IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

EXXON MOBIL CORPORATION, Plaintiff, v. MAURA TRACY HEALEY, Attorney General of Massachusetts, in her official capacity, Defendant.	)	No. 4:16-CV-469-K

OPPOSITION OF ATTORNEY GENERAL MAURA HEALEY TO PLAINTIFF EXXON MOBIL CORPORATION'S MOTION FOR PRELIMINARY INJUNCTION

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I. INTRODUCTION

Exxon Mobil Corporation ("Exxon" or the "Company") seeks a preliminary injunction to halt Massachusetts Attorney General Maura Healey's investigation into whether Exxon violated the Massachusetts Consumer Protection Act, Mass. Gen. Laws ch. 93A ("Chapter 93A"), the Massachusetts consumer and investor protection law. Exxon's motion for preliminary injunction—and indeed, its entire lawsuit, which the Attorney General is simultaneously moving to dismiss—is a calculated effort to avoid and delay the Company's compliance with a duly authorized and lawful civil investigative demand ("CID") issued by the Attorney General regarding Exxon's conduct in the Massachusetts marketplace. Moreover, Exxon has filed a nearly identical lawsuit against Attorney General Healey in Massachusetts state court.[1] As set forth in the Attorney General's concurrent brief in support of her motion to dismiss this case, the Massachusetts trial court—not this Court—is the proper forum for Exxon to assert its challenges to the CID issued by the Attorney General. This Court therefore need not reach Exxon's preliminary injunction motion because it should dismiss Exxon's suit for lack of personal jurisdiction over Attorney General Healey, as well as on the other grounds set forth in her motion to dismiss.

Even if the case is not dismissed, Exxon has failed to satisfy its burden to show it is entitled to preliminary injunctive relief. Exxon's claim that it will be irreparably harmed by enforcement of the CID is belied by the fact that Exxon has challenged the CID in Massachusetts state court and thus has a more than adequate remedy there to raise all of its objections, whether under federal or state law, to the CID. Even if Exxon ultimately is required to comply, the

[1] Exxon's Texas suit includes federal constitutional claims that it did not, but could have, brought in Massachusetts. Those federal constitutional claims are analogous to the Massachusetts constitutional claims Exxon raised in its Massachusetts suit.

Company has *already been complying* with a substantially similar subpoena issued by New York Attorney General Eric Schneiderman in late 2015 and *has produced hundreds of thousands pages of documents* to the New York Attorney General's office, without filing any objection in federal or state court. Further, costs Exxon may incur in complying with the CID do not constitute an irreparable harm, particularly given Exxon's resources, and the fact that it is already engaged in the process of identifying and producing documents in response to the New York Attorney General's subpoena. Nor can Exxon demonstrate it is likely to prevail on the merits of its claims, because its constitutional arguments are without basis. The CID does not regulate, compel, or chill Exxon's speech, and the purpose of the Attorney General's investigation is wholly consistent with the First Amendment, which does not protect false, deceptive, or misleading statements in the marketplace. Exxon's other constitutional arguments are equally meritless.

Finally, the public interest and balance of harms strongly favor denying Exxon its requested relief. An injunction barring the Massachusetts Attorney General from carrying out an investigation pursuant to Chapter 93A—a Massachusetts law intended by the Massachusetts Legislature to protect consumers and investors—would impose significant harm on Massachusetts residents. Granting Exxon the relief it seeks also would result in significant interference with the Massachusetts public's entitlement to have its duly enacted laws enforced by the Attorney General. If this Court reaches Exxon's motion for preliminary injunction, it should be denied.

II. LEGAL AND FACTUAL BACKGROUND

A. The Attorney General's Authority to Issue Civil Investigative Demands Under Massachusetts Law

Attorney General Healey is an elected constitutional officer in the Commonwealth of Massachusetts and is the state's highest ranking law enforcement official. Mass. Gen. Laws ch. 12, § 3. The Attorney General also has various enumerated statutory powers, including enforcement of Chapter 93A, which proscribes unfair and deceptive practices in the conduct of business.[2]

The purpose of Chapter 93A is "to improve the commercial relationship between consumers and business persons and to encourage more equitable behavior in the marketplace," *Poznik v. Mass. Med. Prof'l Ins. Ass'n*, 628 N.E.2d 1, 4 (Mass. 1994) (abrogated by statute on other grounds), as well as to provide "proper disclosure of information and a more equitable balance in the relationship of consumers to persons conducting business activities," *Commonwealth v. DeCotis*, 316 N.E.2d 748, 752 (Mass. 1974). To that end, section 2 of Chapter 93A prohibits "unfair or deceptive acts or practices in the conduct of any trade or commerce."

"'*[W]henever [s]he believes* a person has engaged in any method, act or practice declared to be unlawful'" by Chapter 93A, the Attorney General possesses broad powers to investigate the suspected unlawful conduct, including the issuance of CIDs. *Att'y Gen. v. Bodimetric Profiles*, 533 N.E.2d 1364, 1367 (Mass. 1989) (quoting and interpreting Attorney General's authority under Mass. Gen. Laws ch. 93A, § 6(1)) (emphasis in original). To initiate an investigation, the Attorney General need only believe that a person or entity is engaging in an act in violation of the statute. *Harmon Law Offices, P.C. v. Att'y Gen.*, 991 N.E.2d 1098, 1103 (Mass. App. Ct. 2013).

[2] Mass. Gen. Laws ch. 12, § 5; Mass. Gen. Laws ch. 93, §§ 8, 9; Mass. Gen. Laws ch. 93A, §§ 4, 6.

CIDs are a crucial tool created by statute to assist the Attorney General in fulfilling her statutory obligation to gain critical information regarding whether the conduct of an entity under investigation amounts to a violation of the statute.[3] In some cases, the information the Attorney General receives through the course of an investigation identifies violations warranting enforcement, and in others, it does not.

