

2. OFAC's finding of a violation and imposition of a penalty are unlawful under the APA because OFAC's post-hoc interpretation of the Executive Order and its April 28, 2014 designation is arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law, and, independently, on the basis that the finding of a violation and imposition of a penalty without fair notice deprive ExxonMobil of due process in violation of the United States Constitution.

3. OFAC now seeks to penalize ExxonMobil retroactively based on eight documents executed in May 2014 with Rosneft Oil Company ("Rosneft"), the Russian state-owned oil company (the "Documents"). At the time those documents were executed in 2014, Rosneft was not subject to any sanctions, and no sanctions prohibited the activities called for or reflected in those documents. Instead, the sole basis of OFAC's July 20, 2017 penalty notice (the "Penalty Notice") is that the documents were signed on behalf of Rosneft by its President and Chairman, Igor Sechin, who at the time was subject to sanctions only in his individual capacity.

4. OFAC's current position is that this fact alone suffices to render the conduct unlawful. That position is plainly incorrect. It relies on a new interpretation by OFAC that had not been announced at the time of the challenged conduct, contravenes the plain text of the relevant executive order, and is directly contrary to contemporaneous, authoritative guidance from the White House and Treasury Department, which repeatedly made clear, at the time Mr. Sechin was sanctioned, that the challenged conduct was lawful.

5. At the time the executive order was issued, the White House provided guidance that the relevant sanctions applied only to the "personal assets" of the

sanctioned individuals and emphasized that the sanctions did not restrict business with the companies those individuals managed. This is contrary to OFAC's new interpretation of the executive order. When Mr. Sechin was designated, the Treasury Department made clear that Rosneft was not designated and that Mr. Sechin was being designated as an "individual[]." Consistent with that, senior administration officials explained that Mr. Sechin was designated "individually" and in his "individual capacity." The Treasury Department further advised that the individual sanctions against Mr. Sechin did not prohibit interacting with him in his representative capacity on behalf of Rosneft. Treasury explained that the dispositive consideration was whose business was being conducted—Rosneft's business or Mr. Sechin's personal business. Here, the eight documents at issue relate to Rosneft's business, not Mr. Sechin's. Under the explicit, unambiguous guidance from both the White House and the Treasury Department, the challenged conduct was expressly permitted.

6. The contemporaneous White House and Treasury Department guidance was consistent with the executive order. Under the text of the pertinent executive order, E.O. 13661, as applied to the sanctions designation at issue, Mr. Sechin was a person whose "property and interests in property" were "blocked" and could not be "transferred . . . or otherwise dealt in." ExxonMobil was not prohibited from accepting or providing funds, goods, or services from or to Rosneft. ExxonMobil thus had every right to execute the business documents with Rosneft, irrespective of Mr. Sechin's role in approving or signing them for Rosneft. The documents, both before and after their execution, were Rosneft's property, not Mr. Sechin's. And when Mr. Sechin signed the documents for Rosneft in his representative capacity as its president, Mr. Sechin was not contributing or

providing his services, or any other form of his property, to ExxonMobil or any other U.S. person. Mr. Sechin's services—if any—could only have been provided to Rosneft and not ExxonMobil.

7. It was not until months after ExxonMobil had executed the Documents consistent with the direct and contemporaneously available guidance that OFAC adopted the novel and counterintuitive interpretation on which it now seeks to penalize ExxonMobil. In fact, even after issuing a subpoena to ExxonMobil in this matter, OFAC candidly acknowledged that it had not yet come to its own view as to the legal standard that it thought should apply. Plainly, ExxonMobil had no ability to identify, with the necessary ascertainable certainty, the standards to which OFAC expected it to conform (which, as noted above, cannot be squared with the text of the executive order). As the Supreme Court has admonished:

It is one thing to expect regulated parties to conform their conduct to an agency's interpretations once the agency announces them; it is quite another to require regulated parties to divine the agency's interpretations in advance or else be held liable when the agency announces its interpretations for the first time in an enforcement proceeding and demands deference.

