

**OPPOSITION OF THE COMMONWEALTH TO EXXON MOBIL CORPORATION'S  
MOTION TO COMPEL THE COMMONWEALTH TO EXPLAIN WHY IT BELIEVES  
EXXONMOBIL'S STATEMENTS, ACTS, AND PRACTICES WERE DECEPTIVE**

## TABLE OF CONTENTS

	<i>Page</i>
Introduction.....	1
Background.....	3
I.    Allegations in Amended Complaint .....	3
II.   ExxonMobil’s Discovery Requests .....	6
Argument .....	11
I.    ExxonMobil never requested that the AGO explain why the listed statements, acts, and practices are deceptive, and in any event, the AGO explained why they are deceptive. ....	11
II.   ExxonMobil is not entitled to the discovery the company is seeking in this motion. ....	14
A.   Requests for Production Nos. 48, 49, 72 .....	15
B.   Interrogatory Nos. 6 and 11 .....	166
Conclusion .....	20

## ADDENDUM TABLE OF CONTENTS

	<i>Page</i>
Defendant Exxon Mobil Corporation’s Responses and Objections to Plaintiff Commonwealth of Massachusetts’ Second Set of Interrogatories (Nov. 13, 2023) .....	Add-1
Letter from J. Rhee to R. Johnston (Feb. 20, 2024) .....	Add-40
Letter from K. Smith to R. Johnston (April 24, 2024) .....	Add-46

## INTRODUCTION

The Attorney General's Office (the AGO) filed a 202-page complaint detailing why ExxonMobil's deceptive statements, acts, and practices regarding climate change violate G. L. c. 93A as to Massachusetts investors and consumers. The AGO then provided ExxonMobil with 273 pages of interrogatory responses that not only identify the relevant statements, acts, and practices, but which further explain why those statements, acts, and practices are deceptive. When ExxonMobil represented that it did not understand why certain of the statements, acts, and practices are deceptive, the AGO suggested that ExxonMobil should provide the AGO with examples so that the AGO could consider what, if any, further explanation it might be able to offer ExxonMobil. The AGO then—referencing ExxonMobil's deficient responses to the AGO's interrogatories and long-delayed document production—proposed that each side commit to supplementing its interrogatory responses every two months as each side reviewed the relevant documents. ExxonMobil stated that it would take the AGO's offers under advisement. After two months of silence, ExxonMobil responded to those offers by filing a motion accusing the AGO of “playing blindman's bluff.” Mem. in Supp of ExxonMobil's Mot. to Compel the Commonwealth to Explain Why It Believes ExxonMobil's Statements, Acts, and Practices Were Deceptive 11 (Apr. 26, 2024) (XOM Mem.).

There are three evident and independently dispositive flaws to ExxonMobil's argument that the AGO has not explained why ExxonMobil's statements, acts, and practices are deceptive. First, ExxonMobil never made such a request in discovery; instead, ExxonMobil merely asked the AGO to identify the deceptive conduct. Second, the AGO has nevertheless voluntarily explained in detail, many different times, why ExxonMobil's conduct is deceptive. Third, as noted above, the AGO offered to try clear up any confusion about any specific deceptive

statement, act, or practice identified by ExxonMobil in the AGO's interrogatory responses and further offered to supplement its interrogatory answers following ongoing document review if ExxonMobil would agree to a reciprocal obligation. Simply put, ExxonMobil has no basis to assert that the AGO is refusing to explain why the company's conduct is deceptive.

Stripping away the motion's misleading title and unfounded accusations reveals that ExxonMobil is conflating discovery relating to why ExxonMobil's conduct is deceptive—discovery, again, that ExxonMobil never requested, but the AGO has nevertheless provided—with discovery that ExxonMobil is not entitled to receive. At the heart of ExxonMobil's motion is the company's baseless attempt to require the AGO (i) to conduct new analyses of other companies' and the Commonwealth's climate-related messaging, (ii) to draft corrective disclosures for the remedies phase of the case years before this Court makes any findings of fact, and (iii) to draft new disclosures that could somehow render nondeceptive ExxonMobil's deceptive advertisements. ExxonMobil has no grounds to request such discovery.

Tellingly, ExxonMobil supports its motion to compel by either re-framing the claims in this case as based on a pure omissions theory, XOM Mem. at 1, which turns on a "specific disclosure or disclosures" that ExxonMobil did not make, or turning this case into a trial about what other fossil fuel companies and state agency officials have said about climate change. Both attempts run counter to this Court's rulings. This Court has already rejected ExxonMobil's attempt to recharacterize the AGO's well pleaded claims as being premised on a pure omissions theory. Mem. of Decision & Order on Def's Mot. to Dismiss Amended Compl. 19 (June 22, 2021) (Dkt. No. 42) (Green, J.) (distinguishing the AGO's allegations from the "pure omission" theory articulated in *Tomasella v. Nestle USA, Inc.*, 962 F.3d 60 (1st Cir. 2020)). And this Court struck ExxonMobil's defenses that may have given the company a foothold for seeking

discovery about statements by other companies and state agency officials. Mem. & Order on Mot. to Strike Certain Defenses 11-19 (Mar. 21, 2022) (Dkt. No. 70) (Krupp, J.) (Motion to Strike Order). For those reasons, and the additional ones set forth below, the Court should deny ExxonMobil's motion.

## **BACKGROUND**

### **I. Allegations in Amended Complaint**

In June 2020, the AGO filed its Amended Complaint. Amended Compl. (June 5, 2020) (Dkt. No. 24). Over the course of 202 pages, the AGO explains in detail why ExxonMobil's statements, acts, and practices had the "capacity to mislead [investors and] consumers, acting reasonably under the circumstances, to act differently from the way they otherwise would have acted" in violation of c. 93A. *Aspinall v. Philip Morris Cos.*, 442 Mass. 381, 396 (2004). Contrary to ExxonMobil's distortion of the AGO's allegations, the AGO does not merely allege that ExxonMobil "did not say enough about the risks of climate change." XOM Mem. at 1. Instead, the Amended Complaint makes clear that ExxonMobil said a lot about climate change, including by implementing over several decades the "Exxon Position" through which the company sought to "emphasize the uncertainty in scientific conclusions regarding the potential enhanced Greenhouse effect." Amended Compl. ¶ 122. For example, ExxonMobil asserted that it was a "lie[] they tell our children" that "a greenhouse effect . . . would melt polar ice caps and devastate U.S. coastal cities." *Id.* ¶ 166. ExxonMobil further contended that "increased levels of carbon dioxide" would actually benefit the world by "promot[ing] crop and forest growth." *Id.* ¶ 171. ExxonMobil made these statements despite knowing that fossil fuels cause climate change, recognizing that the impacts of climate change would be catastrophic for the world and

ExxonMobil's fossil fuel business, and predicting with remarkable accuracy the climactic effects the world is currently confronting. *Id.* ¶¶ 479-81.

The AGO explained in the Amended Complaint in detail how ExxonMobil never disclosed to investors and consumers the company's own detailed knowledge of the "catastrophic" impacts of climate change. *Id.* ¶¶ 11, 480; *see also id.* ¶¶ 69-114. To the contrary, ExxonMobil consistently minimized the risk of climate change and overstated how the company and its fossil fuel products—products that cause climate change—mitigated that risk, thereby portraying the company as part of the solution to—rather than a driving cause of—climate change. All the while, ExxonMobil has ranked consistently as one of the largest emitters of climate-change causing greenhouse gas emissions among all U.S. companies and global fossil-fuel product producers. *Id.* ¶ 66.

On the investor side, ExxonMobil has been representing that oil and gas demand will remain high for decades to come, especially because of growth in the developing world, without disclosing the risks inherent in such a high-emissions pathway, including, for example, lowered economic growth in developing countries, *id.* ¶¶ 90, 310, 479, 503, and an increased likelihood of a disruptive, costly, wealth-destroying energy transition, *id.* ¶¶ 501, 527-29. Nor has ExxonMobil disclosed the catastrophic environmental consequences of its business plan. Instead, ExxonMobil has represented that the company has been conservatively managing any climate-related risk by applying a high and escalating proxy cost of carbon to ensure that it was appropriately prioritizing low-cost, low-emission assets and low-carbon business lines. But, in reality, it applied a proxy cost that was lower and less effective, thereby exposing the company to heightened climate risk. *Id.* ¶ 358-402, 487. ExxonMobil has also asserted that even if society transitioned quickly away from oil and gas, the company was positioned to succeed due to its

ability to produce low-cost, low-emission oil and gas as well as the company's vast investments in low-carbon business lines—a position that grossly understates the existential threat a carbon-constrained world poses to ExxonMobil's core business and ExxonMobil's preparedness for that threat. *Id.* ¶ 508-11, 13. ExxonMobil has used all of those representations to convey that that the company has been effectively managing climate risk, including by asserting that the company faced no risk of stranded assets regardless of how the energy transition unfolded. *Id.* ¶¶ 492-93.

On the consumer side, ExxonMobil has been representing to consumers that using ExxonMobil fossil fuel products will benefit the environment and reduce consumers' emissions, but those benefits are minuscule at best when compared with the massive greenhouse gas emissions associated with the extraction, production, and use of those products that are causing climate change and endangering communities. *E.g., Id.* ¶ 753. For example, ExxonMobil deceptively advertises its Synergy Supreme<sup>+</sup> gasoline product on signage at Massachusetts service stations and online that says in big, red, bold letters the fuel is "2X CLEANER," which the smaller print—when it appears—then suggests means "Better gas mileage" and "Lower emissions." *Id.* ¶ 595. ExxonMobil similarly promotes its "green" Mobil 1<sup>TM</sup> motor oil—literally colored green by ExxonMobil—as a "Solution" that can "contribute" to consumers' "carbon dioxide emission-reduction efforts." *Id.* ¶ 611. To induce and sustain brand-loyalty, ExxonMobil deceptively portrays the company as a "leader[] in solving the problem of climate change," "support[ing] . . . action to reduce greenhouse gas emissions," and "focus[ed] on developing clean energy to 'protect tomorrow today.'" *Id.* ¶ 762, *see also id.* ¶¶ 761-70. But in both its product advertising and brand-marketing, ExxonMobil has failed to disclose that the production and use of its fossil fuel products are a leading cause of climate change that, if unabated, will cause catastrophe consequences, *id.* ¶¶ 90, 96, 105, or that the company is actually

*increasing* fossil fuel production, *id.* ¶ 598. And the examples described above represent just some of the deceptive statements, acts, and practices described in detail across 53-pages in the Amended Complaint. *Id.* ¶¶ 537-720.

## **II. ExxonMobil's Discovery Requests**

In July 2022, ExxonMobil served its first set of interrogatories. Relevant here are two interrogatories.

Interrogatory No. 2: Identify all statements, acts, or practices by ExxonMobil that you allege constitute deceptive acts or practices that are material to investors or consumers in the Commonwealth, and for each statement, act, or practice, indicate whether you allege it supports the investor fraud claim (count 1) or the consumer fraud claims (counts 2 and 3) in the amended complaint.

Interrogatory No. 6: Identify any deceptive statements, acts or practices that continued beyond, or remain ongoing after, June 6, 2020, that you contend support your requests for relief and any corrective disclosures or actions you contend ExxonMobil should be required to undertake to remedy the alleged statutory violations.

App. A to XOM Mem. As the plain text of the interrogatories makes clear, ExxonMobil requested that the AGO *identify* the statements, acts, or practices that support its claims.

ExxonMobil separately asked regarding the subset of those statements, acts, or practices that post-date June 6, 2020, for a list of “corrective disclosures or actions” that the AGO contends ExxonMobil should take to “remedy” the statutory violations for that post-June 2020 conduct. *Id.*

The AGO provided over 150 pages of responses to Interrogatory Nos. 2 and 6. And, notably, ExxonMobil rightly does not seek to compel further responses to Interrogatory No. 2.



As requested, the AGO provided a list of the deceptive statements, acts, and practices that the AGO had identified at the time of the interrogatory responses on October 21, 2022, September 26, 2023, and December 18, 2023. XOM Mem. Exs. 3, 8, 9. But the AGO went beyond the narrow response requested in the interrogatories by providing both a narrative summary of its claims as well as detailed lists explaining why ExxonMobil's conduct was deceptive. *Id.*

For example, the AGO would have satisfied ExxonMobil's interrogatories by, among other things, simply identifying ExxonMobil's statements about how the company claims it has been reducing emissions. But the AGO went much further by providing ExxonMobil with the following points, among others, regarding *why* ExxonMobil's statements touting its emissions reductions were deceptive:

- ExxonMobil has been portraying its own insufficient mitigation and remedial efforts as an effective response to the risks of climate change. Third Set of Responses to ExxonMobil First Set of Interrogatories (Third Responses), XOM Mem. Ex. 3, at 15.
- ExxonMobil has been representing that it has been modifying its business practices to align with a low carbon future—without disclosing that such claims exaggerate the extent that such efforts can mitigate the climate risks they are designed to address. *Id.* at 96.
- ExxonMobil has been claiming that its business plan is aligned with the Paris Agreement while continuing to pursue fossil fuel developments which undermine the Paris Agreement objectives. *Id.* at 18.<sup>1</sup>

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<sup>1</sup> The Paris Agreement aims to keep the global temperature increase well below 2 degrees C above pre-industrial levels—the temperature above which the earth would experience irreversible climate impacts—and to pursue efforts to limit it to 1.5 degrees C. Amended Compl. ¶ 322.

- ExxonMobil has been emphasizing its Scope 1 and 2 emissions reductions while ignoring its more substantial Scope 3 emissions. *Id.* at 98.<sup>2</sup>
- ExxonMobil has been making claims about being a net-zero company and meeting net-zero goals, but the Company's business plans are not aligned with its net-zero claims. *Id.* at 17.
- ExxonMobil has been making claims that the company will meet net-zero goals, but the company has undercounted emissions related to methane in those calculations. *Id.* at 17.
- ExxonMobil has been representing that it has been reducing emissions, including methane emissions and emissions relating to flaring, thereby conveying that the Company has been responsibly reducing its emissions and/or the Company is a leader in reducing emissions. *Id.* at 17.
- ExxonMobil has been representing that the company is dedicated to addressing climate change, when the success of its business model depends on increasing production of fossil fuels. *Id.* at 16.
- ExxonMobil has been representing that it is limiting greenhouse gas emissions while not disclosing that the company is one of the most significant contributors to greenhouse gas emissions. *Id.* at 16.

The AGO, therefore, both identified ExxonMobil's deceptive conduct—specific statements boasting about its emissions reductions—and further explained why that conduct is deceptive.

By contrast, the AGO objected to providing ExxonMobil with a list of remedial actions that the AGO contends the company will need to take concerning its post-June 2020 conduct

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<sup>2</sup> Scope 3 emissions are emissions that result from consumer use of ExxonMobil's fossil fuel products like, for example, emissions resulting from operating a gasoline powered vehicle. *See* Amend. Compl. ¶ 521.

because it is premature and would cause more confusion than clarity to answer a contention interrogatory concerning the remedies phase of the case. XOM Mem. Ex. 3 at 159. Notably, in ExxonMobil's own response to the AGO's interrogatories, ExxonMobil took the position that responding to contention interrogatories regarding the earlier liability phase of the case is "premature at this stage of discovery." ExxonMobil's Responses and Objections to the Commonwealth's Second Set of Interrogatories, Add-10.

