

1. The Commonwealth alleges that ExxonMobil somehow deceived Massachusetts consumers and investors about whether fossil fuels contribute to climate change and about risks posed by climate change, largely by not explicitly disclosing such risks in all of its statements and on all of its products. On this theory, the Commonwealth claims ExxonMobil violated Chapter 93A of the Massachusetts General Laws by making certain material misrepresentations and omissions to Massachusetts investors and consumers. Under Chapter 93A, the Commonwealth

must prove, among other elements, that any alleged misrepresentations and omissions were both deceptive and material.

2. In July 2022, ExxonMobil served its first set of RFPs on the Commonwealth. Relevant here, RFP Nos. 13, 15-26, 28-33, and 36-38 seek information generally concerning the use of fossil fuels by the Commonwealth and other Massachusetts consumers, the Commonwealth's and Massachusetts consumers' and investors' knowledge of climate-related risks and disclosures, and the Commonwealth's investments in ExxonMobil and other fossil fuel companies.

3. The Commonwealth has refused to produce any documents in response to those RFPs on the ground that any responsive documents would be irrelevant. The parties have engaged in meet-and-confers and exchanged correspondence relating to the Commonwealth's refusal to produce documents responsive to some of ExxonMobil's RFPs, but the Commonwealth's current position is that it will produce no responsive documents.

4. As set forth in detail in the Memorandum of Law, the Commonwealth should be compelled to produce responsive documents, which are relevant for two primary reasons. First, ExxonMobil's RFPs seek records that are relevant to rebutting the Commonwealth's allegation that ExxonMobil's representations were deceptive. Responsive records would tend to make it less probable that Massachusetts consumers and investors interpreting ExxonMobil's statements reasonably under the circumstances would have been deceived. Second, ExxonMobil's RFPs seek records that are relevant to rebutting the Commonwealth's allegation that ExxonMobil's representations were material. Responsive records would demonstrate the factors that are important to investors in fossil fuel companies and consumers of fossil fuel products and would thus rebut the allegation that any purportedly deceptive representations were material.

5. In support of its motion to compel, ExxonMobil also relies on the accompanying (i) Memorandum of Law, (ii) Affidavit of Jeannie S. Rhee (“Rhee Affidavit”), and (iii) Exhibits 1 through 7, which are attached to the Rhee Affidavit.

6. Pursuant to Superior Court Rule 9A(c), ExxonMobil respectfully requests a hearing on all issues raised in this motion and the accompanying memorandum of law. A hearing is warranted because this motion addresses discovery issues that are central to the claims and defenses in the case.

CONCLUSION

For these reasons, ExxonMobil respectfully requests that the Court allow its motion to compel and order the Commonwealth to search for and produce records responsive to RFP Nos. 13, 15-26, 28-33, and 36-38.

Dated: December 8, 2023

Respectfully submitted,

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/s/ Thomas C. Frongillo

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CERTIFICATION UNDER SUPERIOR COURT RULE 9C

Pursuant to Superior Court Rule 9C, counsel for Defendant ExxonMobil Corporation (Thomas C. Frongillo, Jeannie Rhee, Kyle Smith, and David Kessler) and counsel for Plaintiff, the Commonwealth of Massachusetts (Brian Clappier, Richard Johnston, Seth Schofield, Andy Goldberg, and Ezra Geggel), conducted a telephonic conference on August 22, 2023, at 3:00 p.m., and exchanged multiple letters on these issues, and made a good faith effort to narrow the areas of disagreement to the fullest extent regarding the Commonwealth's refusal to produce documents in response to certain of ExxonMobil's requests for production.

CERTIFICATE OF SERVICE

I, Thomas C. Frongillo, counsel for Defendant Exxon Mobil Corporation, hereby certify that on December 8, 2023, I caused a copy of this Exxon Mobil Corporation's Motion to Compel on counsel of record by electronic service.

/s/ Thomas C. Frongillo

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