Christopher v. SmithKline Beecham Corp., 567 U.S. 142, 158-59 (2012).

8. For these reasons and those otherwise alleged herein, Plaintiffs bring this action to set the penalty aside as unlawful and for declaratory and injunctive relief against the Secretary of the United States Department of the Treasury Steven Mnuchin (“Secretary of the Treasury”) in his official capacity, the Director of the Office of Foreign Assets Control John E. Smith (“Director of OFAC”) in his official capacity, and OFAC (together, the “Defendants”). Plaintiffs respectfully allege, based on their personal knowledge and information and belief, as follows:

PARTIES

9. Plaintiff Exxon Mobil Corporation is a New Jersey corporation whose principal place of business is in Irving, Texas.

10. Plaintiff ExxonMobil Development Company (“EMDC”) is a wholly owned subsidiary of Exxon Mobil Corporation whose principal place of business is in Houston, Texas.

11. Plaintiff ExxonMobil Oil Corporation (“EMOC,” and together with Exxon Mobil Corporation and EMDC, “ExxonMobil” or “Plaintiffs”) is a wholly owned subsidiary of Exxon Mobil Corporation whose principal place of business is in Albany, New York.

12. Defendant Steven Mnuchin is the Secretary of the Treasury of the United States. This defendant is sued in his official capacity.

13. Defendant John E. Smith is the Director of OFAC. This defendant is sued in his official capacity.

14. Defendant OFAC is an office within the Treasury Department’s Office of Terrorism and Financial Intelligence, located at the United States Department of the Treasury, 1500 Pennsylvania Avenue, N.W., Annex, Washington, D.C., 20220.

JURISDICTION AND VENUE

15. This action arises under the United States Constitution and the APA, 5 U.S.C. §§ 702 - 706. This Court thus has jurisdiction pursuant to 28 U.S.C. § 1331.

16. The Court has the authority to grant declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201 and 2202, and its inherent equitable powers.

17. Venue is proper in this District under 28 U.S.C. § 1391(e)(1)(C), which provides that venue is proper in “any judicial district” where a plaintiff resides. Plaintiff ExxonMobil Corporation is a resident of this judicial district.

18. Sovereign immunity is waived by 5 U.S.C. § 702.

FACTUAL ALLEGATIONS

I. ExxonMobil’s Business Relationship with Rosneft Began Long Before the 2014 Executive Order Imposed Limited Sanctions on Individuals.

19. ExxonMobil has had a continuous business presence in the Russian energy sector for decades, encompassing upstream, downstream, and chemical operations. In connection with those business ventures, ExxonMobil has partnered with Rosneft and its subsidiaries and affiliates since the late 1980s. The United States government has historically supported those activities.

20. The business with Rosneft at issue here represents the continuation of ExxonMobil’s longstanding activities in Russia and was begun at a time when there were no relevant sanctions in place.

21. In its Penalty Notice, OFAC alleges eight purported violations. The first seven relate to the execution of documents memorializing the completion of certain activities pursuant to previously executed contracts related to joint projects in the High Arctic (“the Completion Deeds”). The eighth relates to the execution of an extension of a previously executed agreement regarding the Russian Far East LNG Project (“the Extension Document”).

a. Joint Exploration and Production in the High Arctic Between ExxonMobil and Rosneft.

22. In furtherance of ExxonMobil’s longstanding business relationship with Rosneft, on August 30, 2011, EMDC and Rosneft concluded a Strategic Cooperation

Agreement that established the framework for joint oil exploration and production in the Russian Kara Sea and Black Sea basins. ExxonMobil's significant investment in the project was supported by the United States government, which has worked with ExxonMobil and other U.S. companies over the last several decades to develop opportunities for Western investment in the Russian energy sector.

23. On June 21, 2013, as contemplated by the 2011 Strategic Cooperation Agreement, Rosneft and EMOC entered into several agreements with respect to joint projects in the High Arctic (the "High Arctic Parent Agreements"). On May 15, 2014, to memorialize the completion of certain conditions precedent identified within the High Arctic Parent Agreements, EMOC (through its President) signed the Completion Deeds. Rosneft executed the Completion Deeds through its President, Mr. Sechin, acting in his representative capacity.