Since 2013, the Attorney General's Office ("Office") has issued several hundred CIDs to or regarding companies or individuals suspected of committing unfair and deceptive business practices or other conduct in violation of Massachusetts law. Appendix ("App."), Declaration of Melissa A. Hoffer ("Hoffer Decl."), ¶ 3. Those CIDs included a number issued in connection with joint investigations with other states and the federal government: about twenty-five with other states; about thirty involving the federal government; and some involving joint investigations with other states and the federal government. *Id.*, ¶ 4.[4] CIDs issued pursuant to the

[3] Nearly every other state attorney general has CID or similar authority. *See, e.g.*, Ala. Code § 8-19-9; Alaska Stat. Ann. § 45.50.495; Ariz. Rev. Stat. Ann. § 44-1524; Ark. Code Ann. § 4-88-111; Colo. Rev. Stat. Ann. § 6-1-107; Del. Code Ann. tit. 6, § 2514; Fla. Stat. Ann. § 501.206; Ga. Code Ann., § 10-1-403; Idaho Code Ann. § 48-611; 815 Ill. Comp. Stat. Ann. 505/3; Kan. Stat. Ann. § 50-631; Ky. Rev. Stat. Ann. § 367.240; La. Stat. Ann. § 51:1412; Md. Code Ann., Com. Law § 13-405; Minn. Stat. Ann. § 8.31; Miss. Code. Ann. § 75-24-27; Mo. Ann. Stat. § 407.040; Mont. Code Ann. § 30-14-113; Neb. Rev. Stat. Ann. § 59-1611; N.H. Rev. Stat. Ann. § 358-A:8; N.J. Stat. Ann. § 56:8-3; N.M. Stat. Ann. § 57-12-12; N.Y. Exec. Law § 63; N.C. Gen. Stat. Ann. § 75-10; Ohio Rev. Code Ann § 1345.06; Okla. Stat. Ann. tit. 15, § 758; Or. Rev. Stat. Ann. § 646.618; 71 Pa. Stat. and Cons. Stat. Ann. § 307-3; 9 R.I. Gen. Laws Ann. § 9-1.1-6; S.C. Code Ann. § 39-5-70; S.D. Codified Laws § 37-24-12; Tenn. Code Ann. § 47-18-106; Tex. Bus. & Com. Code Ann. § 17.61; Vt. Stat. Ann. tit. 9, § 2460; Va. Code Ann. § 59.1-201; Wash. Rev. Code Ann. § 19.86.110; Wyo. Stat. Ann. § 40-12-112.

[4] Examples since 2013 (made public through settlement with target companies) include: investigations involving large multistate groups and the federal government (Chase Bank, Ocwen, and HSBC); investigations with small groups of states and the federal government (Citigroup, JP Morgan); a joint investigation with federal authorities (Oppenheimer); a joint investigation with another state (LPL Financial); and a joint investigation with a large multistate group (MoneyGram). App. Exhibit ("Exh.") 1, App. 338-350 (Office press releases). A recent example is the Office's 2016 leadership and participation in a multistate investigation into Volkswagen's "clean diesel" deception,

Office's Chapter 93A investigative authority have addressed, among other things, foreclosure practices of banks, business practices in the pharmaceuticals industry, the marketing and sale of securities, and solicitations and transactions involving other products and services sold in Massachusetts. *Id*.

B. Exxon's Business Activities in Massachusetts

Exxon[5] conducts extensive business in Massachusetts, including sales of its fossil-fuel products directly to the State and to wholesalers and retailers located in Massachusetts and sales of its securities to Massachusetts-based investors, including large financial services companies. Indeed, Exxon is one of the leading suppliers of fossil fuel products in Massachusetts, routinely conducting transactions with hundreds of Massachusetts retailers of Exxon products, including Pep Boys, Advance Auto Parts, Auto Zone, NAPA Auto Parts, Costco, and Target.[6] Most prominently, Exxon distributes fossil fuel products to consumers through more than 300 Exxon-branded retail service stations that sell Exxon gasoline and other fuel products[7] and through the operation of its own interstate oil pipeline system and major fuel distribution terminals in the Massachusetts cities of Springfield and Everett.[8] Exxon provides advertising and marketing support directly to wholesalers of its products, including those located in Massachusetts.[9] To

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resulting in a partial settlement providing Massachusetts with nearly $100 million in Chapter 93A civil penalties and environmental mitigation. Exh. 2, App. 352-353 (Office press release).

[5] Exxon is the largest publicly-traded oil and gas corporation in the world. Exh. 3, App. 355.

[6] Exh. 4, App. 357-373 (portion of an Exxon website with the "Where to buy Mobil™ motor oil" store locator results for the Boston zip code 02108).

[7] Exh. 5, App. 375-380 (portions of an Exxon website directing customers to find its branded stations in Massachusetts); Exh. 6, App. 382-383 (portion of an Exxon website for a representative Mobil-branded station in Boston, Massachusetts).

[8] Exh. 7, App. 385 (Exxon webpage describing its interstate oil pipeline system and fuel distribution terminals in the Massachusetts cities of Springfield and Everett).

[9] Exh. 8, App. 387-389 (wholesalers of Exxon products "have access to premier fuel products and innovative consumer pull programs [and] best-in-class marketing and advertising support and dedicated sales expertise"). *See also* Exh. 9, App. 391 (describing Exxon's "retail fuels technology

promote its sales of fossil fuel products, Exxon advertises them in Massachusetts through all types of media, including radio, television, and the Internet. Hoffer Decl. ¶ 15. Recently, Exxon also directly sold products to Massachusetts. An Exxon division entered into a contract to supply the Massachusetts State Police with motor oil for its cruisers from 2011 through 2014. Exxon touted the deal as providing environmental benefits to Massachusetts.[10]

Exxon's business transactions in Massachusetts also include its relationships with Massachusetts securities investors, such as Boston-based institutional shareholders State Street Corporation and Wellington Capital Management, which together held more than $21 billion in Exxon stock as of March 31, 2016, and mutual fund managers such as Boston-based Fidelity Investments.[11] Indeed, Exxon admits it recently has sold securities (short term fixed rate notes) in Massachusetts.[12]

C. 2015 Investigative Reporting and Release of Exxon Documents

In 2015, the Los Angeles Times, in cooperation with the Columbia University School of Journalism,[13] and the news organization InsideClimate News[14] published a series of investigative reports and internal Exxon and other documents establishing that Exxon had a robust climate

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platform" for Exxon-branded stations and quoting Exxon wholesale manager Grant Doescher describing platform's benefits for "[o]ur stations").

[10] *See* Exh. 10, App. 393-394 (contract) and Exh. 11, App. 396-397 (press release).

[11] *See* Exh. 12, App. 400 (list of largest institutional shareholders); Exh. 13, App. 402 (holdings of Fidelity Independence Fund). Exxon's chief executive officer discussed the Company's environmental performance with a Massachusetts-based investor at the Company's 2014 annual shareholder meeting. *See* Exh. 14, App. 426 (shareholder meeting unofficial transcript).

[12] Memorandum of Law in Support of Exxon's Motion for a Preliminary Injunction ("Memo.") at 10 n.53. Such notes are not exempt from the definition of "security" under Massachusetts law, subjecting such transactions to scrutiny pursuant to Chapter 93A. *Compare* 15 U.S.C. § 77c(a)(3) *with* Mass. Gen. Laws ch. 110A, § 401(k).

[13] Exh. 15, App. 431-445 (Sara Jerving, et al., *What Exxon knew about the Earth's melting Arctic*, L.A. Times, Oct. 9, 2015).