On February 20, 2024, ExxonMobil sent a letter raising alleged remaining "deficiencies" with the AGO's responses to the First Set of Interrogatories—a letter that ExxonMobil did not include in its exhibits to the current motion. Add-41. Of note, ExxonMobil did not raise the AGO's objection to providing a list of corrective disclosures, *id.*, and the parties did not discuss this topic at the subsequent meet and confer on March 6, 2024. The current motion is the first time ExxonMobil has raised this issue in six months.

On November 2, 2023, ExxonMobil served its Second Set of Interrogatories. Relevant here, ExxonMobil requested:

Interrogatory No. 11: Identify what specific disclosure or disclosures the Commonwealth contends ExxonMobil was required to make in order to make its advertisements to Massachusetts consumers not deceptive or misleading.

App. A to XOM Mem. The AGO objected on a number of bases, including that the Office is under "no obligation to explain, hypothetically and counterfactually, whether ExxonMobil could have included additional disclosures in its advertisements that would have rendered them non-deceptive and/or non-misleading, and if so, what those disclosures could have included." First Set of Responses to ExxonMobil's Second Set of Interrogatories, XOM Mem. Ex. 5 at 10. In a subsequent meet and confer, the AGO further explained that ExxonMobil has the relevant

information it needs to understand why the AGO is alleging that ExxonMobil's advertisements are deceptive, and the AGO reiterated its position that it has no obligation to craft disclosures for ExxonMobil's advertisements.

Regarding the Request for Production of Documents (RFPs), ExxonMobil served its second set of RFPs on November 2, 2023, which included the following three requests:

RFP No. 48: All written, audio, or video advertisements to consumers in Massachusetts about gasoline, motor oil, or other fossil fuel products that the Commonwealth contends sufficiently disclose the risks of climate change posed by fossil fuels so as not to be deceptive or misleading.

RFP No. 49: All documents and communications concerning statements to investors in Massachusetts by energy companies that the Commonwealth believes sufficiently disclose the risks of climate change posed by fossil fuels, or the risks to those companies' business, so as not to be deceptive or misleading.

RFP No. 72: All public documents and communications, including statements in speeches by Commonwealth officials, that the Commonwealth contends appropriately and sufficiently disclose the risks of climate change posed by the Commonwealth's use of fossil fuels.

App. A to XOM Mem. The above RFPs do not merely ask the AGO to collect documents hitting on certain search terms or relating to certain topics. Instead, these RFPs request that the AGO conduct independent legal analyses of undefined statements by other energy companies and Commonwealth officials to determine whether those statements "sufficiently disclose the risks of climate change." The AGO objected in its responses and on a subsequent meet and confer because Rule 34 does not provide a basis to force a party to conduct new legal analyses, and in

any event, the RFPs relate to the stricken defenses of selective prosecution, *in pari delicto*, and unclean hands. Responses to ExxonMobil's Second Request for Production of Documents, XOM Mem. Ex. 10 at 3-5; 31-32.

## ARGUMENT

**I. ExxonMobil never requested that the AGO explain why the listed statements, acts, and practices are deceptive, and in any event, the AGO explained why they are deceptive.**

The Court should reject ExxonMobil's motion to compel responses to Interrogatory Nos. 6 and 11 for the basic reason that ExxonMobil never requested that the AGO *explain* why ExxonMobil's statements, acts, and practices are deceptive. ExxonMobil argues that Interrogatory Nos. 6 and 11 provide the basis for that request, but they do not. Interrogatory No. 6 only requests that the AGO articulate the remedial actions that the AGO will request that Court order ExxonMobil to take if it finds that one or more ExxonMobil statements, acts, or practices violate c. 93A, and only for the subset of statements, acts, and practices that post-date June 2020. Interrogatory No. 11 only requests that the AGO identify the "specific disclosure or disclosures" that ExxonMobil could have added to its advertisements to render the deceptive advertisements nondeceptive. As is apparent from the language of the interrogatories, they do not address investor-related or non-advertisement, consumer-related statements that pre-date June 2020. But more fundamentally, they do not ask the question embedded in the title of ExxonMobil's motion—why are ExxonMobil's statements, acts, and practice deceptive?

The AGO, nevertheless and without waiving its rights, has expended a great deal of resources answering that question in its interrogatory responses. For example, below are just a few examples of the AGO explaining in its interrogatory responses why ExxonMobil's statements, acts, and practices are deceptive:

- ExxonMobil has been overstating the climate benefits of its carbon capture business line, given that the Company has been employing carbon capture for the purpose of extracting additional hydrocarbons (which cause climate change). XOM Mem. Ex. 3 at 18.
- ExxonMobil has been stating that it is aligned with and supports the Paris Agreement, when its business plans are neither aligned with nor supportive of the goals of the Paris Agreement. *Id.* at 122.
- ExxonMobil has been advertising to Massachusetts consumers that it is an environmentally friendly company that is dedicated to finding solutions to climate change without disclosing to consumers that the Company's own scientists told Company management that fossil fuel emissions were a significant cause of climate change and that fossil fuel use would need to be eliminated or significantly reduced to minimize the adverse effects of climate change, and, nevertheless, ExxonMobil continued to extract fossil fuels from the ground and sell fossil fuel products in ever increasing amounts. *Id.* at 118.

It is unclear why ExxonMobil is claiming that the company does not understand the allegations. For example, ExxonMobil argues that it cannot "divine" why the AGO is alleging that it is deceptive for ExxonMobil to brag about reducing its methane emissions. Br. at 3. But as detailed above, the AGO provided many explanations in its interrogatory responses for why ExxonMobil's statements touting the company's emissions reductions are misleading. *Supra* at 7-8.

Given that the AGO has provided ExxonMobil with detailed explanations of the allegations, the Rule 9(b) cases ExxonMobil cites are inapposite. XOM Mem. at 9. In the first case, the plaintiff only alleged that the defendant had "generally engaged in 'dishonest

underwriting practices’ and issued ‘fraudulent loans’” without making any “effort to explain why the loans issued were fraudulent.” *Republic Bank v. Bear Stearns*, 683 F.3d 239, 256 (6th Cir. 2012). The next case is even farther afield because the defendant “never had any dealings” with the plaintiffs, and, given the lack of direct contact, the plaintiffs never explained why the defendant had any obligation “to disclose any information to them at all, nor how [defendant] should have done so.” *Carroll v. Fort James Corp.*, 470 F.3d 1171, 1174 (5th Cir. 2006). The final case is the most curious for ExxonMobil to cite, as the Court merely noted the Rule 9(b) standard in a footnote in one part of the decision and engaged in no relevant analysis when discussing the c. 93A claims in a separate part. *JFF Cecilia LLC v. Weiner Ventures, LLC*, 2020 WL 4464584, at \*7 n.3, \*\*13-14 (Super. Ct. July 30, 2020) (Salinger, J.).

Moreover, ExxonMobil has no reason to resort to a motion to obtain information about the allegations in this case when the AGO has been voluntarily providing such information to ExxonMobil. Indeed, during a meet and confer in early March, the AGO explained, yet again, how the interrogatory responses articulated why ExxonMobil’s conduct was misleading and even offered to provide ExxonMobil with further explanations for specific statements if ExxonMobil identified the specific statements that it deemed were unaccompanied by sufficient explanations. In addition, the AGO noted that the Office was finally gaining access to ExxonMobil’s long-delayed document productions, which ExxonMobil had not produced in time to meet the Court-ordered production deadline. *See* Motion of Exxon Mobil Corporation to Enlarge the Document Production and Discovery Deadlines (Dec. 1, 2023) (Dkt. No. 88). As such, the AGO offered to supplement its interrogatory responses every two months based on the Office’s ongoing review of material produced by ExxonMobil, so long as ExxonMobil committed to a reciprocal schedule for supplementing the company’s deficient interrogatory responses. At no point in those

conversations did ExxonMobil convey that the AGO's positions were unreasonable or that the parties were at an "impasse." XOM Mem. at 6. Instead, ExxonMobil stated that it would take those offers under advisement and respond.

ExxonMobil responded by waiting for two months and then filing a motion accusing the AGO of "playing blindman's bluff." *Id.* at 11. It is unclear why ExxonMobil is leveling that accusation against the AGO, but it appears to be an accusation in search of supporting facts.<sup>3</sup>

**II. ExxonMobil is not entitled to the discovery the company is seeking in this motion.**

ExxonMobil justifies its motion by claiming it needs the requested discovery to understand why its conduct is deceptive. But as detailed above, the AGO has already provided ExxonMobil with that information. Stripping away the misleading title of the motion reveals that ExxonMobil is seeking to compel the AGO to do the following:

- Conduct an analysis evaluating all statements from energy companies and Commonwealth officials to determine whether those statements "appropriately and sufficiently disclose the risks of climate change." RFP Nos. 48, 49, 72
- Provide "corrective disclosures or actions [the AGO] contend[s] ExxonMobil should be required to undertake." Interrogatory No. 6.

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<sup>3</sup> On May 10, 2024, the AGO served a motion to compel on ExxonMobil due to the company's failure to provide complete responses to the AGO's interrogatories and lack of response to the AGO's repeated attempts over the course of two months to discern whether the company intended to supplement its incomplete responses. On May 13, 2024, ExxonMobil finally agreed to the AGO's longstanding proposal that each side supplement its interrogatory answers every two months through October. Add-47. This belated agreement is a helpful development, but ExxonMobil refused to provide complete responses to two interrogatories, which remain the subject of the AGO's outstanding motion to compel.



- Provide the “specific disclosure or disclosures the [AGO] contends ExxonMobil was required to make in order to make its advertisements to Massachusetts consumers not deceptive or misleading.” Interrogatory No. 11.

**A. Requests for Production Nos. 48, 49, 72**

Addressing the RFPs first, the AGO is not sitting on a document comparing and contrasting ExxonMobil’s climate-related statements with those of other energy companies or the Commonwealth. ExxonMobil, therefore, is seeking to use Rule 34 to compel the AGO to conduct a new analysis to determine whether any statements that the AGO happens to have within its possession, custody, or control from other fossil fuel companies or state agency officials “appropriately and sufficiently disclose the risks of climate change.” ExxonMobil has not provided the AGO with any precedent for using Rule 34 for this purpose—and the AGO is aware of none. To the contrary, ExxonMobil recently declared in a letter to the AGO that “courts have repeatedly recognized that a responding party ‘is not required to engage in any independent research or expert analysis’ in responding to discovery requests,” Add-46-47 (quoting *Carnevale v. Boeing Co.*, 2017 WL 11542234, at \*1 (D. Mass. Mar. 7, 2017)), yet that is exactly what ExxonMobil is asking this Court to compel the AGO to do here. While ExxonMobil argues that it is not requesting that the AGO conduct any legal analysis to respond to this request, XOM Mem. at 11, the AGO cannot respond to the request without conducting independent research and legal analysis.

As a separate, dispositive flaw, ExxonMobil is also requesting that the Court compel the AGO to conduct analyses that relate directly to the defenses that this Court has stricken. Motion to Strike Order at 19 (Dkt. No. 70). In RFP Nos. 48 and 49, ExxonMobil is requesting that the AGO evaluate whether *other* energy companies misrepresented climate risk, but such an

analysis, to the extent it is relevant at all, would be relevant only to ExxonMobil's stricken selective prosecution defenses. *See, e.g.*, Mem. of L. in Supp. of the Commonwealth's Mot. to Strike Certain Defenses in ExxonMobil's Answer 14 (Sept. 24, 2021) (Dkt. No. 55) (noting that ExxonMobil alleged in its Defense 32 that the AGO "selectively treated ExxonMobil differently from others who are similarly situated."). Of course, ExxonMobil argues that it needs this analysis "to understand what the Commonwealth alleges ExxonMobil has done wrong," XOM Mem. at 11, but whether the AGO believes other energy companies have "sufficiently disclose[d] the risks of climate change" to investors says nothing about whether ExxonMobil's *own*, context specific statements are deceptive. And, in all events, as detailed above, the AGO has already told ExxonMobil many times, in detail what it has done wrong.

In RFP No. 72, ExxonMobil requests that the AGO examine the Commonwealth's statements, acts, and practices to determine whether the Commonwealth has "appropriately and sufficiently disclose[d] the risks of climate change." App. A to XOM Mem. But this Court's decision striking the *in pari delicto* and unclean hands defenses precludes ExxonMobil from seeking such discovery. Motion to Strike Order at 19 (Dkt. No. 70). Again, ExxonMobil argues it needs this information to understand "what it has done wrong," but the AGO is not responsible for curing ExxonMobil's ostensive ignorance, nor would comparing and contrasting ExxonMobil's statements with those of the Commonwealth help ExxonMobil understand what the AGO is alleging in this case.

**B. Interrogatory Nos. 6 and 11**

Turning to the interrogatories, ExxonMobil conflates (i) an explanation of why ExxonMobil's statements, acts, and practices are deceptive with (ii) corrective disclosures that the AGO may or may not request that this Court order ExxonMobil to make following a finding

by the Court that one or more of ExxonMobil's statements, acts or practices violated c. 93A. As detailed above, the AGO has already explained why ExxonMobil's statements, acts, or practices are deceptive; and as detailed below, ExxonMobil is not entitled to compel the AGO to respond to a contention interrogatory concerning what corrective disclosures the AGO may propose that the Court require ExxonMobil to make in the remedies phase of the case.

Here, it remains hopelessly premature for the AGO to guess at what corrective statements may be warranted before this Court makes a finding on which ExxonMobil statements, acts, or practices violate c. 93A, and specifically why they do so. Indeed, it is not even clear at this early stage whether the Court will deem such corrective statements necessary. While it is true that the AGO did state that "resolving the legality of any future corrective statements is a fact-bound exercise" in its opposition to ExxonMobil's motion to dismiss, XOM Mem. at 2 n.3, ExxonMobil conveniently omits the remainder of the quoted sentence. The remainder of the quoted sentence makes clear that the formulation of potential proposed corrective statements "requires, *first*, a liability finding." Mass. Opp. to Mot. to Dismiss at 40 (Dkt. No. 32) (emphasis added). *United States v. Phillip Morris USA, Inc.*, 566 F3d 1095 (D.C. Cir. 2009)—the case cited by the AGO in support of that point—is, again, instructive.

Begin, for example, with the district court's remedy opinion in that case, which makes clear that "[e]very sentence of the Corrective Statements is based in specific Findings of Fact made by th[e] Court in the Original Opinion." *United States v. Phillip Morris USA, Inc.*, 907 F. Supp. 2d 1, 15 (D.D.C. 2012) (emphases added). And end with the D.C. Circuit's earlier opinion rejecting the defendants' contention that they were denied due process "because the government did not disclose its final corrective statements proposal until its post-trial proposed remedial order." *Phillip Morris*, 566 F.3d at 1138-39. That was so, the D.C. Circuit held, because

(i) “Defendants received the government’s proposed . . . corrective statements . . . two months before the remedies phase of the trial began” and (ii) they were able to contest the proposed statements during a fourteen-day trial, including by cross-examining “at least one government witness who testified about corrective statements.” *Id.* at 1138 (citing *Phillip Morris*, 449 F. Supp. 2d at 923). The D.C. Circuit thus readily held that the “Defendants ha[d] not demonstrated any prejudice.” *Phillip Morris*, 566 F.3d at 1138-39.

