

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT  
CIVIL ACTION No. 1984-CV-03333-BLS1

COMMONWEALTH OF MASSACHUSETTS,

*Plaintiff,*

v.

EXXON MOBIL CORPORATION,

*Defendant.*

RECEIVED

APR 11 2022

SUPERIOR COURT-CIVIL  
MICHAEL JOSEPH DONOVAN  
CLERK/MAGISTRATE

**JOINT MOTION FOR ENTRY OF CONFIDENTIALITY STIPULATION AND  
PROTECTIVE ORDER AND PROPOSED TRACKING ORDER**

Plaintiff the Commonwealth of Massachusetts (the “Commonwealth”), and  
Defendant Exxon Mobil Corporation (“ExxonMobil”) (collectively, the “Parties”) by  
their undersigned counsel, jointly move for the entry of a Confidentiality Stipulation and  
Protective Order (“Protective Order”) and proposed Tracking Order (“Tracking Order”).  
A conference pursuant to Superior Court Rule 16 is scheduled in this matter on May 5,  
2022.

In support of this Motion, the Parties state as follows:

1. The Parties have spent several months meeting and conferring and  
negotiating drafts of the proposed Protective Order and Tracking Order as well as an ESI  
Protocol. Entry of these orders and protocols will assist in facilitating judicial efficiencies  
and effective management of the litigation.
2. The Parties agree that entry of a Protective Order pursuant to Mass. R.  
Civ. P. 26(c) is necessary in this litigation to govern the exchange and filing of

confidential and highly confidential information and documents produced or made available in this case, and to provide processes to facilitate discovery of materials containing confidential or highly confidential information. The proposed Protective Order is attached as Exhibit A.

3. The Protective Order contains the following provisions, in accordance with Trial Court Rule VIII: Uniform Rules on Impoundment Procedure and the Formal Guidance of the Business Litigation Sessions Regarding Confidentiality Agreements:

- (a) The proposed Order requires a Party seeking impoundment to follow the Trial Court's Uniform Rules on Impoundment Procedure. (Order, at ¶ 25)
- (b) The Court is not bound by the Parties' designation of information or documents as "Confidential." Any such designation does not create a presumption that documents or information so designated are entitled to confidential treatment pursuant to Mass. R. Civ. P. 26(c) or impoundment pursuant to the Uniform Rules on Impoundment Procedure. The Order specifically provides that "[i]mpoundment may not be effected by agreement among the parties." (Id.)
- (c) Neither the Court nor any of its support personnel are required to execute any form of declaration or undertaking agreeing to be bound by the terms of the Order. (Id. ¶¶17(l), 19(k))

4. Pursuant to Superior Court Rule 16, the Parties submit an agreed-upon Tracking Order setting forth a schedule for the litigation and certain agreements on discovery. The proposed Tracking Order is attached as Exhibit B.

5. Finally, pursuant to Superior Court Rule 16, the Parties also submit an agreed-upon ESI Protocol to govern e-discovery in the case. The ESI Protocol is attached as Exhibit C.

WHEREFORE, the Parties respectfully request that the Court enter the Parties' Protective Order and proposed Tracking Order.

Dated April 11, 2022

Respectfully submitted,

PLAINTIFF, COMMONWEALTH OF MASSACHUSETTS,

By its Attorney,

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#### CERTIFICATE OF SERVICE

I, Shennan Kavanagh, hereby certify that on April 11, 2022 I caused the foregoing Motion with Exhibits A-C to be served by email on all counsel set forth in the above signature blocks.

/s/ Shennan Kavanagh  
Shennan Kavanagh





COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT  
CIVIL ACTION No. 1984-CV-03333-BLS1

COMMONWEALTH OF MASSACHUSETTS,

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*Defendant.*

**CONFIDENTIALITY STIPULATION AND PROTECTIVE ORDER**

In order to expedite the flow of discovery material, facilitate the prompt resolution of disputes over confidentiality, adequately protect material entitled to be kept confidential, and ensure that protection is afforded only to material so entitled, pursuant to Mass. R. Civ. P. 26(c), and with the consent of the Parties, it is hereby ORDERED:

1. This Confidentiality Stipulation and Protective Order (the "Order") shall govern the treatment of all documents, discovery responses, information and deposition testimony produced pursuant to the Massachusetts Rules of Civil Procedure by any party or non-party in the above-captioned lawsuit (the "Action") (the "Discovery Material").

2. The word "document" as used herein shall have the full meaning ascribed to it in Rule 34 of the Massachusetts Rules of Civil Procedure.

3. The term "Confidential Information" as used herein means (i) trade secret or other confidential research, development, or commercial information (as those terms are used in Mass. R. Civ. P. 26(c)(7)) and/or (ii) information that is otherwise subject to a Non-Disclosure Agreement ("NDA") or protected from disclosure by applicable law; and (iii) that is designated

“Confidential” in the manner provided herein. The term “Highly Confidential Information” as used herein means information and related communications that would constitute Confidential Information and: (i) contain highly sensitive and proprietary models, forecasts, intellectual property, or analysis, and that (ii) the Producing Party maintains as highly confidential in its business, and (iii) the disclosure of which is highly likely to cause serious harm to the competitive position or the business of the Producing Party.

4. “Producing Party” means any person, whether or not a party to the litigation, who produces Confidential or Highly Confidential Information in the course of the Action.

5. “Designating Party” means a party or non-party that designates information or items produced in disclosures or in response to document requests as “Confidential” or “Highly Confidential.”

6. “Receiving Party” means a party or its Counsel that receives Discovery Material from a Producing Party as authorized under this Protective Order or a secondary recipient that receives Discovery Material from a Receiving Party as authorized under Paragraphs 17 and 19 of this Protective Order.

7. Any party that produces Discovery Material in the Action may designate as “Confidential” or “Highly Confidential” any Discovery Material that the Producing Party believes, in good faith, contain Confidential or Highly Confidential Information, as defined by this Order. Any non-party that produces Discovery Material in the Action may designate as Confidential or Highly Confidential any Discovery Material that it produces in this Action and that it believes, in good faith, contain Confidential or Highly Confidential Information, as defined by this Order, only if that non-party agrees to be subject to personal jurisdiction in Massachusetts solely for the purposes of enforcing this Order and to comply with this Order.

Only documents containing Confidential or Highly Confidential Information shall be so designated. Notwithstanding any other provisions of this Order, a non-party that agrees to be subject to personal jurisdiction in Massachusetts solely for purposes of enforcing this Order and to comply with this Order may only designate as Confidential or Highly Confidential Discovery Material that it produces in this Action.

8. Except as otherwise provided in this Protective Order, or as otherwise stipulated or ordered, Confidential or Highly Confidential Information must be clearly so designated before or at the time the Confidential or Highly Confidential Information is disclosed or produced.

