

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

COMMONWEALTH OF MASSACHUSETTS,

Plaintiff,

v.

EXXON MOBIL CORPORATION,

Defendant.

Civil Action No.

**NOTICE OF REMOVAL**

Defendant Exxon Mobil Corporation (“ExxonMobil”), hereby removes this action, currently pending in the Suffolk County Superior Court of the Commonwealth of Massachusetts, to the United States District Court for the District of Massachusetts pursuant to 28 U.S.C. §§ 1331, 1332(d), 1441(a), 1442, and 1453(b).<sup>1</sup> To the extent any part of Plaintiff’s causes of action can be construed as non-federal, this Court has supplemental jurisdiction over them under 28 U.S.C. § 1367(a) because they form part of the same case or controversy as those causes of action over which the Court has original jurisdiction.

While purportedly brought under state law and in the name of consumer protection, this lawsuit by Plaintiff the Commonwealth of Massachusetts, acting through its Attorney General (“Plaintiff” or “MAAG”), is the culmination of a multi-year plan concocted by plaintiffs’ attorneys, climate activists, and special interests to force a political and regulatory agenda that has

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<sup>1</sup> By filing this Notice of Removal, ExxonMobil does not waive any right, defense, affirmative defense, or objection, including based on a lack of personal jurisdiction. *See, e.g., Carter v. Bldg. Material & Constr. Teamsters’ Union Local 216*, 928 F. Supp. 997, 1000-01 (N.D. Cal. 1996) (“A petition for removal affects only the forum in which the action will be heard; it does not affect personal jurisdiction.” (citing *Morris & Co. v. Skandinavia Ins. Co.*, 279 U.S. 405, 409 (1929))).

not otherwise materialized through the legislative process. From the day MAAG announced the underlying investigation to its recent rush to file this lawsuit in the midst of the trial of a similar suit brought by the New York Attorney General,<sup>2</sup> it has been abundantly clear that MAAG has been engaged in a pretextual use of its law enforcement power to further a political agenda, bar ExxonMobil from participating in the public discourse about climate change, and force a societal change toward what MAAG deems a “clean energy future.”

When viewing the Complaint’s allegations in this context, it becomes even clearer that this suit is neither about consumer protection, nor properly brought under state law. It instead seeks to wade into complex federal statutory, regulatory, and constitutional issues and frameworks, and to substitute one state’s judgment for that of longstanding decisions by the federal government about national and international energy policy and environmental protection. A suit of this nature should be heard, and promptly dismissed, by a federal court.

#### **TIMELINESS OF REMOVAL**

1. Plaintiff filed this action against ExxonMobil on October 24, 2019, in the Suffolk County Superior Court as Civil Action No. 19-3333. ExxonMobil was served on October 30, 2019. This Notice of Removal is timely because it is filed within 30 days of service. *See* 28 U.S.C. § 1446(b).

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<sup>2</sup> In *People of the State of New York v. Exxon Mobil Corp.*, No. 452044/2018 (N.Y. Sup. Ct.), the New York Attorney General filed a four-count complaint alleging a longstanding fraudulent scheme to defraud investors about how the Company addressed the risks of climate change. A bench trial proceeded before the Honorable Barry Ostrager on October 22, 2019, and concluded on November 7, 2019. In its summation, however, the New York Attorney General asked the court to dismiss its fraud counts (two of the four counts in the complaint), effectively conceding it had failed to introduce any evidence of intent or reliance—core elements of fraud. Ex. 1 at 2072:7-2073:10. The case is currently under submission with a decision expected on the two remaining claims before the end of the year.

**FACTUAL BACKGROUND AND SUMMARY OF ALLEGATIONS**

2. On March 29, 2016, MAAG and a coalition of state attorneys general, calling themselves the “Green 20,” held a press conference entitled “AGs United for Clean Power,” hereinafter referred to as the “Green 20 press conference.” Lamenting the perceived “gridlock in Washington,” the Green 20 announced “collective efforts to deal with the problem of climate change” and vowed to “step into this [legislative] breach” through “creative[.]” and “aggressive[.]” use of the powers of their respective offices to end the world’s reliance on fossil fuels. Ex. 2 at 1-3, 5.

3. Attorney General Healey’s specific remarks echoed this agenda, proclaiming “there’s nothing we need to worry about more than climate change,” and pledging to undertake “quick, aggressive action” to alleviate the threat to “the very existence of our planet” by moving the country toward a “clean energy future.”<sup>3</sup> *Id.* at 12-13. Her comments also made clear that her “investigation” had a preordained conclusion—that ExxonMobil had engaged in deception. *Id.* (describing the “troubling disconnect between what Exxon knew” and what it “chose to share with investors and with the American public”).<sup>4</sup>

4. The Green 20 press conference was the product of closed-door meetings with climate activists and plaintiffs’ lawyers. Since at least 2012, when they gathered in La Jolla, California, to participate in a “Workshop on Climate Accountability, Public Opinion, and Legal

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<sup>3</sup> See <https://www.algore.com/news/former-vice-president-al-gore-and-a-coalition-of-attorneys-general-from-across-the-country-announce-historic-state-based-effort-to-combat-climate-change> (link to video of Green 20 press conference; Attorney General Healey’s comments begin at 33:11).

<sup>4</sup> The overtly political nature of the Green 20 press conference drew a swift and sharp rebuke from thirteen other state attorneys general, who criticized the Green 20’s efforts to “[u]s[e] law enforcement authority to resolve a public policy debate.” Ex. 3 at 3.

Strategies,” these activists sought to influence the debate surrounding climate change by gaining access to ExxonMobil’s internal documents. Ex. 4. La Jolla workshop attendees reached nearly unanimous agreement on the importance of using legal actions to “maintain[ ] pressure on . . . industry that could eventually lead to its support for legislative and regulatory responses to global warming” and further recognized that “a single sympathetic state attorney general might have substantial success in bringing key internal documents to light.” *Id.* at 11-12, 27.

