



COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT  
CIVIL ACTION NO.: 16-1888F

IN RE CIVIL INVESTIGATIVE	)
DEMAND NO. 2016-EPD-36,	)
ISSUED BY THE OFFICE OF THE	)
ATTORNEY GENERAL	)



**ANSWER**

The Commonwealth of Massachusetts, acting by and through the Office of Attorney General Maura Healey (the “Attorney General”), hereby answers the Petition of Exxon Mobil Corporation (“Exxon”) to Set Aside or Modify the Civil Investigative Demand or Issue a Protective Order (the “Petition”) in the above-captioned action.

In response to the prefatory, unnumbered statement in the Petition, the Attorney General denies that Exxon is entitled to the relief it seeks, and asserts that this Court has personal jurisdiction over Exxon and that the Attorney General is entitled to an order of this Court compelling Exxon to comply with the Attorney General’s Civil Investigative Demand, No. 2016-EPD-36 (the “CID”), issued to Exxon on April 19, 2016, in accordance with the Massachusetts Consumer Protection Act, G.L. c. 93A, § 6.

**INTRODUCTION**

1. The Attorney General admits she participated in a press conference on climate change in New York City on March 29, 2016 (the “March 29, 2016, Press Conference”), which was attended by various state Attorneys General, and that former Vice President Al Gore spoke at the March 29, 2016, Press Conference. Asserts that the transcript of the March 29, 2016, Press Conference provided by Exxon in Exhibit

(“Ex.”) A to the Petition (the “Transcript”) speaks for itself. Denies knowledge or information sufficient to form a belief as to the truth of the assertion that “ExxonMobil was formed as a result of a merger between ‘Exxon’ and ‘Mobil’ on November 30, 1999,” and otherwise denies the assertions in the Petition.

2. The Attorney General asserts that the Transcript and the document attached as Ex. C to the Petition, App. 53-87, speak for themselves, and otherwise denies the assertions in the Petition.

3. The Attorney General admits that there were various presentations delivered the day of the March 29, 2016, Press Conference that were closed to the press, and otherwise denies knowledge or information sufficient to form a belief as to the truth of the assertions in the Petition and therefore denies them.

4. The Attorney General admits that she delivered remarks at the March 29, 2016, Press Conference, asserts that the remarks speak for themselves, and otherwise denies the assertions in the Petition.

5. The Attorney General admits that she delivered remarks at the March 29, 2016, Press Conference, asserts that the remarks speak for themselves, and otherwise denies the assertions in the Petition.

6. The Attorney General admits that the CID was served on the Petitioner on April 19, 2016, and asserts the CID, which is attached to the Petition as Ex. B, App. 23-51, speaks for itself.

7. The Attorney General denies the assertions in the Petition.

8. The Attorney General denies the assertions in the Petition.

9. The Attorney General denies the assertions in the Petition.

10. The Attorney General admits that the Petitioner is a foreign corporation incorporated in New Jersey that maintains its headquarters in Texas, asserts that the Petition states conclusions of law to which no response is required, and otherwise denies the assertions in the Petition.

11. The Attorney General denies knowledge or information sufficient to form a belief as to the truth of the assertions in the Petition, asserts that the CID imposes no annoyance, embarrassment, oppression, or undue burden on the Petitioner, and otherwise denies the assertions in the Petition.

12. The Attorney General denies the assertions in the Petition.

13. The Attorney General denies the assertions in the Petition and asserts the Attorney General had, and at the time of issuing this Answer, continues to have, reason to investigate the Petitioner for violating G.L. c. 93A, § 2, and to issue the CID pursuant to G.L. c. 93A, § 6, based on the Petitioner's marketing and/or sale of energy and fossil fuel derived products to consumers in Massachusetts, and the marketing and/or sale of securities, as defined in G.L. c. 110A, § 401(k), to investors in the Commonwealth, and further asserts that the CID imposes no annoyance, embarrassment, oppression, or undue burden on the Petitioner.

14. The Attorney General admits that the Petitioner filed suit in the United States District Court for the Northern District of Texas (*ExxonMobil Corporation v. Maura Tracy Healey*, Case No. 4:16-CV-469) seeking to adjudicate the same or similar claims as those raised by this Petition, and asserts that the Petitioner's challenge to the CID involves the interpretation and application of Massachusetts state law and that this Court is the proper forum to fully adjudicate the Petition. Denies that the subject

investigation violates Exxon's rights and otherwise denies the assertions in the Petition.