Designation in conformity with this Protective Order requires:

(a) for Confidential or Highly Confidential Information in hard copy or imaged document form (e.g., paper or electronic imaged documents, including slip sheets, but excluding transcripts of depositions), that the Producing Party affix the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” to each page of the document that contains Confidential or Highly Confidential Information or use other appropriate means to notify the Receiving Party of any confidentiality designations (e.g., written notice in a production cover letter to the undersigned counsel for the Receiving Party).<sup>1</sup> A Producing Party that makes original documents or materials available for inspection need not designate them for protection until after the inspecting Party has indicated which material it would like copied and produced. During the inspection and before the designation, all of the material made available for inspection shall be deemed Highly

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<sup>1</sup> Specifically, in re-productions of documents that were previously produced in other matters (*see* ESI protocol for this matter, n. 1), the Parties are not required to re-stamp confidentiality designations pursuant to this Order and may rely on the confidentiality designations from the other matters. For instance, a Producing Party may advise the Receiving Party in writing that all documents designated as Confidential (or Highly Confidential) in a prior matter should be treated as Confidential (or Highly Confidential) here as well.



Confidential. After the inspecting Party has identified the documents it wants copied and/or produced, the Producing Party must determine which documents qualify for protection under this Protective Order. Then, before producing the specified documents, the Producing Party must affix the appropriate confidentiality legend to each page of the document that contains Confidential or Highly Confidential Information or use other appropriate means to notify the Receiving Party of any confidentiality designations (e.g., written notice in a production cover letter to the undersigned counsel for the Receiving Party).

(b) for Confidential or Highly Confidential Information testimony given in deposition, that the Designating Party identify those portions of testimony that contain Confidential or Highly Confidential Information and specify the level of protection being asserted either on the record at or before the close of the deposition, within 17 days after the receipt of the transcript, or within some other agreed-upon time period. When it is impracticable to identify separately each portion of testimony that is entitled to protection, the Designating Party may designate the entire transcript as Confidential or Highly Confidential.

Parties shall give the other Parties notice if they reasonably expect a deposition, hearing, or other proceeding to include the Parties' Confidential or Highly Confidential Information so that the Parties can ensure that only authorized recipients of the Confidential or Highly Confidential Information are present at those proceedings. The use of a document as an exhibit at a deposition shall not in any way affect its designation as Confidential or Highly Confidential Information.

The title page of transcripts containing Confidential or Highly Confidential Information shall include a legend indicating that the transcript contains Confidential or Highly Confidential information, followed by a list of all pages (including line numbers as appropriate) that have

been designated as Confidential or Highly Confidential Information and the level of protection being asserted by the Designating Party. The pages and exhibits containing Confidential or Highly Confidential Information shall be separately bound and separately maintained from the transcript testimony and exhibits not containing Confidential or Highly Confidential Information. The Designating Party shall inform the court reporter of these requirements.

Before the expiration of the 17-day period after receipt of the transcript or other agreed-upon period for designation, the deposition testimony shall be treated in its entirety as Highly Confidential unless otherwise agreed. After the expiration of the 17-day period after receipt of the transcript or other agreed-upon period for designation, the deposition testimony shall be treated only as actually designated. If no designation is made within the 17-day after receipt of the transcript or other agreed-upon time period, the testimony shall be treated as non-confidential Discovery Material. The exhibits to the deposition shall maintain their original confidentiality designations (e.g., the corresponding slip-sheet TIFF placeholder image containing the Bates number and confidentiality designation).

(c) for Confidential or Highly Confidential Information produced in some form other than hard copy or electronic image (e.g., native files) and for any other tangible items, that the Producing Party affix the confidentiality designation in a prominent place on the exterior of the container or containers in which the Confidential or Highly Confidential Information is transmitted or stored. In addition, to the extent practicable, the Parties may embed the confidentiality designation of Confidential or Highly Confidential Information produced in native form into the file name of the document being produced and/or identify the Confidential or Highly Confidential Information in any transmission or communication accompanying the

production. If a native file is printed for use at a deposition, the printed version shall include the designation provided with the native production.

(d) To the extent practicable and as set forth in the ESI protocol for this action, the appropriate confidentiality designation for all Confidential or Highly Confidential Information produced in electronic form shall be included in a metadata field within the corresponding production load file (i.e., .DAT file).

9. A failure to designate Confidential or Highly Confidential Information does not, standing alone, waive the Designating Party's right to secure protection under this Protective Order for such Confidential or Highly Confidential Information. Upon discovery of an incorrect designation, which a Producing Party claims in good faith should have been designated Confidential or Highly Confidential, the Designating Party shall give notice to Receiving Party, and the Receiving Party must make reasonable efforts to assure that the Confidential or Highly Confidential Information is treated in accordance with the provisions of this Protective Order. The Producing Party shall thereafter provide replacement productions with the correct confidentiality designations.

10. There is good cause under G.L. c. 93A, § 6(6) for all documentary material or other information produced by any person pursuant to Civil Investigative Demands ("Non-Party CID Production") to be disclosed. Notwithstanding paragraphs 7-8 above, if one of the Parties has a good faith belief that Discovery Material it obtained from a non-party pursuant to Civil Investigative Demands ("Non-Party CID Production") contain Confidential or Highly Confidential Information, the Party may designate the Non-Party CID Production that contain Confidential or Highly Confidential Information in its entirety as Confidential or Highly Confidential by so noting in the cover page accompanying the production or affixing a label to



the electronic storage device on which the production is made. If a Party has a good faith belief that transcripts of testimony of non-parties taken pursuant to Civil Investigative Demand (“Non-Party CID Testimony”) or exhibits to such testimony (“Non-Party CID Exhibit”) contain Confidential or Highly Confidential Information, the Party may designate each Non-Party CID Testimony or Non-Party CID Exhibit as Confidential or Highly Confidential by applying an electronic Confidential or Highly Confidential designation to each page of the document. Where so designated, except as otherwise provided under G.L. c. 93A, § 6(6), the Parties will treat the Non-Party CID Production, Non-Party CID Testimony, or Non-Party CID Exhibit as containing Confidential or Highly Confidential Information provided that a Party shall seek to dedesignate particular Non-Party CID Production documents only when a Party reasonably believes they will use the particular document or documents in the litigation.<sup>2</sup>

11. If a party or non-party who agrees to be subject to personal jurisdiction in Massachusetts solely for purposes of enforcing this Order and to comply with this Order (a “Producing Entity”) discovers that Discovery Material produced prior to or subsequent to the entry of this Order were not properly designated as Confidential or Highly Confidential, that Producing Entity shall promptly give written notice thereof and identify the Discovery Material it intends to designate as Confidential or Highly Confidential; such Discovery Material shall, pursuant to this Order, be treated as Confidential or Highly Confidential in accordance with the provisions of this Order from receipt of the notification under this paragraph.

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<sup>2</sup> In the event a Non-Party CID Production, Non-Party CID Testimony, or Non-Party CID Exhibit is designated as Confidential or Highly Confidential pursuant to paragraph 10, at the Receiving Party’s request, the Parties agree to meet and confer to discuss a process for determining whether a narrower confidentiality designation can be achieved.



12. Discovery Material previously produced without a confidentiality designation prior to entry of this Order, including but not limited to, Discovery Material produced in response to a discovery request in this Action, may be designated by the Producing Entity by notice in writing within forty-five (45) days of the entry of this Order, and shall be treated appropriately from the date written notice of the designation is provided to the Receiving Party.