5. Two climate activists who led the effort to access ExxonMobil’s records gave secret presentations to the attorneys general before the Green 20 press conference commenced.<sup>5</sup> At the beginning of 2016, one of these activists and groups representing special, private interests met at the Rockefeller Family Fund offices to discuss the goals of a so-called “Exxon campaign.” Ex. 5. These goals included:

- “To establish in [the] public’s mind that Exxon is a corrupt institution that has pushed humanity (and all creation) toward climate chaos and grave harm.”
- “To delegitimize [ExxonMobil] as a political actor.”
- “To force officials to disassociate themselves from Exxon, their money, and their historic opposition to climate progress, for example by refusing campaign donations, refusing to take meetings, calling for a price on carbon, etc.”
- “To drive divestment from Exxon.”
- “To drive Exxon & climate into [the] center of [the] 2016 election cycle.” *Id.*<sup>6</sup>

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<sup>5</sup> These presentations were not only closed to the public, but the AGs also directed the participants to conceal their participation. *See* Ex. 7 (“My ask is if you speak to the reporter, to not confirm that you attended or otherwise discuss the event.”).

<sup>6</sup> ExxonMobil’s allegations concerning the La Jolla workshop, “Exxon campaign,” and MAAG’s coordination with private interests were addressed in proceedings against attorney Matthew Pawa and California municipal officials arising from their efforts to suppress ExxonMobil’s speech about climate policy. *Exxon Mobil Corp.*, No. 096-297222-18, 2018 Tex. Dist. LEXIS 1 (Tarrant Cty. Tex. Apr. 24, 2018), *appeal filed*, No. 02-18-00106-CV (Tex. App.—Fort Worth, Apr. 2, 2018). Judge R. H. Wallace of the District Court of Tarrant County, Texas, found ExxonMobil’s evidence sufficient to support exercising personal jurisdiction in the matter. *Id.* at \*14.

6. On April 19, 2016, three weeks after the activist-driven Green 20 press conference, MAAG issued a civil investigative demand (“CID”) to ExxonMobil. Ex. 6. In response, ExxonMobil moved to quash the CID in Massachusetts state court<sup>7</sup> and filed a separate, federal action in the Northern District of Texas against Attorney General Healey, seeking injunctive and declaratory relief for violation of its rights under the First, Fourth, and Fourteenth Amendments, the Commerce Clause, and Texas common law.<sup>8</sup> MAAG then requested a tolling agreement from ExxonMobil, agreeing not to seek any documents or depose any witnesses pursuant to the CID pending the final resolution of the two aforementioned actions (one of which is still pending). ExxonMobil agreed with MAAG’s request, and the parties signed a tolling agreement in June 2016. Ex. 8. After months of no substantive discussions between the parties, MAAG provided notice of this lawsuit in October 2019, on the eve of ExxonMobil’s multi-week trial against the New York Attorney General in New York state court. *See* Ex. 9-10.

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<sup>7</sup> The summary proceedings that followed the motion to quash were limited to evaluating the CID’s validity under the authorizing statute, Mass. Gen. Laws Chapter 93A, § 6, and personal jurisdiction. The Massachusetts Superior Court denied ExxonMobil’s motion and granted MAAG’s cross-motion based on Massachusetts state law, but expressly did “not address Exxon’s arguments regarding free speech.” *In re Civil Investigative Demand No. 2016-EPD-36*, 2017 WL 627305, at \*4 n.2 (Mass. Super. Jan. 11, 2017). The Massachusetts Supreme Judicial Court affirmed, but acknowledged that ExxonMobil’s federal action “challeng[es] the C.I.D. on constitutional grounds not raised in th[e] [state] action.” *Exxon Mobil Corp. v. Attorney General*, 479 Mass. 312, 328-29 (2018).

<sup>8</sup> In that federal action, Judge Kinkeade concluded that ExxonMobil’s allegations were sufficiently plausible to warrant jurisdictional discovery because “Attorney General Healey’s actions leading up to the issuance of the CID causes the Court concern and presents the Court with the question of whether Attorney General Healey issued the CID with bias or prejudgment about what the investigation of Exxon would discover.” *Exxon Mobil Corp. v. Healey*, 215 F. Supp. 3d 520, 523, 532 (N.D. Tex. 2016). Before discovery, however, Judge Kinkeade transferred the case to the Southern District of New York. Judge Caproni’s decision dismissing ExxonMobil’s complaint is currently on appeal to the Second Circuit. *Exxon Mobil Corp. v. Schneiderman*, 316 F. Supp. 3d 679, 687 (S.D.N.Y. 2018), *appeal docketed*, No. 18-1170 (2d Cir. Apr. 23, 2018).

7. MAAG had no legitimate reason to file suit at that time. MAAG's rush to the courthouse was clearly the result of a deliberate strategy to interfere with ExxonMobil's trial preparation, assist a fellow Green 20 member in achieving the goals of the "Exxon campaign," and capitalize on the inevitable media coverage surrounding the New York trial. The timing of MAAG's filing also deprived ExxonMobil of its statutory right to meaningfully meet and confer under Chapter 93A, § 4—ExxonMobil had to either sacrifice trial preparation to meet with MAAG, or forfeit its opportunity to resolve or narrow the issues raised by this suit.

8. When MAAG filed its four-count complaint in this action on October 24, 2019, its allegations echoed both MAAG's predetermined conclusions announced at the 2016 Green 20 press conference and the goals of the climate activist-led La Jolla workshop and "Exxon campaign." In this light, it is clear that although nominally premised on state law and cloaked as consumer protection, this lawsuit at its core seeks to restrict the production, sale, and use of fossil fuels, attempting to usurp policy and foreign affairs roles properly reserved to the federal government. *See, e.g.*, Compl. ¶ 35 ("[P]roduction and consumer use of such transportation fuels is a leading cause of climate change that endangers public health and consumer welfare."); ¶ 39 (citing a need for "an orderly transition away from fossil fuels" and alleging that "continued investment in ExxonMobil's fossil fuel business and production and use of ExxonMobil's fossil fuel products would bring about cataclysmic outcomes for humankind"); ¶ 598 (alleging that "ExxonMobil . . . impeded and deferred the essential transition to cleaner energy sources").

9. Litigation about the appropriate use of fossil fuels and the global issues presented by climate change belongs in a federal forum because it necessarily raises disputed and substantial federal questions, is governed by federal common law, and implicates actions ExxonMobil took under federal leases. This lawsuit is also in essence a putative class action under Massachusetts

law, and meets the requirements and overall purpose of the Class Action Fairness Act (“CAFA”), which favors federal jurisdiction over cases with significant interstate ramifications. For these reasons and as explained in more detail below, this litigation must be heard in federal court to address the important national and international policies implicated.<sup>9</sup>

### **GROUND FOR REMOVAL**

#### **This Action Raises Disputed and Substantial Federal Issues**

10. Suits that purport to allege only state-law causes of action nevertheless “arise under” federal law if the “state-law claim[s] necessarily raise a stated federal issue, actually disputed and substantial, which a federal forum may entertain without disturbing any congressionally approved balance of federal and state judicial responsibilities.” *Grable & Sons Metal Prods., Inc. v. Darue Eng’g & Mfg.*, 545 U.S. 308, 314 (2005).

