COMMONWEALTH OF MASSACHUSETTS
APPEALS COURT

NO.

COMMONWEALTH OF MASSACHUSETTS,

Plaintiff-Appellee,

v.

EXXON MOBIL CORPORATION,

Defendant-Appellant.

ON PETITION FOR INTERLOCUTORY RELIEF FROM SUFFOLK SUPERIOR COURT CIVIL ACTION NO. 1984-03333-BLS1

MEMORANDUM OF LAW IN SUPPORT OF PETITION OF EXXON MOBIL CORPORATION FOR INTERLOCUTORY RELIEF PURSUANT TO G.L. c. 231, § 118, para. 1

EXXON MOBIL CORPORATION

Patrick J. Conlon
(*pro hac vice*)
22777 Springwoods Village Pkwy.
Spring, TX 77389
Tel: 832-624-6336

CAMPBELL CONROY & O'NEIL, P.C.

Thomas C. Frongillo
(BBO# 180690)
20 City Square, Suite 300
Boston, MA 02129
Tel: 617-241-3092

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP

Theodore V. Wells, Jr.
(*pro hac vice*)
Daniel J. Toal
(*pro hac vice*)
1285 Avenue of the Americas
New York, NY 10019
Tel: 212-373-3000

Justin Anderson
(*pro hac vice*)
2001 K Street, NW
Washington, DC 20006
Tel: 202-223-7300

Dated: April 19, 2022

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

Defendant Exxon Mobil Corporation ("ExxonMobil") submits this Memorandum of Law in support of its Petition for Interlocutory Relief Pursuant to G.L. c. 231, § 118, seeking review and reversal of the March 21, 2022 Memorandum and Order of the Superior Court granting the Commonwealth's Motion to Strike Certain Defenses.

INTRODUCTION

ExxonMobil should not be forced to defend itself against the Commonwealth's claims with one hand tied behind its back. When ExxonMobil challenged the constitutionality of the Attorney General's investigation, the Commonwealth argued those challenges were premature. It said ExxonMobil would have to wait until a civil action was filed. Massachusetts and federal courts agreed and, as a result, ExxonMobil's constitutional challenges were dismissed under a deferential standard of review for government investigations. The Commonwealth is now wielding the shield that protects its investigations as a sword to gut ExxonMobil's defenses. This Court should not allow that gambit to prevail. The Commonwealth is now a civil litigant and is no longer entitled to deference. The Commonwealth should be held to its promise that ExxonMobil would have a fair opportunity to present its defenses in any civil action it filed.

The Superior Court's decision to strike ExxonMobil's constitutional defenses (Defenses 30–33 and 35) is premised on two legal errors. *First*, the Superior Court erroneously held that collateral estoppel bars the defenses. Collateral estoppel applies only where an issue decided in one proceeding is identical in all respects to an issue raised in a subsequent proceeding. That standard was not met here because ExxonMobil's challenges to the investigation were all resolved more than a year and a half prior to the filing of the Commonwealth's complaint. ExxonMobil did not (and could not) have raised any of the stricken defenses at that time because the defenses are directed at the statements that form the basis for the Commonwealth's claims—statements that include constitutionally-protected speech and petitioning.

Second, the Superior Court erroneously imposed inapplicable pleading burdens. To proceed with its defenses, ExxonMobil was not required to rebut a presumption of regularity because that presumption applies only in criminal cases. When it acts as a plaintiff in a civil action, the Commonwealth does not receive the benefit of the doubt. It was also error to hold ExxonMobil's defenses to a plausibility standard. That heightened standard applies only to claims in a

complaint—not to defenses, which must merely be "set forth affirmatively" in an answer. But even if these heightened standards applied, ExxonMobil would meet them in light of the detailed factual allegations in support of its defenses. The Superior Court's decision should be vacated.

BACKGROUND

I. ExxonMobil Challenged the Commonwealth's Pre-Suit Investigation.

In March 2016, the Commonwealth announced an investigation of ExxonMobil within hours of holding a closed-door meeting with climate activists. R.A. 575–77. A CID to ExxonMobil followed less than one month later. R.A. 578–79. ExxonMobil challenged the issuance of the CID in both state and federal court.

In state court, ExxonMobil moved to quash the CID. The trial court denied the motion, *In re Civ. Investigative Demand*, No. 2016-EPD-36, 2017 WL 627305, at *7 (Mass. Super. Ct. Jan. 11, 2017), and the Supreme Judicial Court affirmed based on the Commonwealth's "broad investigatory powers." *Exxon Mobil Corp.* v. *Att'y Gen.*, 479 Mass. 312, 324, 330 (2018).