13. The inadvertent production of Discovery Material protected by the attorney-client privilege, the work product doctrine, any joint defense privilege, or any other privilege, protective doctrine, or immunity from disclosure recognized under applicable law is not a waiver of the privilege or protection from discovery in this action or in any other proceeding. A Producing Entity may request the return of any Privileged Documents. A request for the return of Privileged Documents shall identify the documents and the basis for withholding them from production. This Protective Order shall be interpreted to provide the maximum protection allowed under applicable law.

14. If a Receiving Party receives what appear to be Privileged Documents, the Receiving Party must refrain from further use or examination of the documents, and shall immediately notify the Producing Party that the Receiving Party possesses material that appears to be privileged. In the event a Producing Party discovers it has disclosed Privileged Documents, the Producing Party may provide clawback notice to the other Parties advising of the disclosure and requesting return or destruction of the Privileged Documents. Upon such notice, the Receiving Party shall make no further use or examination of the Privileged Documents and shall immediately take reasonable efforts to segregate them in a manner that will prevent further disclosure or dissemination of their contents, and, within ten (10) days of receiving such notice of production of Privileged Documents, the Receiving Party shall take reasonable efforts to:

(i) sequester, destroy or return all reasonably accessible documents identified by the Producing Party in such notice; (ii) destroy or delete all reasonably accessible copies of such documents, and (iii) for any other reasonably accessible document, information or material derived from the produced Privileged Documents, including testimony concerning the Privileged Document, not use such portions containing privileged information. To the extent the Receiving Party provided any clawed-back Privileged Documents to a secondary recipient as authorized under this Protective Order, the Receiving Party shall promptly make reasonable efforts to retrieve and return or destroy such clawed-back Privileged Documents and notify the Producing Party that it has done so. If the Receiving Party identifies any notes or other work product containing the contents of Privileged Documents, the Receiving Party will not use those portions of such notes or work product unless a court later designates the Privileged Documents as not privileged or protected, and after the completion and exhaustion of all appeals, rehearings, or reviews of the court ruling, including the time limits for filing any motions or applications for extension of time pursuant to applicable law. Privileged Documents that are not reasonably accessible because of undue burden or cost are considered to be sequestered.

15. Any Producing Party that claws back Privileged Documents will provide Receiving Parties with a privilege log that is consistent with Mass. R. Civ. P. 26(b)(5)(A)'s requirements on privilege logs and reasonably identifies the basis for the assertion of privilege or protection over the clawed-back documents. Counsel shall undertake reasonable efforts to resolve the issue of whether the documents are privileged without court intervention. To the extent Counsel cannot resolve the issue, the Receiving Party may bring a motion to compel production of the Privileged Documents, but may not assert as a ground for compelling production the fact or circumstance that the Privileged Documents had already been produced.

In the event of a motion to compel production of the Privileged Documents, the burden is on the Producing Party to provide information regarding the content and context of the Privileged Documents sufficient to establish the applicability of any asserted privilege or prohibition from discovery.

16. Any Confidential Information (unless the designation is challenged in accordance with paragraph 31 of this Order and the Discovery Material are thereafter dedesignated as provided by that paragraph) shall be held confidential, shall only be disclosed to "Qualified Persons" (as defined herein), and shall only be used in connection with this Action. All Qualified Persons shall be subject to the jurisdiction of this Court for the purpose of enforcing this Order.

17. "Qualified Persons" for Confidential Information shall be limited to the following:

- (a) The Receiving Party's counsel (including members of such counsel's staff, such as paralegals, secretaries, and law clerks, to whom it is reasonably necessary that the material be shown for purposes of this litigation);
- (b) The Receiving Party's current employees and agents to whom it is reasonably necessary that the material be shown for purposes of this litigation;
- (c) Actual or potential independent experts or consultants for each party to whom disclosure is reasonably necessary for the defense or prosecution of this action; provided that such expert or consultant has executed a Non-Disclosure Certificate substantially in the form of Exhibit A attached hereto;



- (d) Any court reporter or typist rendering services for recording or transcribing of testimony in the Action or any outside independent reproduction firm or any technical or technology services firm rendering services for a party in the Action, but only to the extent necessary for such services to be provided;
- (e) Independent copying services, independent computer consulting and support services, independent exhibit makers, independent translators, and other independent litigation support services retained by counsel for purposes of this action;
- (f) Any person whom a named party intends, in good faith, to call as a witness in any deposition, hearing or at trial in the Action, and that person's attorneys to the extent reasonably necessary to prepare for and provide his or her testimony; provided that (i) if required by valid request under the Massachusetts Rules of Civil Procedure or by Court Order, such person has been timely disclosed; and (ii) such person has executed a Non-Disclosure Certificate substantially in the form of Exhibit A attached hereto;
- (g) The person or persons who authored the document containing Confidential Information (the "Author"), who received such Confidential Information in the ordinary course of business (the "Recipient"), or who spoke in an audio recording containing Confidential Information (the "Speaker"), provided that disclosure is reasonably necessary to such person for the prosecution or defense of this action; and (ii) such person has executed a



Non-Disclosure Certificate substantially in the form of Exhibit A attached hereto;

- (h) The person who was a subject of the document containing Confidential Information (the "Subject"); provided that, if the Subject was not the Author or Recipient of such document, or if such Confidential Information relates to any specifically identifiable person other than the Subject, prior to disclosure of such Confidential Information to the Subject, the Subject has been notified of the existence of this Order on the record of a transcribed examination under oath or has executed a Non-Disclosure Certificate substantially in the form of Exhibit A attached hereto;
- (i) Such persons as the Producing Entity, or its representatives, shall consent to in writing pursuant to paragraph 24 of this Order; provided that such person has executed a Non-Disclosure Certificate substantially in the form of Exhibit A attached hereto;
- (j) Former employees or agents of a party who need to know or have access to any Confidential Information for the purposes of the Action; provided that, prior to disclosure of the Confidential Information, such former employee or agent has been notified of the existence of this Order on the record of a transcribed examination under oath or has executed a Non-Disclosure Certificate substantially in the form of Exhibit A attached hereto;
- (k) State agencies and state officials authorized by the Commonwealth of Massachusetts to enforce Massachusetts state law; and

- (l) A Court and its personnel.

18. Any Highly Confidential Information (unless the designation is challenged in accordance with paragraph 31 of this Order and the Discovery Material are thereafter dedesignated as provided by that paragraph) shall be held as Highly Confidential, shall only be disclosed to "Qualified Persons" (as defined herein), and shall only be used in connection with this Action. All Qualified Persons shall be subject to the jurisdiction of this Court for the purpose of enforcing this Order.