11. Plaintiff’s lawsuit attempts to undermine and supplant federal and foreign policy and hold a single fossil fuel manufacturer responsible for the alleged impacts of global climate change. Plaintiff expressly brings this suit, in part, based on MAAG’s “authority to prevent or remedy damage to the environment” caused by corporations. Compl. ¶ 45 (citing G.L. c. 12, § 11 D).

12. Plaintiff’s “greenwashing” allegations, which pertain to certain of ExxonMobil’s fuel and motor oil products, are particularly demonstrative of this suit’s ultimate aim. *See, e.g.*, Compl. § VI.B. Plaintiff alleges that “even if it is technically true” that these products “improve internal combustion engine performance and/or efficiency,” they could never be considered “safe and environmentally beneficial” because “the development, production, refining, and consumer

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<sup>9</sup> If Plaintiff challenges this Court’s jurisdiction, ExxonMobil reserves the right to further elaborate on these grounds beyond their specific articulations in this Notice.

use of ExxonMobil fossil fuel products” increase “greenhouse gas emissions.” *See id.* ¶ 601 (such advertising claims are “highly deceptive”), ¶ 602, ¶ 645. This is not a consumer protection argument; it is a statement of policy directly in conflict with Congressional and Executive branch decisions. The issue here is not the representations made in advertisements in Massachusetts, but the fact that the products are sold *at all*. The practical result of MAAG’s claim—that fossil fuel products cannot be considered “safe” under Massachusetts law—amounts to a demand that ExxonMobil cease its sales altogether. *See id.* ¶ 600 (the “production and use of ExxonMobil’s fossil fuel products emit large volumes of the dangerous greenhouse gas pollution that is causing disruptive climate change impacts”).

13. Using the ill-suited tool of the Massachusetts consumer protection statute, MAAG seeks to substitute its preferred energy policy for the federal government’s, as manifested in climate change treaties. For decades, the United States’ international climate change policy has sought to balance environmental policy with economic development. *See* The White House, Statement by President Trump on the Paris Climate Accord (June 1, 2017), <https://www.whitehouse.gov/briefings-statements/statement-president-trump-paris-climate-accord/> (announcing the United States’ withdrawal from the Paris Climate Accord based on, among other things, financial burdens and energy restrictions). Plaintiff’s lawsuit improperly asks a court to weigh in on precisely those issues. *See, e.g.*, Compl. ¶ 310 (noting “the current federal administration’s stated intent to withdraw from the” Paris Agreement). *Cf. Am. Ins. Ass’n v. Garamendi*, 539 U.S. 396, 413 (2003) (claims that implicate the “exercise of state power that touches on foreign relations” in a significant way “must yield to the National Government’s policy”); *Crosby v. Nat’l Foreign Trade Council*, 530 U.S. 363, 381, 388 (2000) (striking down Massachusetts law barring state entities from transacting with companies doing business in

Myanmar because the law “undermine[d] the President’s capacity . . . for effective diplomacy”); *City of Oakland v. BP P.L.C.*, 325 F. Supp. 3d 1017, 1026 (N.D. Cal. 2018) (Alsup, J.) (“Because this relief would effectively allow plaintiffs to govern conduct and control energy policy on foreign soil, we must exercise great caution.”).

14. There is thus no question that Plaintiff’s pretextual litigation—although nominally derived from Massachusetts’ consumer protection statute—raises several “actually disputed and substantial” federal issues for which federal jurisdiction would not disrupt “any congressionally approved balance of federal and state judicial responsibilities.” *See Grable*, 545 U.S. at 314. *Cf. In re Pharm. Indus. Average Wholesale Price Litig.*, 457 F. Supp. 2d 77, 79, 82 (D. Mass. 2006) (denying motion to remand consumer fraud case that turned on a Medicare statute definition). If anything, allowing these causes of action to proceed in state court would disrupt federal interests.

15. Specifically, Plaintiff’s suit is an attempt to supplant delicate international negotiations and Congressional and Executive branch decisions intended to address both environmental policy and economic growth. To illustrate, Plaintiff’s theory of wrongdoing assumes that “the world must swiftly shift away from fossil fuel energy” and that ExxonMobil has “perpetuat[ed] reliance on fossil fuels around the world.” *See, e.g.*, Compl. ¶ 767. Plaintiff’s causes of action would also require a court to determine whether “substantially curtailing the use of fossil fuels is necessary to stabilize the increase in global average temperature and reduce the risk of catastrophic climate change.” *Id.* ¶ 811. One of the regulations underlying Plaintiff’s third and fourth causes of action would force a court to evaluate the “safety,” “utility,” and “benefit to be derived from the use” of fossil fuels. *See id.* ¶ 774 (citing 940 C.M.R. § 3.05(1)).

16. But Congress has already sought to strike the appropriate balance between energy production and environmental protection by enacting federal statutes, *see, e.g.*, Clean Air Act, 42

U.S.C. § 7401(c),<sup>10</sup> and directing federal agencies to regulate ExxonMobil’s conduct and perform their own cost-benefit analyses. *See, e.g.*, Final Carbon Pollution Standards for New, Modified and Reconstructed Power Plants, 80 Fed. Reg. at 64683–84 (EPA considering impacts of “wildfire” and “extreme precipitation events”). The federal government has thus weighed the costs and benefits of fossil fuels, and permitted their sale because, among other things, affordable energy is critical for economic growth. *See City of Oakland*, 325 F. Supp. 3d at 1023 (“[O]ur industrial revolution and the development of our modern world has literally been fueled by oil and coal. Without those fuels, virtually all of our monumental progress would have been impossible.”).