[14] Exh. 16, App. 447-550 (InsideClimate News articles in Exxon: The Road Not Taken series). InsideClimate News was named a finalist for a Pulitzer Prize for its work on the series. Exh. 17, App. 552-553.

change scientific research program in the late 1970s into the 1980s that documented the serious potential for climate change, the likely contribution of fossil fuels (the Company's chief product) to climate change, and the risks of climate change, including risks to Exxon's own assets and businesses.[15] Exxon's scientists were, in the early 1980s, predicting significant increases in global temperature as a result of the combustion of fossil fuels, and that a 2 to 3 degree Celsius[16] increase could lead to melting of polar ice, rising sea levels, "redistribution of rainfall," "accelerated growth of pests and weeds," "detrimental health effects," and "population migration."[17] One Exxon scientist warned that it was "distinctly possible" that the effects of climate change over time will "indeed be catastrophic (at least for a substantial fraction of the earth's population)."[18]

Based on these documents showing Exxon's longstanding internal knowledge and more recent Exxon statements, it appears that Exxon may have failed to disclose fully its knowledge of the threats posed by climate change to its businesses and that Exxon continues to make apparently misleading and deceptive statements to investors and consumers. For example, as described above, Exxon understood that warming in excess of two degrees Celsius (about 3.6 degrees Fahrenheit) would pose a significant threat, and it is widely recognized today that, to

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[15] According to InsideClimate News, its "reporters interviewed former Exxon employees, scientists, and federal officials, and consulted hundreds of pages of internal Exxon documents, many of them written between 1977 and 1986." Neela Banerjee, *et al*., Exxon: The Road Not Taken 2 (InsideClimate News 2015), *available at* https://insideclimatenews.org/content/exxon-road-not-taken (e-book; last accessed Aug. 5, 2016). InsideClimate News also reviewed "thousands of documents from archives including those held at the University of Texas-Austin, the Massachusetts Institute of Technology and the American Association for the Advancement of Science." *Id.* Following the disclosure, Exxon does not dispute the authenticity of the documents. Exh. 18, App. 555-556 (Exxon webpage posting documents).

[16] A 2 to 3 degree Celsius temperature increase is equivalent to a 3.6 to 5.4 degree Fahrenheit increase.

[17] Exh. 19, App. 569-570 (Henry Shaw, *CO_2 Greenhouse and Climate Issues* (March 28, 1984)).

[18] Exh. 20, App. 572 (interoffice memorandum from R.W. Cohen to W. Glass (Aug, 18, 1981)).

avoid the most severe impacts of climate change, carbon dioxide emissions must be reduced to ensure global average temperature increase does not exceed two degrees Celsius above preindustrial levels; that objective formed the basis for the recent Paris Agreement of the parties, including the United States, to the United Nations Framework Convention on Climate Change.[19] In its 2012 World Energy Outlook, the International Energy Agency reported that "[n]o more than one-third of proven reserves of fossil fuels can be consumed prior to 2050 if the world is to achieve the 2 degree Celsius goal."[20] If substantial portions of Exxon's vast fossil fuel reserves are unable to be burned due to carbon dioxide emissions limits put in place to stabilize global average temperature, those assets—valued in the billions—will be stranded, placing shareholder value at risk.[21] Over three decades ago, Exxon understood that climate-driven risk to its businesses, recognizing in 1982, in a memorandum widely distributed to Exxon management, that "[m]itigation of the 'greenhouse effect' would require major reductions in fossil fuel combustion,"[22] and, in 1984, that "[w]e can either adapt our civilization to a warmer planet or avoid the problem by sharply curtailing the use of fossil fuels."[23]

Yet, Exxon continues to maintain that the future is bright for its investors, representing in a 2014 report Exxon prepared for shareholders that "[w]e are confident that none of our

[19] *See* Exh. 21, App. 580, at art. 2 § 1(a) (Paris Agreement). As of August 3, 2016, 180 countries have signed the agreement, and 22 of those countries have formally ratified it.
[20] *See* Exh. 22, App. 609 (executive summary).
[21] Indeed, one financial services provider in New England bluntly concluded that "there are fundamental questions about whether fossil fuel companies like ExxonMobil have a long-term future in the marketplace." *See* Exh. 23, App. 618 (IW Financial, *Managing the Risks of Exposure to Fossil Fuel Companies*).
[22] Exh. 24, App. 626 (memorandum from M.B. Glaser to a broad distribution list of Exxon management, attaching document, "CO_2 'Greenhouse Effect' Summary").
[23] Exh. 19, App. 570 (Henry Shaw, *CO_2 Greenhouse and Climate Issues* (March 28, 1984)).

hydrocarbon reserves are now or will become 'stranded.'"[24] Exxon made that same representation in 2016 correspondence to the U.S. Securities and Exchange Commission,[25] and likewise represented in a 2016 press release for its "Energy Outlook 2016" that "[o]il will provide one third of the world's energy in 2040, remaining the No. 1 source of fuel, and natural gas will move into second place."[26]

Exxon also understood in the early 1980s that doubling of atmospheric carbon dioxide would occur "sometime in the latter half of the 21st century," and that "CO_2-induced climate changes should be observable well before doubling."[27] Exxon's scientists agreed with the scientific consensus that "a doubling of atmospheric CO_2 from its pre-industrial revolution value would result in an average global temperature rise of (3.0 ± 1.5) [degrees Celsius]."[28] Exxon understood that "a temperature increase of this magnitude would bring about significant changes in the earth's climate, including rainfall distribution and alterations in the biosphere."[29] Nevertheless, as of 2016, Exxon continues to tell investors and consumers that "[w]hile most scientists agree climate change poses risks related to extreme weather, sea-level rise, temperature extremes, and precipitation changes, current scientific understanding provides limited guidance

[24] *See* Exh. 25, App. 628 (Exxon, *Energy and Carbon—Managing the Risks* (2014)). The 2014 report was prepared, according to Exxon, "in connection with the withdrawal of a prior shareholder proposal" seeking "an analysis of the potential for the Company's oil and gas assets to become stranded as a result of global public policy regarding climate change." Exh. 26, App. 662 (Feb. 29, 2016, Letter from Exxon counsel Louis L. Goldberg, Esq., to Office of Chief Counsel, U.S. Securities and Exchange Commission).
[25] Exh. 26, App. 662.
[26] Exh. 27, App. 670 (press release, "ExxonMobil's Energy Outlook Projects Energy Demand Increase and Decline in Carbon Intensity," dated Jan. 25, 2016).
[27] Exh. 28, App. 675 (letter from Roger W. Cohen to A.M. Natkin, Exxon Office of Science and Technology (Sept. 2, 1982)).
[28] *Id.*, App. 674. A temperature increase of 1.5 to 4.5 degrees Celsius equals a temperature increase of 2.7 to 8.1 degrees Fahrenheit.
[29] *Id.*

on the likelihood, magnitude, or time frame of these events."[30]

Concerns that Exxon has not adequately disclosed climate risk to Massachusetts investors in its securities appear to be reflected in recent actions by Exxon shareholders (including Massachusetts-based shareholders) to compel the Company to more fully assess and respond to climate risks.[31]

D. Exxon Investigations and Litigation

1. New York Subpoena, Federal Investigation, and Massachusetts CID

On or about November 5, 2015, New York Attorney General Eric Schneiderman issued a subpoena to Exxon under New York's Martin Act, seeking documents regarding Exxon's climate research and its communications to investors and consumers about the risks of climate change and the effect of those risks on Exxon's business.[32] Exxon is cooperating with the New York subpoena and has produced more than 700,000 pages of documents to New York.[33]

In January 2016, at the request of members of Congress, the Department of Justice asked the Federal Bureau of Investigation to investigate whether Exxon should be prosecuted under the federal Racketeer Influenced and Corrupt Organizations Act, based on the documents released

[30] Exh. 29, App. 683 (Exxon webpage, *Meeting global needs—managing climate change business risks*).