15. The Attorney General asserts that the allegations contained in this paragraph are conclusions of law or requests for relief to which no responses are required. To the extent response is required, the Attorney General denies the assertions in the Petition.

### **FACTS**

16. The Attorney General admits that she participated in the March 29, 2016, Press Conference in New York City with various state Attorneys General, and that former Vice President Gore spoke at the press conference. Asserts that the Transcript speaks for itself, and otherwise denies the assertions in the Petition.

17. The Attorney General admits that she participated in the March 29, 2016, Press Conference, asserts that the Transcript speaks for itself, and otherwise denies the assertions in the Petition.

18. The Attorney General admits that the New York Attorney General participated in the March 29, 2016, Press Conference, asserts that the Transcript speaks for itself, and otherwise denies the assertions in the Petition.

19. The Attorney General admits that former Vice President Gore spoke at the March 29, 2016, Press Conference, asserts that the Transcript speaks for itself, and otherwise denies the assertions in the Petition.

20. The Attorney General admits that former Vice President Gore spoke at the March 29, 2016, Press Conference, asserts that the Transcript speaks for itself, and otherwise denies the assertions in the Petition.

21. The Attorney General admits that she participated in the March 29, 2016,

Press Conference, asserts that the Transcript speaks for itself, and otherwise denies the assertions in the Petition.

22. The Attorney General asserts that the Transcript speaks for itself and that the Attorney General's statements at the March 29, 2016, Press Conference reflected her well-founded belief that a formal investigation of Exxon was warranted, including, potentially the issuance of the CID, to inform her decisions regarding whether to pursue claims against Exxon for violations of the Massachusetts Consumer Protection Act, G.L. c. 93A, § 2. Denies that any of the Attorney General's statements reflect any "prejudicial determination that ExxonMobil had engaged in deception," and otherwise denies the assertions in the Petition.

23. The Attorney General admits that the Attorney General and others delivered remarks at the March 29, 2016, Press Conference, asserts that the Transcript speaks for itself, and otherwise denies the assertions in the Petition.

24. The Attorney General denies that Exxon's free speech or ability to engage in the free exchange of viewpoints or ideas has been limited in any way by the Attorney General's investigation, denies that the issuance of the CID represents an attempt by the Attorney General to intimidate or coerce anyone to silence regarding their views on the risks of climate change or on any other issue, asserts that the Attorney General issued the CID to investigate potential violations of state law that became apparent from documents in the public record, refers to the cited documents in the record for their effect in fact and law, and otherwise denies the assertions in the Petition.

25. The Attorney General reasserts her response to paragraph 24 above in response to this paragraph of the Petition.

26. The Attorney General reasserts her response to paragraph 24 above in response to this paragraph of the Petition.

27. The Attorney General admits that representatives of the offices of various state attorneys general attended and communicated in advance about the March 29, 2016, Press Conference, denies any impropriety in any statements the Attorney General made at the March 29, 2016, Press Conference, refers to the cited documents in the record for their effect in fact and law, and otherwise denies the assertions in the Petition.

28. The Attorney General admits that there were various presentations delivered on the day of the March 29, 2016, Press Conference, refers to the cited documents in the record for their effect in fact and law, and otherwise denies knowledge or information sufficient to form a belief as to the truth of the assertions in the Petition.

29. The Attorney General admits that there was a presentation by Peter Frumhoff on the day of the March 29, 2016, Press Conference, and refers to the documents in the record for their effect in fact and law.

30. The Attorney General denies knowledge or information sufficient to form a belief as to the truth of the assertions in the Petition, and refers to the documents in the record for their effect in fact and law.

31. The Attorney General admits that there was a presentation by Matthew Pawa on the day of the March 29, 2016, Press Conference, denies knowledge or information sufficient to form a belief as to the truth of the other assertions in the Petition, and refers to the documents in the record for their effect in fact and law.

32. The Attorney General denies knowledge or information sufficient to form a belief as to the truth of the assertions in the Petition, and refers to the cited documents

for their effect in fact and law.

33. The Attorney General denies knowledge or information sufficient to form a belief as to the truth of the assertions in the Petition, and refers to the cited documents for their effect in fact and law.

