1 assist with these surges, and, given the sudden, temporary, and occasional nature of the surges,
2 cannot train additional attorneys in time to meet court deadlines without seriously prejudicing this
3 case. (See *id.*, at ¶¶ 12, 13.) It also cannot simply dismiss its attorneys once litigation surges have
4 subsided. Therefore, assistance from Lieff Cabraser, which does have the resources to
5 immediately scale litigation resources up and down, will be necessary during litigation surges;
6 this assistance is authorized under Government Code section 19130, subdivision (b)(10). (See
7 Ochoa Decl., at ¶ 9; Nelson Decl., at ¶¶ 26-27.)

8 Furthermore, once the Lawsuit resolves, there will be no need for attorneys with Lieff
9 Cabraser's unique skill set. The Lawsuit is generational. (See Mayeda Decl., at ¶ 11; Ochoa
10 Decl., at ¶ 4.) The Environment Section has never seen a lawsuit of this size in recent history, and
11 it is unlikely that it will see a lawsuit of this size in the foreseeable future. (See Ochoa Decl., at ¶¶
12 4, 7, 13.) It takes years to develop the skill set necessary to conduct litigation of this magnitude.
13 (See *id.*, at ¶ 11.) It does not make sense for DOJ to spend years recruiting and training attorneys
14 who know how to respond to lawsuits involving tens of millions of documents if they may never
15 see a lawsuit of this size again in their careers.

16 CASE claims that there is no urgency under Government Code section 19130 because the
17 State had control over the timing of the filing of the complaint. (See CASE, Request for Contract
18 Review, at p. 2.) CASE is wrong. Respectfully, the State cannot and will not wait to protect its
19 residents against ongoing misconduct by oil companies responsible for climate change. (See Cal.
20 Office of the Attorney General, Press Release *Attorney General Bonta Announces Lawsuit*
21 *Against Oil and Gas Companies for Misleading Public About Climate Change - California*
22 *becomes the largest geographic area and the largest economy to sue giant oil companies, supra*
23 [online].) Rather, state agencies that sue in order to protect important rights absolutely may avail
24 themselves of outside counsel when helpful to safeguard those rights. (See *In re State Personnel*
25 *Board*, PSC 02-02 at p. 11.) In any event, DOJ will not have control over the timing of surge
26 litigation tactics that the defendant oil companies are sure to use in this case. (See Ochoa Decl., at
27 ¶¶ 9, 11; see Mayeda Decl., at ¶¶ 5-8.)

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CONCLUSION

California has initiated a historic lawsuit against five of the largest oil companies in the world to hold them accountable for misleading the public with respect to their role in exacerbating climate change. DOJ is proudly taking the lead in what has been described as the most significant lawsuit against fossil fuel companies in U.S. history. But in order to effectively litigate this “monster” of a case, DOJ needs support. Lieff Cabraser provides resources, expertise, and objective input not available within the civil service. Its support will allow DOJ to effectively prosecute what is bound to be a large and hard-fought lawsuit on behalf of current and future generations of Californians. Therefore, DOJ respectfully requests that the Contract be allowed.

Dated: January 24, 2024

Respectfully submitted,

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