[31] In the past year, Exxon shareholders came close to passing resolutions that would have required Exxon to implement "stress tests" to ascertain more specifically the climate-driven risks to Exxon's businesses. The proposals "drew more support than any contested climate-related votes" in Exxon's history, and indicate that "more mainstream shareholders like pension funds, sovereign wealth funds, and asset managers are starting to take more seriously" the effects on Exxon of a "global weaning from fossil fuels." Exh. 30, App. 686-687 (Bradley Olson & Nicole Friedman, *Exxon, Chevron Shareholders Narrowly Reject Climate-Change Stress Tests*, The Wall Street Journal, May 25, 2016); *see also* Exh. 31, App. 691-693 (Natasha Lamb & Bob Litterman, *Really? Exxon left the risk out of its climate risk report*, May 28, 2014) (discussing Exxon's *Energy and Carbon—Managing the Risks* report (Exh. 25)).

[32] Exh. 32, App. 695-699 (*Exxon Mobil Investigated for Possible Climate Change Lies by New York Attorney General*, N.Y. Times, Nov. 5, 2015).

[33] Exh. 33, App. 706 (comment to InsideClimate News published on July 7, 2016).

by journalists.[34] United States Attorney General Lynch recently confirmed that the investigation is ongoing.[35]

Following the release of the Exxon documents, the Attorney General's Office also reviewed them and other Exxon public statements and representations and determined that an investigation pursuant to Chapter 93A was warranted. Attorneys General Schneiderman and Healey and several other attorneys general met in New York in March 2016 and discussed at a press conference their cooperation on a number of national environmental issues.[36] Attorney General Healey announced that her office also would be investigating Exxon.[37]

On April 19, 2016, the Office served Exxon's Massachusetts registered agent with the CID. The CID seeks documents from Exxon on such topics as "Exxon's development, planning, implementation, review, and analysis of research efforts to study CO_2 emissions"; research on how the effects of climate change will affect Exxon's costs, marketability, and future profits; and how this information was communicated to consumers and investors.[38]

2. Texas and Massachusetts Cases

On June 15, 2016, Exxon filed the complaint in this action against Attorney General Healey, in her official capacity, alleging that Attorney General Healey's investigation violated its constitutional rights, along with its motion for a preliminary injunction to enjoin Attorney General Healey from enforcing the CID. The following day, June 16, 2016, Exxon filed in Massachusetts Superior Court a petition to set aside or modify the CID along with an emergency motion seeking the same relief and a stay of the Massachusetts proceedings pending the outcome

[34] Exh. 34, App. 709 (letter from Department of Justice describing referral).
[35] Exh. 35, App. 713 (comment reported in press).
[36] Exh. 36, App. 717-720 (press release regarding press conference, including video recording).
[37] *Id.* (video recording).
[38] Civil Investigative Demand, No. 2016-EPD-36, at 12-20 (Exxon Complaint, Exhibit B).

of the Texas proceeding.[39]

III. ARGUMENT

"A preliminary injunction is an extraordinary remedy," and a decision to grant such relief "is to be treated as the exception rather than the rule." *Miss. Power & Light Co. v. United Gas Pipe Line Co.*, 760 F.2d 618, 621 (5th Cir. 1985). Exxon, as the moving party, fails to meet its heavy burden of satisfying each of the prerequisites for obtaining preliminary injunctive relief. *See id*. In the first instance, as set forth above and in the Attorney General's concurrent brief in support of her motion to dismiss this case, this Court lacks personal jurisdiction over Attorney General Healey and subject matter jurisdiction over this matter, and venue is improper. Exxon therefore cannot succeed on the merits of its claim because the case must be dismissed. And, were that not the case, Exxon's constitutional claims fail on the merits. Exxon also cannot demonstrate it will be irreparably harmed by the issuance of the CID; the potential harm from enjoining the Attorney General's Chapter 93A investigation—to Massachusetts and to the investor and consumer interests that the Attorney General seeks to vindicate—far outweighs any harm to Exxon; and issuing an injunction here would undermine the public's strong interest in investigating potential fraud and deception in the marketplace. *See Clark v. Prichard*, 812 F.2d 991, 993 (5th Cir. 1987). Exxon's motion should therefore be denied.

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[39] Exh. 37, App. 722-751. In its Massachusetts papers, Exxon asserted a violation of the free speech provision of the Massachusetts constitution and of other state, but not federal, constitutional and statutory provisions. Massachusetts courts generally interpret the free speech guarantees of the Massachusetts constitution consistently with the First Amendment, with resort to federal case law. *See, e.g., Opinions of the Justices*, 440 N.E.2d 1159, 1160 (Mass. 1982) ("criteria which have been established by the United States Supreme Court for judging claims arising under the First Amendment . . . are equally appropriate to claims brought under cognate provisions of the Massachusetts Constitution" (citation omitted)). And the Massachusetts courts are, of course, fully capable of adjudicating objections under the federal Constitution to state regulatory activities. *See generally, e.g., Bulldog Investors Gen. P'ship v. Sec'y of Commonwealth*, 953 N.E.2d 691 (Mass. 2010) (reviewing federal constitutional challenges to state securities law enforcement).