19. "Qualified Persons" for Highly Confidential Information shall be limited to the following:

- (a) The Receiving Party's outside counsel and in-house counsel that are responsible for representing the parties in the Action (including members of such counsel's staff, such as paralegals, secretaries, and law clerks, to whom it is reasonably necessary that the material be shown for purposes of this litigation);
- (b) Actual independent experts or consultants for each party to whom disclosure is reasonably necessary for the defense or prosecution of this action; provided that such expert or consultant has executed a Non-Disclosure Certificate substantially in the form of Exhibit A attached hereto;
- (c) Any court reporter or typist rendering services for recording or transcribing of testimony in the Action or any outside independent reproduction firm or any technical or technology services firm rendering

services for a party in the Action, but only to the extent necessary for such services to be provided;

- (d) Independent copying services, independent computer consulting and support services, independent exhibit makers, independent translators, and other independent litigation support services retained by counsel for purposes of this action;
- (e) Any person whom a named party intends, in good faith, to call as a witness in any deposition, hearing or at trial in the Action, and that person's attorneys to the extent reasonably necessary to prepare for and provide his or her testimony; provided that (i) if required by valid request under the Massachusetts Rules of Civil Procedure or by Court Order, such person has been timely disclosed; (ii) such person has executed a Non-Disclosure Certificate substantially in the form of Exhibit A attached hereto; and (iii) such person is shown, but not retain, the Highly Confidential Information;
- (f) The person or persons who authored the document containing Highly Confidential Information (the "Author"), who received such Highly Confidential Information in the ordinary course of business (the "Recipient"), or who spoke in an audio recording containing Highly Confidential Information (the "Speaker"), provided that (i) disclosure is reasonably necessary to such person for the prosecution or defense of this action; and (ii) such person has executed a Non-Disclosure Certificate substantially in the form of Exhibit A attached hereto;

- (g) The person who was a subject of the document containing Highly Confidential Information (the "Subject"); provided that, if the Subject was not the Author or Recipient of such document, or if such Highly Confidential Information relates to any specifically identifiable person other than the Subject, prior to disclosure of such Highly Confidential Information to the Subject, the Subject has been notified of the existence of this Order on the record of a transcribed examination under oath or has executed a Non-Disclosure Certificate substantially in the form of Exhibit A attached hereto;
- (h) Such persons as the Producing Entity, or its representatives, shall consent to in writing pursuant to paragraph 24 of this Order; provided that such person has executed a Non-Disclosure Certificate substantially in the form of Exhibit A attached hereto;
- (i) Former employees or agents of a party who need to know or have access to any Highly Confidential Information for the purposes of the Action; provided that, prior to disclosure of the Highly Confidential Information, such former employee or agent has been notified of the existence of this Order on the record of a transcribed examination under oath or has executed a Non-Disclosure Certificate substantially in the form of Exhibit A attached hereto;
- (j) State agencies and state officials authorized by the Commonwealth of Massachusetts to enforce Massachusetts state law; and
- (k) A Court and its personnel.



20. Qualified Persons other than those described in paragraphs 17(l) and 19(k) authorized to have access to Confidential or Highly Confidential Information shall maintain the confidentiality thereof, and shall not disseminate or disclose such Confidential or Highly Confidential Information to any person not authorized to have access to Confidential or Highly Confidential Information pursuant to this Order (unless the designation is challenged in accordance with paragraph 31 of this Order and the Discovery Material are thereafter dedesignated as provided by that paragraph).

21. Qualified Persons other than those described in paragraphs 17(k), 17(l), 19(j) and 19(k) shall not use such Confidential or Highly Confidential Information for any purpose other than in connection with this Action (unless the designation is challenged in accordance with paragraph 31 of this Order and the Discovery Material are thereafter dedesignated as provided by that paragraph).

22. Qualified Persons authorized to have access to Confidential or Highly Confidential Information shall only make copies of Confidential or Highly Confidential Information that are reasonably necessary.

23. Qualified Persons authorized to have access to Confidential or Highly Confidential Information other than those described in paragraphs 17(k), 17(l), 19(j) and 19(k) shall not use any Confidential or Highly Confidential Information in connection with any other legal proceeding, and shall not use any Confidential or Highly Confidential Information for any purpose whatsoever other than in connection with this Action (unless the designation is challenged in accordance with paragraph 31 of this Order and the Discovery Material are thereafter dedesignated as provided by that paragraph).

24. Prior to disclosure of any Confidential or Highly Confidential Information to any Qualified Persons defined in paragraphs 17 (c), (f), (g), (h), (i), (j) and 19 (b), (e), (f), (g), (h) and (i) of this Order, counsel for the party proposing to disclose such information shall first provide such person with a copy of this Order and shall cause such person to execute a Non-Disclosure Certificate substantially in the form of Exhibit A hereto.

25. Any party may file or use Confidential or Highly Confidential Information in or with the Court, consistent with this paragraph. No fewer than ten (10) days or five (5) days in the case of use at trial before any Confidential Information (unless the designation is challenged in accordance with paragraph 31 of this Order and the Discovery Material are thereafter dedesignated as provided by that paragraph) is to be filed or offered in evidence at trial or any court hearing, or as soon as practicable if ten (10) days' notice or five (5) days' notice in case of use at trial cannot be given, a party intending to include such a document in any filing or offer such a document in evidence at trial or any court hearing shall give notice to the Producing Entity of its intent to do so. If the Producing Entity (or the party that designated the Discovery Material as Confidential or Highly Confidential) (the "Designating Entity") intends to retain the Confidential or Highly Confidential designation on such Discovery Material to be filed or used in Court, such Designating Entity shall, at least five (5) days before such Confidential or Highly Confidential Information is to be filed or offered in evidence at any court hearing or three (3) days before such Confidential or Highly Confidential Information is to be offered in evidence at trial, or as soon as practicable if it cannot be done that far in advance, serve an emergency motion for impoundment in accordance with the Uniform Rules on Impoundment Procedure, Trial Court Rule VIII and Superior Court Rule 9A. Any party seeking to file a motion to impound shall serve such motion by hand, overnight delivery or other mutually agreeable

method and any opposition shall be served on the moving party within ten (10) business days.

The motion may be filed, with any opposition received, at the end of ten (10) business days.

The Confidential Information may be filed with the Court, *in camera*, pending a ruling on a motion for impoundment if the Court so orders, but in such circumstance be filed in a sealed envelope bearing the style of the lawsuit and shall be marked with the following statement in bold letters: **“PROVISIONALLY IMPOUNDED PENDING COURT ORDERED IN CAMERA REVIEW.”** Upon an order of impoundment by the Court, Confidential Information subject to the order must then be filed or re-filed in a sealed envelope bearing the style of the lawsuit and shall be marked with the following statement in bold letters: **“The contents of this envelope are subject to an Order entered [date]. This envelope shall not be opened nor the contents displayed or revealed except in accordance with that Order.”** Impoundment may not be effected by agreement among the parties.

26. Nothing in this Order shall, in this or any other action, constitute or be deemed:

(a) an agreement by the Producing Entity to produce any Discovery Material or supply any information or testimony not otherwise agreed upon or required by the Rules of Civil Procedure or Court order; (b) a waiver by the Producing Entity of any right to object to or seek further protective order with respect to any request for Discovery Material; (c) a waiver by the Producing Entity of any claim of immunity, privilege, or other legal protection with respect to any Discovery Material; or (d) an admission by the Producing Entity with respect to the relevance of the propriety of the disclosure of any Discovery Material. Nothing in this Order shall be construed as precluding the Producing Entity from objecting to any disclosure or use of any Discovery Material in this or any other action.



27. Nothing in this Order shall be construed as restricting a Producing Entity's use of its own Confidential or Highly Confidential Information. However, any information that is publicly-filed with the Court by a Producing Entity in pleadings or otherwise shall no longer be deemed Confidential or Highly Confidential unless the Producing Entity has filed such information under seal pursuant to paragraph 25 herein.