34. The Attorney General admits that representatives of the offices of various state attorneys general attended the March 29, 2016, Press Conference, denies any impropriety in any statements the Attorney General made at the March 29, 2016, Press Conference, and otherwise denies the assertions in the Petition.

35. The Attorney General denies the assertions in the Petition.

36. The Attorney General denies the assertions in the Petition.

37. The Attorney General admits the assertions in the Petition.

38. The Attorney General denies knowledge or information sufficient to form a belief as to the truth of the assertions regarding the location of the subject documents, asserts that the CID speaks for itself, refers to the Massachusetts Consumer Protection Act and any applicable limitations periods for their effect in law, and otherwise denies the Petition.

39. The Attorney General denies the assertions in the Petition.

40. The Attorney General asserts that Exxon has marketed and sold energy and other fossil fuel derived products to consumers in the Commonwealth for many years, and continues to do so, both at retail stores and at gas and service stations that operate “Exxon” and/or “Mobil” branded stations under the company name, refers to any applicable limitations period for its effect in law, and otherwise denies the assertions in the Petition.

41. The Attorney General asserts that Exxon has marketed and sold securities, as the term is defined in G.L. c. 110A, § 401(k), in the Commonwealth for many years, and continues to do so, refers to any applicable limitations period for its effect in law, and otherwise denies the assertions in the Petition.

42. The Attorney General asserts that the CID was issued in furtherance of the Attorney General's investigation into whether Exxon committed unfair and deceptive acts and practices in violation of the state's Consumer Protection Act arising out of its transaction of business in the Commonwealth, that Exxon is subject to personal jurisdiction in Massachusetts both with respect to the CID and any related potential violations of the state's Consumer Protection Act, and that the CID speaks for itself, and otherwise denies the assertions in the Petition.

43. The Attorney General refers to the cited documents for their effect in fact and law, and otherwise denies the assertions in the Petition.

44. The Attorney General refers to the cited documents for their effect in fact and law, and otherwise denies the assertions in the Petition.

45. The Attorney General denies the assertions in the Petition.

46. The Attorney General denies the assertions in the Petition, and asserts that the CID speaks for itself and that the CID presents no unreasonable burden on Exxon.

47. The Attorney General asserts that the CID speaks for itself, and otherwise denies the assertions in the Petition.

48. The Attorney General asserts that the CID speaks for itself, that the parties' agreement to extend the deadlines for challenging the CID and the dates for production and other compliance was made to facilitate discussions regarding such



compliance and/or challenge, and that the assertions in the Petition do not require further response.

49. The Attorney General denies Exxon's rights have been violated, admits that Exxon recently filed an action in the United States District Court for the Northern District of Texas and a motion to enjoin the enforcement of the CID, and asserts that the Commonwealth is moving to dismiss that case based on lack of personal jurisdiction, abstention, and ripeness, among other grounds, and otherwise opposing the relief Exxon seeks in the Texas suit.

50. The Attorney General asserts that this Massachusetts court has both subject matter and general and specific jurisdiction over Exxon in this matter, and otherwise denies the assertions in the Petition.

51. The Attorney General asserts that the Petition states an Exxon request for relief, and requires no response. To the extent response is required, the Attorney General denies the assertions in the Petition.

#### **GROUND ONE**

52. The Attorney General asserts that the Petition states a request for relief and conclusions of law to which no response is required and otherwise denies the assertions in the Petition.

53. The Attorney General asserts that the Petition states conclusions of law to which no response is required. To the extent response is required, the Attorney General denies the assertions in the Petition.

54. The Attorney General asserts that the Petition states conclusions of law to which no response is required and otherwise denies the assertions in the petition.

## **GROUND TWO**

55. The Attorney General asserts that the Petition states a request for relief, and requires no response. To the extent response is required, the Attorney General denies the assertions in the Petition.

56. The Attorney General asserts that the Petition states a request for relief, and requires no response. To the extent response is required, the Attorney General denies the assertions in the Petition.

57. The Attorney General asserts that the Petition states a request for relief and conclusions of law to which no response is required and otherwise denies the assertions in the Petition.

58. The Attorney General asserts that the Petition conclusions of law to which no response is required and otherwise denies the assertions in the Petition.

59. The Attorney General asserts that the Petition states an Exxon request for relief to which no response is required. To the extent response is required, the Attorney General denies the assertions in the Petition.