24. The Completion Deeds did not create new or additional obligations or rights between ExxonMobil and Rosneft. In fact, the High Arctic Parent Agreements did not require (or contemplate) the need for Completion Deeds—under those agreements, completion of the relevant conditions precedent occurred with the performance of the underlying actions and events.

b. The 2013 Russian Far East LNG Project.

25. OFAC has also alleged that ExxonMobil's execution of a document memorializing the extension of an agreement related to the Russian Far East LNG Project violated the URSR.

26. ExxonMobil, through its affiliate ExxonNeftegas Limited, has been exploring, developing, and operating on Sakhalin Island in the Russian Far East since the early 1990s.

27. On June 21, 2013, EMDC and Rosneft executed an agreement regarding project development activities with respect to a potential liquefied natural gas (“LNG”) plant in the Russian Far East. On September 27, 2013, the parties executed an amended and restated agreement (the “Amended Agreement”). Both agreements were signed on behalf of Rosneft by Mr. Sechin in his representative capacity as its President.

28. On May 14, 2014 in Houston, Texas, EMDC (through its President) signed the Extension Document, which memorialized a previously agreed extension to the Amended Agreement’s expiration date. EMDC and Rosneft, through their respective vice presidents, had already executed a letter agreement agreeing to this same extension in late April 2014; the Extension Document served as further formal documentation of the extension.

29. Thereafter, the executed Extension Document was couriered to Russia, where it was countersigned on May 23, 2014, by Rosneft, through Mr. Sechin in his representative capacity as its President.

30. The fact that the Completion Deeds and the Extension Document were countersigned on behalf of Rosneft by Mr. Sechin was a decision made by Rosneft, governed by Rosneft’s corporate process and Russian corporate law.

II. Executive Order 13661 and Related Guidance Issued in March, April, and May 2014 Contradict the Interpretation Now Being Retroactively Imposed by OFAC.

31. In early 2014, U.S.-Russian relations were strained by the Russian political interference and eventual military incursion into the Crimea region of Ukraine. In response, pursuant to the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701-06 (“IEEPA”), on March 6, 2014, President Obama issued Executive Order 13660, declaring a national emergency and freezing the property of persons involved with Russia’s military intervention. Executive Order 13660 expressly authorized the Secretary of the Treasury, in

consultation with the Secretary of State, to identify the persons subject to sanction, namely, those engaged, either directly or indirectly, in undermining the Ukrainian democratic process or otherwise threatening the sovereignty or territorial integrity of Ukraine.

32. Subsequently, on March 16, 2014, President Obama issued Executive Order 13661, the order at issue in this case, which expanded the scope of sanctions to include the authorization of sanctions on, among others, individuals who were considered officials of the Russian Government and ordered that with respect to certain named individuals:

All property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person . . . are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in.

33. The Executive Order explained that:

The prohibitions in section 1 of this order include but are not limited to:

(a) the making of any contribution or provision of funds, goods, or services by, to, or for the benefit of any person whose property and interests are blocked pursuant to this order; and

(b) the receipt of any contribution or provision of funds, goods or services from such person.

34. In a White House briefing the day after issuance of the Executive Order, a Senior Administration Official explained:

I want to be **clear** that while we will not rule out taking additional steps in the future, our current focus is to identify these cronies of the Russian government and **target their personal assets and wealth, rather than the business entities and industries that they may manage or oversee.** (Emphases added.)

The Administration published the text of the briefing on the White House website.

35. Likewise, in a fact sheet on the Ukraine-related sanctions related to Executive Order 13661 published the same day as the briefing, the White House explained:

We have fashioned [the] sanctions to impose costs on named individuals who wield influence in the Russian government and those responsible for the deteriorating situation in Ukraine Our current focus is to identify these individuals and target their **personal assets**, but **not companies that they may manage on behalf of the Russian state**. (Emphases added.)