28. In the event that a Qualified Person authorized to have access to Confidential or Highly Confidential Information is served with a request, subpoena, demand, or other legal process that seeks production of that information, such person (the "Requested Person") shall, to the extent permitted by law, provide written notice to the Producing Entity within fourteen (14) days of the receipt of such request, subpoena, demand, or other legal process or, where it is not immediately apparent that a request, subpoena, demand, or other legal process seeks Confidential or Highly Confidential Information, within seven (7) business days of the subsequent determination that it seeks production of such information, whichever is later, and furnish the Producing Entity (and the Designating Entity, if different than the Producing Entity) with a copy of said subpoena or other process or order. To the extent permitted by law, the Requested Person shall not produce the information without providing prior written notice to the Producing Entity (and the Designating Entity, if different than the Producing Entity), and furnish the Producing Entity (and the Designating Entity, if different than the Producing Entity) with a copy of said subpoena or other process or order. The Requested Person shall not produce the information until the earlier of: (i) receipt of prior written consent from the Producing Entity (and the Designating Entity, if different than the Producing Entity); (ii) the return date of the subpoena or other process (unless the obligation to respond is stayed); or (iii) five (5) business days after a decision on any motion to quash or motion for a protective order or such shorter period as the

Court may direct. Nothing herein shall prevent a Qualified Person from complying with an order of a Court.

29. If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed a Designating Party's Confidential or Highly Confidential Information or Privileged Documents to any person or in any circumstance not authorized under this Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve or destroy all unauthorized disseminated copies of the Confidential or Highly Confidential Information or Privileged Documents, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Protective Order, and (d) request such person or persons to execute the Non-Disclosure Certificate.

30. If a Receiving Party learns that a Designating Party's Confidential or Highly Confidential Information or Privileged Documents have been accessed other than by disclosure by the Receiving Party to any person or in any circumstance not authorized under this Protective Order (e.g., "hacked"), the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized access or disclosure, (b) investigate and report to Receiving Party the scope of and circumstances of the unauthorized access or disclosure as it relates to the Designating Party's Confidential or Highly Confidential Information; (c) take immediate and reasonable steps to rectify the unauthorized access or disclosure, including by instituting additional security measures to prevent any further access or disclosure, and (d) comply with all obligations under applicable laws relating to unauthorized access or disclosure, including security breach notification laws and applicable data protection laws, which includes all relevant Massachusetts laws, rules, regulations, governmental requirements, and codes applicable to personal data.

31. If at any time a party wishes, for any reason, to dispute a designation of Confidential or Highly Confidential Information hereunder, such party shall notify the Designating Entity of such dispute in writing, identifying the Confidential Information in dispute. Within thirty (30) days of receiving such notice, the Designating Entity shall state in writing to the disputing party the Designating Entity's basis for having designated the Discovery Material as Confidential or Highly Confidential. If no such statement in writing is given within that timeframe (or within a longer timeframe agreed to by the parties), the Discovery Material shall no longer be treated as Confidential or Highly Confidential. The parties may engage in any further meet and confers as necessary to resolve the dispute. If the Parties cannot resolve a challenge, the Challenging Party or Designating Entity may seek a ruling from the Court as to whether the disputed Confidential or Highly Confidential Information is entitled to the level of confidentiality assigned by the Designating Party. The Designating Entity shall have the burden of establishing that the Discovery Material should be protected pursuant to this order.

Receiving Parties shall continue to treat the challenged Confidential or Highly Confidential Information with the level of protection as designated until the Court rules on the challenge, and, if applicable, any appeal from that ruling has been concluded. With respect to any material that ceases to be subject to the protection of this Order, the Designating Entity shall, at its own expense, provide to each party which so requests additional copies thereof from which the original confidentiality legends affixed hereunder have been removed.

32. Except as otherwise provided, any notice to the Producing Entity required to be given under this Order shall be provided by hand delivery, e-mail or recognized overnight delivery service to the undersigned counsel for the Producing Entity.



33. This Order shall apply to the parties and any non-party from whom discovery may be sought in this proceeding and that desires protection for the discovery sought provided that any such non-party agrees to be subject to personal jurisdiction in Massachusetts for purposes of enforcing this Order and to comply with this Order.

34. The provisions of this Order shall survive the final disposition of this Action and shall continue in full force and effect. The Court shall retain jurisdiction over the parties to this Order, and any other person bound by the terms of this Order (including non-parties designating Discovery Material as Confidential or Highly Confidential Information), to enforce the terms thereof. Final disposition shall be deemed to be the later of (1) dismissal of all claims and defenses in this action, with prejudice; or (2) entry of final judgment after the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the time limits for filing any motions or applications for extension of time pursuant to applicable law.

35. This Order may be executed by facsimile and in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. Counsel for the parties to the Order shall exchange among themselves original signed counterparts and a complete set of executed counterparts shall be filed with the Court.

36. Nothing in this Order shall prevent any person, whether or not a party, from seeking modification of this Order or from seeking to challenge confidential treatment (as provided by this Order) of any Discovery Material. In addition, nothing in this Order shall prevent any party or other person from objecting to discovery that the party or person believes to be improper.

37. All parties agree to be bound by the terms of this Protective Order pending its entry by the Court, and any violation of its terms before its entry shall be subject to the same penalties and sanctions as if this Protective Order had been entered by the Court.

38. Within 60 days after the final disposition of this action as defined in paragraph 34, each Receiving Party must destroy or return all Confidential or Highly Confidential Information to the Producing Party, including all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of the Confidential or Highly Confidential Information, and certify, in writing to the Designating Party, that it has destroyed or returned all Confidential or Highly Confidential Information and has not retained any copies, abstracts, compilations, summaries, or any other format reproducing or capturing any of the Confidential or Highly Confidential Information. The Receiving Party's obligation to return or destroy Confidential or Highly Confidential Information received from another Party extends to Confidential or Highly Confidential Information the Receiving Party disclosed to other authorized recipients pursuant to this Protective Order.

Agreed to by the Parties,

**COMMONWEALTH OF  
MASSACHUSETTS**

By its attorneys,

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**EXXON MOBIL CORPORATION**

By its attorneys

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Attorneys for Defendant  
EXXON MOBIL CORPORATION

Dated: April 11, 2022

SO ORDERED BY THE COURT:

\_\_\_\_\_  
Superior Court Judge

\_\_\_\_\_  
Dated



**EXHIBIT A**

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT  
CIVIL ACTION No. 1984-CV-03333-BLS1

COMMONWEALTH OF MASSACHUSETTS,

*Plaintiff,*

v.

EXXON MOBIL CORPORATION,

*Defendant.*

**NON-DISCLOSURE CERTIFICATE**

I, \_\_\_\_\_ hereby certify and agree to the following:

1. I am to be provided access to certain Confidential [or Highly Confidential] Information that was produced in this action subject to the terms of the Confidentiality Stipulation and Order between the parties and entered by the Court as an Order dated \_\_\_\_\_ (the "Order").

2. I have been given a copy of, and have read, the Order, agree to be bound by its terms, and understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt.

3. I understand that the contents of the Confidential [or Highly Confidential] Information, and any notes or other memoranda or any other forms of information that copy, reflect, summarize, or otherwise reveal such Confidential [or Highly Confidential] Information, shall not be disclosed to any other person except in accordance with the Order.

