

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

EXXON MOBIL CORPORATION,)	
)	
)	
Plaintiff,)	
)	
v.)	No. 4:16-CV-469-K
)	
ERIC TRADD SCHNEIDERMAN,)	
Attorney General of New York, in his official)	
capacity, and MAURA TRACY HEALEY,)	
Attorney General of Massachusetts, in her)	
official capacity,)	
)	
Defendants.)	
)	

**DEFENDANT ATTORNEY GENERAL MAURA HEALEY’S
MOTION TO DISMISS FIRST AMENDED COMPLAINT**

Defendant, Massachusetts Attorney General Maura Healey, by and through counsel, hereby moves to dismiss this case pursuant to Rule 12(b) of the Federal Rules of Civil Procedure.

1. The Attorney General’s Office (“AGO”) issued a civil investigative demand (“CID”) to Exxon Mobil Corporation’s (“Exxon”) registered agent in Boston, Massachusetts, on April 19, 2016. The Attorney General issued the CID to Exxon pursuant to Mass. Gen. Laws ch. 93A, § 6, to investigate potential unfair and deceptive acts or practices in Exxon’s marketing and sale of fossil fuel-derived products and securities to consumers and investors in Massachusetts, in violation of Massachusetts law.

2. On June 15, 2016, Exxon filed the complaint initiating this case, alleging that the CID violated its constitutional rights and was an abuse of process.

3. On June 16, 2016, Exxon also filed a petition and an emergency motion to set aside or modify the CID or issue a protective order in Massachusetts Superior Court, with allegations very similar to those in the aforementioned complaint. *See In re Civil Investigative Demand No. 2016-EPD-36, Issued by the Attorney General*, No. 16-CV-1888F (Mass. Super. Ct. Jun. 16, 2016).

4. On November 10, 2016, the Court granted Exxon's motion to amend its original complaint and file its First Amended Complaint (Doc. No. 100).

5. The Court should dismiss this case with prejudice for several reasons.

6. First, the Court should dismiss this case under Rule 12(b)(2), because it lacks personal jurisdiction over Attorney General Healey. The Texas long-arm statute does not reach the Attorney General when sued in her official capacity, and the Attorney General lacks "minimum contacts" with Texas, such that exercise of personal jurisdiction over her by the Court would be unfair and unreasonable and, therefore, in violation of due process. The Court should dismiss this case for lack of personal jurisdiction without further inquiry. *See Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 578 (1999); *Alpine View Co. Ltd. v. Atlas Copco AB*, 205 F.3d 208, 213 (5th Cir. 2000).

7. Second, the Court should dismiss this case under Rule 12(b)(1), because the dispute is not ripe under *Google, Inc. v. Hood*, 822 F.3d 212 (5th Cir. 2016), where Exxon has the opportunity to challenge the CID and any future enforcement in the Massachusetts Superior Court.

8. Third, the Court should dismiss this case under Rule 12(b)(3), because this district is an improper venue, given that the Attorney General's offices are located in Massachusetts, and the events underlying Exxon's complaint—*i.e.*, the issuance of the CID—occurred in

Massachusetts, not Texas.

9. Fourth, the Court should dismiss Exxon's Texas state law claims under Rule 12(b)(1) because they are barred by the Eleventh Amendment. *See Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89 (1984).

10. Fifth, the Court should dismiss this case under Rule 12(b)(1) because abstention under *Younger v. Harris*, 401 U.S. 37 (1971), is warranted here. There are ongoing state civil proceedings in Massachusetts related to the CID at issue here; those proceedings implicate important state interests; and the Massachusetts state court provides an adequate forum to hear the claims raised in this matter.

11. Sixth and finally, the Court should dismiss this case under Rule 12(b)(6) because the First Amended Complaint does not satisfy the minimum pleading standards of Rule 8(a)(2) by failing to state plausible grounds for relief. *See Ashcroft v. Iqbal*, 556 U.S. 662 (2009).

PRAYER

For these reasons and those set out in the Memorandum of Law in Support of Defendant Attorney General Maura Healey's Motion to Dismiss the First Amended Complaint, the Court should DISMISS Exxon's First Amended Complaint as to Attorney General Healey with prejudice.

Respectfully submitted,

MAURA HEALEY
ATTORNEY GENERAL OF
MASSACHUSETTS

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Dated: November 28, 2016

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on November 28, 2016, all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system. Any other counsel of record will be served in accordance with the Federal Rules of Civil Procedure.

s/ Douglas A. Cawley
Douglas A. Cawley