The Administration published the text of the fact sheet on the White House website.

36. These express statements that the Executive Order did *not* restrict business with the companies managed by the targeted individuals—which would have been a significantly more severe foreign policy measure, inconsistent with the President’s carefully calibrated approach—constituted clear and authoritative guidance to the public regarding the scope of the sanctions.

37. On April 28, 2014, the U.S. government added Mr. Sechin and other individuals to the Treasury Department’s Specially Designated Nationals (“SDN” list), pursuant to Executive Order 13661. That same day, the White House emphasized on a public conference call that, although Mr. Sechin was the President of Rosneft, the sanctions were imposed against him “individually”:

Of note, in today’s set of sanctions are two key members of the Russian leadership’s inner circle. They [include] Igor Sechin, who’s the President and Chairman of the Management Board of Rosneft, Russia’s leading petroleum

operation **We are imposing sanctions on Sechin
individually.** (Emphasis added.)¹

The Administration published the text of the conference call on the White House website.

38. Also on April 28, 2014, White House Deputy National Security Adviser Tony Blinken participated in a televised interview on PBS NewsHour from the White House. The sole topic of the one-one-one interview was the Ukraine/Russia sanctions designations made that day pursuant to Executive Order 13661, and it confirmed the White House's statements from that day. In the interview, Mr. Blinken stated that "[Rosneft] wasn't designated itself. [Sechin] was [designated] **in his individual capacity**" (emphasis added). Mr. Blinken added that under the newly announced sanctions, "U.S. persons, U.S. companies will not [be] able to do business with them [i.e., sanctioned individuals] **in their individual capacities**" (emphasis added). When asked during the interview if a subsequent decision to impose sanctions on Rosneft, rather than on individuals like Mr. Sechin, would "have an immediate impact on" U.S. partners "[I]ike ExxonMobil," Mr. Blinken explained:

What we have been focused on is making sure that we maximize the pressure we're exerting on Russia and minimize the impact here in the United States or in Europe. That's why we have done it in such a deliberate, careful

¹ The above-referenced guidance, and other guidance cited above, continues to be maintained on an archived version of the White House website. See Background Briefing by Senior Administration Officials on Ukraine (Mar. 17, 2014), available at <https://obamawhitehouse.archives.gov/the-pressoffice/2014/03/17/background-briefing-senior-administration-officials-ukraine>; Fact Sheet: Ukraine-Related Sanctions (Mar. 17, 2014), available at <https://obamawhitehouse.archives.gov/the-pressoffice/2014/03/17/fact-sheet-ukraine-related-sanctions>; Background Briefing on Ukraine by Senior Administration Officials (Mar. 20, 2014); available at <https://obamawhitehouse.archives.gov/the-pressoffice/2014/03/20/background-briefing-ukraine-senior-administration-officials>; Background Conference Call on Ukraine Sanctions (Apr. 28, 2014), available at <https://obamawhitehouse.archives.gov/the-pressoffice/2014/04/28/background-conference-call-ukraine-sanctions>; Statement by the Press Secretary on Ukraine (Apr. 28, 2014), available at <https://obamawhitehouse.archives.gov/the-pressoffice/2014/04/28/statement-press-secretary-ukraine>.

fashion. That has been the result to date. . . . [T]he step-by-step process is to make sure that everything we do is focused on exerting pressure on Russia and **minimizing any impact or consequences on American companies**, on European companies.

39. The White House's contemporaneous guidance that the sanctions targeted the personal assets of certain individuals designated in their individual capacities, and not the businesses that they managed or oversaw, drew a critical foreign policy distinction. In giving its guidance, the White House noted that Mr. Sechin is the President of Rosneft, "Russia's leading petroleum operation." Prohibiting business with Mr. Sechin in his representative capacity could thus have been tantamount to a prohibition on U.S. persons' business with Rosneft itself, representing a substantial expansion and escalation of the overall sanctions authorized by Executive Order 13661. The White House's repeated contemporaneous public guidance was clear that the President did not intend to take that drastic step at that time, but was holding such an option in reserve.