4. I shall not use the Confidential [or Highly Confidential] Information for any purpose other than that specifically permitted by the terms of the Order.

5. I agree to be subject to the jurisdiction of the Massachusetts Superior Court for purposes of enforcement of this Non-Disclosure Certificate and the Order.

By: \_\_\_\_\_

Title: \_\_\_\_\_

Representing: \_\_\_\_\_

Date: \_\_\_\_\_



Exhibit B

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT  
CIVIL ACTION NO.:  
1984-CV-03333-BLS1

COMMONWEALTH OF MASSACHUSETTS,

Plaintiff,

v.

EXXON MOBIL CORPORATION,

Defendant.

**[PROPOSED] TRACKING  
ORDER**

The Court hereby enters the following tracking order providing deadlines by which certain items shall be completed.

1. *Starting Date:* All time periods for this tracking order will start on the last business day of the month in which the Supreme Judicial Court issues its opinion on Exxon Mobil Corporation's ("ExxonMobil") pending appeal of this Court's denial of ExxonMobil's special motion to dismiss pursuant to the anti-SLAPP statute, provided that the Supreme Judicial Court affirms this Court's denial of the motion ("**Starting Date**").

2. *Fact Discovery:* Fact discovery will close within **twenty-four months of the Starting Date ("Conclusion of Fact Discovery")**. All written discovery and all notices of deposition shall be served sufficiently in advance of the Conclusion of Fact Discovery, so that all fact discovery will be scheduled to be complete by that date.

3. *Document and Written Discovery:* Rolling production of documents is permitted. The documents may be produced as they are kept in the ordinary course of business or organized and labeled to correspond with the categories in the request.

4. *Depositions:* Each party may take **up to thirty fact witness oral depositions** in this case, including any depositions of third parties, but exclusive of the two depositions the Court allowed under Rule 27(b) by order dated February 8, 2022. Corporate representative witness depositions pursuant to a notice under Mass. R. Civ. P. 30(b)(6) shall be considered as one deposition. The parties may request the Court for additional depositions upon a showing of good cause.

5. *Third-Party Discovery:* Any party that receives discovery in this case from any non- or third-party shall, without awaiting a Rule 34 request, produce said discovery to the other

party within two weeks from the time of receipt of said discovery or entry of this order, whichever is later, provided that the parties' Confidentiality Stipulation and Protective Order has been entered by the Court.

6. *Expert Designations and Reports:*

a. Within **two months of the Conclusion of Fact Discovery**, the Commonwealth will designate the experts upon whom it intends to rely at trial and serve ExxonMobil with reasonably detailed disclosures (*i.e.*, qualifications, substance of opinions, and bases for opinions) with respect to each such expert.

b. Within **five months of the Conclusion of Fact Discovery**, ExxonMobil will designate the experts upon whom it intends to rely at trial and serve the Commonwealth with reasonably detailed disclosures (*i.e.*, qualifications, substance of opinions, and bases for opinions) with respect to each expert.

c. Within **seven months of the Conclusion of Fact Discovery**, the Commonwealth will designate any rebuttal experts on which it intends to rely at trial and serve on ExxonMobil reasonably detailed disclosures (*i.e.*, qualifications, substance of opinions, and bases for opinions) with respect to each such rebuttal expert.

d. All expert reports shall be produced with all documents on which the expert relied, including documents previously produced by the parties. Drafts of expert reports and/or work papers, and communications between or among experts, their staff, and counsel shall not be subject to discovery. No expert shall testify at trial as to any opinions not substantially disclosed in the expert report or base any opinions on facts not substantially disclosed in the expert report. Expert reports will not be automatically deemed confidential but rather any party may designate those portions of reports that include information protected by any protective order pursuant to such order.

7. *Expert Depositions:* Depositions of experts will be scheduled to conclude within **nine months of the Conclusion of Fact Discovery**.

8. *Non-Dispositive Motions:* The parties will meet and confer in good faith regarding page limits and the briefing schedule for oppositions and replies for all non-dispositive motions as appropriate under Superior Court or other applicable rules.

9. *Summary Judgment Motions:* Any summary judgment motions pursuant to Rule 56 will be served within **eleven months of the Conclusion of Fact Discovery**, oppositions to such motions will be served within **thirteen months of the Conclusion of Fact Discovery**, reply briefs will be served within **fourteen months of the Conclusion of Fact Discovery**, and the moving party(ies) will file the respective Rule 9A motion packages with the Court within five days of the service of reply briefs or the expiration of the deadline for reply briefs.

10. *Pre-Trial Conference:* Should any claim survive the Court's ruling(s) on dispositive motions, the Court will schedule a Rule 16 conference after the resolution of all dispositive motions for the purpose of establishing a trial date and schedule for pre-trial filings.



If any party desires a status conference prior to that date, the party may submit a request for a conference to the Court.

11. *Electronic Service:* The parties renew their consent to electronic service in this case, including service of all discovery.

12. *Modification:* For good cause shown, any party may serve a motion at any time during these proceedings seeking a modification of and/or an exception from the provisions of this Order.

Signed this \_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Justice of the Superior Court



COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT  
CIVIL ACTION No. 1984-CV-03333-BLS1

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COMMONWEALTH OF MASSACHUSETTS,

*Plaintiff,*

v.

EXXON MOBIL CORPORATION,

*Defendant.*

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**STIPULATED AGREEMENT REGARDLING DISCOVERY  
OF ELECTRONICALLY STORED INFORMATION ("ESI Protocol")**

**1. PURPOSE**

Absent special circumstances and as a supplement to any applicable rules and orders, the specifications set forth below ("ESI Protocol") shall govern the production of all electronically stored information (ESI), and any documents, transcripts of prior testimony, exhibits, and other materials and information (including, to avoid any ambiguity, any copies, summaries, or derivations thereof) produced by the Parties in the first instance<sup>1</sup> during discovery in the above-captioned action.

**2. COOPERATION**

The Parties are aware of the importance the Court places on cooperation and commit to cooperate in good faith throughout the matter. The Parties agree that any discovery shall be consistent with Massachusetts Rules of Civil Procedure 26 and as such requests for production of ESI and related responses will be reasonably calculated to lead to the discovery of admissible evidence. The agreements

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<sup>1</sup> Documents which are not produced in the first instance in this litigation, i.e., documents that were previously produced in other matters, shall be produced pursuant to the ESI protocols governing the format of document productions in those other matters, provided that those re-productions are in a reasonably usable format and provided that the Producing Party informs all other Parties, prior to or at the time of production, that the production will be in a nonconforming format. The Parties reserve the right to object to a non-conforming format.



set forth herein do not constitute a waiver of any kind, by any party, of any valid objection to the production of particular ESI.

### **3. E-DISCOVERY LIAISON**

The Parties have identified or will identify liaisons to each other who are responsible for discussing their respective ESI. Each e-discovery liaison for Plaintiff or Defendant will be, or will have access to those who are, knowledgeable about the technical aspects of e-discovery, including the location, nature, accessibility, format, collection, search methodologies, and production of ESI in this matter. The Parties will rely on the liaisons, as needed, to confer about ESI and to help resolve disputes without court intervention.