A. Exxon Has Not Shown That It Will Suffer Irreparable Harm from the CID.

"Irreparable harm requires a showing that: (1) the harm to Plaintiff[] is imminent[,] (2) the injury would be irreparable[,] and (3) that Plaintiff[] [has] *no other* adequate legal remedy." *GoNannies, Inc. v. GoAuPair.com, Inc.*, 464 F. Supp. 2d 603, 608 (N.D. Tex. 2006) (emphasis added) (citing *Chacon v. Granata*, 515 F.2d 922, 925 (5th Cir. 1975)). Exxon wrongly claims that the CID violates its constitutional rights and as a result, the "impending deprivation" of those rights constitutes an "impending irreparable harm" warranting a preliminary injunction. *See* Memorandum of Law in Support of Exxon's Motion for a Preliminary Injunction ("Memo.") at 24-25.[40]

Exxon, however, has not and cannot establish irreparable harm. First, Exxon has—*and is availing itself of*—another adequate legal remedy: Exxon has, pursuant to the requirements of Chapter 93A, challenged the Attorney General's CID in Massachusetts Superior Court, and the Massachusetts state courts will consider Exxon's constitutional arguments in due course. *See Google, Inc. v. Hood*, 822 F.3d 212, 225-28 (5th Cir. 2016) (finding no irreparable harm supporting preliminary injunctive relief from state attorney general investigatory subpoena because challengers to such subpoenas have "adequate remedy at law" in state courts hearing future enforcement actions). Judicial review of Exxon's petition to set aside or modify the CID will take place over the next few months, and following a decision by the Massachusetts

[40] In support of its argument that its anticipated constitutional harms constitute irreparable injury, Exxon relies on *Cohen v. Coahoma Cty., Miss.*, 805 F. Supp. 398, 402 (N.D. Miss. 1992) (prisoner established irreparable harm where subject to policy of whipping during interrogation), and *Palmer ex rel. Palmer v. Waxahachi Indep. Sch. Dist.*, 579 F.3d 502, 506 (5th Cir. 2009) (student's First Amendment challenge to a dress code banning expressive t-shirts). These cases neither involved a challenge to a subpoena like the CID nor held that bald allegations of potential future constitutional injury carry a movant's burden to establish irreparable harm. Exxon has not cited any case where a corporation demonstrated imminent constitutional harm by virtue of being required to respond to a consumer and investor fraud investigation.

Superior Court, appeals may be lodged. There is no imminent risk that Exxon will be required to comply with the Attorney General's CID until its petition is adjudicated, and thus *no* irreparable harm will befall Exxon. *See id.* at 227 (vacating preliminary injunction that "covers a fuzzily defined range of enforcement actions that do not appear imminent"). Where recourse is available in Massachusetts courts and there is no imminent risk that Exxon will be forced to comply with the CID until state court proceedings conclude, Exxon cannot establish it will be irreparably harmed. On that basis alone, Exxon's motion should be denied.

Moreover, Exxon has no irreparable harm here, since it has *already produced over 700,000 pages of documents* in response to a similar subpoena issued by the New York Attorney General and is continuing to cooperate with New York's investigation—a fact Exxon fails to mention in its voluminous filings with this Court.[41] Exxon's cooperation with the New York investigation shows that it can readily comply with Massachusetts's investigation into subjects similar to those covered by the Massachusetts CID.[42]

In any event, Exxon has not alleged a single concrete fact that the CID curtails its speech, placing it at risk of imminent harm. To the contrary, Exxon's complaint confirms it is undaunted by the CID: "ExxonMobil intends—and has a Constitutional right—to continue to advance its perspective in the national discussions over how to respond to climate change." Compl., ¶ 79. Although Exxon wrongly accuses the Attorney General of pursuing the investigation for an improper purpose—"to deter" Exxon from "participating in ongoing public deliberations about climate change," *id.*, ¶ 13—Exxon never alleges any fact showing that it was, or will be,

[41] Exh. 33, App. 706. Despite Massachusetts's request for the New York documents in the CID, Exxon has not agreed to share those documents with Massachusetts.
[42] Nor is Exxon at any risk that documents produced in response to the CID will be publicly disseminated now. Mass. Gen. Laws ch. 93A, § 6(6).

deterred.[43] Exxon's conclusory claims that the Attorney General wants to curtail its speech are far too threadbare and speculative to support a showing of imminent harm. *See Univ. of Penn. v. EEOC*, 493 U.S. 182, 195-202 (1990) (affirming denial of relief from administrative subpoena because alleged First Amendment harm to academic freedom too attenuated and speculative to preclude disclosure of peer review materials, citing *Branzburg v. Hayes*, 408 U.S. 665 (1972)); *Laird v. Tatum*, 408 U.S. 1, 13-14 (1972) (affirming trial court denial of injunctive relief in First Amendment challenge to Army regulatory action and holding that unspecified "[a]llegations of a subjective 'chill' are not an adequate substitute for a claim of specific present objective harm or a threat of specific future harm"); *Dole v. Milonas*, 889 F.2d 885, 891 (9th Cir. 1989) (affirming denial of protective order against administrative subpoena because "[b]are allegations of possible first amendment violations are insufficient to justify judicial intervention into a pending investigation" (citation omitted)). In fact, before and after the CID was issued, Exxon has continued to speak about its views on climate change, including with regard to pending investigations and this very litigation.[44] Exxon makes no serious claim that the CID will chill its ability to convey its point of view.[45]

And, finally, neither the litigation costs of challenging the CID in state court nor the administrative costs of compliance with an investigation are a cognizable or irreparable injury to

[43] Exxon follows a similar tact elsewhere in the Complaint, wrongly alleging the Attorney General's purpose is to deter, target, or compel speech, but never alleging how the CID will in fact have that effect. *See* Compl., ¶¶ 83, 87-88.

[44] *See, e.g.*, Exh. 38, App. 753-764 (collecting examples of Exxon's statements).

[45] Exxon will have an opportunity to raise relevant First Amendment challenges in connection with any future enforcement action in state court. *Google*, 822 F.3d at 228 ('"[I]nvocation of the First Amendment cannot substitute for the presence of an imminent, non-speculative irreparable injury. And we cannot say at this early stage of a state investigation that any suit that could follow would necessarily violate the Constitution.").

Exxon, a multinational company with $16.2 billion in profits in 2015.[46] *See Miss. Power & Light Co.*, 760 F.2d at 630 ("time and energy necessarily expended" without an injunction "are not enough"); *Am. Radio v. Mobile S.S. Ass'n*, 483 F.2d 1, 5 (5th Cir. 1973) (finding that need to pursue "litigation of one's claim in . . . state courts" does not constitute irreparable injury warranting injunctive relief); *Cuomo v. Dreamland Amusements, Inc.*, No. 08-Civ.-6321 JGK, 2008 WL 4369270, at *12 (S.D.N.Y. Sept. 22, 2008) (in considering claim of irreparable harm from compliance with state administrative subpoena, "no irreparable injury has been shown because the present detriment to [plaintiff] from the investigation is that it must participate in an investigation," and thus "[t]he costs of such compliance do not constitute irreparable injury").

B. Exxon Has Not Established That It Is Substantially Likely to Prevail on the Merits of Its Constitutional Objections to the CID.