ExxonMobil also filed a civil lawsuit in federal court in Texas challenging the Commonwealth's investigation. The first judge

assigned to the case found the Commonwealth's investigation "concerning." *Exxon Mobil Corp.* v. *Healey*, 215 F. Supp. 3d 520, 523 (N.D. Tex. 2016). After the case was transferred, a district court in New York dismissed the action. The Second Circuit affirmed, holding that res judicata barred ExxonMobil's claims because its state court challenge of the CID involved "the same relevant injury: *the CID's alleged violation* of various federal constitutional provisions and their state analogues." *Exxon Mobil Corp.* v. *Healey*, 28 F.4th 383, 402–03 (2d Cir. 2022) (emphasis added).

II. ExxonMobil Asserted Constitutional Defenses to the Commonwealth's Complaint.

Several years after the issuance of the CID, in October 2019, the Commonwealth filed a complaint against ExxonMobil alleging a series of misleading statements and omissions under G.L. c. 93A.[1] In response, ExxonMobil asserted constitutional defenses for official misconduct (Defense 30), conflict of interest (Defense 31), selective enforcement (Defense 32), viewpoint discrimination (Defense 33), and violation of the right to petition (Defense 35). R.A. 585–91. These

[1] The Commonwealth amended its complaint in 2020. R.A. 14. For ease of reference, ExxonMobil refers to the "amended complaint" as the "complaint."

defenses were based on the Commonwealth filing an action that targets ExxonMobil's speech in the public debate on climate change.

The Commonwealth moved to strike the defenses and, on March 21, 2022, the Superior Court granted that motion.[2] R.A. 883. Although Defenses 30–33 and 35 were pled separately, the Superior Court assessed them together as "a single selective enforcement defense" and found that this defense was collaterally estopped because it "principally focused on the Commonwealth's motive for bringing this case." R.A. 875, 876. The issue of motive was purportedly "litigated and decided" in the federal court challenge to the CID—even though the federal ruling predated the filing of this case. *Id.* The Superior Court focused solely on the Commonwealth's motives in suing ExxonMobil—not whether the asserted claims attack ExxonMobil's exercise of its constitutional rights.

The Superior Court further held that the constitutional defenses were inadequately pled. R.A. 879. The Superior Court first applied a

---

[2] Although the Superior Court also erroneously struck other defenses (Defenses 7–8 and 22–25), ExxonMobil is not seeking interlocutory relief as to those defenses. R.A. 883. For Defense 34, the Superior Court held that ExxonMobil may argue at a later stage that any corrective disclosures violate the First Amendment's compelled speech doctrine. R.A. 875.

"presumption of regularity" to the Commonwealth's allegations. R.A. 878. Next, the Superior Court used the "plausibility" pleading standard required for claims under Rule 8(a) of the Massachusetts Rules of Civil Procedure—not the lower pleading standard for defenses under Rule 8(c). R.A. 878–79. Finally, the Superior Court held that ExxonMobil's allegations were implausible because no one could "reasonably infer"—based on allegations of collusion and improper influence between the Commonwealth and climate activists—that the Commonwealth "shared in [climate] activists' improper motivation to punish Exxon." R.A. 879.

STANDARD OF REVIEW

A Single Justice has plenary authority to permit an appeal of an interlocutory order. G.L. c. 231, § 118; *Aspinall* v. *Philip Morris Cos., Inc.*, 442 Mass. 381, 389 (2004). Once an appeal is permitted, the Single Justice "enjoys broad discretion . . . to modify, annul or suspend the execution of the interlocutory order" or "to report the request for relief to the appropriate appellate court." *Packaging Indus. Grp., Inc.* v. *Cheney*, 380 Mass. 609, 614 (1980) (cleaned up). Where, as here, an appeal concerns a question of law, the Single Justice reviews the Superior Court's order *de novo*. *See Christopher House of Webster Ltd.*

P'ship v. *Hubbard Health Sys. Real Est.*, 2021 WL 6051868, at *2 (Mass. App. Ct. Dec. 10, 2021).