### **4. DEFINITIONS**

The Parties agree that the term “document(s)” shall include, but is not limited to, hard copy and ESI versions of word and .pdf documents, spreadsheets, emails and attachments, presentations, text files, and databases.

### **5. PROCESS FOR MEETING AND CONFERING ON POTENTIAL SEARCH TERMS OR PREDICTIVE CODING**

The Parties shall meet and confer in good faith and with the goal of achieving a just, speedy, and cost-efficient methodology or workflow for identifying responsive documents to be produced. E.g., the Parties may agree, after a meet and confer in which the Party sets forth its proposal, to proceed by using search terms, custodians, or date ranges that are narrowly tailored to particular issues in the matter combined with or by employing other methods to cull data and identify potentially responsive documents for review and production, including the use of technological solutions such as predictive coding/technology assisted review. Simply because a document hits upon a search term or is otherwise identified by technological tools as potentially responsive does not mean that the document is in fact responsive, and the Parties may conduct further review and/or analysis to determine responsiveness and

privilege. The Parties may meet and confer to discuss the burden, accessibility and discoverability of potentially responsive data from non-traditional data sources (e.g., audio and video files, etc.). To the extent that any data from non-traditional data sources will be produced, it will be done so in a reasonably useable form. If necessary, the Parties may meet and confer to finalize production specifications from non-traditional data sources.

**6. PRODUCTION FORMATS**

- a) *General Format Information.* Except as to the formatting requirements agreed to herein, all documents shall be produced as kept by the Producing Party in the ordinary course of business. With respect to documents that only exist in hard copy, the Parties agree that at the discretion of the Producing Party such documents will either be made available for inspection as kept in the ordinary course or will be produced in electronic format as image files with, to the extent practicable, OCR text. With respect to ESI documents, the Parties agree to produce such documents in single-page, Group IV TIFF image file format (using a minimum resolution of 300 dpi) with Concordance-compatible image and data load files (i.e., .OPT and .DAT files) using standard Concordance delimiters. To the extent technically feasible without undue burden, when converting ESI from its native format into TIFF image format, hidden content (including hidden slides, columns and rows), tracked changes, edits, comments (including author comments), notes (including speakers notes) shall also be imaged so that such content is viewable on the image file. If particular documents warrant a different format, the Parties will cooperate to arrange for the mutually acceptable production of such documents. The Parties agree to take reasonable measures in processing documents for production so as to not materially affect the searchability of documents. Productions will be delivered via secure electronic file transfer system or shipped on encrypted physical media, such as CDs, DVDs or hard

drives. To maximize the security of information in transit, any media on which documents being produced are transmitted may be encrypted by the Producing Party using commercially reasonable encryption technology.

- b) *Metadata.* The metadata fields set out in Appendix 1 will be produced in the .DAT data load file to the extent already in existence and reasonably accessible and/or available. To the extent that metadata does not exist, is not reasonably accessible or available, or would be unduly burdensome to collect, nothing in this Protocol shall require any party to extract, capture, collect, or produce such data. The Parties are not under any obligation to create or manually code metadata fields that are not otherwise automatically generated or that do not exist in the original metadata, with the exception of the following fields: (1) BegBates, (2) EndBates, (3) BegAttach, (4) EndAttach, (5) Confid Designation, (6) Text Path, and (7) All Custodian, all of which shall be populated by the Producing Party or its vendor. The first line in each Concordance compatible .DAT file shall be the header containing the agreed-upon metadata field names, and each subsequent line shall contain the fielded data for each document. .OPT and .DAT files shall be provided in a folder on the production deliverable named "Data."

c) *Production Specifics.*

- (i) Each image should be named with its corresponding Bates number. TIFF files must be produced in Group IV format with minimum resolution of 300 dpi. Original document orientation shall be maintained (i.e., portrait to portrait and landscape to landscape), but the Parties may, but are not required to, customize formatting to allow for optimal legibility (for example, by imaging all e-mail files in portrait mode to minimize text truncation issues). Bates numbers,



confidentiality designations, and redactions shall be burned into the TIFF image files. TIFF image files shall be provided in a folder on the production deliverable named "Images."

- (ii) Image and document break information in .OPT image load files must correspond to the beginning Bates number in the .DAT metadata load file. Each TIFF file produced must be referenced in the production's corresponding .OPT image load file.
- (iii) Any document being produced in color shall be produced as color 300 dpi single-page JPEG files. Except for all documents that are or contain advertisements, marketing materials and/or public relations materials, including all drafts thereof, and all other documents that need to be in color in order to be fully or meaningfully understood, which shall be produced in color,<sup>2</sup> the parties are not required to produce documents in color in the first instance. If the Receiving Party has good cause to make reasonable requests for production of certain documents in color, the Receiving Party may do so by providing: (1) a list of the Bates numbers of documents it requests to be produced in color format; and (2) an explanation of the need for production in color format. The Producing Party shall not unreasonably deny such requests, but need not make such production until the Parties reach agreement regarding the additional costs associated with the production of documents in color. The Producing Party, at its

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<sup>2</sup> In the event there is a lack of clarity or disagreement regarding whether certain documents fall within one of these categories, the Parties may request to meet and confer with the goal of reaching an agreement regarding whether the documents must be produced in color.

sole discretion, may opt to produce native copies of the requested documents in lieu of providing color JPEG files.

- (iv) Excel files, .CSV files, and other similar spreadsheets, communications from internal messaging systems<sup>3</sup> and audio and video files shall be produced in native format ("Native Files"). Native Files shall be provided in a folder on the production deliverable named "Natives." Each Native File shall be produced with a corresponding slip-sheet TIFF placeholder image file, which will contain burned in Bates numbers, confidentiality designations and language indicating that the document is being produced as a Native File. Native Files shall be named with the beginning Bates number that is assigned to that specific record in the production. A "NativeLink" entry for each spreadsheet shall be included in the .DAT load file indicating the relative file path to each native file in the production volume. Native Files shall be produced with extracted text and applicable metadata fields as set forth in Appendix 1. For Native Files that contain redactions, the Producing Party will apply the redactions directly on the native file itself. Each Producing Party will make reasonable efforts to ensure that it or its discovery vendor, prior to conversion to TIFF, reveals hidden data from redacted Native Files that are produced as TIFF image files and will be formatted so as to be readable (for example, column widths should be formatted so that numbers do not appear as "#####"). Under these circumstances, all single-page TIFF images shall include row and column headings.

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<sup>3</sup> To the extent that they exist on systems from which they are exportable.

- (v) Other than as specifically set forth in the paragraph above, and other than as further agreed upon for any file types that are not susceptible to imaging, a Producing Party need not produce documents in native format.
- (vi) For each produced document, an extracted text file shall be provided along with its corresponding TIFF image file(s) and metadata. Each extracted text file shall be named according to the beginning Bates number that is assigned to that specific record in the production, followed by .txt. File names shall not contain any special characters or embedded spaces. The text of native files shall be extracted directly from the native file. However, if a document has been redacted, Optical Character Recognition (“OCR”) of the redacted document will suffice in lieu of extracted text. Also, if extracted text is not available in the native file or documents contain redactions, the documents shall be processed by an OCR tool prior to production to extract available text so that the record is searchable. If a party, however, chooses not to OCR sets of documents that have been originally maintained in an image format or hard copy format because the utility of the OCR is outweighed by the expense, it need not provide OCR for such documents that do not have available extracted text.
- (vii) Bates numbering must maintain consistent padding (e.g., with a consistent number of leading zeros) across the entire production and be sequential within a given document. The numbering convention shall be consistent throughout rolling productions. There shall be no spaces between the prefix and numeric value. No special characters shall be used other than underscores and dashes. If suffixes are used, they shall be in dot notation (e.g., BATES000000001.001).