17. Plaintiff’s request that a state court substitute its judgment for that of Congress and EPA on these issues—and impose significant penalties and injunctive relief based on Plaintiff’s assertion that a different balance should be struck—constitutes a “collateral attack” on an entire [federal] regulatory scheme . . . premised on the notion that [the scheme] provides inadequate protection.”<sup>11</sup> *Bd. of Comm’rs of Se. La. Flood Prot. Auth.-E. v. Tenn. Gas Pipeline Co.*, 850 F.3d 714, 724 (5th Cir. 2017) (internal quotations omitted). Removal is appropriate under such circumstances.<sup>12</sup> *See, e.g., Bennett v. Southwest Airlines Co.*, 484 F.3d 907, 909 (7th Cir. 2007)

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<sup>10</sup> *See also* Energy Reorganization Act of 1974, 42 U.S.C. § 5801; Mining and Minerals Policy Act, 30 U.S.C. § 21a; Surface Mining Control and Reclamation Act, 30 U.S.C. § 1201.

<sup>11</sup> These are difficult questions without easy answers—and MAAG should not be the arbiter of climate policy, particularly when it has failed in other instances to support implementation of “ambitious greenhouse gas reductions.” *Kain v. Dep’t of Env’tl Protection*, 474 Mass. 278, 282 (2016) (defending Massachusetts Department of Environmental Protection in suit regarding its refusal to promulgate regulations to establish GHG emissions limits).

<sup>12</sup> Plaintiff’s suit also implicitly attacks the federal government’s decision to contract with ExxonMobil to extract, develop, and sell fossil fuel resources on federal lands. *See infra* at ¶¶ 25–28. Any such collateral attacks also necessitate dismissal of this suit. *See, e.g., Tenn. Gas Pipeline*, 850 F.3d at 724.

(removal proper where claims were “a collateral attack” on the validity of agency action under a complex regulatory scheme); *Bryan v. BellSouth Commc’ns, Inc.*, 377 F.3d 424, 430 (4th Cir. 2004) (removal proper when consumer protection suit “effectively challenge[d]” the filed rate set by FCC); *Hill v. BellSouth Telecomms., Inc.*, 364 F.3d 1308, 1317 (11th Cir. 2004) (same).

18. Beyond the jurisdictional points raised above, it is also notable that Plaintiff’s lawsuit puts at issue multiple important federal issues including, but not limited to: (1) whether the First Amendment would allow ExxonMobil to be held liable for engaging in advertising and public relations campaigns that reflect a particular policy position with respect to fossil fuel use and climate change; and (2) whether a state court can burden the production, sale, and use of what federal policy has deemed an essential resource, consistent with the United States Constitution’s Commerce Clause and foreign affairs doctrine, and other constitutional principles.

19. Finally, federal jurisdiction would uphold, not upset, the principles of federalism reflected in this case—federal courts are the traditional forums for litigation regarding the intersection of national resources, environmental law, and foreign policy.<sup>13</sup> *See Grable*, 545 U.S. at 313 (federal jurisdiction must be “consistent with congressional judgment about the sound division of labor between state and federal courts”). As Judge Alsup in the Northern District of California held last year, the “international reach of the alleged wrong” of climate change requires “the scope of plaintiffs’ claims to be decided under federal law.” *City of Oakland*, 325 F. Supp.

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<sup>13</sup> Nor would this Court’s evaluation of Chapter 93A, § 2(a) raise issues unique under Massachusetts law, as this subsection must be interpreted consistently with Section 5 of the Federal Trade Commission Act. *See* G.L. c. 93A, § 2(b) (“It is the intent of the legislature that in construing paragraph (a) of this section . . . courts will be guided by the interpretations given by the [FTC] and the Federal Courts to section 5(a)(1) of the [FTCA.]”); *Purity Supreme, Inc. v. Attorney Gen.*, 380 Mass. 762, 766 (1980) (“The Massachusetts statute thus incorporates the extensive body of Federal administrative and decisional law under the FTC Act . . . at least in so far as it relates to definitions of ‘unfair’ and ‘deceptive.’”).

3d at 1028-29.

**Plaintiff’s Complaint Arises Under Federal Common Law**

20. This Court also has federal jurisdiction under 28 U.S.C. § 1331 over Plaintiff’s suit because its causes of action arise from federal common law. *See Nat’l Farmers Union Ins. Cos. v. Crow Tribe of Indians*, 471 U.S. 845, 850 (1985) (recognizing federal original jurisdiction over “claims founded upon federal common law”). Federal common law governs in limited areas that implicate “uniquely federal interests” such that application of state law would be inappropriate. *See, e.g., Boyle v. United Techs. Corp.*, 487 U.S. 500, 504-07 (1988); *Resolution Trust Corp. v. Gladstone*, 895 F. Supp. 356, 362–63 (D. Mass. 1995) (applying federal common law because there was “a significant interest in having a uniform standard of liability govern the conduct of directors and officers of federally chartered, federal insured, savings and loan institutions”).

21. One such area is “the general subject of environmental law and specifically . . . ambient or interstate air and water pollution.” *Native Vill. of Kivalina v. ExxonMobil Corp.*, 696 F.3d 849, 855 (9th Cir. 2012); *Am. Elec. Power Co. v. Connecticut*, 564 U.S. 410, 421-22 (2011) (“AEP”). Claims rooted in the effects of global greenhouse gas emissions therefore implicate uniquely federal interests in environmental, energy, and national security policy and necessitate a uniform approach under federal common law. *See, e.g., id.; see also Massachusetts v. U.S. Veterans Admin.*, 541 F.2d 119, 123 (1st Cir. 1976) (federal common law “was originally recognized to fill a void in the law applicable to suits seeking abatement of pollution originating within the domain of one state sovereign and exerting adverse effects in the domain of another”). When evaluating recent global warming-related claims against ExxonMobil, both Judge Alsup and Judge Keenan in the Southern District of New York determined that such claims “are governed by federal common law.” *See City of New York v. BP P.L.C.*, 325 F. Supp. 3d 466, 472 (S.D.N.Y.

2018) (“[T]he City’s claims are ultimately based on the ‘transboundary’ emission of greenhouse gases, indicating that these claims arise under federal common law and require a uniform standard of decision.”); *California v. BP P.L.C.*, 2018 WL 1064293, at \*2 (N.D. Cal. Feb. 27, 2018) (Alsup, J.) (claims “which address the national and international geophysical phenomenon of global warming—are necessarily governed by federal common law”).