Even if ExxonMobil’s interrogatory were not premature for the reasons just described, the Court should deny ExxonMobil’s motion to compel the AGO to answer it for yet another reason as well. Contention interrogatories “may ask another party to indicate what it contends . . . . They are distinct from interrogatories that request identification of witnesses or documents that bear on the allegations.” *Bituminous Casualty Corp., v. Scottsdale Ins. Co.*, No. 12-CV-0084, 2013 WL 1411544, at \*1 (D. Minn. Apr. 8, 2013) (internal citations omitted). Contention interrogatories are not “necessarily objectionable . . . but the court may order that such an interrogatory need not be answered until after designated discovery has been completed, or until a pretrial conference, or other later time.” Mass. R. Civ. P. 33(b). Consistent with that rule, a federal Massachusetts magistrate judge cited favorably the principle that “contention interrogatories are appropriately reserved for after discovery, except ‘in the rare event that future discovery would be unhelpful or unlikely to elicit issues and establish a necessary factual foundation in that particular litigation.’” *United States ex rel. Long v. Janssen Biotech*, No. 16-12182-FDS, 2023 WL 3794179, at \*4 (D. Mass. June 1, 2023) (Kelley, Mag. J.) (quoting *In re Facebook, Inc.*, No. MDL 12-2389, 2016 WL 5080152, \*3 (S.D.N.Y. July 7, 2016)); *see id.* (A party has no obligation to “lay out [its] entire case . . . while discovery remains ongoing.”).

Here, there is no reason for the AGO to respond to a contention interrogatory regarding the remedies phase; instead, doing so would create unnecessary complications and bog down discovery by “impos[ing] upon [the AGO] unnecessarily arduous obligations to update as new information becomes available.” *Long*, 2023 WL 3794179, at \*4. To take one example, suppose the Court finds that ExxonMobil has violated c. 93A by advertising its gasoline as “2x Cleaner.” Whether ExxonMobil will need to make a corrective disclosure depends on, among other factors, whether ExxonMobil is still running the 2x Cleaner advertisements at the time of that liability finding, the content of those advertisements, whether ExxonMobil made any changes to the advertisements, when ExxonMobil made those changes, and the reason the Court concluded that those advertisements violate c. 93A, among other factors. Those factors are either unknowable at this time or are facts that the AGO is attempting to pursue in discovery (such as by obtaining consumer surveys from ExxonMobil). *See* Commonwealth’s Motion to Compel ExxonMobil to Produce Documents Responsive to Requests For Production 11, 12, and 88 Through a “Targeted” Process (Feb. 7, 2024) (Dkt. No. 109). As a result, it is impractical at this time to determine whether any corrective disclosure will be necessary to protect Massachusetts consumers from ExxonMobil’s false and deceptive 2x Cleaner campaign. And even were the AGO forced to provide some answer to what a hypothetical corrective statement may or may not be, the AGO could not commit that its position would not change as facts on the ground evolve, including, for example, this Court’s liability findings, thereby rendering any answer a fruitless exercise and a waste of limited resources.

Finally, in Interrogatory No. 11, ExxonMobil requests that the AGO “[i]dentify what specific disclosure or disclosures the Commonwealth contends ExxonMobil was required to make in order to make its advertisements to Massachusetts consumers not deceptive or

misleading.” Again, the AGO has already explained why ExxonMobil’s advertisements are deceptive. This Interrogatory does not seek such information but instead is a contention interrogatory that misconstrues the AGO’s contentions. As stated above, ExxonMobil is attempting to recast the AGO’s claims as premised on a pure omissions theory to then argue that this case turns on a “specific disclosure or disclosures” that ExxonMobil could have made to render nondeceptive its decades-long campaign of deceptive conduct. But, as explained above and confirmed by this Court, *see supra* p. 2, the AGO’s is not alleging claims based on pure omissions case. And much like with Interrogatory No. 6, any response would cause more confusion than clarity by conveying that there is a “specific disclosure or disclosures” that would serve as a salve for ExxonMobil’s deceptive conduct.<sup>4</sup>

### **CONCLUSION**

For the foregoing reasons, this Court should deny ExxonMobil’s Motion to Compel.

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<sup>4</sup> ExxonMobil’s motion states that the company is moving to compel pursuant to Rule 45(d), but the company likely meant to move pursuant to Rule 37(a)(2).

Dated: May 15, 2024

Respectfully submitted,

COMMONWEALTH OF MASSACHUSETTS,

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### **CERTIFICATE OF SERVICE**

I, Ezra D. Geggel, certify that on May 15, 2024, I served the foregoing document and the supporting Addendum, by sending a copy thereof by electronic service in accordance with the Joint Motion to Set Pleading Deadlines, allowed by the Court on April 14, 2020 to:

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## **ADDENDUM TABLE OF CONTENTS**

### ***Page***

Defendant Exxon Mobil Corporation's Responses and Objections to Plaintiff Commonwealth of Massachusetts' Second Set of Interrogatories (Nov. 13, 2023).....	Add-1
Letter from J. Rhee to R. Johnston (Feb. 20, 2024) .....	Add-40
Letter from K. Smith to R. Johnston (April 24, 2024) .....	Add-46

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT  
CIVIL ACTION No. 1984-CV-03333-BLS1

COMMONWEALTH OF  
MASSACHUSETTS,

*Plaintiff,*

-against-

EXXON MOBIL CORPORATION,

*Defendant.*

**Service Via E-Mail**

**DESIGNATED AS**  
**CONFIDENTIAL UNDER**  
**THE PROTECTIVE ORDER**

**DEFENDANT EXXON MOBIL CORPORATION'S RESPONSES AND OBJECTIONS  
TO PLAINTIFF COMMONWEALTH OF MASSACHUSETTS'  
SECOND SET OF INTERROGATORIES**

Pursuant to Massachusetts Rules of Civil Procedure 26 and 33, Defendant Exxon Mobil Corporation ("ExxonMobil" or the "Company"), by and through its undersigned counsel, hereby provides the following responses and objections (the "Responses and Objections") to Plaintiff Commonwealth of Massachusetts' Second Set of Interrogatories dated September 29, 2023 ("Second Set of Interrogatories"). These Responses and Objections are provided without waiver of any objections or defenses that ExxonMobil does not assert in this response, previously asserted, or hereafter may assert in the above-captioned action ("Action").

These Responses and Objections shall not be construed as an admission of relevancy, materiality, authenticity, or admissibility of any document, fact, issue, or piece of information. ExxonMobil reserves the right to object to the admissibility in evidence of all or any part of the responses herein. The fact that ExxonMobil has responded, or failed to object, to any of Plaintiff's Second Set of Interrogatories does not mean that ExxonMobil acknowledges the propriety of such

interrogatory. These Responses and Objections are based on ExxonMobil's current knowledge. ExxonMobil specifically reserves the right to (i) supplement, amend, or clarify these Responses and Objections as may be necessary or appropriate, and (ii) use or rely on, at any time, subsequently discovered information omitted from these Responses and Objections as a result of mistake, error, oversight, or inadvertence.

### **OBJECTIONS TO DEFINITIONS AND INSTRUCTIONS**

1. ExxonMobil incorporates the Objections to Definitions and Objections to Instructions in its August 11, 2022 Responses and Objections to the Commonwealth's June 27, 2022 Interrogatories, to the extent applicable to the Second Set of Interrogatories, as though fully set forth herein.

2. ExxonMobil objects to the definition of "Cost-Side Proxy Cost" set forth in Definition No. 1 as vague, ambiguous, lacking in particularity, unintelligible, counterfactual, and susceptible to multiple interpretations.

3. ExxonMobil objects to the definition of "Demand-Side Proxy Cost" set forth in Definition No. 2 as vague, ambiguous, lacking in particularity, unintelligible, counterfactual, and susceptible to multiple interpretations.

### **RESPONSES AND OBJECTIONS TO THE SECOND SET OF INTERROGATORIES**

1. ExxonMobil incorporates the Objections to the June 27, 2022 Interrogatories in its August 11, 2022 Responses and Objections to the Commonwealth's June 27, 2022 Interrogatories, to the extent applicable to all interrogatories in the Second Set of Interrogatories, as though fully set forth herein.

2. ExxonMobil objects to all interrogatories in the Second Set of Interrogatories as overbroad, unduly burdensome, not proportional to the needs of this case, and

not relevant to the claims or defenses of any party asserted in this Action, to the extent that they seek information from January 1, 2005 through the present. This time period predates the four-year statute of limitations applicable to Plaintiff's claims, *see* G.L. c. 260, § 5A. Any information outside of the statute of limitations presumptively has no bearing on ExxonMobil's alleged liability. In responding to the Interrogatories, ExxonMobil will provide responsive information from June 18, 2012 through June 6, 2020, the date of filing of the Amended Complaint unless otherwise noted.

3. The foregoing Objections are made without waiving in any way or intending to waive ExxonMobil's right to respond and/or object further to each interrogatory and the right at any time to revise, correct, supplement, clarify, and/or amend the Responses and Objections set forth below.

4. Subject to and without waiver of any of the foregoing Objections, ExxonMobil sets forth the following Responses and Objections to specific interrogatories in Plaintiff's Second Set of Interrogatories:

**Interrogatory 1C**

Identify all entities and persons likely to have discoverable information that you may use to defend against the Commonwealth's claims, along with the subject matter of that information.

**Response to Interrogatory 1C**

ExxonMobil objects to Interrogatory 1C on the grounds that it is vague, overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence, as required by Mass. R. Civ. P. 26(b)(1), to the extent that the Interrogatory calls for the identification of every entity and every person likely to have discoverable information that ExxonMobil may use to support its defenses, along with the subject matter of that information.

ExxonMobil also objects to Interrogatory 1C as premature, including because the Commonwealth has refused to explain its theory of the case and frustrated ExxonMobil's efforts to do so in the following ways. The Commonwealth's conduct prevents ExxonMobil from providing a full response to this Interrogatory at this time.

*First*, the Commonwealth has refused to respond in whole or in part to most of ExxonMobil's First Requests for the Production of Documents, raising a series of baseless objections, including that no documents responsive to many of ExxonMobil's requests are relevant. And to the extent the Commonwealth has agreed to produce documents, its production of such documents is not complete. The Commonwealth has further refused to search for responsive records in the files of any Commonwealth agency other than the Office of the Attorney General ("AGO"). Instead, the Commonwealth has suggested that ExxonMobil should pursue discovery from all other Commonwealth agencies other than the AGO through separate Rule 45 subpoenas. In an abundance of caution, ExxonMobil has pursued discovery from various specific Commonwealth agencies pursuant to Massachusetts Rule of Civil Procedure 45, a laborious and time-consuming process that has resulted in the production of very few records to date. The result of all of these efforts by the Commonwealth is that ExxonMobil lacks the documentary discovery to which it is entitled as the defendant in this case.

*Second*, the Commonwealth has refused to describe essential aspects of its purported claims against ExxonMobil, including in response to ExxonMobil's First Set of Interrogatories dated July 14, 2022 ("First Set of Interrogatories"). Among other things, the Commonwealth has refused to identify what, if any, specific information it alleges ExxonMobil knew, but that was not known to Massachusetts consumers and investors, including the Commonwealth; it has refused to identify any specific information that was material to Massachusetts consumers and investors about which

ExxonMobil allegedly made deceptive statements; it has refused to provide a comprehensive list of ExxonMobil's allegedly deceptive statements, acts, and practices; it has not identified any specific Massachusetts investors or consumers whom it alleges were actually deceived by ExxonMobil; it has refused to identify all of the individuals and entities that it believes are likely to have discoverable information that it may use in its case; and it has refused to provide any specific information about the civil penalties it seeks or the basis for such penalties.

ExxonMobil also objects to this Interrogatory to the extent that it seeks disclosure of ExxonMobil's work product, consulting experts, potential testifying experts, and third parties who have assisted ExxonMobil in anticipation of the litigation. ExxonMobil objects to this Interrogatory to the extent that it seeks facts and opinions known and held by experts, acquired or developed in anticipation of litigation or for trial, disclosure of which is governed by Mass. R. Civ. P. 26(b)(4) and the Scheduling Order ("Scheduling Order") entered in this case on May 6, 2022. Pursuant to Massachusetts law on the work product doctrine, ExxonMobil will not identify the specific individuals who are serving as consulting experts, and ExxonMobil will identify its testifying experts at the appropriate time in accordance with the Scheduling Order in this action.

Subject to and without waiver of its objections, ExxonMobil states that it has identified numerous ExxonMobil employees in responding to the Commonwealth's Interrogatories 1A and 1B, as well as in letters to the Commonwealth about lists of ExxonMobil custodians.<sup>1</sup> As discovery proceeds, ExxonMobil may identify some of those previously listed employees as individuals with

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<sup>1</sup> See, e.g., November 4, 2022 Letter from J. Anderson to R. Johnston; November 28, 2022 Letter from J. Anderson to R. Johnston; December 22, 2022 Letter from J. Anderson to R. Johnston; January 4, 2023 Letter from J. Anderson to R. Johnston; March 31, 2023 Letter from J. Anderson to R. Johnston; May 31, 2023 Letter from J. Anderson to R. Johnston; June 9, 2023 Letter from J. Anderson to R. Johnston; June 30, 2023 Letter from J. Anderson to R. Johnston.

discoverable information that it may use to defend against the Commonwealth's claims, but it is premature to do so at this time.

ExxonMobil also states that the Commonwealth has identified individuals and entities that are likely to have discoverable information that it may use to support its claims.<sup>2</sup> ExxonMobil may at a later time identify some of the individuals or entities identified by the Commonwealth as individuals or entities with discoverable information that it may use to defend against the Commonwealth's claims. For the reasons stated above, however, it is premature to do so at this time.

ExxonMobil further responds by providing the following non-exhaustive response to this Interrogatory:

- a. Entities on which ExxonMobil has served third-party subpoenas, including but not limited to those incorporated in the Commonwealth's September 26, 2023 Third Set of Responses to ExxonMobil's First Set of Interrogatories, and:
  - i. The Commonwealth's Operational Services Division;
  - ii. Massachusetts School Board Authority; and
  - iii. ScottMadden, Inc.
- b. All specific persons and entities alleged by the Commonwealth to have been deceived by ExxonMobil.
- c. All persons with knowledge of the claims or evidence submitted by the Commonwealth in *Massachusetts v. EPA*, 549 U.S. 497 (2007) and the judicial and administrative proceedings leading up to, or related to, that case.

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<sup>2</sup> See Third Set of Responses to ExxonMobil's First Set of Interrogatories at 5–12.

- d. All persons with knowledge of the claims or evidence submitted by the parties in *Kain v. DEP*, 474 Mass. 278 (2016), and underlying judicial proceedings, including the plaintiffs in that case.
- e. All individuals and entities involved in the preparation, planning, drafting, and/or publication of any report by the Commonwealth related to climate change, as well as the implementation of the recommendations in any such reports, including but not limited to:
  - i. *Massachusetts Climate Protection Plan* (2004)
  - ii. *Massachusetts Clean Energy and Climate Plan for 2020* (2010)
  - iii. *Energy Management Basics for Municipal Planners and Managers* (2013)
  - iv. *2015 Update: Massachusetts Clean Energy and Climate Plan for 2020* (2015)
  - v. *Massachusetts Comprehensive Energy Plan* (2018)
  - vi. *Global Warming Solutions Act: 10-Year Progress Report* (2018)
  - vii. *Interim Clean Energy and Climate Plan for 2030* (2020)
  - viii. *Massachusetts 2050 Decarbonization Roadmap* (2020)
  - ix. *Massachusetts Clean Energy and Climate Plan for 2025 and 2030* (2022)
  - x. *Massachusetts Clean Energy and Climate Plan for 2050* (2022)
  - xi. *Massachusetts Climate Change Assessment* (2022)
- f. Other agencies, offices, employees, or agents of the Commonwealth with information relevant to this case, including but not limited to:
  - i. All persons and entities involved in the purchase of gasoline or motor oil by or on behalf of the Commonwealth.



