

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

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COMMONWEALTH OF MASSACHUSETTS,

Plaintiff,

v.

EXXON MOBIL CORPORATION,

Defendant.

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**Service Via E-Mail**

**DEFENDANT EXXON MOBIL CORPORATION’S  
MOTION TO DISMISS THE AMENDED COMPLAINT**

Pursuant to Mass. R. Civ. P. 12(b)(2) and 12(b)(6), the First Amendment to the United States Constitution, and Superior Court Rule 9A, Defendant Exxon Mobil Corporation (“ExxonMobil”) hereby moves to dismiss the Amended Complaint for lack of personal jurisdiction and failure to state a claim upon which relief can be granted. As grounds for this motion, ExxonMobil states:

1. On June 5, 2020, the Office of the Attorney General (“the Attorney General”) on behalf of the Commonwealth of Massachusetts filed an Amended Complaint purporting to bring three causes of action pursuant to G.L. c. 93A arising out of ExxonMobil’s public statements about energy and climate policy. The Amended Complaint alleges that ExxonMobil engaged in investor and consumer deception by failing to advocate for an immediate transition away from traditional energy sources to renewable energy and by purportedly concealing the link between

fossil fuels, carbon emissions, and climate change. The Amended Complaint should be dismissed for three separate and independent reasons.

2. First, dismissal is warranted under Rule 12(b)(2) because the Court lacks personal jurisdiction over ExxonMobil to adjudicate the Attorney General's claims. ExxonMobil is not subject to general jurisdiction because it is not "at home" in Massachusetts. *See Daimler AG v. Bauman*, 571 U.S. 117, 137 (2014). Nor is ExxonMobil subject to specific jurisdiction because the Attorney General's claims do not "aris[e] from" ExxonMobil's contacts with the forum, as required by the Due Process Clause of the U.S. Constitution and the Massachusetts long-arm statute. G.L. c. 223A, § 3; *Walden v. Fiore*, 571 U.S. 277, 284 (2014). Instead, the Attorney General's claims are based on ExxonMobil's statements of opinion regarding future energy demand, its products, and the Company's corporate activities, all of which were conceived, developed, and published outside of Massachusetts and were not specifically directed at Massachusetts. In addition, personal jurisdiction is not authorized by the long-arm statute because the Amended Complaint does not—and cannot—assert that the conduct alleged to violate G.L. c. 93A "cause[d] tortious injury" in Massachusetts. G.L. c. 223A, § 3(c) & (d).

3. Second, if the Court determines that it can exercise personal jurisdiction over ExxonMobil, all three causes of action asserted in the Amended Complaint should nevertheless be dismissed pursuant to Rule 12(b)(6) because they all fail to state valid claims on which relief can be granted under G.L. c. 93A, §§ 2, 4. *See Iannacchino v. Ford Motor Co.*, 451 Mass. 623, 636 (2008). The three causes of action do not plausibly allege that ExxonMobil engaged in "deceptive" acts or practices under G.L. c. 93A, § 2, because they fail to identify any (i) statements or (ii) knowing omissions by ExxonMobil that would mislead a reasonable investor or consumer in a material manner. Rather, the three causes of action target public statements by ExxonMobil that

are either entirely truthful (as the Attorney General concedes) or non-actionable statements of opinion—none of which are materially misleading. The Attorney General cannot state a claim by proceeding on a theory of omission, because an omission is not actionable under Chapter 93A unless it is knowing, material, and misleading. There is nothing inherently misleading, much less materially so, about a fossil fuel company promoting its securities, product, or brand, without advocating for an immediate transition away from fossil fuels. Furthermore, the first and third causes of action fail because they does not plausibly allege that the purportedly deceptive statements were made while ExxonMobil was engaged in “trade or commerce,” as Chapter 93A requires. *Id.* § 2.

4. Finally, the Amended Complaint should be dismissed because it seeks to interpret Chapter 93A to compel affirmative disclosures that would violate the First Amendment. The Attorney General’s theory of deceptive omission seeks to impose liability on ExxonMobil whenever it speaks unless it disseminates the Attorney General’s ideological message on climate policy. The protected speech and petitioning activity targeted by the Amended Complaint is entitled to the highest rung of constitutional protection. But even if analyzed as commercial speech, the disclosures sought are unconstitutional. The First Amendment forbids the Attorney General from compelling disclosures that are not “purely factual and uncontroversial.” *Zauderer v. Off. of Disciplinary Counsel of Supreme Court*, 471 U.S. 626, 651 (1985); *Nat’l Institute of Family and Life Advoc. v. Becerra*, 138 S. Ct. 2361, 2372 (2018). This precludes the Attorney General from compelling dire warnings concerning speculative future events and moral imperatives on the “controversial” issue of “climate change.” *Janus v. Am. Fed’n of State, Cty., & Mun. Employees, Council 31*, 138 S. Ct. 2448, 2476 (2018). Nor can the Attorney General carry its burden to establish that the desired disclosures “directly advance[]” and are “narrowly” tailored

to a substantial government interest. *Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n*, 447 U.S. 557, 564-66 (1980). The Attorney General's omission theory therefore cannot stand and the Amended Complaint thus should be dismissed with prejudice.

5. In support of its motion to dismiss, ExxonMobil also relies on the accompanying (i) Memorandum of Defendant Exxon Mobil Corporation in Support of Its Motion to Dismiss the Amended Complaint, and (ii) the Affidavit of Joel P. Webb, which is filed in support of ExxonMobil's motion to dismiss for lack of personal jurisdiction.

6. Pursuant to Superior Court Rule 9A(c)(3), ExxonMobil respectfully requests a hearing on all issues raised in this motion and the accompanying memorandum of law.

### **CONCLUSION**

For these reasons, ExxonMobil respectfully requests that the Court allow its motion to dismiss pursuant to Mass. R. Civ. P. 12(b)(2) and 12(b)(6) and the First Amendment, and enter an order dismissing all causes of action alleged in the Amended Complaint.

Dated: August 5, 2020

Respectfully submitted,

EXXON MOBIL CORPORATION

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**CERTIFICATION UNDER SUPERIOR COURT RULE 9C**

In accordance with Superior Court Rule 9C, counsel for Defendant Exxon Mobil Corporation (Patrick J. Conlon, Justin Anderson, and Thomas C. Frongillo) and counsel for the Commonwealth of Massachusetts (Richard A. Johnston and James A. Sweeney) conducted a telephonic conference on Wednesday, July 29, 2020, at 12:30 p.m., and made a good faith effort to narrow areas of disagreement regarding the motion but were unable to do so.

**CERTIFICATE OF SERVICE**

I, Thomas C. Frongillo, counsel for Defendant Exxon Mobil Corporation, hereby certify that on August 5, 2020, I served a copy of the Defendant Exxon Mobil Corporation's Motion to Dismiss the Amended Complaint on counsel of record by electronic service in accordance with the Joint Motion to Set Pleading Deadlines, allowed by the Court on April 14, 2020.

  
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