## **GROUND THREE**

60. The Attorney General asserts that the Petition states a request for relief to which no response is required. To the extent response is required, the Attorney General denies the assertions in the Petition.

61. The Attorney General asserts that the Petition states a request for relief and conclusions of law to which no response is required. To the extent response is required, the Attorney General denies the assertions in the Petition.

62. The Attorney General asserts that the Petition states a request for relief

and conclusions of law to which no response is required. To the extent response is required, the Attorney General denies the assertions in the Petition.

63. The Attorney General asserts that the Petition states conclusions of law to which no response is required. To the extent response is required, the Attorney General denies the assertions in the Petition.

64. The Attorney General asserts that the Petition states a request for relief and conclusions of law to which no response is required. To the extent response is required, the Attorney General denies the assertions in the Petition.

65. The Attorney General asserts that the Petition states conclusions of law to which no response is required. To the extent response is required, the Attorney General denies the assertions in the Petition.

66. The Attorney General asserts that the Petition states conclusions of law to which no response is required. To the extent response is required, the Attorney General denies the assertions in the Petition.

67. The Attorney General asserts that the Petition states a request for relief and conclusions of law to which no response is required. To the extent response is required, the Attorney General denies the assertions in the Petition.

#### **GROUND FOUR**

68. The Attorney General asserts that the Petition states a request for relief to which no response is required. To the extent response is required, the Attorney General denies the assertions in the Petition.

69. The Attorney General asserts that the Petition states a request for relief and conclusions of law to which no response is required. To the extent response is

required, the Attorney General denies the assertions in the Petition.

70. The Attorney General asserts that the Petition states a request for relief and conclusions of law to which no response is required. To the extent response is required, the Attorney General denies the assertions in the Petition.

71. The Attorney General asserts that the Petition states a request for relief and conclusions of law to which no response is required. To the extent response is required, the Attorney General denies the assertions in the Petition.

### **AFFIRMATIVE DEFENSES**

#### *First Defense*

The Petitioner's challenge to the CID involves the interpretation and application of Massachusetts state law, and this Court is the proper forum to fully adjudicate the Petition.

#### *Second Defense*

The Petition fails to state a claim upon which relief can be granted, because the Petitioner has failed to allege facts demonstrating that the Attorney General exceeded her investigatory authority under G.L. c. 93A, § 6, by issuing the CID.

#### *Third Defense*

The Petition fails to state a claim upon which relief can be granted, because the Petitioner has failed to allege facts demonstrating the CID imposes annoyance, embarrassment, oppression, or undue burden within the meaning of Mass. R. Civ. P. 26(c), and, therefore,

[space intentionally left blank]

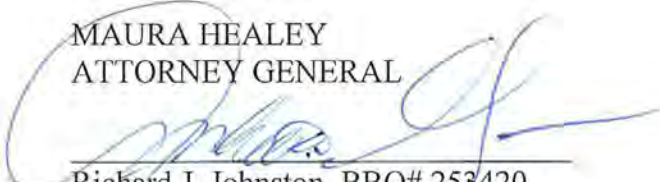
has failed to allege facts demonstrating good cause for setting aside or modifying the CID under to G.L. c. 93A, § 6.

Respectfully submitted,

THE COMMONWEALTH OF  
MASSACHUSETTS

By its attorney:

MAURA HEALEY  
ATTORNEY GENERAL



Richard J. Johnston, BBO# 253420  
Chief Legal Counsel

richard.johnston@state.ma.us

Melissa A. Hoffer, BBO# 641667

Chief, Energy and Environment Bureau

melissa.hoffer@state.ma.us

Christophe Courchesne, BBO# 660507

Chief, Environmental Protection Division

christophe.courchesne@state.ma.us

I. Andrew Goldberg, BBO# 560843

andy.goldberg@state.ma.us

Peter C. Mulcahy, BBO # 682958

peter.mulcahy@state.ma.us

Assistant Attorneys General

Environmental Protection Division

Office of the Attorney General

One Ashburton Place, 18th Floor

Boston, MA 02108

(617) 727-2200

Dated: August 8, 2016

#### CERTIFICATE OF SERVICE

I, I. Andrew Goldberg, hereby certify that on this 8<sup>th</sup> day of August, 2016, I caused a copy of the foregoing document to be served upon counsel of record by regular mail.



I. Andrew Goldberg