

# NOTIFY

V 4/21

## COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

COMMONWEALTH OF MASSACHUSETTS,	) NOTICE SENT (8)
	) 04-26-22
<i>Plaintiff,</i>	)
	) MD
v.	)
	)
EXXON MOBIL CORPORATION,	)
	)
<i>Defendant.</i>	)

### 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,

/s/ Shennan Kavanagh

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**EXXON MOBIL CORPORATION**

By its attorneys

/s/ Justin Anderson

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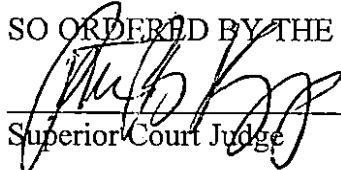
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Attorneys for Defendant  
EXXON MOBIL CORPORATION

Dated: April 11, 2022

SO ORDERED BY THE COURT:

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

4/14/22  
\_\_\_\_\_  
Dated



**EXHIBIT A**

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

_____	)
COMMONWEALTH OF MASSACHUSETTS,	)
	)
<i>Plaintiff,</i>	)
	)
v.	)
	)
EXXON MOBIL CORPORATION,	)
	)
<i>Defendant.</i>	)
_____	)

**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: \_\_\_\_\_