- ii. The Massachusetts Office of Climate Innovation and Resilience, and all current and former employees thereof, including but not limited to Melissa Hoffer.
  - iii. The Massachusetts Executive Office of Energy and Environmental Affairs, and all current and former employees thereof.
  - iv. The Massachusetts Governor's Office and all current and former employees thereof, including but not limited to all current and former Governors of Massachusetts, who participated in any activities related to fossil fuel consumption or climate change.
  - v. All current and former members of the Global Warming Solutions Act Implementation Advisory Committee.
  - vi. All current and former employees of the Office of the Attorney General with knowledge of any efforts by the Attorney General's Office to require climate-related disclosures by fossil fuel companies and/or at locations where fossil fuel products are sold, including gasoline service stations.
  - vii. All persons, including all current and former employees of the Division of Standards familiar with the process of obtaining and/or renewing a Motor Fuel License in the Commonwealth.
- g. All persons and entities who have filed a complaint with the AGO or any other consumer or investor protection agency concerning deceptive statements, acts, or practices by ExxonMobil or any other fossil fuel company.

Without waiver of any of the foregoing objections, ExxonMobil further responds with a list of additional individuals responsive to Interrogatory 1C in Appendix A.

ExxonMobil reserves its rights to supplement its Response as it acquires additional information through discovery, including from the Commonwealth's productions of documents and responses to ExxonMobil's Interrogatories.

**Interrogatory 2**

For the time period January 1, 2005 to the Date of ExxonMobil's Response, state whether ExxonMobil or, to its knowledge, any of its BFA Holders in Massachusetts or operators of Exxon-, Mobil-, or ExxonMobil-branded gasoline stations in Massachusetts disclosed to the public that fossil fuel products, greenhouse gas emissions from fossil fuel products, and/or the extraction, refining, transportation, and use of fossil fuel products contribute to climate change, and if so, identify the dates, Medium, and the contents of all such Communications.

**Response to Interrogatory 2**

ExxonMobil objects to the use of the term "disclosed" in Interrogatory 2 as vague, ambiguous, lacking in particularity, susceptible to multiple interpretations, overbroad, and unduly burdensome, including because it appears to assume that ExxonMobil had a legal duty or obligation to disclose "to the public" certain unspecified information but does not identify the source of any such obligation.

ExxonMobil also objects to the use of the phrase "to the public" in Interrogatory 2 as vague, ambiguous, lacking in particularity, susceptible to multiple interpretations, overbroad, and unduly burdensome, including because the Interrogatory does not define "the public" or the nature of the action or actions that would constitute "disclos[ure] to the public."

ExxonMobil also objects to the use of the phrase "that fossil fuel products, greenhouse gas emissions from fossil fuel products, and/or the extraction, refining, transportation, and use of fossil fuel products contribute to climate change" as vague, ambiguous, lacking in particularity, susceptible to multiple interpretations, overbroad, and unduly burdensome, in that it does not

identify the specific information or statements that are the subject of the Commonwealth's Interrogatory.

ExxonMobil also objects to Interrogatory 2 to the extent it seeks information that is outside of ExxonMobil's custody, possession, or control, including to the extent it seeks information about statements made by "BFA Holders in Massachusetts or operators of Exxon-, Mobil-, or ExxonMobil-branded gasoline stations in Massachusetts," as ExxonMobil has not owned or operated gasoline stations in Massachusetts since 2010. *See* Mem. of Def. Exxon Mobil Corp. in Support of its Mot. to Dismiss at 5.

ExxonMobil also objects to Interrogatory 2 to the extent it is a contention interrogatory and therefore premature at this stage of discovery. *See* Mass. R. Civ. P. 33(b).

ExxonMobil objects to this Interrogatory as unduly burdensome to the extent it seeks information about public statements that are equally available to the Commonwealth. In fact, the Commonwealth's responses to ExxonMobil's First Set of Interrogatories show that the Commonwealth has already conducted an analysis of ExxonMobil's public statements.

ExxonMobil also objects to Interrogatory 2 as not relevant to the claims or defenses in this Action because any alleged failure to "disclose[] to the public that fossil fuel products, greenhouse gas emissions from fossil fuel products, and/or the extraction, refining, transportation, and use of fossil fuel products contribute to climate change" is not actionable under Chapter 93A to the extent that information was already publicly known.

ExxonMobil also objects to the Interrogatory as not relevant to the claims or defenses in this Action because, by the start date of the applicable limitations period, the Commonwealth itself had publicly and extensively discussed in Massachusetts the relationship between fossil fuels, greenhouse gases and climate change. For example, in 2003, the Commonwealth sued the U.S.

Environmental Protection Agency to compel that agency to regulate greenhouse gas emissions under the Clean Air Act. During that litigation, the Commonwealth stated that “[e]missions from U.S. motor vehicles, power plants, and other sources continue to increase the concentration of greenhouse gases in the atmosphere,” thereby causing climate change, and that “the effects of climate change” include rising sea levels, property damage, crop failure, and extreme weather events.<sup>3</sup> In its 2004 *Massachusetts Climate Protection Plan*, in a section titled “What Can Massachusetts Do To Address Climate Change?,” the Commonwealth wrote: “We know that a wide range of human activities generate greenhouse gases, including the burning of fossil fuels . . . .” In the same report, the Commonwealth stated that “[a] major concern is that [fossil fuels] emit carbon dioxide when burned, significantly contributing to the enhanced greenhouse effect,” and explained how carbon dioxide and methane are “heat-trapping gas[es]” produced through fossil fuel combustion. And in 2008, the Commonwealth passed the Global Warming Solutions Act to “reduc[e]” greenhouse gas “emissions to levels that scientific evidence had suggested were needed to avoid the most damaging impacts of climate change.”<sup>4</sup>

ExxonMobil also objects to the Interrogatory as not relevant to the claims or defenses in this Action because, by the start date of the applicable limitations period, ExxonMobil had also publicly discussed the relationship between greenhouse gases and climate change. For example, in a February 2006 report titled, *Tomorrow’s Energy: A Perspective on Energy Trends, Greenhouse Gas Emissions and Future Energy Options*, ExxonMobil wrote:

[W]e recognize that the accumulation of greenhouse gases in the Earth’s atmosphere poses risks that may prove significant for society and ecosystems. . . . Since the 1800s concentrations of carbon dioxide (CO<sub>2</sub>) in the atmosphere have increased by roughly 30% (from 280 to 380 parts per million today). Concentrations of other greenhouse gases have also increased – including a doubling

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<sup>3</sup> *Massachusetts v. EPA*, Pet’rs’ Br., 2005 WL 257460, at \*3, 6 (D.C. Cir. Jan. 24, 2005).

<sup>4</sup> *Kain v. Dep’t of Env’t Prot.*, 474 Mass. 278, 281-82 (2016).

of methane levels. Human activities have contributed to these increased concentrations, mainly through the combustion of fossil fuels for energy use; land use changes (especially deforestation); and agricultural, animal husbandry and waste-disposal practices.

Surface temperature measurements have shown that the average global temperature has risen by about 0.6°C since the mid-1800s. Other changes, consistent with the surface temperature rise, have also been observed. For example, scientists have documented a decrease in the volume of mountain glaciers and an increase in the length of growing seasons. These observations have fueled concern about the potential longer-term consequences of climate change.<sup>5</sup>

In addition, in a 2006 interview, then-ExxonMobil Chairman and CEO Rex Tillerson stated: “We recognize that climate change is a serious issue,” and “[w]e recognize that greenhouse gas emissions are one of the factors affecting climate change.”<sup>6</sup>

In 2007, in response to a report by the Union of Concerned Scientists, ExxonMobil stated: “What is clear today is that greenhouse gas emissions are one of the factors that contribute to climate change, and that the use of fossil fuels is a major source of these emissions.”<sup>7</sup>

In 2008, ExxonMobil’s *2007 Corporate Citizenship Report* stated:

There are legitimate concerns about the risks of climate change due to rising greenhouse gas emissions resulting from the world’s enormous requirements for fossil fuels and changes in land use around the planet, both of which are associated with global economic growth . . . . Without question, evidence shows that the earth’s average temperature has warmed approximately 0.7 degrees Celsius in the last century. Without question, many global ecosystems, especially polar ones, are showing signs of warming. Without question, emissions and concentrations of carbon dioxide (CO<sub>2</sub>)—one of several greenhouse gases—have increased during

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<sup>5</sup> EXXONMOBIL, TOMORROW’S ENERGY: A PERSPECTIVE ON ENERGY TRENDS, GREENHOUSE GAS EMISSIONS AND FUTURE ENERGY OPTIONS 10 (2006), available at <https://www.sec.gov/Archives/edgar/vpr/0602/06028401.pdf>

<sup>6</sup> Jad Mouawad, *Exxon chief brings mainly a change of style*, N.Y. TIMES (Mar. 30, 2006), <https://www.nytimes.com/2006/03/30/business/worldbusiness/30iht-exxon.html>.

<sup>7</sup> ExxonMobil’s Response to Union of Concerned Scientists Report, ABC News (Jan. 3, 2007), <https://abcnews.go.com/Technology/story?id=2768373>.

this same time period. The burning of fossil fuels and changes in land use are significant sources of CO<sub>2</sub> emissions.<sup>8</sup>

In a 2008 Proxy Statement, in response to a shareholder proposal to adopt quantitative goals for reducing greenhouse gas emissions, ExxonMobil stated: “At ExxonMobil, we take the risk posed by rising greenhouse gas (GHG) emissions seriously and are taking action. Our views, actions, and progress on climate change are widely available, for example, in executive speeches, in the report *Tomorrow’s Energy: A Perspective on Energy Trends, Greenhouse Gas Emissions and Future Energy Options* (2006), in our report to the *Carbon Disclosure Project* (2007), and in the annual *Corporate Citizenship Report*.”<sup>9</sup>

In 2009, ExxonMobil’s *2008 Corporate Citizenship Report*, under the subheading “Managing Climate Change Risks,” stated: “Our strategy to reduce greenhouse gas emissions from our operations and consumer use of products includes improving our own energy efficiency, advancing proven emissions-reducing technology, and developing breakthrough technologies for the long term.”<sup>10</sup> In the same report, ExxonMobil stated: “As was recently summarized in the Fourth Assessment Report of the Intergovernmental Panel on Climate Change (IPCC), the risks to society and ecosystems from increasing greenhouse gas (GHG) emissions are significant. Meeting the enormous energy demand growth and managing the risk of GHG emissions are the twin challenges of our time.”<sup>11</sup>

In 2010, ExxonMobil’s *2009 Corporate Citizenship Report*, under the subheading “Managing Climate Change Risks,” stated: “ExxonMobil recognizes the dual challenge of providing energy necessary for economic development while reducing greenhouse gas (GHG)

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<sup>8</sup> EXXONMOBIL, 2007 CORPORATE CITIZENSHIP REPORT 15 (2008).

<sup>9</sup> ExxonMobil, Schedule 14A (April 10, 2008), available at <https://ir.exxonmobil.com/node/21556/html>.

<sup>10</sup> EXXONMOBIL, 2008 CORPORATE CITIZENSHIP REPORT 2 (2009).

<sup>11</sup> *Id.* at 30.

emissions associated with energy production and use. Our efforts to reduce GHG emissions from our operations and consumer use of products include improving energy efficiency, implementing proven emissions-reducing technologies, and developing breakthrough technologies for the long term.”<sup>12</sup> In the “Managing Climate Change Risks” section of the report, ExxonMobil identified “Reducing GHG emissions”—with focus on “flare reduction, cogeneration, and efficiency in our own operations and technology for reducing energy use by consumers”—as a “Priority Issue.”<sup>13</sup> ExxonMobil also explained that, “[d]ue to concerns over the risks of climate change, a number of countries have adopted, or are considering the adoption of, regulatory frameworks to reduce GHG emissions, including cap and trade regimes, carbon taxes, increased efficiency standards, and incentives or mandates for renewable energy.”<sup>14</sup>

In 2011, ExxonMobil’s *2010 Corporate Citizenship Report*, in a section titled “Managing Climate Change Risks,” stated: “Addressing the risks of climate change will require significant efforts by industry, government, and society. Expanding energy supplies to meet global demand while developing technologies that reduce GHG emissions are among the world’s greatest challenges.”<sup>15</sup>

On June 6, 2012, ExxonMobil published its *2011 Corporate Citizenship Report*; in a section titled “Managing Climate Change Risks,” the report stated: “Global climate change remains an extraordinarily complex issue. Scientific evidence points to the fact that rising GHG emissions present risks to society and ecosystems—and that these risks warrant action by

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<sup>12</sup> EXXONMOBIL, 2009 CORPORATE CITIZENSHIP REPORT 3 (2010).

<sup>13</sup> *Id.* at 30.

<sup>14</sup> *Id.* at 34.

<sup>15</sup> EXXONMOBIL, 2010 CORPORATE CITIZENSHIP REPORT 33 (2011).

governments, companies, and citizens. Reducing GHG emissions while expanding energy supply is one of the greatest challenges facing our industry and modern society.”<sup>16</sup>

Without waiver of the foregoing objections, ExxonMobil provides some non-exhaustive examples of ExxonMobil’s public discussion of the topics at issue in Interrogatory 2:

- *Managing climate change risks*, ExxonMobil, [www.exxonmobil.com](http://www.exxonmobil.com) (2012)<sup>17</sup>
  - “Managing long-term climate risks. Rising greenhouse gas emissions pose significant risks to society and ecosystems.”
- *2013 Outlook for Energy* (2012)
  - “Over the past decade, countries around the world have been working to address the risks associated with rising greenhouse gas emissions. Global emission growth patterns are already changing – reflecting the more widespread use of energy-efficient technologies and less carbon-intensive energy sources. After decades of growth, energy-related CO<sub>2</sub> emissions are expected to plateau around 2030, despite a steady rise in overall energy demand.”
  - “Climate change policies will play a key role in limiting the growth of greenhouse gas in the future. Public policies are a key factor in assessing the energy future, particularly in the area of greenhouse gas (GHG) emissions.”

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<sup>16</sup> EXXONMOBIL, 2011 CORPORATE CITIZENSHIP REPORT 23 (2012).

<sup>17</sup> *Managing climate change risks*, EXXONMOBIL (August 17, 2012), [http://www.exxonmobil.com/Corporate/safety\\_climate.aspx](http://www.exxonmobil.com/Corporate/safety_climate.aspx)  
[[https://web.archive.org/web/20120817033202/http://www.exxonmobil.com/Corporate/safety\\_climate.aspx](https://web.archive.org/web/20120817033202/http://www.exxonmobil.com/Corporate/safety_climate.aspx)]



- ExxonMobil, 2012 Corporate Citizenship Report (2013)
  - “We also recognize the importance of understanding and managing the environmental and social risks associated with climate change. ExxonMobil is taking steps to reduce our own greenhouse gas emissions . . . .”
  - “The multifaceted risks of climate change warrant action by governments, companies and citizens. ExxonMobil’s strategy to manage climate change risks is focused on reducing greenhouse gas (GHG) emissions through increased energy efficiency, enhanced operations of our facilities and technological innovation. As we work to reduce emissions, our challenge is to create solutions that protect the environment without undermining global economic growth.”
- ExxonMobil, 2013 Corporate Citizenship Report (2014):
  - “We manage our climate change risks by focusing on reducing greenhouse gas (GHG) emissions through increased energy efficiency, enhanced operations at our facilities and technological innovation.”
  - “Our climate change risk management strategy includes four components: mitigating GHG emissions in our operations, developing cutting-edge technology, encouraging the responsible use of our products and engaging on climate policy and planning.”
  - “Reducing GHG emissions hinges on appropriate public policies that seek to reduce the risks posed by climate change at minimum cost to society, while recognizing the importance of abundant, reliable, affordable energy for global economic development.”