22. As discussed above, although Plaintiff frames its suit as derived from a state statute that concerns consumer and investor deception, Plaintiff’s course of conduct and key allegations demonstrate that this action is intended to hold ExxonMobil singularly liable for producing products that contribute to climate change.<sup>14</sup> Because Plaintiff’s suit is inherently premised on interstate pollution that causes environmental harm in the form of global warming, it implicates uniquely federal interests and should be governed by federal common law.<sup>15</sup> *See BP*, 2018 WL 1064293, at \*3 (a “patchwork of fifty different answers to the same fundamental global issue would

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<sup>14</sup> Plaintiff’s efforts to artfully plead its Complaint are unsurprising, given the impropriety of lawsuits seeking liability under a nuisance theory for the impacts of the lawful production, promotion, refining, marketing, and sales of fossil fuels. *See, e.g., City of Oakland*, 325 F. Supp. 3d at 1029 (dismissing global warming nuisance claims because “the problem at hand clearly deserves a solution best addressed by [the political] branches”); *City of New York*, 325 F. Supp. 3d at 476 (dismissing similar claims with prejudice).

<sup>15</sup> That Plaintiff’s suit includes allegations regarding ExxonMobil’s global promotion, public disclosures, and investments relevant to climate change does not alter the conclusion that federal common law provides the exclusive mechanism for resolving at least some of Plaintiff’s causes of action. *Cf. BP*, 2018 WL 1064293 at \*1 (holding suits governed by federal common law even though they were “premised on the theory that—despite long-knowing that their products posed severe risks to the global climate—defendants produced fossil fuels while simultaneously engaging in large scale advertising and public relations campaigns to discredit scientific research on global warming, to downplay the risks of global warming, and to portray fossil fuels as environmentally responsible and essential to human well-being”). Although “fixated on an earlier moment in the train of industry,” Plaintiff’s causes of action regarding the promotion and sale of fossil fuels still implicate the type of transboundary pollution suit that has historically been governed by federal common law. *See id.* at \*4.

be unworkable”); *Kivalina*, 696 F.3d at 855–56; *AEP*, 564 U.S. at 422 (in cases like this, “borrowing the law of a particular State would be inappropriate”).

**This Action Meets the Elements of the Federal Officer Removal Statute (“FORS”)**

23. This action can be removed under FORS because federal officers directed ExxonMobil to engage in activities that constitute the crux of Plaintiff’s Complaint—i.e., the extraction and production of fossil fuels.

24. FORS allows removal of an action against “any officer (or any person acting under that officer) of the United States or of any agency thereof . . . for or relating to any act under color of such office.” 28 U.S.C. § 1442(a)(1). Removal under this statute is appropriate when “(1) [a] defendant can demonstrate it was acting under the direction of a federal officer or agency; (2) the defendant has a colorable defense under federal law; and (3) a causal connection exists between the defendant’s acts or omissions and the claims asserted by the plaintiff.” *O’Connell v. Foster Wheeler Energy Corp.*, 544 F. Supp. 2d 51, 53 (D. Mass. 2008). These elements are met here.<sup>16</sup>

25. First, there is a causal nexus between ExxonMobil’s alleged improper conduct, undertaken in part at the direction of federal officials, and Plaintiff’s causes of action. For many years, ExxonMobil has explored for, developed, and produced oil and gas on federal lands pursuant to leases issued by the federal government. *See, e.g.*, Ex. 11. These leases require ExxonMobil to perform activities that, “in the absence of a contract with a private firm, the Government itself would have had to perform.” *Watson v. Philip Morris Cos.*, 551 U.S. 142, 154 (2007).

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<sup>16</sup> ExxonMobil, a private corporation, *see* Compl. ¶¶ 46-47, is a “person” within the meaning of the statute. *See O’Connell*, 544 F. Supp. 2d at 58 (removal by private corporation “satisfied all three elements of the statute”).

26. As explained above, Plaintiff’s causes of action are aimed at stopping or reducing ExxonMobil’s production and sale of fossil fuels. But that activity was precisely what federal leases required ExxonMobil to do. These federal leases contain many provisions that demonstrate ExxonMobil acted at the direction of a federal officer when it undertook actions that, assuming the truth of Plaintiff’s allegations, “are a major cause of global climate change,” and will have “serious, life-threatening, and costly impacts on the people of the Commonwealth.” *See* Compl. ¶¶ 54-69, 222–52. For example, these leases require ExxonMobil to “develop[] . . . the leased area” diligently, including carrying out exploration, development, and production activities approved by Interior Department officials for the express purpose of “maximiz[ing] the ultimate recovery of hydrocarbons from the leased area.” Ex. 12 § 10; *see also* Ex. 11 § 10 (instructing that “[a]fter due notice in writing, the Lessee **shall** drill such wells and produce at such rates as the Lessor may require”) (emphasis added). Drilling on these leased lands takes place “in accordance with an approved exploration plan (EP), development and production plan (DPP) or development operations coordination document (DOCD) [as well as] approval conditions”—all of which must undergo extensive review and approval by federal authorities. Ex. 12 §§ 9, 10.

27. Federal government control of leased oil and gas continues even after it is removed from the ground—the government has a right of first refusal to purchase all materials “[i]n time of war or when the President of the United States shall so prescribe,” Ex. 12 § 15(d), Ex. 11 § 15(d), and mandates that 20% of all crude and natural gas produced pursuant to drilling leases be offered “to small or independent refiners,” Ex. 12 § 15(c); Ex. 11 § 15(c).

28. When complying with such restrictions, obligations, and directives, ExxonMobil is likewise following the direction of the federal government. *Cf. Camacho v. Autoridad de Telefonos de Puerto Rico*, 868 F.2d 482, 486 (1st Cir. 1989) (removal proper when the defendants

“were acting under express orders, control and directions of federal officers”) (internal quotations omitted).

29. Moreover, ExxonMobil has several meritorious federal defenses to Plaintiff’s lawsuit, including preemption, *see id.* at 487, and that Plaintiff’s causes of action are barred by the Commerce Clause, Due Process Clause, First Amendment, and foreign affairs doctrine. Each of these colorable federal defenses is sufficient to satisfy Section 1442. *See Willingham v. Morgan*, 395 U.S. 402, 407 (1969) (a defendant invoking section 1442(a)(1) “need not win his case before he can have it removed”). Accordingly, FORS allows removal of this action.

**This Action Satisfies the Class Action Fairness Act’s (“CAFA”) Requirements**

30. Plaintiff’s lawsuit is also removable under CAFA, *see* 28 U.S.C. §§ 1332(d) and 1453(b), because Plaintiff is pursuing the equivalent of a class action and CAFA’s statutory requirements are satisfied. *See* 28 U.S.C. § 1332(d) (CAFA jurisdiction measured upon removal).