1. The CID Does Not Regulate Speech or Violate the First Amendment.

As a threshold matter, the CID does not regulate or burden any speech and therefore does not "infringe on First Amendment rights." *See* Memo. at 14. Exxon argues that the CID is a "direct and deliberate assault" on its First Amendment rights that "regulates" and "intrudes on" its political speech. *See id*. at 13-15. The CID does no such thing. Subpoenas like the Attorney General's CID "do not directly regulate the content, time, place, or manner of expression, nor do they directly regulate political association." *SEC v. McGoff*, 647 F.2d 185, 187-88 (D.C. Cir. 1981) (upholding Securities and Exchange Commission subpoena for corporate records relating to transactions with South Africa). The First Amendment does not ordinarily protect routine corporate business records, which are all that the CID requests. A subpoena for corporate records like the CID is a "generally applicable" order "*unconcerned with regulating speech*" and does not even have the incidental (but permissible) "effect of interfering with speech." *Emp't Div.*,

[46] *See* Exh. 39, App. 766.

Dep't of Human Res. v. Smith, 494 U.S. 872, 886 n.3 (1990) (emphasis added). This principle follows from the black letter law that the First Amendment does not prevent government inquiries that seek information from the press, a context with much weightier First Amendment dimensions than a routine inquiry from a state attorney general to a publicly traded company concerning its potentially misleading and deceptive practices in violation of state consumer and investor protection laws.[47] Accordingly, the recipient of such a subpoena is not entitled to special protection under the First Amendment.[48]

Moreover, the First Amendment in no way bars the Attorney General's investigation into whether Exxon's commercial communications with consumers and investors have been false, deceptive, misleading, or fraudulent in violation of Chapter 93A. *See* Section II.C., *supra*. Indeed, such investigations by state attorneys general and federal authorities are commonplace. *See, e.g.*, Section II.A, *supra*; 15 U.S.C. §§ 45, 46(a), 49, 52, 57b-1 (Federal Trade Commission); 15 U.S.C. §§ 77t, 78u (Securities and Exchange Commission). The purpose of her investigation is wholly consistent with the First Amendment, which does not protect false, deceptive, or

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[47] *See Herbert v. Lando*, 441 U.S. 153, 175 (1979) (no special exemption for media from general rules of pretrial discovery); *Zurcher v. Stanford Daily*, 436 U.S. 547, 565-67 (1978) (no special immunity for press from search warrants); *Branzburg*, 408 U.S. at 688-90 (no First Amendment reporters' privilege in grand jury probe to conceal sources and information conveyed under promise of confidentiality). *See also In re Enforcement of Subpoena*, 767 N.E.2d 566 (Mass. 2002) ("The mere fact that the subpoena calls for production of documents reflecting, inter alia, communications that the witness had with others does not burden speech . . . . A discovery request or subpoena seeking information about a witness's communications does not automatically raise free speech concerns. *Similarly, the fact that the subject matter of the witness's communications may include items that are of current public interest or controversy*, and the fact that the witness is himself a journalist, *do not transform the commission's subpoena into a violation of free speech rights*" (emphasis added).).

[48] The Attorney General thus need not demonstrate a "compelling interest" in the materials sought, or that her requests have a "sufficient nexus" to that interest, as Exxon contends. Memo. at 14. The cases Exxon cites for imposing greater scrutiny concern far-afield inquiries that, for example, directly and imminently threatened the constitutionally protected privacy interests of individuals. *E.g.*, *In re Grand Jury Investigation of Possible Violation of 18 U.S.C. § 1461 et seq.*, 706 F. Supp. 2d 11, 17-18 (D.D.C. 2009).

misleading statements in the marketplace. *Friedman v. Rogers*, 440 U.S. 1, 9 (1979) (First Amendment does not limit "restrictions on false, deceptive, and misleading commercial speech"); *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 357 (1995) (government "may, and does, punish fraud directly"); *United States v. Philip Morris USA, Inc.*, 566 F.3d 1095, 1123 (D.C. Cir. 2009) ("it is well settled that the First Amendment does not protect fraud"). If the Attorney General concludes as a result of her investigation that the statements are indeed fraudulent and chooses to pursue enforcement action, she may certainly do so consistently with the First Amendment. Accordingly, the Court should disregard Exxon's conclusory and premature First Amendment arguments.

2. The CID Is Fully Consistent with the Fourth Amendment Because It Is Expressly Authorized by Massachusetts Law and Seeks Information Relevant to Potentially Unlawful Conduct.

Under *United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950), the seminal case on the constitutional limits of subpoenas, which Exxon fails to cite in its papers, "law-enforcing agencies have a legitimate right to satisfy themselves that corporate behavior is consistent with the law and the public interest." To meet constitutional requirements, "it is sufficient if the inquiry is within the authority of the agency, the demand is not too indefinite and the information sought is reasonably relevant. 'The gist of the protection is in the requirement, expressed in terms, that the disclosure sought shall not be unreasonable.'" *Id.* at 652-53 (quoting *Okla. Press Publ'g Co. v. Walling*, 327 U.S. 186, 208 (1946)). Here, the CID is firmly within the Attorney General's legal authorities and is appropriately targeted at information relevant to the investigation. Exxon has failed to establish that the CID is unreasonable.[49]

[49] Exxon's citation of the *American Tobacco* case, Memo. at 17, ignores that its purportedly blanket rule cabining governmental investigations has been "decisively abandoned." *See In re McVane*, 44

As discussed above, the CID is premised on the Attorney General's reasonable belief that Exxon violated or is violating Chapter 93A by making false, misleading, and fraudulent statements about climate change to Massachusetts consumers and investors. *See Harmon Law Offices, P.C. v. Att'y Gen.*, 991 N.E.2d 1098, 1103 (Mass. App. Ct. 2013). The CID seeks Exxon's documents regarding the basis for and background of its public statements; these documents are within Exxon's exclusive control; and Exxon has not shown that any of the CID requests are irrelevant to this inquiry.[50]

Exxon's major objection to the CID's breadth appears to be that some of the CID requests seek documents that are outside the statute of limitations period for Chapter 93A claims. *See* Memo. at 9, 17.[51] Of the document requests in the CID, the large majority seek documents that are recent and plainly relevant to Exxon's conduct within the four-year limitations period. The other requests are tailored to obtain information related to Exxon's past knowledge,

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F.3d 1127, 1134 (2d Cir. 1995) ("While the Supreme Court early in this century strongly condemned 'fishing expeditions into private papers on the possibility that they may disclose evidence of crime,' *FTC v. Am. Tobacco Co.*, 264 U.S. 298, 306 (1924), that position was decisively abandoned in [*Okla. Press Publ'g Co.*] and [*Morton Salt Co.*].'"); *United States v. Tyson's Poultry, Inc.*, 216 F. Supp. 53, 68 (W.D. Ark. 1963) ("The term 'fishing expedition' as a characterization of any such investigation has lost its impact during passage of years since that phrase appeared in the *American Tobacco* case, and it is incumbent upon any person objecting to the demands of subpoenas . . . to be more specific in their objections."). The other case Exxon cites, *Zurcher*, concerned search warrants, not subpoenas of business records.