Motions to strike are "generally disfavored." *Bochart* v. *City of Lowell*, 989 F. Supp. 2d 151, 153 (D. Mass. 2013). To prevail, the moving party must establish that the challenged defenses are "clearly inadequate as a matter of law," *F.D.I.C.* v. *Gladstone*, 44 F. Supp. 2d 81, 90 (D. Mass. 1999), after "tak[ing] as true the allegations of the answer" and drawing all inferences in the defendant's favor, *Bos. Hous. Auth.* v. *Martin*, 92 Mass. App. Ct. 1103, 1103 (2013) (cleaned up). The Superior Court erred in holding that the Commonwealth met that exacting standard.

ARGUMENT

I. Collateral Estoppel Does Not Preclude ExxonMobil's Constitutional Defenses.

The Superior Court's conclusion that collateral estoppel precluded ExxonMobil's constitutional defenses depends on a false equivalence. ExxonMobil's federal court challenge to the CID involved the Commonwealth's authority to issue a CID. That challenge did not—and could not—involve whether the Commonwealth's claims against ExxonMobil are based at least in part on the exercise of its constitutional rights. The Commonwealth's claims were filed over

three years after the issuance of the CID and a year and a half after the federal court dismissed ExxonMobil's challenge to the CID. That court did not and could not have ruled on the propriety of the as-yet unknown claims the Commonwealth would bring.

"When a State court is faced with the issue of determining the preclusive effect of a Federal court's judgment, it is the Federal law of res judicata which must be examined." *Evans* v. *Lorillard Tobacco Co.*, 465 Mass. 411, 465–66 (2013). Under federal law, collateral estoppel requires that the issue sought to be precluded was (1) raised in the prior action; (2) actually litigated; (3) determined by a valid and binding final judgment; and (4) essential to the judgment. *Grella* v. *Salem Five Cent Sav. Bank*, 42 F.3d 26, 30 (1st Cir. 1994). The scope of collateral estoppel "must be confined to situations where the matter raised in the second suit is identical in all respects with that decided in the first proceeding." *Faigin* v. *Kelly*, 184 F.3d 67, 78 (1st Cir. 1999).

Here, the Superior Court precluded ExxonMobil's constitutional defenses because the issue of "improper motive" had been previously litigated in the federal court challenge to the CID. R.A. 876. ExxonMobil does not dispute that the prior federal court challenge involved whether the Commonwealth lacked a good faith belief to

investigate. *Exxon Mobil Corp.* v. *Schneiderman*, 316 F. Supp. 3d 679, 704 (S.D.N.Y. 2018); *see also Healey*, 28 F.4th at 399 (explaining claims arose from "the CID's alleged violation of various federal constitutional provisions and their state analogues"). But here, by contrast, ExxonMobil's defenses arise from the Commonwealth's filing of claims that seek to regulate constitutionally-protected speech and petitioning activity.[3]

The Superior Court conflated these two distinct issues because both rest on overlapping "substantive allegations." R.A. 877. This overlap "does not establish the requisite identity of issues for purposes of collateral estoppel." *Faigin*, 184 F.3d at 78. Instead, "the issues must be defined by reference to the judicial determinations at stake." *Id.*[4] At issue in the federal litigation was the Commonwealth's conduct

---

[3] *See, e.g.*, R.A. 591 ("The Attorney General's Amended Complaint targets quintessential petitioning by ExxonMobil, including lobbying activities and ExxonMobil's statements to regulators, policymakers, public officials, and the press on climate policy."); *see also* R.A. 587–90.

[4] As discussed below, the pleading standard applicable here differs from the plausibility standard applied in the federal court challenge to the CID. "[F]or purposes of preclusion, issues are not identical if the second action involves application of a different legal standard, even though the factual setting of both suits be the same." *In re Relafen Antitrust Litig.*, 286 F. Supp. 2d 56, 65 (D. Mass. 2003)

in issuing the CID. At issue here is whether the *complaint* is at least in part predicated on the content of ExxonMobil's speech and petitioning activity. *See Commonwealth* v. *Exxon Mobil Corp.*, 2021 WL 3488414, at *3 (Mass. Super. Ct. June 22, 2021) (recognizing that Commonwealth's claims depend at least in part on "protected petitioning"). Because the issues raised by ExxonMobil's defenses are not identical in all respects to the issues in the proceedings challenging the CID, the Superior Court erred in striking ExxonMobil's defenses.

ExxonMobil had no prior opportunity to litigate whether the Commonwealth is seeking to restrict its constitutional rights with a Chapter 93A enforcement action. During the CID litigation, the Commonwealth told the federal court that any such argument would be premature because the Commonwealth had not yet "determined to undertake a Chapter 93A enforcement action."[5] The Commonwealth insisted that ExxonMobil could "defend itself and raise its objections

(quoting Wright & Miller, 18 Fed. Prac. & Proc. Juris. § 4417 (2002)).