31. CAFA allows removal of any “class action” where minimal diversity exists, at least 100 class members are represented, and “the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interests and costs.” 28 U.S.C. § 1332(d)(1), (2), (5); *see also* 28 U.S.C. § 1453(b). The statute defines “class action” as “any civil action filed under rule 23 of the Federal Rules of Civil Procedure or similar State statute or rule of judicial procedure authorizing an action to be brought by 1 or more representative persons as a class action.” *Id.* § 1332(d)(1)(B). According to CAFA’s legislative history, “the definition of ‘class action’ is to be interpreted liberally. Its application should not be confined solely to lawsuits that are labelled ‘class actions’ . . . . Generally speaking, lawsuits that resemble a purported class action should be considered class actions for the purpose of applying these provisions.” S. Rep. No. 109-14, at 35 (2005), *as reprinted in* 2005 U.S.C.C.A.N. 3, 34.

32. Although not labeled as such, this lawsuit is “in substance a class action,” properly removable under CAFA. *Addison Automatics, Inc. v. Hartford Cas. Ins. Co.*, 731 F.3d 740, 742 (7th Cir. 2013) (holding removal was proper irrespective of the plaintiff’s “artificial attempt to disguise the true nature of the suit”); *see also Addison Automatics, Inc. v. Netherlands Ins. Co.*, 2015 WL 461958, at \*3 (D. Mass. Feb. 4, 2015) (noting that factually similar *Hartford* case should have put the defendants on notice of removability even though the plaintiff “did not specifically mention Rule 23 or file the complaint as a class action”).

33. Massachusetts courts recognize that “[a]n action brought by the Attorney General under [Chapter 93A] § 4, is comparable to a class action.” *Commonwealth v. Chatham Dev. Co.*, 49 Mass. App. Ct. 525, 528-29 (2000) (citing MAAG’s “power to bring suit not only on behalf of those persons specifically injured but also on behalf of those similarly situated”); *Commonwealth v. DeCotis*, 366 Mass. 234, 245 (1974) (“The very purpose of the Attorney General’s involvement is to provide an efficient, inexpensive, prompt and broad solution to the alleged wrong” similar to the available relief in a consumer class action). Moreover, Plaintiff seeks to address purported wrongs in its representative capacity on behalf of Massachusetts consumers and investors and “in the public interest.” *See, e.g.*, Compl. ¶¶ 51, 791, 804, 818, 828; *see also id.* ¶¶ 1-2 (seeking to “hold ExxonMobil accountable for misleading the state’s investors and consumers”); *id.* § VII.A. (seeking determination that ExxonMobil has “commit[ed] deceptive practices against Massachusetts investors and consumers”).

34. CAFA’s purpose is best served by litigating this case in federal court, as the statute was intended “to strongly favor the exercise of federal diversity jurisdiction over class actions with interstate ramifications.” S. Rep. No. 109-14, at 35; *see also Dart Cherokee Basin Operating Co. v. Owens*, 574 U.S. 81, 89 (2014) (“CAFA’s primary objective is to ensur[e] Federal court

consideration of interstate cases of national importance.”) (citation omitted); *Standard Fire Ins. Co. v. Knowles*, 568 U.S. 588, 595 (2013) (same). As described more fully above, Plaintiff’s lawsuit implicates issues of national and international importance—it belongs in federal court.

35. Minimal diversity is present here. *See* 28 U.S.C. § 1332(d)(2)(A) (requiring that “any member of a class of plaintiffs” be “a citizen of a State different from any defendant”). On information and belief, Plaintiff seeks to represent and seeks relief on behalf of citizens of Massachusetts. *See e.g.*, Compl. ¶¶ 1-2. ExxonMobil is not a citizen of Massachusetts. *See* 28 U.S.C. § 1332(c)(1) (citizenship derived from states of incorporation and principal place of business); *see also* Compl. ¶ 46.

36. The number of represented plaintiffs necessary for CAFA jurisdiction is present here because Plaintiff seeks relief on behalf of, among others, “Massachusetts-based institutional investors and investment managers,” Compl. ¶ 269, and “Massachusetts consumers” to whom ExxonMobil has sold and marketed its fossil fuel products, *see id.* ¶ 600. On information and belief, this number exceeds 100 purported class members.

37. Although the Complaint does not allege a specific amount in controversy, Plaintiff’s allegations demonstrate that CAFA’s \$5,000,000 threshold is satisfied. *See* 28 U.S.C. § 1332(d)(2). In noticing removal, a defendant need only include a “plausible allegation that the amount in controversy exceeds the jurisdictional threshold.” *Dart Cherokee*, 574 U.S. at 89. Here, Plaintiff alleges that ExxonMobil is liable under Chapter 93A for a sweeping pattern of deception in countless communications with investors and consumers over the last decade, and that Plaintiff is entitled to up to \$5,000 for each purportedly misleading statement. *See, e.g.*, Compl. ¶¶ 1, 2, 17, 29, 34, 36, 642, 647, 687, VIII. Request for Relief. Although those allegations alone establish that the amount in controversy plausibly exceeds \$5,000,000, Plaintiff also seeks “comprehensive

injunctive relief,” which could independently satisfy the jurisdictional threshold. *See Richard C. Young & Co. v. Leventhal*, 389 F.3d 1, 3 (1st Cir. 2004) (“Courts have repeatedly held that the value of the matter in controversy is measured . . . by the judgment’s pecuniary consequences to those involved in the litigation.”). Additionally, Plaintiff requests compensation for the costs of its investigation and attorney’s fees under Chapter 93A. *See Romulus v. CVS Pharmacy, Inc.*, 770 F.3d 67, 81 n.15 (1st Cir. 2014) (attorney’s fees included in amount in controversy where explicitly allowed by statute).

### **COMPLIANCE WITH OTHER REMOVAL REQUIREMENTS**

38. Based on the foregoing, this Court has original jurisdiction of this action and removal is proper. The United States District Court for the District of Massachusetts is the appropriate venue for removal under 28 U.S.C. §1441(a) because it is the federal judicial district encompassing the Superior Court of Massachusetts (Suffolk County), where this suit was originally filed.

39. A copy of all process, pleadings, and orders received by ExxonMobil is attached as Exhibit 13. *See* 28 U.S.C. § 1446(a). Pursuant to Local Rule 81.1(a), ExxonMobil will file within 28 days certified or attested copies of all records, proceedings, and docket entries in the state court action.