[50] According to public documents, Exxon, with the assistance of other fossil fuel interests and non-governmental entities, also appears to have disseminated misleading statements in order to raise doubts about the credibility of scientific findings demonstrating the risks of climate change, thereby distorting consumer, investor, and public perception of the risks. This conduct is plainly relevant to Exxon's potential violations of Chapter 93A; Demand No. 5 of the CID therefore requests Exxon's communications with these third parties. Such communications may also provide further information regarding Exxon's internal knowledge of climate risks relative to its contemporaneous and later statements to consumers and investors.

[51] Exxon claims it could not have violated Massachusetts law given the limited extent of its Massachusetts activities and the Massachusetts courts' lack of personal jurisdiction over Exxon. In light of Exxon's extensive contacts with Massachusetts, the Court should reject Exxon's effort to inflate this facially meritless argument into a constitutional objection to the CID. *See* Section II.B, *supra*.

statements, and conduct based on the publicly available documents summarized above.

Events occurring *prior* to the limitations period may provide critical evidence regarding whether a violation of law occurred *during* the limitations period. *See, e.g., Ocean Spray Cranberries, Inc. v. Mass. Comm'n Against Discrimination*, 808 N.E.2d 257, 269-70 (Mass. 2004) (plaintiff who had seasonable claim may use events occurring prior to limitations period as "background evidence" and entity's prior conduct "is relevant as background evidence" to a determination whether subsequent actions by entity constitute violations of applicable law). Understanding what Exxon knew—and for how long it has known it—about the impacts of climate change on its businesses and on the environment is highly relevant to the determination whether Exxon's conduct during the limitations period violated Chapter 93A. Such information can demonstrate that Exxon knew that statements it made during the limitations period were false, misleading, or fraudulent *in light of* Exxon's *prior* knowledge and conduct.

Further, the investigation may reveal facts that would demonstrate other bases for continuing liability, *see, e.g.*, *Taygeta Corp. v. Varian Assocs., Inc*., 763 N.E.2d 1053, 1064-65 (Mass. 2002) (recurring tortious conduct in the form of continuing flow of contaminated groundwater to abutting property constituted continuing nuisance not barred by three-year statute of limitations even though dumping that caused contamination occurred decades before suit), and/or that equitable tolling of the Chapter 93A statute of limitations would be proper, *see, e.g.*, *Lambert v. Fleet Nat'l Bank*, 865 N.E.2d 1091, 1097 (Mass. 2007) (holding that discovery rule applies to Chapter 93A claims); *Szymanski v. Boston Mut. Life Ins. Co*., 778 N.E.2d 16, 20 (Mass. App. Ct. 2002) (same; reversing grant of summary judgment for defendant insurer where question of fact existed whether discovery rule should apply to toll the statute of limitations). Because in this context Exxon cannot establish that its conduct beyond the limitations period is

irrelevant to the Attorney General's investigation, the Company's time-based objections to the CID do not establish that it is entitled to an injunction.

More broadly, Exxon's burden in responding to the CID is neither unusual nor greater than necessary under Massachusetts law. *See Att'y Gen. v. Bodimetric Profiles*, 533 N.E.2d 1364, 1367-68 (Mass. 1989) ("Documentary demands exceed reasonable limits only when they 'seriously interfere with the functioning of the investigated party by placing burdens on manpower or requiring removal of critical records.'" (quoting *Matter of Yankee Milk, Inc.*, 362 N.E.2d 207, 212 n.8 (Mass. 1977)). The Court should also consider Exxon's claimed burdens in light of its production of documents to the New York Attorney General, discussed above, and the indisputable ease of duplicating that production for Massachusetts. The CID is reasonable.

3. Exxon's Bias Claim Is Frivolous.

Exxon's due process argument boils down to a contention that the Attorney General's brief statement at a New York press conference in March evinced an improper bias that would prevent her from serving as a "disinterested" prosecutor in the case.[52] The claim is utterly without merit. If credited, it would allow law enforcement targets to disrupt necessary investigations whenever a prosecutor speaks publicly on a matter.

The Attorney General's comments recognized climate change as an environmental matter of grave public concern—consistent with both her authority to protect the environmental resources of Massachusetts, Mass. Gen. Laws ch. 12, § 11D, and with the edicts of federal and state law[53]—and also announced the initiation of the investigation at issue in this case. The

[52] Exxon offensively equates Attorney General Healey to prosecutors found guilty of gross misconduct, bad faith, or a pecuniary conflict of interest, none of which are at issue here.

[53] *See, e.g.*, *Massachusetts v. EPA*, 549 U.S. 497 (2007) (federal law); Global Warming Solutions Act, 2008 Mass. Acts ch. 298, and Green Communities Act, 2008 Mass. Acts ch. 169 (state laws addressing climate change).

statement explained the reasons for the investigation and her reasonable belief that Exxon's statements—as reflected in Exxon's own documents in the public domain as discussed above—may have misled investors, consumers, and the public about the harms caused by climate change, both to Exxon's business and assets and to the environment and human populations. Indeed, *such a belief that Exxon violated state law is the very basis for an investigation*. *See Harmon Law Offices*, 991 N.E.2d at 1103.

Exxon has cited no case holding that such a public statement violates due process by showing improper motive or bias, inappropriate prejudgment of the investigation, or personal animus against Exxon. *See Empower Texans, Inc. v. Tex. Ethics Comm'n*, No. A-14-CA-172-SS, 2014 WL 1666389, at *5 (W.D. Tex. Apr. 25, 2014) ("Plaintiffs' complaint that the [commission] has 'already found them guilty' is . . . hyperbolic."); *All Am. Check Cashing, Inc. v. Corley*, No. 3:16CV55TSL-RHW, 2016 WL 1173120, at *10, *14 (S.D. Miss. Mar. 22, 2016) (abstaining from asserting federal jurisdiction over constitutional case against state banking agency and finding no bad faith where plaintiff "offers only speculation, but no proof, that the Department's purpose in conducting its examination/investigation was other than legitimate").

Exxon's assertions that the Attorney General's statement demonstrates her bias or prejudgment of the investigation's merits disregard the Attorney General's unremarkable authority, as an elected official and a prosecutor, to explain to the public and the press that she is conducting an investigation. "Statements to the press may be an integral part of a prosecutor's job . . . and they may serve a vital public function." *Buckley v. Fitzsimmons*, 509 U.S. 259, 278 (1993). *See also Goldstein v. Galvin*, 719 F.3d 16, 30 (1st Cir. 2013) ("Not only do public officials have free speech rights, but they also have an obligation to speak out on matters of public concern."); Scott M. Matheson, Jr., *The Prosecutor, the Press, and Free Speech*, 58

Fordham L. Rev. 865, 888 (1990) ("Prosecutors are publicly accountable; their accountability is measured in part through public information about the prosecutor's office, and about particular cases. Indeed, it is generally accepted that elected prosecutors have an obligation to inform the community about the functioning of their offices."). The Attorney General's statement merely reflects her belief, in light of her Office's review of the public record, that Exxon violated the state's consumer and investor protection laws with respect to its marketing and sale of fossil fuel derived products to consumers and of securities to investors.