[5] Mem. of Law in Support of Def.'s Mot. to Dismiss the First Am. Compl., *Exxon Mobil Corp.* v. *Healey*, No. 4:16-cv-00469-L (N.D. Tex. Nov. 28, 2016), ECF No. 125, at 17.

in Massachusetts state court when and if" an action was filed.[6] Now that the Commonwealth has commenced that action, ExxonMobil should be allowed to defend itself.

II. The Superior Court Erred by Holding That ExxonMobil Did Not Sufficiently Plead Its Constitutional Defenses.

The Superior Court's conclusion that ExxonMobil had not sufficiently pled its constitutional defenses is based on three errors: (1) granting the Commonwealth a presumption of regularity reserved for criminal prosecutions; (2) imposing a heightened pleading standard inapplicable to defenses; and (3) holding that ExxonMobil's defenses were implausible under that standard.

A. The Superior Court Improperly Granted the Commonwealth a Presumption of Regularity.

The presumption of prosecutorial regularity calls for courts to presume that criminal prosecutors, "in the absence of clear evidence to the contrary, have properly discharged their official duties." *United States* v. *Armstrong*, 517 U.S. 456, 464 (1996). This presumption is based on criminal prosecutors' "broad discretion to enforce the Nation's criminal laws." *Id.* (cleaned up). There is no basis to extend that deference to the Commonwealth in a civil action.

---

[6] *Id.*

In applying the presumption of prosecutorial regularity, the Superior Court relied on two inapposite opinions. The first opinion concerned a city council's decision to revoke a corporation's license to store diesel fuel. *See Foster from Gloucester, Inc*. v. *City Council of Gloucester*, 10 Mass. App. Ct. 284 (1980). The court there broadly noted that "[t]here is every presumption in favor of the honesty and sufficiency of the motives actuating public officers in actions ostensibly taken for the general welfare." *Id.* at 294. This language does not address the presumption of prosecutorial regularity, let alone demonstrate that it applies in the civil pleading context.

The second opinion involved the discoverability of information concerning a selective prosecution defense in response to a civil enforcement action under the Foreign Agents Registration Act. *Att'y Gen. of U.S.* v. *Irish People, Inc.*, 684 F.2d 928, 949–55 (D.C. Cir. 1982). In analyzing whether the defendant made a prima facie showing of selective prosecution, the court simply stated that because the defendant fell within the Act's registration requirements, "all that was exercised here was the executive's pure enforcement power. If the Government has a valid ground to bring this action, then presumptively it has every right and duty to do so." *Id.* at 948–49. That is a far cry

from raising the civil pleading burden for defenses against government misconduct.

Even if the Commonwealth were entitled to a presumption of prosecutorial regularity, ExxonMobil has rebutted the presumption by pleading a "colorable claim" of improper motive. *Irish People, Inc.*, 684 F.2d at 932. ExxonMobil alleges that the Commonwealth filed this action in collaboration with climate activists to pursue pretextual legal actions against ExxonMobil and the fossil fuel industry, all for the purpose of "maintaining pressure on the industry that could eventually lead to its support for legislative and regulatory responses to global warming." R.A. 572–73. After these meetings, the Commonwealth publicly announced its investigation of ExxonMobil. R.A. 575–76. These allegations raise a "colorable claim" of improper motive.

B. The Superior Court Erroneously Applied a Heightened Plausibility Standard.

The Superior Court erroneously dismissed ExxonMobil's constitutional defenses because ExxonMobil purportedly failed to allege facts that "plausibly" supported them. R.A. 879. The Massachusetts Rules of Civil Procedure do not require that defenses be "plausibly" pled; defenses need only be "set forth affirmatively" in an answer.

The plausibility standard is used to test the sufficiency of a complaint under Rule 8(a), which requires a party to plead "a short and plain statement of the claim *showing* that [it] is entitled to relief." Mass. R. Civ. P. 8(a) (emphasis added). Rule 8(a)'s specific requirement to make a "showing" is what triggers plausibility review. *See Iannacchino* v. *Ford Motor Co.*, 451 Mass. 623, 636 (2008). When pleading defenses, however, a defendant is not required to "show" that it is entitled to relief; a defendant need only "set forth affirmatively" its defenses. Mass. R. Civ. P. 8(c).