40. The Treasury Department reinforced this distinction in its own guidance, which indicated that the sanctions would not be used to penalize U.S. persons for entering into agreements with companies managed by recently designated SDNs. The Treasury Department's official release announcing the designations expressly stated that "Rosneft is a state-owned company and has not been sanctioned." Moreover, as reported by the press on April 28, 2014, Treasury Department officials said that Mr. Sechin's "designation **wouldn't impact U.S. companies' ability to do business with Rosneft** because Mr. Sechin does not control the firm" (emphasis added). That same day, the then-Secretary of the United States Department of Treasury, Jacob Lew also reiterated the narrow, surgical focus of the new sanctions, describing them as "targeted actions."

41. The White House and Treasury Department guidance was closely noted. Its plain meaning—that business with Rosneft was not restricted—was clearly understood by the market and the press. Foreign Policy reported on April 28, 2014, the day of the conference call with senior administration officials:

Sechin’s **personal assets will be frozen**, but **Treasury officials said the designation wouldn’t impact U.S. companies’ ability to do business with Rosneft** because Sechin does not control the firm. (emphases added)

42. The New York Times reported the same understanding on the same day:

The United States **did not place sanctions on Rosneft**, and Mr. Sechin does not own a majority of the company, so **American companies can still work with Rosneft**. (emphases added)

43. Further, as reported in the Times, a Treasury Department official advised that “U.S. persons are **not prohibited** from dealing with Rosneft, including participating in meetings of the company board’ on which Mr. Sechin sits” (emphasis added). The guidance as to participation in board meetings was particularly salient because Bob Dudley, a U.S. person and the Chief Executive Officer of BP, was a member of the Rosneft board.

44. The Wall Street Journal reported the same guidance a few weeks later on May 16, 2014, reporting that the Treasury Department confirmed that the sanctions on Mr. Sechin did not bar Mr. Dudley or other “U.S. persons” from interacting with Mr. Sechin in a purely representative capacity on behalf of Rosneft. It cited the Treasury Department as explaining that the key consideration was whose business was being conducted:

Mr. Dudley [—a U.S. person—] for example, may participate in board meetings with Mr. Sechin **as long as they are conducting Rosneft’s, and not Mr. Sechin’s personal, business**, the Treasury Department said. (emphasis added)

III. ExxonMobil and Rosneft Executed the Documents in May 2014.

45. As described in more detail above, within weeks of Mr. Sechin's designation as an SDN, during the month of May 2014, ExxonMobil executed one agreement and seven "completion deeds"—documents memorializing the completion of certain activities pursuant to other contracts—with Rosneft, which OFAC alleges violated the URSR. The Documents were countersigned by Rosneft through Mr. Sechin in his capacity as the President of Rosneft.

46. As explained above, at the time the Documents were executed, the Russia/Ukraine sanctions did not restrict business with Rosneft, but rather only applied to Mr. Sechin's personal assets and wealth. The White House and Treasury Department guidance available to the public at that time confirmed this understanding of the scope of the sanctions that were then in force. The White House has never repudiated its guidance on this topic.

IV. OFAC Issued an Administrative Subpoena That Was Inconsistent with the Guidance That Had Been Given.

47. On July 22, 2014, OFAC issued an administrative subpoena to EMDC (the "Subpoena") relating to the execution of the Documents.

48. The Subpoena states that OFAC "has reason to believe that [ExxonMobil] . . . entered into a contract with Rosneft that was signed by Mr. Igor Sechin, an individual whose property and interests in property are blocked."

49. In communications between OFAC and ExxonMobil's outside legal counsel discussing the Subpoena, OFAC conceded that the agency itself had not reached a position on the propriety of executing documents countersigned by SDNs in a representative capacity.