- ExxonMobil, *Energy and Carbon – Managing the Risks* (2014):
  - “ExxonMobil addresses the risk of climate change in several concrete and meaningful ways. We do so by improving energy efficiency and reducing emissions at our operations, and by enabling consumers to use energy more efficiently through the advanced products we manufacture.”
  - “ExxonMobil is involved in researching emerging technologies that can help mitigate the risk of climate change. For example, the company has conducted research into combustion fundamentals with automotive partners in order to devise concepts to improve the efficiency and reduce emissions of internal combustion engines.”
  - “Our Outlook for Energy also envisions that governments will enact policies to constrain carbon in an effort to reduce greenhouse gas emissions and manage the risks of climate change.”
- ExxonMobil, *Energy and Climate* (2014)
  - “We believe it is important that as policymakers seek to provide accessible and affordable energy for all, they also carefully consider the risks posed by climate change, including climate change that may result from anthropogenic causes. The risks of climate change are serious enough to warrant cost-effective policy responses that balance mitigation, adaptation, and other social priorities.”
- ExxonMobil, *2014 Corporate Citizenship Report* (2015):
  - “Managing the risks of climate change is an important responsibility for our business and society at large. We continue to take steps to improve efficiency,

reduce emissions and contribute to effective long-term solutions to manage these risks.”

- “Climate change is a significant risk management challenge facing society today. . . . We are helping to meet the challenge by supplying cleaner-burning natural gas, which has contributed to reducing U.S. greenhouse gas (GHG) emissions to 1990s levels; developing emissions-reducing technologies; encouraging energy efficiency; and pursuing research with our university partners to advance the search for solutions.”
- “As we seek to increase production of oil and natural gas to meet growing global energy demand, we continue to take steps to reduce emissions and contribute to effective long-term solutions to manage climate change risks.”
- “Society continues to face the dual challenge of expanding energy supplies to support economic growth and improve living standards, while simultaneously addressing the societal and environmental risks posed by rising greenhouse gas (GHG) emissions and climate change.”
- ExxonMobil, 2015 Corporate Citizenship Report (2016):
  - “We understand the need to thoughtfully invest to expand the benefits of modern energy while protecting the environment and addressing the impacts of rising greenhouse gas emissions and climate change.”
  - “If society is to take significant actions to reduce the risks of climate change, which ExxonMobil states as an important responsibility, it must adopt appropriate public policies that reduce greenhouse gas emissions from fossil fuels.”

- “Society continues to face the dual challenge of meeting energy demand to support the economic growth needed for improved living standards, while simultaneously addressing the risks posed by rising greenhouse gas emissions and climate change. While future temperature changes and the associated impacts are difficult to accurately predict, we believe the risks of climate change are real and warrant thoughtful action. ExxonMobil supports advancement of the scientific understanding of climate change and is committed to providing affordable energy to support human progress while advancing effective solutions to address the risks of climate change. Our climate change risk management strategy includes four components: engaging on climate change policy, developing future technology, mitigating greenhouse gas emissions in our operations and developing solutions that reduce greenhouse gas emissions for our customers.”
- “Improved living standards will require meeting the world’s energy needs while managing the environmental impacts of energy use, including climate change.”
- “The [IPCC] Fifth Assessment reports high confidence in the scientific certainty of many aspects of climate change, including that atmospheric greenhouse gas concentrations are rising in response to emissions, the earth’s temperature has warmed over the last century and that the risks associated with climate change will increase with the magnitude of atmospheric greenhouse gas concentration and temperature increases.”
- ExxonMobil, 2016 Corporate Citizenship Report (2017):

- “[*The Outlook for Energy*] also highlights the dual challenge of providing the world with access to affordable and reliable energy supplies while reducing emissions to address the risks of climate change.”
- “Society continues to face the dual challenge of meeting the world’s growing energy demand, while simultaneously addressing the risks of climate change. ExxonMobil believes the risks of climate change warrant thoughtful action. We are committed to providing affordable energy to support human progress while advancing effective solutions to address climate change. Our climate change risk management strategy includes four components: developing technology solutions, mitigating emissions in our operations, providing solutions that reduce greenhouse gas emissions for our customers and engaging on climate change policy.”
- “As we seek to increase production of oil and natural gas to meet growing global energy demand, we are committed to mitigating greenhouse gas emissions within our operations. ExxonMobil has a robust set of processes to improve efficiency, mitigate emissions and contribute to effective long-term solutions to manage climate change risks.”
- ExxonMobil, 2016 Energy & Carbon Summary (2017):
  - “Society continues to face the dual challenge of meeting energy demand to support the economic growth needed for improved living standards, while simultaneously

addressing the environmental risks posed by rising greenhouse gas emissions and climate change.”

- ExxonMobil, 2017 Sustainability Report (2018):
  - “Meeting the world’s growing energy demand while simultaneously reducing environmental impacts, including the risks of climate change, is one of society’s most pressing challenges. We are focused on mitigating emissions in our operations, developing technology solutions, providing solutions that reduce emissions for our customers and engaging on climate change policy.”
  - “ExxonMobil believes the risks of climate change warrant action. Our climate change risk management strategy consists of four pillars: mitigating emissions in our operations, developing scalable technology solutions, providing customer solutions that reduce their greenhouse gas emissions and engaging on climate change policy.”
- ExxonMobil, 2018 Sustainability Report (2019):
  - “Increased demand for energy will also impact emission levels, which underscores the need to continue to pursue emission reduction efforts to mitigate the risks of climate change.”
  - “ExxonMobil works to meet the world’s growing demand for energy while reducing environmental impacts and the risks of climate change. To mitigate greenhouse gas emissions from our operations, ExxonMobil focuses on increasing energy efficiency and reducing flaring, venting and other emissions.”

- ExxonMobil, 2019 Energy & Carbon Summary (2019):
  - “We also play an essential role in protecting the environment and addressing the risks of climate change. ExxonMobil is taking significant steps to minimize the greenhouse gas (GHG) emissions from our own operations. For example, we have committed to reducing methane emissions from our operations by 15 percent and flaring by 25 percent by 2020 [when compared to 2016], as well as reducing the GHG intensity at our operated Canadian oil sands facilities by 10 percent by 2023 [when compared to 2016]. Since 2000, we have invested more than \$9 billion in our facilities and research to develop and deploy lower-emission energy solutions such as cogeneration, algae biofuels, and carbon capture and storage (CCS). We have partnered with more than 80 universities around the world to support emerging energy research. At the same time, we help our customers reduce their emissions through the use of our energy saving technologies and sustainable products. We also actively engage in climate-related policy discussions. We understand that dealing successfully with climate change risks will require a coordinated effort involving individuals, governments and industry leaders around the world. ExxonMobil supports the 2015 Paris Agreement. In 2017 we became a founding member of the Climate Leadership Council to help promote a revenue-neutral carbon tax. And last year we joined the Oil and Gas Climate Initiative (OGCI), a voluntary collaboration of leading companies in our industry aimed at reducing climate-related risks.”

- “There are few challenges more important than meeting the world’s growing demand for energy while reducing environmental impacts and the risks of climate change.”
- “Our commitment to mitigating emissions from our operations is unwavering. That said, it is important to understand that while ExxonMobil continues to strive to mitigate emissions, our absolute emission levels are impacted by the size and composition of our asset portfolio.”
- “Meeting growing demand for reliable, affordable energy to support prosperity and enhanced living standards is coupled with the need to do so in ways that reduce potential impacts on the environment, including those relating to air quality and the risks of climate change.”
- ExxonMobil, 2020 Energy & Carbon Summary (2020):
  - “With this increased energy demand comes the potential for greater environmental impacts, including greenhouse gas (GHG) emissions and the risks of climate change.”
  - “The Company’s strategy focuses on the dual challenge of meeting the growing demand for energy to support economic development around the world while minimizing environmental impacts and the risks of climate change. ExxonMobil believes it has an important role to play in helping reduce climate risks through its commitment to manage operational emissions, produce cleaner, more advanced products, conduct fundamental research into new technology solutions, and engage in climate policy discussions.”



- ExxonMobil, 2021 Energy & Carbon Summary (2021):
  - “Reducing methane emissions in oil and natural gas operations is an important way to reduce global greenhouse gas emissions.”
  - “The IPCC pathways that lead to net zero and limit warming to less than 2°C show important trends, including increase in renewables (wind and solar), decrease in coal, increase in use of carbon dioxide removal (CDR), increase in carbon capture, and focused efforts to reduce other greenhouse gases and aerosols that cause warming. The IEA’s net-zero emissions by 2050 scenario, a net-zero analysis through 2030, also reached similar conclusions on needed CO<sub>2</sub> reductions through deployment of all key technologies.”
  - “The Company’s strategy focuses on the dual challenge of meeting the growing demand for energy to support economic development around the world while minimizing environmental impacts and the risks of climate change. ExxonMobil believes it has an important role to play in helping reduce climate risks through its commitment to manage operational emissions, produce cleaner, more advanced products, conduct fundamental research into new technology solutions, and engage in climate policy discussions.”
- ExxonMobil, “Our position on climate policy and carbon pricing” (July 2, 2021):
  - “We understand the tremendous challenge represented by climate change and have fully supported the Paris Agreement since its inception. Our scientists are working to develop innovative solutions to help reduce emissions, with a focus on the highest emitting and most difficult to decarbonize sectors of the economy: commercial transportation, power generation and heavy industry.”

- ExxonMobil, 2021 10-K (2022):
  - **“Net-zero scenarios.** Driven by concern over the risks of climate change, a number of countries have adopted, or are considering the adoption of, regulatory frameworks to reduce greenhouse gas emissions including emissions from the production and use of oil and gas and their products. These actions are being taken both independently by national and regional governments and within the framework of United Nations Conference of the Parties summits under which many countries of the world have endorsed objectives to reduce the atmospheric concentration of CO<sub>2</sub> over the coming decades, with an ambition ultimately to achieve ‘net-zero.’ Net-zero means that emissions of greenhouse gases from human activities would be balanced by actions that remove such gases from the atmosphere. Expectations for transition of the world’s energy system to lower emission sources and ultimately net-zero derive from hypothetical scenarios that reflect many assumptions about the future and reflect substantial uncertainties. The company’s objective to lead in the energy transition, including the company’s announced ambition ultimately to achieve net-zero with respect to emissions from operations where ExxonMobil is the operator, carries risks that the transition, including underlying technologies, policies, and markets as discussed in more detail below, will not develop at the pace or in the manner expected by current net-zero scenarios. The success of our strategy for the energy transition will also depend on our ability to recognize key signposts of change in the global energy system on a timely basis, and our corresponding ability to direct investment to the technologies

and businesses, at the appropriate stage of development, to best capitalize on our competitive strengths.”

- ExxonMobil, *Advancing Climate Solutions – 2022 Progress Report* (2022)
  - “Energy-related greenhouse gas emissions are projected to peak by 2030 before declining about 15% to 2050, marking a significant improvement versus the emissions growth that occurred over the past decade. Efficiency gains and a shift in the energy mix, including increased use of lower-carbon sources, enable a more than 60% improvement in the carbon intensity of global GDP from 2019 to 2050.”
- ExxonMobil’s Response to the December 8, 2021 House Committee on Oversight and Reform Questions to Darren Woods (2022):
  - “ExxonMobil agrees that the combustion of fossil fuels releases greenhouse gasses, which contribute to climate change.”
- ExxonMobil, *ExxonMobil Global Outlook – Executive Summary* (2023)
  - “As lower-emission options grow, we project the world’s energy-related CO<sub>2</sub> emissions will decline 25% by 2050. That’s a major change as these emissions rose by 10% over the past decade. While the progress is substantial, larger reductions are needed to keep global warming from exceeding 2° Celsius, according to the United Nations Intergovernmental Panel on Climate Change (IPCC).
- ExxonMobil, 2022 10-K (2023):
  - **Net-zero scenarios.** Driven by concern over the risks of climate change, a number of countries have adopted, or are considering the adoption of, regulatory frameworks to reduce greenhouse gas emissions including emissions from the production and use of oil and gas and their products. These actions are being taken

both independently by national and regional governments and within the framework of United Nations Conference of the Parties summits under which many countries of the world have endorsed objectives to reduce the atmospheric concentration of CO<sub>2</sub> over the coming decades, with an ambition ultimately to achieve ‘net zero.’ Net zero means that emissions of greenhouse gases from human activities would be balanced by actions that remove such gases from the atmosphere. Expectations for transition of the world’s energy system to lower-emission sources, and ultimately net-zero, derive from hypothetical scenarios that reflect many assumptions about the future and reflect substantial uncertainties. The company’s objective to play a leading role in the energy transition, including the company’s announced ambition ultimately to achieve net zero with respect to Scope 1 and 2 emissions from operations where ExxonMobil is the operator, carries risks that the transition, including underlying technologies, policies, and markets as discussed in more detail below, will not develop at the pace or in the manner expected by current net-zero scenarios. The success of our strategy for the energy transition will also depend on our ability to recognize key signposts of change in the global energy system on a timely basis, and our corresponding ability to direct investment to the technologies and businesses, at the appropriate stage of development, to best capitalize on our competitive strengths.”<sup>18</sup>

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<sup>18</sup> In addition to the statements listed herein, each 10-K issued by ExxonMobil during the limitations period has included the following statement or a substantially similar statement: “**Climate change and greenhouse gas restrictions.** Due to concern over the risk of climate change, a number of countries have adopted, or are considering the adoption of, regulatory frameworks to reduce greenhouse gas emissions. . . . These requirements could make our products more expensive, lengthen project implementation times, and reduce demand for hydrocarbons, as well as shift hydrocarbon demand toward relatively lower-carbon sources such as natural gas.”

### **Interrogatory 3**

State whether ExxonMobil, as of the Date of ExxonMobil's Response, "is confident that none of its hydrocarbon reserves are now or will become stranded." If ExxonMobil cannot make that representation as of the Date of ExxonMobil's Response, explain why.

### **Response to Interrogatory 3**

ExxonMobil objects to this Interrogatory as unduly burdensome, not proportional to the needs of this case, and not relevant to the claims or defenses in this Action in that it asks ExxonMobil to make a "representation" as to certain aspects of its business as of November 2023. As stated above, in responding to the interrogatories, ExxonMobil will provide responsive information from June 18, 2012 through June 6, 2020, the date of filing of the Amended Complaint.

Interrogatory 3 also seeks information that is not relevant to the claims or defenses in this Action because the quoted statement about "confidence" related to future events is inherently the kind of forward-looking statement of opinion or judgment that is not actionable under Chapter 93A. *See, e.g., Winter Panel Corp. v. Reichhold Chemicals, Inc.*, 823 F. Supp. 963, 974 (D. Mass. 1993) ("Statements of opinion or judgment relating to future events are not actionable [under Chapter 93A], where the future event is not fully within the declarant's control."); *von Schonau-Riedweg v. Rothschild Bank AG*, 95 Mass. App. Ct. 471, 497 (2019) ("A statement on which liability for misrepresentation may be based must be one of fact, not of expectation, estimate, opinion, or judgment."). Interrogatory 3 is also unduly burdensome, not proportional to the needs of this case, and not relevant to the claims or defenses in this Action to the extent it seeks to require ExxonMobil to undertake analyses of its current business operations for purposes of this litigation although ExxonMobil is under no obligation to do so.

