

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
CIVIL ACTION NO. 16-1888F

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



**EMERGENCY MOTION OF EXXON MOBIL
CORPORATION TO SET ASIDE OR MODIFY THE CIVIL
INVESTIGATIVE DEMAND OR ISSUE A PROTECTIVE ORDER**

Pursuant to G.L. c. 93A, § 6(7), Superior Court Rule 9A(e), and the standards set forth in Mass. R. Civ. P. 26(c), Petitioner Exxon Mobil Corporation ("ExxonMobil"), through this special appearance and without consenting to jurisdiction, respectfully requests that this Court set aside a civil investigative demand (the "CID") served on ExxonMobil by the Attorney General. As grounds for this motion, ExxonMobil states:

1. On April 19, 2016, the Attorney General served the CID on ExxonMobil, which states that the Attorney General is investigating possible violations of G.L. c. 93A, § 2. According to the CID, the Attorney General's investigation centers on two types of transactions: (1) ExxonMobil's marketing and sale of energy and other fossil fuel derived products to consumers in Massachusetts, and (2) ExxonMobil's marketing and sale of securities to Massachusetts investors.
2. The Court should set aside the CID because the Court lacks personal jurisdiction over ExxonMobil in connection with any violation contemplated by the Attorney General's investigation. During the 4-year limitations period of G.L. c. 93A, § 2, ExxonMobil has not (1) sold fossil fuel derived products to consumers in Massachusetts, (2) owned or operated a

single retail store or gas station in the Commonwealth, or (3) sold any form of equity to the general public in Massachusetts. Furthermore, ExxonMobil's only sale of debt in the past decade has been to underwriters outside the Commonwealth, and ExxonMobil did not market those sales to Massachusetts consumers.

3. However, if this Court determines that it can exercise personal jurisdiction over ExxonMobil, alternatively, and solely to protect its rights and preserve its objections, ExxonMobil respectfully requests that this Court order the following relief.

4. The Court should exercise its inherent authority to disqualify the Attorney General and her office from pursuing this investigation and appoint an independent counsel, who is not compensated on a contingency-fee basis, to determine whether an investigation is warranted and, if so, to conduct that investigation. The Attorney General's public extrajudicial statements disparaging ExxonMobil and prejudging the outcome of any investigation preclude her and her office from serving as a disinterested prosecutor in any investigation of ExxonMobil.

5. The Court also should set aside, modify, or issue a protective order concerning the CID because it violates ExxonMobil's constitutional, statutory, and common law rights. The CID impermissibly infringes on ExxonMobil's constitutional rights to free speech, freedom from unreasonable searches and seizures, and guarantee of due process of law as guaranteed by Articles XII, XIV, and XVI of the Massachusetts Declaration of Rights. The CID also runs afoul of the standards set forth in Mass. R. Civ. P. 26(c) because it imposes undue burden and expense on ExxonMobil. For instance, the CID requests production of over 40 years of documents, despite the 4-year statute of limitations. Furthermore, the CID is impermissibly unspecific and does not affirmatively state that ExxonMobil may withhold documents on the basis of privilege.

6. Finally, the Court should exercise its discretion to stay adjudication of this

Petition pending the resolution of an earlier filed federal action in the United States District Court for the Northern District of Texas, *Exxon Mobil Corp. v. Healey*, Case No. 4:16-CV-469 (N.D. Tex. June 15, 2016), which seeks to enjoin the Attorney General's investigation.

7. This emergency motion is filed pursuant to Superior Court Rule 9A(e) because ExxonMobil has been unable to reach an agreement with the Attorney General that satisfactorily addresses ExxonMobil's concerns relating to the CID prior to June 16, 2016, the agreed-upon time for ExxonMobil to initiate any legal proceeding to set aside or modify the CID without waiving its right to object to the CID.

8. ExxonMobil also relies on the grounds set forth in its Memorandum in Support of Petition and Emergency Motion of Exxon Mobil Corporation to Set Aside or Modify the Civil Investigative Demand or Issue a Protective Order filed with this motion.

Respectfully Submitted,

EXXON MOBIL CORPORATION

By its attorneys,

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Dated: June 16, 2016

CERTIFICATE OF COMPLIANCE WITH SUPERIOR COURT RULE 9C

I, Thomas C. Frongillo, hereby certify that before serving the Emergency Motion of Exxon Mobil Corporation to Set Aside or Modify Civil Investigative Demand or Issue a Protective Order, counsel for ExxonMobil, including Theodore V. Wells Jr., Michele Hirshman, Daniel J. Toal, Patrick J. Conlon, Daniel E. Bolia, and others, conducted several Superior Court Rule 9C telephone conferences with Assistant Attorney General Andrew Goldberg and Assistant Attorney General Christophe Courchesne from the Attorney General's Office since the service of the CID on April 19, 2016. The most recent conference was conducted on June 15, 2016 at approximately 12:35 p.m. Although counsel made a good faith effort to narrow the areas of disagreement with the Attorney General's Office, the parties were unable to reach a satisfactory resolution.

/s/ Caroline K. Simons

Caroline K. Simons

Dated: June 16, 2016

CERTIFICATE OF SERVICE

I hereby certify that a true copy of this document was served upon the Attorney General's Office for the Commonwealth of Massachusetts by hand delivery on June 16, 2016.

/s/ Caroline K. Simons

Caroline K. Simons