Although no Massachusetts court has compared the pleading standards for claims and defenses, case law interpreting the federal analogue to Rule 8 is instructive. Like the Massachusetts rule, the federal rule requires a "showing that the pleader is entitled to relief," but for defendants to merely "state" their defenses. Fed. R. Civ. P. 8; *see also Alicea* v. *Comm.*, 466 Mass. 228, 236 n.12 (2013) (using federal case law to interpret Rule 8(c) because the federal rule is "analog[ous]"). Courts within the First Circuit have uniformly held, based on "the language differences in the applicable rules," that defenses are subject to a lower pleading standard than the plausibility standard governing claims. *Owen* v. *Am. Shipyard Co.*, 2016 WL

1465348, at *2 (D.R.I. Apr. 14, 2016); *see Astellas Inst. for Regenerative Med.* v. *ImStem Biotechnology, Inc.*, 458 F. Supp. 3d 95, 110 (D. Mass. 2020).[7]

The decision in *Deutsche Bank National Trust Co.* v. *Gabriel*, 81 Mass. App. Ct. 564 (2012)—which the Superior Court cited below—does not hold to the contrary. *Deutsche* did not address whether defenses must be "plausibly" alleged. *Id.* at 571.[8] The Court observed that a Rule 12(f) motion to strike a defense is akin to a Rule 12(b)(6) motion because both "challenge[] the legal sufficiency of the pleading." *Id.* The legal sufficiency of pleadings, however, is governed by Rule 8 rather than Rule 12. *See, e.g.*, *Kipp* v. *Kueker*, 7 Mass. App. Ct. 206,

---

[7] *See also Asphaltos Trade, S.A.* v. *Bituven Puerto Rico, LLC*, 2021 WL 965645, at *2 (D.P.R. Mar. 15, 2021); *Traincroft, Inc.* v. *Ins. Co. of Penn.*, 2014 WL 2865907, at *3 (D. Mass. June 23, 2014); *Hansen* v. *R.I.'s Only 24 Hour Truck & Auto Plaza, Inc.*, 287 F.R.D. 119, 122–23 (D. Mass. 2012); Wright & Miller, 5 Fed. Prac. & Proc. Civ. § 1274 n.9 (4th ed. 2021) ("[T]he majority of courts have rightly held that Rule 8(c) does not warrant the extension of the *Twombly* and *Iqbal* standard to affirmative defenses.").

[8] In discussing Rule 12(b)(6), the Court in *Deutsche* cited a chapter from a leading treatise that advocates against applying a plausibility standard to defenses. *See* 81 Mass. at 571 (citing Wright & Miller, 5C Fed. Prac. & Proc. Civ. § 1381 (4th ed. 2021) ("The better view is that the plausibility standard only applies to the pleading of affirmative claims for relief.")).

213 n.7 (1979) (explaining that "a motion under Rule 12(b)(6) test[s] the[] sufficiency" of allegations under Rule 8). And Rule 8 establishes different pleading standards for claims and defenses. *See, e.g.*, *Owen*, 2016 WL 1465348, at *2. Accordingly, *Deutsche* does not support the Superior Court's application of a plausibility standard.

Even if a plausibility standard were to apply, ExxonMobil satisfies that standard as to Defenses 30–33 and 35. Those defenses plausibly allege that the Commonwealth violated ExxonMobil's constitutional rights. *See* R.A. 614–18.[9]

Despite having 81 licensed distributors, 77 importers, and 61 exporters of gasoline in Massachusetts,[10] the Commonwealth has

---

[9] The Superior Court suggested that ExxonMobil's "factual allegations" were primarily "conclusory," R.A. 879, even though ExxonMobil pled numerous facts to support its defenses. *See* R.A. 572–80, 585–91. A trial court in Texas adopted these facts in concluding that the Massachusetts Attorney General expressly targeted ExxonMobil's statements on "public policy." *In Re Exxon Mobil Corp.*, 2018 Tex. Dist. LEXIS 1, at *10 (Tarrant Cty. Tex. Apr. 24, 2018). This decision was not rendered "a legal nullity," as the Superior Court concluded. R.A. 879 n.9. Although the Texas Court of Appeals found a lack of personal jurisdiction over the defendants, it did not disturb the trial court's factual findings. *See City of San Francisco* v. *Exxon Mobil Corp.*, 2020 WL 3969558 (Tex. Ct. App. June 18, 2020).