ExxonMobil also objects to this Interrogatory in that the request to "make [a] representation" is vague, ambiguous, lacking in particularity, and susceptible to multiple interpretations.

Subject to and without waiver of the foregoing objections and subject to its current understanding, ExxonMobil states that, to the extent Interrogatory 3 intends to quote from ExxonMobil's 2014 report, *Energy and Carbon – Managing the Risks*, the document speaks for itself, and ExxonMobil refers to it for its complete terms. ExxonMobil further states that the quoted statement in *Energy and Carbon – Managing the Risks* was accurate at the time and in the context it was made. To the extent any other response to this Interrogatory is required, ExxonMobil refers the Commonwealth to ExxonMobil's robust public disclosures, which provide shareholders insights into the resiliency of ExxonMobil's business.

#### **Interrogatory 4**

For each year between 2005 and 2022, inclusive, provide the cost that ExxonMobil used per ton for its Demand-Side Proxy Cost and its Cost-Side Proxy Cost, including the costs for each region (e.g., OECD v. non-OECD or Alberta v. New Mexico, etc.) and time period (e.g., 2030, 2040, etc.).

#### **Response to Interrogatory 4**

ExxonMobil objects to Interrogatory 4 because the use of the terms "Demand-Side Proxy Cost" and "Cost-Side Proxy Cost" renders the Interrogatory unintelligible, counterfactual, vague, and ambiguous. ExxonMobil does not use the terms "Demand-Side Proxy Cost" or "Cost-Side Proxy Cost."

ExxonMobil also objects that the Commonwealth's definition of "Cost-Side Proxy Cost" as "the proxy cost that ExxonMobil referred to as its 'GHG Cost' in the New York Attorney General litigation" is incoherent. As Justice Ostrager recognized in the referenced litigation, "proxy cost of carbon and GHG costs are different metrics." *People of the State of New York v. Exxon Mobil Corp.*, 119 N.Y.S.3d 829 (Sup. Ct. 2019). The conflation of the terms "proxy cost" and "GHG Cost" in Interrogatory 4 renders the Interrogatory vague, ambiguous, and confusing.

ExxonMobil also objects to this Interrogatory as unduly burdensome to the extent it seeks information that ExxonMobil has already produced to the Commonwealth.

Subject to and without waiver of the foregoing objections, ExxonMobil states that information about the costs that ExxonMobil used, where appropriate, to assess the direct effect of actual or reasonably anticipated greenhouse-gas-related regulations on specific ExxonMobil projects is contained in the Appendices to its annual Corporate Plan Dataguide (the “Dataguide”). The Dataguides and Appendices for the years 2006 to 2016 have been produced to the Commonwealth through ExxonMobil’s production of the documents produced to the New York Attorney General (“NYAG”) in connection with *People of the State of New York v. Exxon Mobil Corp.*, No. 452044/2018 (N.Y. Sup. Ct.), and the NYAG’s investigation preceding that action (collectively, the “NYAG Matter”). *See, e.g.*, EMC 001593755, EMC 001260657, EMC 004083183, EMC 004083150, EMC 001594743, EMC 004210285, EMC 004212067, EMC 004212183, EMC 001598610, EMC 001597885, EMC 001604454, EMC 003422156, EMC 001613011, EMC 004295978, EMC 001764946, EMC 003418411, EMC 001608248, EMC 004295999, EMC 002381607, EMC 003417289, EMC 003488762, EMC 003481997. ExxonMobil has also agreed to produce additional information responsive to this Interrogatory based upon the reasonable search that ExxonMobil agreed to conduct in response to Request for Production 45,<sup>19</sup> as set forth in the August 28, 2023 and November 9, 2023 Letters from Jeannie S. Rhee to Richard A. Johnston.

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<sup>19</sup> “All documents and Communications concerning ExxonMobil’s:

...

- e. Use of a mechanism for incorporating a financial metric for climate risk into economic models, business planning, or investment decisions, such as a cost of CO<sub>2</sub>, cost of carbon, proxy cost of carbon, GHG cost, shadow carbon price, or other approach, including all documents and Communications concerning:
  - i. ExxonMobil statements regarding such mechanisms;
  - ii. What such mechanisms account for;

ExxonMobil further states that it has likewise produced to the Commonwealth, through ExxonMobil's production of the documents produced in the NYAG Matter, models showing how ExxonMobil has used an assumed cost reflecting potential climate policies, actions, and regulations that governments may take that will impact the global demand for oil and gas to depress future energy demand estimates in various demand sectors. *See, e.g.*, EMC 003429186, EMC 003153031, EMC 003147347, EMC 003147348, EMC 002038233, EMC 002323112, EMC 003429135, EMC 003429139, EMC 002057842, EMC 003213943. And as the record in *Exxon Mobil Corp.*, No. 452044/2018 (N.Y. Sup. Ct.) establishes, to the limited extent a direct metric (such as fuel efficiency standards) could be used to suppress demand in a given sector (such as transportation), that metric was used, and there was no need to rely on a proxy instead. *See id.* Dkt. No. 421, Exxon Mobil Corporation's Pre-Trial Memorandum at 20 (Oct. 7, 2019) (citing sources); *see also Exxon Mobil Corp.*, Trial Tr. 1776:7–1808:4 (T. Onderdonk direct examination) (Nov. 4, 2019). ExxonMobil has also agreed to produce additional information responsive to this Interrogatory based upon the reasonable search that ExxonMobil agreed to conduct in response to Request for Production 45, as set forth in the August 28, 2023 and the November 9, 2023 Letters from Jeannie S. Rhee to Richard A. Johnston.

### **Interrogatory 5**

State what ExxonMobil meant to communicate when it published the following statement "Keeps your engine 2x cleaner for better gas mileage," together with all facts, data, and analysis which You contend support and/or substantiate that statement.

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- iii. Whether such mechanisms account for systemic risks;
  - iv. Calculations or explanations as to how ExxonMobil initially established and thereafter maintained such mechanisms for internal use;
  - v. Use of such mechanisms in valuing ExxonMobil's fossil fuel reserves and resources, including oil sands projects in Canada;
  - vi. Use of such mechanisms in asset impairment evaluations; or
  - vii. Use of such mechanisms in projecting demand for ExxonMobil's fossil fuel products."



### **Response to Interrogatory 5**

ExxonMobil objects to the phrase “what ExxonMobil meant to communicate” as vague and ambiguous, including because it is susceptible to multiple interpretations. ExxonMobil further objects to this Interrogatory because ExxonMobil is under no obligation to “state what [it] meant to communicate.” ExxonMobil further objects to this Interrogatory because the Interrogatory appears to quote from a document that is not identified and for which no date or context is provided, and because the quoted statement speaks for itself. ExxonMobil further objects to this Interrogatory because the request for supporting materials would more properly be posed as a request for the production of documents.

Subject to and without waiver of the foregoing objections, ExxonMobil directs the Commonwealth to the publicly available information on ExxonMobil’s website, which contains a footnote after the phrase “Keeps your engine 2x cleaner for better gas mileage” that states: “Based on Synergy Supreme+ gas compared to gasoline meeting minimum government standards. Wear reduction was measured by an industry standard lubricant test. Actual benefits are based on continuous use and may vary depending on vehicle type, driving style, and gasoline previously used.”<sup>20</sup>

In addition, the facts, data, and analysis that support and/or substantiate that statement have been produced or will be produced to the Commonwealth based upon the reasonable search that ExxonMobil has agreed to conduct in response to pending Requests for Production of documents;

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<sup>20</sup> Synergy™ unleaded gasoline, ExxonMobil, <https://www.exxon.com/en/unleaded-gasoline> (last accessed Nov. 4, 2023).

ExxonMobil refers the Commonwealth to those records. *See, e.g.*, MASS-XOM000320354; MASS-XOM000320356; RFP Nos. 103,<sup>21</sup> 104,<sup>22</sup> 108,<sup>23</sup> 109,<sup>24</sup> 110,<sup>25</sup> 113,<sup>26</sup> 178<sup>27</sup>.

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- <sup>21</sup> “All documents and Communications concerning ExxonMobil’s advertised representations that Mobil 1 and ExxonMobil lubricant products are ‘green’ or that they help reduce GHG emissions, including the claims in ExxonMobil’s advertisements identified in paragraphs 611 through 616 of the Amended Complaint regarding Mobil 1.”
- <sup>22</sup> “All documents and Communications concerning commissioning surveys or otherwise gathering and analyzing data, concerning consumer perceptions as to GHG emissions, global warming, climate change, or climate risk as a rationale for developing, creating, and implementing the advertisements for its Synergy Gas and Mobil 1 products, including qualitative and quantitative testing.”
- <sup>23</sup> “All documents and Communications concerning advertisements referring to ExxonMobil’s actions or funding regarding the purchase, acquisition, research, development, utilization, implementation, dissemination, or sale of non-fossil-fuel energy businesses, assets, technology, or products, including hydrogen and algae biofuels.”
- <sup>24</sup> “All documents and Communications concerning advertisements referring to the terms ‘carbon capture,’ ‘carbon capture and storage,’ ‘carbon capture and sequestration,’ CCS, ‘low carbon,’ ‘lower carbon,’ low carbon solutions,’ ‘lower carbon solutions,’ ‘methane reduction,’ ‘net-zero,’ ‘sustainable,’ ‘sustainability,’ or ‘sustainable fuels.’”
- <sup>25</sup> “All documents and Communications concerning advertisements referring to ExxonMobil’s actions regarding or to ExxonMobil’s funding of the purchase, acquisition, research, development, utilization, implementation, dissemination, or sale of CCS businesses, assets, technology, or products.”
- <sup>26</sup> Request 113 seeks “[a]ll documents and Communications concerning any environmental claims made in the advertisements identified in response to [Request 111].” Request 111, in turn, seeks “[a]ll documents and Communications, including exemplars of all advertisements, including those employing social media influencers, used by or for ExxonMobil, its employees, its agents, its BFA Holders, its franchisees, or its independent contractors to promote or market ExxonMobil fossil fuel products or the ExxonMobil brand in Massachusetts or to Massachusetts consumers.”
- <sup>27</sup> “All Documents and Communications concerning ExxonMobil’s evaluation of, substantiation of, and/or attempts to substantiate claims made in the Advertisements, Advertising Campaigns, and/or Brand Marketing campaigns listed in paragraph 176.a., *supra*, including all Documents and Communications ExxonMobil received from one or more third-parties evaluating, substantiating, and/or attempting to substantiate the claims made in the Advertisements, Advertising Campaigns, and/or Brand Marketing campaigns listed in paragraph 176.a., *supra*.” The “Advertisements, Advertising Campaigns, and/or Brand Marketing campaigns listed in paragraph 176.a.” include “ExxonMobil’s ‘Keeps your engine 2x Cleaner for better gas mileage’ Advertisements and/or Advertising Campaigns.”

Dated: November 13, 2023  
New York, NY

CAMPBELL CONROY & O'NEIL, P.C.

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*Attorneys for Exxon Mobil Corporation*

### **Appendix A**

<b>Name</b>	<b>Subject Matter<sup>i</sup></b>
Bain, Rachel	Lack of deception of investors and consumers
Barry, Michael	Lack of deception of investors and consumers
Beaton, Matthew A.	Lack of deception of investors and consumers
Bechard, John	Lack of deception of investors and consumers
Beistline, George	Lack of deception of investors
Belfield, Chalita	Lack of deception of investors and consumers
Bramlage, Kathleen	Lack of deception of investors and consumers
Branger, Amy	Lack of deception of investors and consumers
Britland, Ethan	Lack of deception of investors and consumers
Broussard, Michelle	Lack of deception of investors and consumers
Brunell, Greg	Lack of deception of investors and consumers
Cagle, Catherine	Lack of deception of investors and consumers
Chu, Hong-Hanh	Lack of deception of investors and consumers
Codd, Ned	Lack of deception of investors and consumers
Cushman, Cheryl	Lack of deception of investors and consumers
DiPaolo, Thomas	Lack of deception of investors and consumers
Dolabany, Samantha	Lack of deception of investors and consumers
Eng, James	Lack of deception of investors and consumers
Espeseth, Eric	Lack of deception of investors and consumers
Evans, Tom	Lack of deception of investors and consumers
Fichter, Katherine	Lack of deception of investors and consumers
FitzMaurice, Maurice J.	Lack of deception of investors
Flynn, John F	Lack of deception of investors and consumers
Foti, Joseph	Lack of deception of investors and consumers
Francois, Roland	Lack of deception of investors and consumers
Frey, Bob	Lack of deception of investors and consumers
Friedman, Eric	Lack of deception of investors and consumers
Frock, Katia	Lack of deception of investors
Garrahan, Maria	Lack of deception of investors
Garvey, Edward	Lack of deception of investors and consumers
Gerlin, Simon R.	Lack of deception of investors
Goldberg, Deborah	Lack of deception of investors and consumers
Greenwell, Shannon	Lack of deception of investors and consumers
Guadagno, Laura M.	Lack of deception of investors and consumers
Gulliver, Jonathan	Lack of deception of investors and consumers
Gunn, Eileen	Lack of deception of investors and consumers
Haggerty, Meghan	Lack of deception of investors and consumers
Hamel, Sonia	Lack of deception of investors and consumers

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<sup>i</sup> ExxonMobil reserves the right to revise the subject matters set forth herein for all of the reasons discussed in its response to Interrogatory No. 1C.

<b>Name</b>	<b>Subject Matter<sup>i</sup></b>
Hammond Jr., Martin	Lack of deception of investors
Heiple, Bonnie	Lack of deception of investors and consumers
Hoffer, Melissa	Lack of deception of investors and consumers
Hoffert, Martin	Lack of deception of investors and consumers
Holub, Amalia	Lack of deception of investors and consumers
Hurley-Barnes, Christine	Lack of deception of investors and consumers
Impemba, Bob	Lack of deception of investors and consumers
Ismay, David	Lack of deception of investors and consumers
Jumpe Jr., John	Lack of deception of investors and consumers
Kenny, Jessica	Lack of deception of investors and consumers
Kersten, Jim	Lack of deception of investors and consumers
Killian, Ronald	Lack of deception of investors and consumers
Krevat, Derek	Lack of deception of investors and consumers
Krop, Karen	Lack of deception of investors and consumers
Lambert, Gary	Lack of deception of investors and consumers
Lavallee, Carrie	Lack of deception of investors and consumers
Leavenworth, Patricia	Lack of deception of investors and consumers
Lee, Cheri	Lack of deception of investors and consumers
Leu, Jay	Lack of deception of investors
MacDonald, James	Lack of deception of investors and consumers
Mahony, Elizabeth	Lack of deception of investors and consumers
McCarthy, Elizabeth	Lack of deception of investors and consumers
McCarthy, Gina	Lack of deception of investors and consumers
McCarthy, Jack	Lack of deception of investors and consumers
McElroy, Michael	Lack of deception of investors
McNamara, William	Lack of deception of investors and consumers
Micozzi, Vincent	Lack of deception of investors and consumers
Miller, Benjamin	Lack of deception of investors and consumers
Miller, Steven J.	Lack of deception of investors and consumers
Minichello, Kelly	Lack of deception of investors and consumers
Miziloek, Claire	Lack of deception of investors and consumers
Mohler, David	Lack of deception of investors and consumers
Molloy, John	Lack of deception of investors
O'Grady, Zachary	Lack of deception of investors
Oliver, Hongyan	Lack of deception of investors and consumers
Ozyurt, Kazim	Lack of deception of investors and consumers
Pacheco, Marc	Lack of deception of investors and consumers
Pellegrini, Beth	Lack of deception of investors and consumers
Perez, Sue	Lack of deception of investors and consumers
Petty, Donald	Lack of deception of investors and consumers
Pitman, Billy	Lack of deception of investors and consumers
Pottier, David	Lack of deception of investors and consumers
Rice, Katie	Lack of deception of investors
Rooney, Tim	Lack of deception of investors and consumers

<b>Name</b>	<b>Subject Matter<sup>i</sup></b>
Rowe, Jeffrey	Lack of deception of investors and consumers
Slesinger, Meredith	Lack of deception of investors and consumers
Snyder, Geoffrey	Lack of deception of investors and consumers
Sullivan, Diane	Lack of deception of investors and consumers
Sutton, Peter	Lack of deception of investors and consumers
Tennis, Abbey	Lack of deception of investors and consumers
Tesler, Jamey	Lack of deception of investors and consumers
Theoharides, Kathleen	Lack of deception of investors and consumers
Thompson Clark, Kelly	Lack of deception of investors and consumers
Trotsky, Michael	Lack of deception of investors
Tsocanos, Ben	Lack of deception of investors and consumers
Van Nostrand, Jamie	Lack of deception of investors and consumers
Varano, Michael	Lack of deception of investors and consumers
Werthamer, Richard	Lack of deception of investors and consumers
White, David J.	Lack of deception of investors and consumers
Williams, Jules	Lack of deception of investors and consumers
Williams, Liz	Lack of deception of investors and consumers
Wilson, Scott	Lack of deception of investors and consumers
Woelfel, Steve	Lack of deception of investors and consumers
Wong, Sandy	Lack of deception of investors and consumers

VERIFICATION

I, Jeffrey D. Bricker, being first duly sworn, deposes, and says I am the Business Development Manager for U.S. Retail Sales for Exxon Mobil Corporation ("ExxonMobil"), the Defendant in the above-captioned matter, and that I am duly authorized to sign this verification on ExxonMobil's behalf. The responses stated herein are true and accurate to the best of my knowledge, information, and belief based on conversations with employees of ExxonMobil who collected this information, a review of documents, and in some instances my personal knowledge.