40. Pursuant to 28 U.S.C. § 1446(d), ExxonMobil will promptly file a copy of this Notice of Removal, as well as a Notice of Filing of this Notice of Removal, with the Clerk of the Superior Court of Massachusetts (Suffolk County), and serve a copy of the same on all parties. A copy of this filing (without exhibits) is attached as Exhibit 14.

41. This Notice of Removal is signed pursuant to Fed. R. Civ. P. 11. *See* 28 U.S.C. § 1446(a). ExxonMobil reserves the right to amend or supplement this Notice of Removal.

ExxonMobil also reserves all defenses and objections available under applicable law, and the filing of this Notice of Removal is subject to, and without waiver of, any such defenses or objections.

WHEREFORE, ExxonMobil respectfully gives notice that this action is hereby removed from the Suffolk County Superior Court, Commonwealth of Massachusetts, to the United States District Court for the District of Massachusetts.

DATE: November 29, 2019

Respectfully submitted,

EXXON MOBIL CORPORATION,

By its attorneys,

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above document was served upon the Attorney General's Office by e-mail and by hand on this 29th day of November 2019.

/s/ Thomas C. Frongillo

Thomas C. Frongillo

# EXHIBIT 1

**In The Matter Of:**  
*People of the State of NY v.*  
*Exxon Mobil Corporation*

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*November 7, 2019*

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1 NEW YORK STATE SUPREME COURT  
2 NEW YORK COUNTY : CIVIL TERM : PART 61

-----X

3 PEOPLE OF THE STATE OF NEW YORK, BY LETITIA  
4 JAMES, Attorney General of the State of New York,

5 Plaintiff,

6 -against-

7 EXXON MOBIL CORPORATION,

8 Defendant.

-----X

9 Index No. 452044/18

10 New York Supreme Court  
11 60 Centre Street  
12 New York, New York 10007  
13 November 7, 2019

14 B E F O R E: HON. BARRY R. OSTRAGER  
15 Supreme Court Justice

16 A P P E A R A N C E S:

17  
18 STATE OF NEW YORK OFFICE OF THE ATTORNEY GENERAL  
19 Attorneys for the Plaintiff  
20 28 Liberty Street  
21 New York, New York 10005  
22 BY: KEVIN WALLACE, ESQ., Of Counsel  
23 AND: KIM A. BERGER, ESQ., Of Counsel  
24 AND: JONATHAN C. ZWEIG, ESQ., Of Counsel  
25 AND: SAMANTHA LISKOW, ESQ., Of Counsel

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A P P E A R A N C E S: (Continued)

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Official Court Reporters

SUMMATION - ZWEIG

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1 THE COURT: All right. Mr. Zweig.

2 MR. ZWEIG: Thank you very much, your Honor. At  
3 the end of the day this case is about two things. And those  
4 two things are quite simply the elements of The Martin Act.  
5 Falsity and materiality.

6 As to falsity, the question is whether Exxon's  
7 statements and omissions had a tendency to deceive or  
8 mislead investors. And for materiality, the question is  
9 whether there is substantial likelihood that a reasonable  
10 investor would have considered the statements or omissions  
11 significant in light of the total mix of information.

12 Falsity and materiality are the only elements of  
13 liability under The Martin Act.

14 THE COURT: I don't mean to interrupt you, but  
15 there are three other claims that the Attorney General  
16 advances in its complaint. Are you going to address those  
17 claims as well?

18 MR. ZWEIG: Your Honor, for purposes of this  
19 presentation, I'll be focussing on The Martin Act.

20 THE COURT: Is that a concession that there is no  
21 common law fraud?

22 MR. ZWEIG: Yes, your Honor.

23 THE COURT: All right.

24 MR. ZWEIG: Again, your Honor, no showing of intent  
25 to defraud under The Martin Act is required. Under the law

SUMMATION - ZWEIG

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1 falsity and materiality are what we have to prove by a  
2 preponderance of the evidence, and that's what we have shown  
3 at this trial. As we explained in our opening, the evidence  
4 for those elements and the appropriateness of the relief  
5 we're seeking is actually pretty straightforward and it  
6 relies almost entirely on facts that aren't even in dispute.

7 THE COURT: Are you conceding that the second --  
8 the second and third counts of the complaint are also out of  
9 this case?

10 MR. ZWEIG: Your Honor, for purposes of this  
11 presentation, focussing on The Martin Act, the elements of  
12 Executive Law -- Executive Law 6312 overlap, but we are  
13 conceding that the -- that the common law fraud and  
14 equitable fraud claims we're not conceding those.

15 THE COURT: And what about the fraud claim?

16 MR. ZWEIG: Not advancing that at this time, your  
17 Honor.

18 THE COURT: I'm sorry?

19 MR. ZWEIG: Not advancing the actual common law  
20 fraud claim at this time, your Honor. I believe that's  
21 count four.

22 THE COURT: If you're not advancing it at this  
23 time, does that mean it's out of the case?

24 MR. ZWEIG: Yes, your Honor. I'm sorry if I worded  
25 that in a confusing way, your Honor.

SUMMATION - ZWEIG

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1 THE COURT: And the second count of the complaint,  
2 is that in the complaint? Is that in the case or out of the  
3 case?

4 MR. ZWEIG: It is, your Honor. And the Executive  
5 Law 6312 claim, the elements, as we understand, overlap with  
6 The Martin Act. So, I was using a bit of shorthand.

7 THE COURT: So, we're dealing with counts one and  
8 two of the complaint and we're stipulating that counts three  
9 and four are out of the case?

10 MR. ZWEIG: Yes, your Honor.

11 THE COURT: Okay. I didn't mean to interrupt you.

12 MR. ZWEIG: No. That's quite all right, your  
13 Honor. Let's start by briefly running through the  
14 undisputed timeline of facts. First, Exxon used two sets of  
15 carbon cost assumptions for years. Exxon spent a lot of  
16 time at trial establishing that fact, but it was never in  
17 dispute. In projecting demand for oil and gas, Exxon used  
18 costs reaching \$60 per ton in developed countries by 2030  
19 and \$80 per ton by 2040. But in projecting costs associated  
20 with its own emissions from its investments and operations,  
21 which total about 120 million tons of CO2 equivalent every  
22 year, Exxon applied much lower costs or no costs at all.  
23 And meanwhile the figures that Exxon was quoting publically  
24 were \$60 per ton in 2030 and \$80 per ton in 2040.