[10] *See* Mass. Dep't of Revenue, Active Fuel Licenses, https://www.mass.gov/doc/active-gasoline-fuel-licensees-list/download (last updated Apr. 2, 2022).

singled out ExxonMobil for the past six years because of the company's policy statements on climate change. R.A. 586–87. For example, the Commonwealth challenges certain ExxonMobil petitioning as deceptive precisely because the company "urge[d] delay in regulatory action." R.A. 588 (alterations in original). Likewise, the Commonwealth challenges certain statements as deceptive because they attempted to lobby policymakers and influence energy policy. R.A. 591. These allegations satisfy the plausibility standard established by Rule 8(a). The Superior Court erred by concluding otherwise.

CONCLUSION

The Superior Court erred, as a matter of law, in granting the Commonwealth's motion to strike ExxonMobil's constitutional defenses. ExxonMobil was not collaterally estopped from raising those defenses, which challenge the alleged conduct the Commonwealth relies on as the basis for its claims; ExxonMobil could not have raised—let alone litigated—those defenses before the Commonwealth filed this action. In addition, the Superior Court erred in according the Commonwealth a presumption of regularity, and applying a heightened plausibility standard that applies to the pleading of claims, but not defenses, a standard that ExxonMobil nevertheless satisfied.

ExxonMobil therefore respectfully requests that this Court vacate the Superior Court's decision striking ExxonMobil's constitutional defenses.

Respectfully submitted,

EXXON MOBIL CORPORATION

By its attorneys,

EXXON MOBIL CORPORATION

Patrick J. Conlon
(*pro hac vice*)
22777 Springwoods Village Parkway
Spring, TX 77389
Tel: 832-624-6336
patrick.j.conlon@exxonmobil.com

CAMPBELL CONROY & O'NEIL, P.C.

By: /s/ *Thomas C. Frongillo*
Thomas C. Frongillo
(BBO# 180690)
20 City Square, Suite 300
Boston, MA 02129
Tel: 617-241-3092
tfrongillo@campbell-trial-lawyers.com

PAUL, WEISS, RIFKIND,
WHARTON & GARRISON, LLP

Theodore V. Wells, Jr.
(*pro hac vice*)
Daniel J. Toal
(*pro hac vice*)
1285 Avenue of the Americas
New York, NY 10019-6064
Tel: (212) 373-3000
Fax: (212) 757-3990
twells@paulweiss.com
dtoal@paulweiss.com

Justin Anderson
(*pro hac vice*)
2001 K Street, NW
Washington, DC 20006-1047
Tel: (202) 223-7300
Fax: (202) 223-7420
janderson@paulweiss.com

Dated: April 19, 2022

CERTIFICATE OF COMPLIANCE

I hereby certify that:

1. This brief complies with the rules of court that pertain to the filing of briefs, including Mass. R.A.P. 16(e) (references to the record), Mass. R.A.P. 18 (appendix to the brief), Mass R.A.P. 20 (form and length of briefs, appendices, and other documents), Mass R.A.P. 21 (redaction); and

2. This brief complies with Mass. Appeals Court Rule 20, and was prepared using Microsoft Word with 14-point, Times New Roman font, and this brief consists of 3,483 words, excluding the parts exempted by Mass. R.A.P. 20(a)(2)(D).

Dated: April 19, 2022

By: /s/ *Thomas C. Frongillo*

Thomas C. Frongillo
(BBO# 180690)
20 City Square, Suite 300
Boston, MA 02129
Tel: 617-241-3092
tfrongillo@campbell-trial-lawyers.com

CERTIFICATE OF SERVICE

I hereby certify that on, April 19, 2022, I served Appellant's Petition for Interlocutory Relief, Memorandum of Law, and Record Appendix by the Electronic Filing System in the Massachusetts Appeals Court and in the Suffolk Superior Court under Civil Action No. 1984-03333-BLS1, and by electronic mail on:

Attorney General of the
Commonwealth of Massachusetts

Richard A. Johnston
Christophe G. Courchesne
Seth Schofield
Office of the Attorney General
Energy and Environment Bureau
One Ashburton Place, 18th Floor
Boston, Massachusetts 02108
richard.johnston@mass.gov
christophe.courchesne@mass.gov
seth.schofield@mass.gov

Dated: April 19, 2022

By: /s/ *Thomas C. Frongillo*
Thomas C. Frongillo
(BBO# 180690)
20 City Square, Suite 300
Boston, MA 02129
Tel: 617-241-3092
tfrongillo@campbell-trial-lawyers.com