Signed under penalty of perjury this 13<sup>th</sup> day of November 2023.

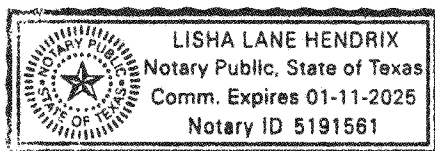


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Sworn to and subscribed before me, this the 13<sup>th</sup> day of November, 2023.



Notary Public



Lisha Lane Hendrix Notary Public  
Notary's printed or typed name

My commission expires: 01/11/2025

**CERTIFICATE OF SERVICE**

I, Thomas C. Frongillo, hereby certify that a true copy of the above document, Defendant Exxon Mobil Corporation's Responses and Objections to Plaintiff Commonwealth of Massachusetts' Second Set of Interrogatories, was served upon Plaintiff's attorney of record by electronic service on November 13, 2023.

/s/ Thomas C. Frongillo

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February 20, 2024

**BY EMAIL**

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Re: *Commonwealth of Massachusetts v. Exxon Mobil Corporation*, Suffolk  
Superior Court Civil Action No. 1984-CV-03333-BLS1 (consolidated with  
*Exxon Mobil Corporation v. Office of the Attorney General*, Suffolk Superior  
Court Civil Action No. 1684-CV-01888)

Dear Rich:

We write to address the inadequacy of the Commonwealth's most recent Responses to ExxonMobil's First Set of Interrogatories (in particular for purposes of this letter, Interrogatory Nos. 2, 6, and 7), as well as the Commonwealth's Responses to ExxonMobil's Second Set of Interrogatories (in particular for purposes of this letter, Interrogatory Nos. 9, 10, and 11), both dated December 18, 2023.

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T. ROBERT ZOCHOWSKI, JR.\*

\*NOT ADMITTED TO THE DC BAR

## **I. Deficiencies with Responses to ExxonMobil's First Set of Interrogatories**

The Commonwealth's December 18, 2023 responses to ExxonMobil's First Set of Interrogatories show that the parties have reached an impasse with respect to Interrogatory Nos. 2, 6, and 7.<sup>1</sup> These Interrogatories require the Commonwealth to provide a complete, exhaustive list—not just “examples”—of (i) ExxonMobil's allegedly deceptive statements, acts, and practices, and (ii) the statements, acts, and practices on which the Commonwealth is relying in seeking civil penalties.

This information lies at the very center of the Commonwealth's case, which the Commonwealth itself describes as “concern[ing]” ExxonMobil's “deceptive public representations about climate change.” Consolidated Opposition of the Commonwealth to ExxonMobil's Three Motions to Compel, dated January 11, 2024 (“MTC Opp.”) at 3. Yet the Commonwealth has repeatedly refused to provide more than “examples” or illustrations of the statements and conduct it alleges to have been deceptive. What is sought, and what must be provided, is a complete list, not a list of mere “examples.”

The Commonwealth's attempt to limit its responses to just “examples” continues to obstruct ExxonMobil's ability to conduct discovery and prepare its defenses. The parties cannot effectively develop the facts necessary for a fair contest at trial if the Commonwealth continues to refuse to identify *each* of the allegedly deceptive statements, acts, or practices it is putting at issue in its case. Nor does the fact that the Commonwealth may later identify additional conduct it alleges to be deceptive absolve the Commonwealth of its obligation to respond to these Interrogatories now with exhaustive lists of information currently known.

## **II. ExxonMobil's Second Set of Interrogatories**

ExxonMobil's Second Set of Interrogatories, served on November 2, 2023, seek additional information about the core of the Commonwealth's allegations. As set forth below, the Commonwealth's responses are insufficient. We request to meet and confer with the Commonwealth promptly to discuss whether the Commonwealth will provide complete answers to these Interrogatories and, if the Commonwealth will not, to declare an impasse.

### **A. Interrogatory No. 9**

Interrogatory No. 9 requires the Commonwealth to “identify any Massachusetts investors or consumers who claim to have been deceived by any allegedly deceptive statement, act, or practice by ExxonMobil.” This Interrogatory goes to the heart of the Commonwealth's allegations, especially given that the Commonwealth recently stated that this case “concerns how Massachusetts investors and consumers interpreted ExxonMobil's [allegedly] deceptive messaging.” MTC Opp. at 28.

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<sup>1</sup> Although this letter addresses the Commonwealth's failure to provide complete responses to Interrogatory Nos. 2, 6, and 7, ExxonMobil reserves all rights as to deficiencies in the Commonwealth's other responses.

Despite this, the Commonwealth has refused to identify a *single* investor or consumer who it believes was actually deceived by ExxonMobil. Instead, the Commonwealth lodges the incredible objection that “the phrase ‘have been deceived’ is vague and ambiguous.” Commonwealth’s Responses to ExxonMobil’s Second Set of Interrogatories (“Commonwealth’s Responses”) at 3. As a result, the Commonwealth contends, it is “unable to discern what information ExxonMobil is seeking,” and unilaterally limits its response to identifying investors and consumers who it believes were “exposed” to ExxonMobil’s “deceptive statements, acts, or practices.” *Id.* at 3–4, 7.

The Commonwealth’s objection that the phrase “have been deceived” is vague and ambiguous has no merit. The Commonwealth has alleged over and over again that Massachusetts investors and consumers have been deceived by ExxonMobil. For example, the Second and Third Causes of Action in the Amended Complaint begin by stating that “ExxonMobil *has deceived* Massachusetts consumers by misrepresenting the purported environmental benefit of using its Synergy and ‘green’ Mobil 1 products” and that “ExxonMobil *has deceived* Massachusetts consumers by promoting false and misleading greenwashing campaigns.” Am. Compl. pp. 196, 199 (emphases added). The complaint also alleges that “ExxonMobil *is deceiving* Massachusetts investors by failing to disclose the dangers that climate change risks pose.” *Id.* p. 63 (emphasis added). The Commonwealth has subsequently reiterated its position that ExxonMobil “*has been deceiving* consumers regarding the impact of its products on climate change and the company’s overall approach to climate change mitigation.” Sept. 26, 2023 Responses at 116 (emphasis added).<sup>2</sup>

Interrogatory No. 9 asks for the identity of the specific investors and consumers who the Commonwealth was referencing when it alleged that investors and consumers have been deceived by ExxonMobil. The Commonwealth’s current answer is insufficient because it refuses to identify any of them.<sup>3</sup>

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<sup>2</sup> See also, e.g., Am. Compl. ¶ 17 (“engaged in decades of deceiving the world”); *id.* ¶ 41 (“ExxonMobil continues to deceive investors and consumers today.”); *id.* ¶ 130 (“Exxon directly contributed to deception of investors and consumers”); *id.* ¶ 578 (“ExxonMobil deceives Massachusetts consumers”); *id.* ¶ 619 (“ExxonMobil’s advertising deceives Massachusetts consumers”); *id.* ¶ 664 (“ExxonMobil’s climate change greenwashing . . . misleads Massachusetts consumers”); *id.* p. 121 (“ExxonMobil is deceiving Massachusetts investors”); *id.* p. 139 (“ExxonMobil is deceiving Massachusetts consumers”); Comm.’s Opp. to ExxonMobil’s Anti-SLAPP Motion at 12 (“ExxonMobil misled and deceived Massachusetts investors and consumers”); Comm.’s Opp. to ExxonMobil’s Motion to Dismiss at 12 (“ExxonMobil deceived investors”).

<sup>3</sup> The Commonwealth also objects that the word “claim” is vague and ambiguous. That objection also is not credible and, in any event, is not a basis to refuse to provide a complete response to this Interrogatory. The Commonwealth itself has extensively used the word “claim” in its common, accepted usage, essentially as being synonymous with “state,” “say,” or otherwise “express.” See, e.g., Sept. 26, 2023 Responses at 16, 18, 96 (“ExxonMobil has been claiming”); *id.* at 17 (“ExxonMobil has been making claims”); *id.* at 33, 34

Finally, the Commonwealth's response to this Interrogatory refers to investors or consumers who were purportedly "exposed to" ExxonMobil's statements or practices, rather than deceived by them. That is no substitute. Exposure to an ExxonMobil statement has no bearing, one way or the other, on whether the recipient was deceived by that statement.<sup>4</sup>

**B. Interrogatory No. 10**

Interrogatory No. 10 requires identification of "any Massachusetts investors and consumers who claim that their 'learning about the link between fossil fuel use and climate change, the catastrophic impact of climate change, and ExxonMobil's role both in causing climate change and in delaying recognition of the risks of climate change' was 'prevented or delayed' by ExxonMobil," as the Commonwealth alleged in its September 26, 2023 Responses to ExxonMobil's First Set of Interrogatories. But the Commonwealth does not identify any such investors or consumers, instead stating that "ExxonMobil has never disclosed or made available to Massachusetts investors or consumers either the timing or the details of its knowledge about climate change" and that "ExxonMobil's efforts have prevented and delayed many investors and consumers from learning about the link" between fossil fuel use and climate change. Commonwealth's Responses at 8, 9.

Referring to "many investors and consumers"—without identifying who they are—is not a sufficient answer. Interrogatory No. 10 asks the Commonwealth to identify with specificity *each* such investor or consumer who has actually claimed, in substance, that his or her "learning about the link between fossil fuel use" and climate change was "prevented or delayed" by ExxonMobil.<sup>5</sup> Either the Commonwealth knows of such specific consumers and investors, and so must identify them, or it does not know of any, and so must say that.

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("ExxonMobil claimed"); Am. Compl. ¶ 171 ("ExxonMobil's advertorials continued to claim"). If the definition of "claim" is the reason why the Commonwealth refuses to answer, it must at least identify all investors and consumers of whom the Commonwealth is aware who have stated, said, or otherwise expressed that they have actually been deceived.

<sup>4</sup> The Commonwealth objects that responding to this Interrogatory now would be premature because discovery is ongoing. That objection has no merit, and certainly is not a basis to refuse to provide any answer at all at this time. The Commonwealth can identify now all of the investors or consumers of whom it is aware—including each investor and consumer underlying the allegations of deception in the Amended Complaint—and supplement its response later. Unless, of course, in refusing to answer, the Commonwealth means to suggest that it filed an Amended Complaint alleging that Massachusetts investors and consumers have actually been deceived without knowledge of any actual investors or consumers who have been deceived.

<sup>5</sup> The Commonwealth also asserts that the word "claim" in Interrogatory No. 10 is vague and ambiguous. That objection is meritless for the reasons discussed in footnote 3 concerning the Commonwealth's objection to Interrogatory No. 9.

### C. Interrogatory No. 11

Interrogatory No. 11 requires the Commonwealth to “identify what specific disclosure or disclosures the Commonwealth contends ExxonMobil was required to make in order to make its advertisements to Massachusetts consumers not deceptive or misleading.” The Commonwealth has refused to respond on the ground that “ExxonMobil has not provided any specificity as to which advertisements, advertising campaigns, and/or brand marketing campaigns are encompassed” by the Interrogatory. Commonwealth’s Responses at 10. The Commonwealth also contends it has “no obligation to explain, hypothetically and counterfactually,” what disclosures ExxonMobil should have made to render its statements not deceptive. *Id.* These objections are meritless, and the Commonwealth must answer this Interrogatory in full.

*First*, as to “specificity,” the Commonwealth should answer this Interrogatory with respect to each of the ExxonMobil “advertisements, advertising campaigns, and/or brand marketing campaigns” that the Commonwealth currently alleges were deceptive, including each of the allegedly deceptive statements, acts, and practices listed in the Commonwealth’s Responses to ExxonMobil’s First Set of Interrogatories and in the Amended Complaint. *See, e.g.*, Sept. 26, 2023 Responses at 116–123 (listing “marketing campaigns and advertisements” alleged to be deceptive); *id.* at 123 (incorporating by reference the “many examples listed in the Amended Complaint and the Second Responses” of deceptive statements, acts, and practices); Am. Compl. ¶¶ 577–672 (alleging that ExxonMobil deceived Massachusetts consumers by failing to disclose information in advertisements and advertising campaigns).

*Second*, the need for this information is heightened by the fundamental unfairness that has resulted from accusing ExxonMobil of deceiving Massachusetts consumers and investors by providing “insufficient” disclosures about climate change risks, while leaving ExxonMobil to guess at what specific information the Commonwealth believes ExxonMobil should have provided. *See, e.g.*, MTC Opp. at 30 (“ExxonMobil has insufficiently articulated” climate and regulatory risks associated with fossil fuel use); *id.* (“ExxonMobil glossed over the necessary consequences of sustained, high-level fossil fuel use.”). For example, without a complete answer to this Interrogatory, there is no way to evaluate whether, as the Court must, the specific information that ExxonMobil allegedly should have disclosed would have been “important to consumers and, hence, likely to affect their choice of, or conduct regarding, a product,” *Comm. v. AmCan Enters., Inc.*, 47 Mass. App. Ct. 330, 335 (1999), as required under Chapter 93A. Moreover, ExxonMobil may pursue different fact discovery, or seek different expert analyses, depending on what specific information the Commonwealth contends was material or would have rendered a statement non-deceptive.

The Commonwealth’s provision of this information now will facilitate document discovery and depositions, and ensure a fair trial. Vague assertions about “insufficient” disclosures or the need to disclose so-called “systemic climate change risks” are the sort of hand-waving that does not allow for the development of a full factual record. Litigation like this cannot devolve into a one-sided guessing game or a trial by ambush in which the Commonwealth reveals on the eve of trial, after time for discovery on the issues that will be

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6

presented at trial has closed, the specific information that should have been disclosed years earlier.