That the Attorney General has coordinated with other state attorneys general in conducting this investigation into potential violations by Exxon of our state laws, and engaged with interested third parties on matters of public concern, is of no moment. What Exxon attempts to paint as nefarious is customary and routine practice for her Office and for attorneys general's offices around the country.[54] Attorneys general are advocates for the public interest, charged by statute with enforcing state law against unfair and deceptive business practices through investigations and legal action, and that is what Attorney General Healey is doing in this case.

4. Exxon's Dormant Commerce Clause Argument Is Meritless.

To the Attorney General's knowledge, no court has ever held that issuance of a CID by a state official to investigate violations of a facially neutral, nondiscriminatory consumer protection statute constitutes forbidden regulation of interstate commerce. *Cf. Lupin Pharm., Inc. v. Richards,* Civ. No. RDB-15-1281, 2015 WL 4068818, at *3 n.6 (D. Md. July 2, 2015) (memorandum decision) (noting that plaintiff raised dormant commerce clause challenge to CID

[54] The investigatory practices here with respect to this investigation into Exxon's potential fraudulent misrepresentations regarding the risks of climate change closely parallel the largely successful collaborations of state attorneys general in tobacco litigation and in other multistate investigations described above. *See, e.g.*, Exh. 40, App. 776-778 (background on Master Settlement Agreement from National Association of Attorneys General); Section II.A, *supra*.

but abstaining under *Younger* before reaching the issue). In any case, Exxon has provided no legal authority for this proposition.

As discussed above, the CID does not "regulate" Exxon's speech or activities—in Massachusetts or out of state. Moreover, "the Commerce Clause . . . [is] informed not so much by concerns about [the] defendant as by structural concerns about the effects of state regulation on the national economy." *Quill Corp. v. North Dakota*, 504 U.S. 298, 312 (1992). Here, Exxon has failed to adduce any facts showing that the CID imposes impermissible burdens on interstate commerce.

C. Granting the Injunction Would Undermine the Attorney General's Investigatory Powers, Harming Massachusetts Consumers and Investors and the Public Interest.

An injunction barring the Attorney General from advancing her investigation would irreparably injure her investigatory efforts under Massachusetts law. "[A]ny time a State is enjoined by a court from effectuating statutes created by representatives of its people, it suffers a form of irreparable injury." *New Motor Vehicle Bd. v. Orrin W. Fox Co.*, 434 U.S. 1345, 1351 (1977) (Rehnquist, J., as Circuit Justice). *See also CUNA Mut. Ins. Soc. v. Att'y Gen.*, 404 N.E.2d 1219, 1221 n.3 (Mass. 1980) ("an order that modified [or set aside] portions of a C.I.D[,] to the extent it was adverse to the Attorney General, had a *final and irreparable effect* on his efforts to obtain certain information" (emphasis added)). Allowing Exxon's motion on this record would open the federal courthouse doors to 42 U.S.C. § 1983 challenges to state-issued subpoenas and CIDs, in disregard of fundamental notions of comity and federalism. Forty state attorneys general, including Attorney General Healey, recently warned the Fifth Circuit Court of Appeals of the dangers of doing so in an amicus brief filed in support of Mississippi Attorney General

Hood when Google, Inc., sought to enjoin an investigation by him.[55]

The Attorney General and Massachusetts courts have a strong, sovereign interest in adjudicating challenges to Chapter 93A CIDs in Massachusetts. An injunction issued here (and any further adjudication of Exxon's claims here) would improperly disregard that interest. *See Lupin Pharm.*, 2015 WL 4068818, at *4 (abstaining in analogous case where, as here, state attorney general was seeking enforcement of CID in state court, triggering judicial oversight). *See also Juidice v. Vail*, 430 U.S. 327, 335-37 (1977); *Stroman Realty, Inc. v. Wercinski*, 513 F.3d 476, 487-88 (5th Cir. 2008).

Finally, Massachusetts residents are entitled to vigorous enforcement of state consumer and investor protection laws. *See, e.g., Stroman Realty, Inc. v. Martinez*, 505 F.3d 658, 663-64 (7th Cir. 2007) (recognizing significant state interest in protecting citizens against "fraudulent, dishonest and incompetent" business practices); *Arbitron Inc. v. Cuomo*, No. 08-Civ.-8497(DLC), 2008 WL 4735227, at *5 (S.D.N.Y. Oct. 27, 2008) ("[The Attorney General's] lawsuit seeks to enforce the state laws against discrimination and deceptive practices. . . . These interests implicate sufficiently central sovereign functions of state government"). An injunction closing the door on the Attorney General's investigation of Exxon would disregard this strong public interest, and place at significant risk the very consumers and investors Chapter 93A is intended to protect.

IV. CONCLUSION

For the foregoing reasons, Exxon's motion for preliminary injunction should be denied.

[55] *See* Amici Curiae Brief of 40 Attorneys General in Support of Mississippi's Interlocutory Appeal, *Google, Inc. v. Hood*, 5th Cir. No. 15-60205, 2015 WL 4094982 (June 29, 2015); *Google, Inc. v. Hood*, 822 F.3d 212, 215 (5th Cir. 2016).

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Respectfully submitted,

MAURA HEALEY
ATTORNEY GENERAL OF
MASSACHUSETTS

By her attorneys:

/s/ *Douglas A. Cawley*

Richard Johnston (*pro hac vice*)
Chief Legal Counsel
richard.johnston@state.ma.us
Melissa A. Hoffer (*pro hac vice)*
Chief, Energy and Environment Bureau
melissa.hoffer@state.ma.us
Christophe G. Courchesne (*pro hac vice*)
Chief, Environmental Protection Division
christophe.courchesne@state.ma.us
I. Andrew Goldberg (*pro hac vice*)
andy.goldberg@state.ma.us
Peter C. Mulcahy (*pro hac vice*)
peter.mulcahy@state.ma.us
Assistant Attorneys General
OFFICE OF THE ATTORNEY GENERAL
One Ashburton Place, 18th Floor
Boston, MA 02108
(617) 727-2200
Fax (617) 727-9665

Douglas A. Cawley
Lead Attorney
Texas State Bar No. 04035500
dcawley@mckoolsmith.com
Richard A. Kamprath
Texas State Bar No. 24078767
rkamprath@mckoolsmith.com
MCKOOL SMITH, P.C.
300 Crescent Court, Suite 1500
Dallas, Texas 75201
(214) 978-4000
Fax (214) 978-4044

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on August 8, 2016, all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system. Any other counsel of record will be served in accordance with the Federal Rules of Civil Procedure.

/s/ *Douglas A. Cawley*
Douglas A. Cawley