50. Because OFAC acknowledged that it had not come to a conclusion by that date, ExxonMobil could not possibly have been on notice of OFAC's current interpretation of the law. Indeed, the only guidance OFAC has ever pointed to, FAQ 285, expressly related to

the Burma sanctions program, not the Ukraine-related sanctions program, and was removed from OFAC's website when the Burma sanctions program was lifted. Both OFAC's guidance (FAQ 3) and the URSR itself (30 C.F.R. § 598.101) make clear that the public should not rely on interpretative guidance from one program in order to interpret a different program. In any event, FAQ 285 was completely inconsistent with the contemporaneous White House and Treasury guidance, which was authoritative and specific to E.O. 13661.

51. On August 21, 2014, EMDC, through its outside counsel, provided its initial response to the Subpoena. EMDC made clear its understanding that the designation of Mr. Sechin prohibited U.S. persons from engaging in transactions with Mr. Sechin in his individual capacity, but did not preclude dealings with Rosneft or with Mr. Sechin in his representative capacity as an officer of Rosneft. EMDC further explained that its views were informed, inter alia, by public announcements by the White House and the Treasury Department.

V. OFAC Issued a Pre-Penalty Notice in June 2015 that Adopted a New Legal Position.

52. On June 22, 2015, OFAC representatives advised ExxonMobil's outside counsel that OFAC had prepared a Pre-Penalty Notice ("PPN") regarding ExxonMobil's interactions with Mr. Sechin.

53. OFAC subsequently provided a copy of the PPN to ExxonMobil's outside counsel. The PPN alleged that ExxonMobil had been "dealing in the blocked services" of Mr. Sechin in "apparent violation of § 589.201 of the Ukraine-Related Sanctions Regulations" and specifically that ExxonMobil had executed certain documents "with SDN Igor Sechin." The PPN identified eight apparent violations of the URSR by ExxonMobil in connection with its execution of the Documents. OFAC's allegations in the PPN that ExxonMobil "engage[d] the services of SDN Igor Sechin" and "executed contracts with Sechin" do not square with the

underlying facts: The “contracts” were with Rosneft, not Mr. Sechin. Rosneft, not ExxonMobil, decided who would sign the documents on behalf of Rosneft. And Rosneft, not ExxonMobil, engaged Mr. Sechin’s services; for it was Rosneft, not ExxonMobil, that employed and compensated Mr. Sechin.

54. ExxonMobil responded by letter to OFAC on August 5, 2015, challenging the allegations in the PPN in accordance with 31 C.F.R. pt. 501, app. A § V(A)(2). ExxonMobil’s response presented the facts to OFAC and explained why, in light of these facts, no violations should be found and no penalty should be assessed.

55. More than a year later, on September 26, 2016, at OFAC’s request, ExxonMobil met with representatives of OFAC to discuss the PPN and ExxonMobil’s response. During that meeting, ExxonMobil reiterated the points raised in its August 5, 2015 response and offered to address any questions from OFAC. In response, OFAC, among other things, dismissed the importance of the White House guidance.

56. After that meeting, ExxonMobil submitted a letter to OFAC to respond to points made by OFAC during the September 26, 2016 meeting (the “Response Letter”). The Response Letter reiterated, among other things, ExxonMobil’s position that as a matter of law and a matter of fairness, ExxonMobil was entitled to, and did, rely on the guidance provided in the public statements made by the White House and Treasury officials in March, April, and May 2014.

57. ExxonMobil engaged with OFAC again in 2017, through meetings and correspondence. OFAC continued to insist that the White House guidance was not controlling and should not have been relied upon.

VI. OFAC Issued The Penalty Notice Based on a Misapplication of the Regulations.

58. On July 20, 2017, OFAC issued the Penalty Notice, which stated that ExxonMobil violated the URSR and assessed a civil penalty in the amount of \$2,000,000. (A copy of the Penalty Notice is attached hereto as Exhibit A.)

59. OFAC claims authority to issue this penalty pursuant to 31 C.F.R. § 589.201.

60. OFAC's issuance of the penalty notice was a final agency action pursuant to 31 C.F.R. pt. 501, app. A § V(A)(5).

61. OFAC's interpretation of Executive Order 13661, as reflected in the Penalty Notice, is broader than, and plainly inconsistent with, the executive order itself and the authoritative guidance issued by the White House and Treasury. OFAC's penalty calculation and finding of "egregiousness" also reflect a plainly incorrect misapplication of its regulations.

