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January 16, 2020

BY ECF

Catherine O'Hagan Wolfe
Clerk of Court
U.S. Court of Appeals for the Second Circuit
Thurgood Marshall United States Courthouse
40 Foley Square
New York, NY 10007

Re: *Exxon Mobil Corp. v. Healey*, No. 18-1170

Dear Ms. Wolfe:

We write in response to the letter filed by the Massachusetts Attorney General (“MAAG”) on December 18, 2019, which provides MAAG’s justification for filing its civil suit against ExxonMobil in the middle of the New York Attorney General’s trial, after three and a half years of inaction. ExxonMobil disputes the MAAG’s recycled and inaccurate recitation of the procedural history of this case, which is clear enough from prior submissions, but writes to clarify the sequence of events that led to MAAG’s filing a civil complaint against ExxonMobil.

Contrary to MAAG’s suggestion, MAAG’s unilateral decision to file its complaint during the New York trial was not prompted by “Exxon’s own *choice* to file an” emergency motion in the pending Massachusetts proceeding to extend the time to meet and confer. (MAAG Dec. 18 Ltr. at 3.) To the contrary, on October 10, 2019—mere days prior to the NYAG trial—MAAG surprised ExxonMobil with a notice “that the Attorney General intends to commence an action against ExxonMobil.” (Ex. A.) In its response, ExxonMobil requested to schedule a meet and confer with MAAG “following the conclusion of the New York State trial in mid-November, less than a month away.” (Ex. B.) MAAG refused that request on October 15, in a letter that insisted on conferring within the next two days, when ExxonMobil was unavailable due to pre-trial proceedings and preparation. Faced with MAAG’s refusal to grant a reasonable accommodation and the likelihood that MAAG would simply file suit after the five-day notice period had expired, ExxonMobil—through local counsel—filed an emergency motion to extend the statutory period to meet and confer. The Massachusetts Superior Court denied that motion as beyond

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the Court's power on October 24, while "asking" MAAG to delay its filing "three days" to allow the parties to meet and confer. (Ex. C at Tr. 28:25, 30:13-15.) After informing ExxonMobil it was solely willing to confer immediately following the hearing, MAAG proceeded to file its complaint **mere hours** later.

To this day, MAAG has offered no explanation why it was necessary for MAAG to serve ExxonMobil with a pre-suit notice on the eve of ExxonMobil's trial in New York or to file its complaint on the third day of those trial proceedings. Accordingly, an inference of strategic timing—rather than mere coincidence—is warranted.

Sincerely,

/s/ Justin Anderson
Justin Anderson

cc: All counsel of record (by ECF)