In addition, the Commonwealth, in its purported role as protector of Massachusetts consumers, should have every interest in ensuring that deceptive statements are not made in Massachusetts. If the Commonwealth believes that certain ExxonMobil statements are deceptive, there should be no prejudice—and every incentive—for the Commonwealth to explain how each of those statements should, in the Commonwealth's view, be corrected.<sup>6</sup>

\* \* \*

Based on the extensive meet and confer exchanges to date and the Commonwealth's refusal to provide sufficient answers, we are now at an impasse with respect to the Commonwealth's deficient answers to Interrogatory Nos. 2, 6, and 7.

We are available to meet and confer as soon as possible to discuss whether the Commonwealth will produce the requested information responsive to Interrogatory Nos. 9, 10, and 11 and, if not, to declare an impasse in light of the Commonwealth's refusal to provide sufficient answers to those Interrogatories.

Sincerely,

/s/ Jeannie S. Rhee

Jeannie S. Rhee

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<sup>6</sup> ExxonMobil does not address any other deficiencies in the Commonwealth's December 18, 2023 Responses to the Second Set of Interrogatories in this letter, and reserves the right to move to compel the Commonwealth as to each of those deficiencies.

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May 13, 2024

**BY EMAIL**

Richard A. Johnston, Esq.  
Office of the Attorney General  
One Ashburton Place  
Boston, MA 02108

Re: *Commonwealth of Massachusetts v. Exxon Mobil Corporation*, Suffolk Superior Court Civil Action No. 1984-CV-03333-BLS1 (consolidated with *Exxon Mobil Corporation v. Office of the Attorney General*, Suffolk Superior Court Civil Action No. 1684-CV-01888)

Dear Rich:

We write in response to your letter dated April 24, 2024. We address each issue raised in that letter below.

**I. ExxonMobil's Responses to Interrogatory Nos. 3, 4, and 5**

Before responding to your letter as to Interrogatory Nos. 3, 4, and 5, we note that, on May 10, 2024, you served ExxonMobil with a Motion to Compel a response to each of these interrogatories. The Motion asserts that you filed it only after you made a "good faith effort" to narrow areas of disagreement "to the fullest extent." That is incorrect. In reality, you filed your motion less than two days after the arbitrary response date of May 8 that you requested in your April 24 letter, without even bothering to confirm whether ExxonMobil was preparing a response. Notwithstanding your approach, we address each interrogatory below.<sup>1</sup>

***Interrogatory No. 3.*** This Interrogatory asks ExxonMobil to state whether, as of the date of the response, ExxonMobil "is confident that none of its hydrocarbon reserves are now or will become stranded." ExxonMobil's Responses and Objections explain that this Interrogatory improperly asks ExxonMobil to undertake an analysis of, and then express an opinion about, its current business operations and future events. Responses and Objections at 28. We are aware of no legal authority supporting the Commonwealth's attempt to compel ExxonMobil to do so, and the Commonwealth identified no such authority during the parties' March 14, 2024 meet and confer. To the contrary, courts have repeatedly recognized that a responding party "is not

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<sup>1</sup> We will separately respond to your Motion to Compel, should you decide not to withdraw it.

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2

required to engage in any independent research or expert analysis” in responding to discovery requests. *Carnevale v. Boeing Co.*, 2017 WL 11542234, at \*1 (D. Mass. Mar. 7, 2017). Accordingly, ExxonMobil stands on its Responses and Objections, including but not limited to ExxonMobil’s objection that the Interrogatory improperly “seeks to require ExxonMobil to undertake analyses of its current business operations for purposes of this litigation although ExxonMobil is under no obligation to do so.” Responses and Objections at 28.

The Commonwealth has also stated that it has chosen to “interpret[]” ExxonMobil’s Responses and Objections as ExxonMobil “answering that it cannot state that the company is confident that none of its hydrocarbon reserves are now or will become stranded.” Mar. 1, 2024 Ltr. from R. Johnston to J. Rhee (“Mar. 1 Ltr.”) at 2. ExxonMobil’s response speaks for itself, notwithstanding whatever subjective interpretation the Commonwealth purports to have.

***Interrogatory No. 4.*** This Interrogatory seeks information about “the cost that ExxonMobil used per ton for its Demand-Side Proxy Cost and its Cost-Side Proxy Cost.” ExxonMobil does not use the terms “Demand-Side Proxy Cost” or “Cost-Side Proxy Cost,” which are defined terms the Commonwealth has created. In any event, as the Commonwealth is aware, ExxonMobil is in the process of producing millions of documents responsive to the Commonwealth’s Requests for Production (“RFPs”), including RFPs that directly address its use of proxy costs and GHG costs.<sup>2</sup> Reserving all objections, ExxonMobil agrees to supplement its response to Interrogatory No. 4 iteratively by June 30, August 31, and October 31, 2024, provided that the Commonwealth agrees to supplement its own interrogatories on the same schedule. Please confirm by May 20, 2024 whether the Commonwealth agrees to that reciprocal schedule.

***Interrogatory No. 5.*** This Interrogatory asks ExxonMobil to “state what ExxonMobil meant to communicate when it published the following statement ‘Keeps your engine 2x cleaner for better gas mileage.’” ExxonMobil reiterates its objections to this Interrogatory, including but not limited to the fact that the request for “what ExxonMobil meant to communicate” is vague and ambiguous. Responses and Objections at 32. During the parties’ March 14, 2024 meet and confer, the Commonwealth failed to clarify the meaning of the request, and failed to explain a cognizable theory of the relevance to this case of the request for “what ExxonMobil meant to communicate” by its statement about gas mileage.

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<sup>2</sup> **RFP No. 39:** “All documents and Communications concerning the preparation, development, update, review, editing, approval, presentation, or implementation of ExxonMobil’s corporate planning models, guidelines, processes, or procedures, including ExxonMobil’s . . . Corporate Plan Dataguide (including appendices), Corporate Plan Guidance, corporate plan models, planning bases (including prospective market prices for fossil fuels), . . . and other corporate processes and procedures for the Company’s project evaluation and investment decisions, including guidance on incorporating GHG emission costs into the Company’s decision-making.”

**RFP No. 45(e):** “All documents and Communications concerning ExxonMobil’s: . . . Use of a mechanism for incorporating a financial metric for climate risk into economic models, business planning, or investment decisions, such as a cost of CO<sub>2</sub>, cost of carbon, proxy cost of carbon, GHG cost, shadow carbon price, or other approach . . . .”



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3

In responding to this Interrogatory, ExxonMobil referred to its website, which provides information about the statement at issue.<sup>3</sup> The Commonwealth has asserted that it will “interpret[] ExxonMobil’s response as conveying that [the referenced] footnote contains the company’s complete answer regarding what it meant to communicate.” Mar. 1 Ltr. at 2–3. Again, ExxonMobil’s response speaks for itself, and notwithstanding whatever subjective interpretation the Commonwealth purports to have, the Commonwealth should not assume ExxonMobil agrees with this subjective interpretation.

Interrogatory No. 5 also seeks “all facts, data, and analysis which [ExxonMobil] contend[s] support and/or substantiate” the statement “Keeps your engine 2x cleaner for better gas mileage.” ExxonMobil has already identified, consistent with the requirements of Mass. R. Civ. P. 33(c), documents containing facts, data, and analysis that support and substantiate the statement.<sup>4</sup> See Responses and Objections at 33. Furthermore, ExxonMobil is continuing to produce documents related to that statement in response to the Commonwealth’s RFPs.<sup>5</sup> Nevertheless, and reserving all objections, ExxonMobil agrees to supplement its response to Interrogatory No. 5 to identify additional examples of documents that contain facts, data, and analysis that support and substantiate the statement iteratively by June 30, August 31, and October 31, 2024, provided that the Commonwealth agrees to supplement its own interrogatories

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<sup>3</sup> ExxonMobil’s website “contains a footnote after the phrase ‘Keeps your engine 2x cleaner for better gas mileage’ that states: ‘Based on Synergy Supreme+ gas compared to gasoline meeting minimum government standards. Wear reduction was measured by an industry standard lubricant test. Actual benefits are based on continuous use and may vary depending on vehicle type, driving style, and gasoline previously used.’” See Responses and Objections at 32 (quoting Synergy™ unleaded gasoline, ExxonMobil, <https://www.exxon.com/en/unleaded-gasoline>).

The Commonwealth contends that, during the parties’ March 14, 2024 meet and confer, ExxonMobil “represented that this clarifying footnote did not contain the company’s complete answer as to what ExxonMobil sought to convey.” Apr. 24 Ltr. at 2. The Commonwealth’s assertion is inaccurate. As an initial matter, ExxonMobil explained during the meet and confer that the Commonwealth has requested, and ExxonMobil is producing, multiple documents related to the “Keeps your engine 2x cleaner” statement. In addition, ExxonMobil explained during the meet and confer that it would take under advisement the Commonwealth’s explanation as to the meaning and relevance of “what ExxonMobil meant to communicate” before determining what further response, if any, it would provide in response to the question about “what ExxonMobil meant to communicate.” But the Commonwealth has neither clarified the meaning of that phrase nor explained its relevance.

<sup>4</sup> The Commonwealth contends that, during the March 14 meet and confer, ExxonMobil “admitted that this response was incomplete.” Apr. 24 Ltr. at 2. This contention is incorrect. During the meet and confer, ExxonMobil stated that its productions were ongoing and that additional documents containing the requested information may continue to be produced. There was no “admission” that ExxonMobil’s response to the interrogatory is “incomplete.”

<sup>5</sup> **RFP No. 178:** “All Documents and Communications concerning ExxonMobil’s evaluation of, substantiation of, and/or attempts to substantiate claims made in [certain] Advertisements, Advertising Campaigns, and/or Brand Marketing campaigns . . . including all Documents and Communications ExxonMobil received from one or more third-parties evaluating, substantiating, and/or attempting to substantiate the claims made in . . . ‘Keeps your engine 2x Cleaner for better gas mileage’ Advertisements and/or Advertising Campaigns.”

**RFP No. 177:** “All Documents and Communications concerning ExxonMobil’s evaluation of consumer response to, and/or perceptions of” advertisements and marketing campaigns, including “ExxonMobil’s ‘Keeps your engine 2x Cleaner for better gas mileage’ Advertisements and/or Advertising Campaigns.”

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4

on the same schedule. Please confirm by May 20, 2024 whether the Commonwealth agrees to that schedule.

## II. The Commonwealth's Contentions Regarding "Illegible" Documents

The Commonwealth contends that ExxonMobil has produced numerous "illegible" documents. During our March 15, 2024 meet and confer on this issue, the Commonwealth took the position that ExxonMobil should identify and reproduce in color *all* PowerPoint and PDF documents, which types of documents the Commonwealth asserted are, on a categorical basis, illegible and unable to be meaningfully understood in grayscale.<sup>6</sup> ExxonMobil responded that the Commonwealth's position contravenes Paragraph 6(c)(iii) of the Stipulated Agreement Regarding Discovery of Electronically Stored Information ("ESI Protocol"). That protocol establishes the process for requesting the reproduction of a document in color: the Commonwealth should identify the specific documents in question, and the parties should then discuss whether any further specialized measures can and should be taken to rectify any perceived issues.

Consistent with the ESI Protocol, the Commonwealth's March 1, 2014 letter identified 626 specific documents that the Commonwealth claims to be illegible.<sup>7</sup> ExxonMobil reviewed those documents and agrees to reproduce 622 of them in native and/or color format in order to improve their legibility.<sup>8</sup> As we did not identify any issues with the legibility or comprehensibility of MASS-XOM003259302, -2787124, -2635799, or -2595519, we will not reproduce those documents. Moreover, ExxonMobil confirms that it has a production process in place to implement Paragraph 6(c)(iii) of the ESI Protocol.

The Commonwealth also contends that ExxonMobil has taken the position that it will not engage on these issues because "its production is too large and it is too late do anything." *See* Apr. 24, 2024 Ltr. from R. Johnston to J. Rhee ("Apr. 24 Ltr.") at 4. That misrepresents ExxonMobil's position. ExxonMobil has repeatedly reaffirmed its commitment to fulfilling its obligations under the ESI Protocol, and to discussing specific documents as to which the Commonwealth reasonably raises issues consistent with that protocol.<sup>9</sup>

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<sup>6</sup> There is no basis for the Commonwealth's suggestion that *all* PDFs and PowerPoints need to be produced in color to be legible. ExxonMobil has assessed a sample of the PowerPoints and PDFs it has already produced and determined that most are not affected by supposed "legibility" issues.

<sup>7</sup> The Commonwealth did not provide the list of documents until April 26, 2024. Moreover, the list includes 849 documents, but many of the entries are duplicates. The list contains only 626 unique documents.

<sup>8</sup> ExxonMobil does not agree that color or native versions are necessary for many of these 622 documents to be understood. However, given that there are inherently subjective questions of what constitutes a "legible" document, ExxonMobil has been expansive and overly inclusive in determining which documents it will agree to reproduce in color or native format.

<sup>9</sup> The Commonwealth represents that its list of 626 documents reflects only "a small fraction of the illegible documents [the Commonwealth has] reviewed in ExxonMobil's productions." Apr. 24 Ltr. at 4 n.1. The Commonwealth does not explain why it chose not to identify *all* such documents.

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5

### **III. The Commonwealth's Contentions as to a Central Repository of Investor Complaints**

As ExxonMobil has repeatedly explained, ExxonMobil does not have a central repository of investor complaints responsive to RFP Nos. 11 and 12, which seek complaints concerning ExxonMobil's climate-related actions or statements. *See, e.g.*, Dec. 14, 2023 Ltr. from J. Rhee to R. Johnston at 2 ("ExxonMobil does not have any central repository of complaints responsive to RFP Nos. 11 and 12."). The Commonwealth's April 24 letter accuses ExxonMobil of "denying that the company has any database that would reflect incoming complaints" and identifies four documents that the Commonwealth contends show the existence of a database for "investor complaints." Apr. 24 Ltr. at 4–5 (citing MASS-XOM001481961, -294965, -294967, and -209372). ExxonMobil rejects the Commonwealth's characterization of those documents. As the email chain in MASS-XOM000294965 reflects, ExxonMobil maintains a general communications database called "CODA," which stands for "Communications Database" and which contains, among other things, some communications from investors.<sup>10</sup> ExxonMobil has already collected, and is already searching, the data in CODA as part of its efforts to respond to the Commonwealth's RFPs. ExxonMobil is also producing communications in the database that could be characterized as "complaints" and that are otherwise responsive to RFPs.<sup>11</sup>

### **IV. Deposition Transcripts**

We will be producing 42 deposition transcripts related to subpoenas issued by the New York Attorney General or in *People of the State of New York v. Exxon Mobil Corporation*, Index No. 452044/2018, in an upcoming production.

Sincerely,

/s/ Kyle Smith  
Kyle Smith

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<sup>10</sup> Nor do the other documents referenced in the Commonwealth's letter show the existence of a database for "investor complaints." MASS-XOM001481961 and MASS-XOM000294967 are CODA extract documents. MASS-XOM000209372 is a weekly shareholder relations statistics report, as indicated by its title and its parent document MASS-XOM000209357; the report is not a repository of investor complaints.

<sup>11</sup> The Commonwealth asked ExxonMobil to explain the redactions in MASS-XOM000294967. That file contains rows that were redacted for privilege because they refer to legal matters. However, we have determined that certain cells in those rows do not contain privileged information, and will produce a new version with fewer redactions.