62. OFAC's interpretation of Executive Order 13661 draws arbitrary and capricious distinctions between conduct that it now contends is proscribed and other legally and economically indistinguishable conduct that is permitted and that it has affirmed is perfectly lawful, such as participation in meetings of the Rosneft board with Mr. Sechin as long as Mr. Sechin's personal business is not being conducted.

63. OFAC seeks to retroactively enforce a new interpretation of an executive order that is inconsistent with the explicit and unambiguous guidance from the White House and Treasury issued before the relevant conduct and still publicly available today. This is fundamentally unfair and constitutes a denial of due process under the Constitution, and violates the Administrative Procedure Act, because market participants, including ExxonMobil, did not have notice of the arbitrary and capricious interpretation OFAC now seeks to retroactively enforce.

64. OFAC's new interpretation is not entitled to deference and should be rejected. See Christopher v. SmithKline Beecham Corp., 567 U.S. 142, 155-59 (2012). Here, the agency's current interpretation of Executive Order 13661, and of the attendant sanctions designation of April 28, 2014, is plainly erroneous and inconsistent with both the order itself and the nature of the sanctions themselves. The President and the Treasury Secretary carefully calibrated sanctions to avoid imposing penalties on U.S. companies for doing business with Rosneft, and designated Mr. Sechin only in his individual capacity. OFAC's penalty notice amounts to a new and retroactive sanctions decision that exceeds the unambiguous scope of the sanctions that the President and the Secretary imposed in 2014.

FIRST CAUSE OF ACTION

(Administrative Procedure Act, 5 U.S.C. § 706(2)(A))

65. Plaintiffs incorporate by reference, as if fully restated herein, paragraphs 1-64 above.

66. ExxonMobil suffered a legal wrong, is adversely affected and is aggrieved by OFAC's finding of a violation and issuance of a penalty and is entitled to judicial review.

67. Issuance of OFAC's penalty notice, including its findings and conclusions, constitutes a final agency action as provided by 31 C.F.R. pt. 501, app. A § V(A)(5), subject to review under the APA.

68. OFAC's penalty notice, its findings and conclusions, and its civil penalty in the amount of \$2,000,000 are arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law because, among other things, they contravene the plain text of the Executive Order, are contrary to authoritative guidance from the Executive Branch, and make

meaningless distinctions between Rosneft documents signed by Mr. Sechin and identical Rosneft documents signed by any other Rosneft executive.

SECOND CAUSE OF ACTION

(Administrative Procedure Act, 5 U.S.C. § 706(2)(B) and the Due Process Clause of the Fifth Amendment of the United States Constitution)

69. Plaintiffs incorporate by reference, as if fully restated herein, paragraphs 1-67 above.

70. OFAC's penalty notice, its findings and conclusions, and its civil penalty in the amount of \$2,000,000 are unlawful and contrary to constitutional right, power, privilege, and immunity.

71. OFAC violated Plaintiffs' Fifth Amendment rights to due process because OFAC failed to provide notice of the specific transactions that would be deemed unlawful until after the allegedly unlawful conduct occurred. Indeed, as explained above, authoritative guidance from the White House and the Treasury Department made clear that the conduct was lawful and proper. It would violate due process for a party to be held liable retroactively for such conduct.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that a judgment be granted:

- (a) Holding unlawful and setting aside OFAC's finding of violations of the URSR by ExxonMobil;
- (b) Holding unlawful and setting aside the imposed penalty of \$2,000,000;
- (c) Declaring that ExxonMobil's conduct did not violate the URSR;
- (d) Permanently enjoining OFAC from collecting civil penalties in connection with the Penalty Notice; and
- (e) Granting such other relief as the Court deems just and proper.

Dated: Dallas, Texas
July 20, 2017

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