Bates numbers shall be branded in the lower right-hand corner of all TIFF images and shall not obscure any part of the underlying image.

- (viii) Parent-child relationships (the association between e-mails and attachments) will be preserved. Document families must be produced consecutively with the family relationship noted in the appropriate metadata field(s). For example, if a party produces an e-mail with its attachments, such attachments shall be produced behind the e-mail in the order in which they were attached.
- (ix) Confidentiality designations should be stamped onto images. Confidentiality designations and related issues, including alternative means of designation, will be handled as set forth in any Protective Order agreed upon by the Parties.
- (x) Each party shall normalize all ESI produced in this case to a single time zone (e.g., GMT, UTC, EST, etc.) and disclose which time zone was utilized during processing in advance of or contemporaneously with making its first production.
- (xi) A Producing Party shall globally de-duplicate (i.e., de-duplicate across custodians) by exact duplicate families using MD5 or SHA-1 hash values. De-duplicated documents shall not be produced if already produced in a prior production. The identity of the primary custodian and other processed and agreed-upon custodians that possessed all de-duplicated items at the time of production shall be provided in the "All Custodian" field of the copy of the single record that is produced. Multiple custodians in the "All Custodian" field shall be separated by a semicolon. A Producing Party is not obligated to provide custodian information for custodians whom it has not agreed to produce. Hard-copy documents shall not be eliminated as duplicates of responsive ESI. The

Parties shall use commercially acceptable e-discovery software that utilizes either MD5 or SHA-1 cryptographic hash values to de-duplicate ESI (at the document [i.e., parent] level). Any party opting to de-duplicate in a different manner from the foregoing procedure shall disclose its de-duplication methodology to the Receiving Party prior to de-duplication. If the Receiving Party objects to the methodology, it shall timely raise those concerns with the Producing Party.

- (xii) The Parties shall make reasonable efforts to remove passwords or other security protection from individual potentially responsive ESI documents.
- (xiii) Common system and program files as defined by the NIST library (which is commonly used by discovery vendors to exclude system and program files from document review and production) need not be processed, reviewed or produced.
- (xiv) To the extent responding to a discovery request requires production of ESI contained in a database, the Producing Party may comply with the discovery request by querying the database and generating a report ("Structured Data Report") in a reasonably usable and exportable electronic format (for example, in Excel or .CSV format). To the extent available and reasonably accessible, the first line in the Structured Data Report will show the column headers for each field of data included in the Structured Data Report. Unless otherwise agreed, the Parties have no obligation to provide a supplemental report for records and information post-dating the extraction of the Structured Data Report.
- (xv) ESI that is (i) used primarily for backup or disaster recovery purposes; or (ii) stored on any computers, servers, external hard drives, or other media created for disaster recovery purposes (collectively, "Backup ESI"), need not be

preserved or produced. A decision to preserve any ESI shall not be interpreted as an admission that the preserved material is reasonably accessible ESI subject to search and production, or relevant or proportional to the issues in this matter.

(xvi) All productions are subject to any Protective Order entered by the Court in this case. Pursuant to the applicable rules and any Protective Order, the production of a privileged or work-product protected ESI, documents, information or materials, whether inadvertent or otherwise, is not a waiver of the privilege or protection in the pending case or in any other federal or state proceeding.

(xvii) Nothing in this ESI Protocol shall affect, in any way, a Producing Party's right to seek reimbursement for costs associated with collection, review, and/or production of documents.

(xviii) Nothing in this ESI Protocol shall be interpreted to require disclosure of information protected by the attorney-client privilege, work-product doctrine, or any other applicable privilege or immunity. The Parties do not waive any objections as to the production, discoverability, admissibility, or confidentiality of any information or documents. All productions are subject to any Protective Order entered by the Court in this action.

## **7. ROLLING PRODUCTION**

Regardless of any agreed-upon phasing of discovery, the Parties agree that rolling productions are acceptable, unless otherwise ordered by the Court.

## **8. DOCUMENTS PROTECTED FROM DISCOVERY**

Should any documents be withheld by either Party on the basis of attorney/client communication privilege, attorney work-product privilege, common interest agreement, a joint-defense privilege or any other applicable privilege, immunity or protective doctrine recognized under applicable law, the Parties



will exchange privilege logs within a reasonable time after the final production of documents and subject to the terms of the Protective Order or as otherwise agreed to by the Parties.

#### **9. MODIFICATION**

This ESI Protocol may be modified by agreement of the affected Parties or by the Court for good cause shown. Nothing in this ESI Protocol waives the right of any Party to petition the Court for an Order modifying its terms upon good cause shown, provided, however, that the affected Parties must first meet and confer and use reasonable best efforts to negotiate an exception from or modification to this ESI Protocol prior to seeking relief from the Court.

### **Appendix 1: ESI Metadata and Coding Fields**

Field Name	Description of Field
BegBates	Beginning document number
EndBates	Ending document number
BegAttach	Beginning document number of family unit
EndAttach	Ending document number of family unit
All Custodian	All production custodians (including the identity of other custodians for de-duplicated records) must be listed in the "All Custodian" field of the copy of the single record that is produced; Multiple custodians in the "All Custodian" field shall be separated by a semicolon.
Author	Author field extracted from the metadata of the native file
From	Sender of the e-mail message
To	Recipient(s) of the e-mail message
CC	Recipient(s) of "carbon copies" of the e-mail message
BCC	Recipient(s) of "blind carbon copies" of the e-mail message
Subject	Subject field extracted from the metadata of the native file
Time Zone	Time zone used to normalize data during processing
Sent Date/Time	Date and time the e-mail message was sent (produced in "MM/DD/YYYY HH:MM:SS" 24 hour format)
Date Created	For non-emails (produced in "MM/DD/YYYY HH:MM:SS" 24 hour format)
Last Modified Date/Time	For non-emails (produced in "MM/DD/YYYY HH:MM:SS" 24 hour format)
File Type	Mail, Calendar, Attachment, E-Doc/Individual File
File Extension	File extension of document (.msg, .doc, .xls, etc.)
File Name	Name of original file
File Path	Original file path of document
All File Paths	If documents deduplicated, all original file paths of document
Title	Title of a non-email document (Microsoft Title field)
Hash Value	MD5 or SHA-1 Hash Value, unique document identifier
Nativelink	Relative file path to each native file in the production volume
Textpath	The path to the corresponding OCR or extracted text file included with a production volume.
Confidentiality	e.g., "Confidential," "Highly Confidential", "Null", etc. – subject to specific Confidentiality designations in case Protective Order
Redaction	Indicating whether a file includes any redactions

**IT IS SO STIPULATED**, through Counsel of Record.

Respectfully submitted,

Dated: April 11, 2022

**COMMONWEALTH OF MASSACHUSETTS      EXXON MOBIL CORPORATION**

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