25 In 2010 Exxon's corporate Greenhouse Gas manager

# EXHIBIT 2

## AGs United For Clean Power Press Conference

March 29, 2016: 11:35 am – 12:32 pm

**AG Schneiderman:** Thank you, good morning. I'm New York's Attorney General, Eric Schneiderman. I thank you for joining us here today for what we believe and hope will mark a significant milestone in our collective efforts to deal with the problem of climate change and put our heads together and put our offices together to try and take the most coordinated approach yet undertaken by states to deal with this most pressing issue of our time. I want to thank my co-convenor of the conference, Vermont Attorney General, William Sorrell, who has been helping in joining us here and been instrumental in making today's events possible, and my fellow attorneys general for making the trip to New York for this announcement. Many of them had been working for years on different aspects of this problem to try and preserve our planet and reduce the carbon emissions that threaten all of the people we represent. And I'm very proud to be here today with Attorney General George Jepsen of Connecticut, Attorney General Brian Frosh of Maryland, Attorney General Maura Healey of Massachusetts, Attorney General Mark Herring of Virginia, and Attorney General Claude Walker of the U.S. Virgin Islands.

We also have staff representing other attorneys general from across the country, including: Attorney General Kamala Harris of California, Matt Denn of Delaware, Karl Racine of the District of Columbia, Lisa Madigan of Illinois, Tom Miller of Iowa, Janet Mills of Maine, Lori Swanson of Minnesota, Hector Balderas of New Mexico, Ellen Rosenblum of Oregon, Peter Kilmartin of Rhode Island and Bob Ferguson of Washington.

And finally, I want to extend my severe thanks to Vice President Al Gore for joining us. It has been almost ten years since he galvanized the world's attention on climate change with his documentary *An Inconvenient Truth*.

And, I think it's fair to say that no one in American public life either during or beyond their time in elective office has done more to elevate the debate about climate change or to expand global awareness about the urgency of the need for collective action on

\* The following transcript of the AGs United For Clean Power Press Conference, held on March 29, 2016, was prepared by counsel based on a video recording of the event, which is available at <http://www.ag.ny.gov/press-release/ag-schneiderman-former-vice-president-al-gore-and-coalitionattorneys-general-across>.

## **AGs United For Clean Power Press Conference**

**March 29, 2016: 11:35 am – 12:32 pm**

climate change than Vice President Gore. So it's truly an honor to have you here with us today.

So we've gathered here today for a conference – the first of its kind conference of attorneys general dedicated to coming up with creative ways to enforce laws being flouted by the fossil fuel industry and their allies in their short-sighted efforts to put profits above the interests of the American people and the integrity of our financial markets. This conference reflects our commitment to work together in what is really an unprecedented multi-state effort in the area of climate change. Now, we have worked together on many matters before and I am pleased to announce that many of the folks represented here were on the Amicus Brief we submitted to the United States Supreme Court in the *Friedrichs v. California Teachers Association* case. We just got the ruling that there was a four-four split so that the American labor movement survives to fight another day. And thanks, thanks to all for that effort and collaboration. It shows what we can do if we work together. And today we are here spending a day to ensure that this most important issue facing all of us, the future of our planet, is addressed by a collective of states working as creatively, collaboratively and aggressively as possible.

The group here was really formed when some of us came together to defend the EPA's Clean Power Plan, the new rules on greenhouse gases. And today also marks the day that our coalition is filing our brief in the Court of Appeals for the District of Columbia. In that important matter we were defending the EPA's rules. There is a coalition of other states on the other side trying to strike down the rules, but the group that started out in that matter together was 18 states and the District of Columbia. We call ourselves The Green 19, but now that Attorney General Walker of the Virgin Islands has joined us our rhyme scheme is blown. We can't be called The Green 19, so now we're The Green 20. We'll come up with a better name at some point.

But, ladies and gentlemen, we are here for a very simple reason. We have heard the scientists. We know what's happening to the planet. There is no dispute but there is confusion, and confusion sowed by those with an interest in profiting from the confusion and creating misperceptions in the eyes of the American public that really need to be cleared up. The U.S. Defense Department, no radical agency, recently called climate change an urgent and

## **AGs United For Clean Power Press Conference**

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growing threat to our national security. We know that last month, February, was the furthest above normal for any month in history since 1880 when they started keeping meteorological records. The facts are evident. This is not a problem ten years or twenty years in the future. [There are] people in New York who saw what happened with the additional storm surge with Super Storm Sandy. We know the water level in New York Harbor is almost a foot higher than it was. The New York State Department of Environmental Conservation, not some radical agency, predicts that if we continue at this pace, we'll have another 1.5 feet of water in New York Harbor. It'll go up by that much in 2050. So today, in the face of the gridlock in Washington, we are assembling a group of state actors to send the message that we are prepared to step into this breach. And one thing we hope all reasonable people can agree on is that every fossil fuel company has a responsibility to be honest with its investors and with the public about the financial and market risks posed by climate change. These are cornerstones of our securities and consumer protection laws.

My office reached a settlement last year based on the enforcement of New York securities laws with Peabody Energy. And they agreed to rewrite their financials because they had been misleading investors and the public about the threat to their own business plan and about the fact that they had very detailed analysis telling them how the price of coal would be going down in the face of actions taken by governments around the world. But they were hiding it from their investors. So they agreed to revise all of their filings with the SEC. And the same week we announced that, we announced that we had served a subpoena on ExxonMobil pursuing that and other theories relating to consumer and securities fraud. So we know, because of what's already out there in the public, that there are companies using the best climate science. They are using the best climate models so that when they spend shareholder dollars to raise their oil rigs, which they are doing, they know how fast the sea level is rising. Then they are drilling in places in the Arctic where they couldn't drill 20 years ago because of the ice sheets. They know how fast the ice sheets are receding. And yet they have told the public for years that there were no "competent models," was the specific term used by an Exxon executive not so long ago, no competent models to project climate patterns, including those in the Arctic. And we know that they paid millions of dollars to support organizations that put out propaganda denying that we can predict or measure the effects of

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fossil fuel on our climate, or even denying that climate change was happening.

There have been those who have raised the question: aren't you interfering with people's First Amendment rights? The First Amendment, ladies and gentlemen, does not give you the right to commit fraud. And we are law enforcement officers, all of us do work, every attorney general does work on fraud cases. And we are pursuing this as we would any other fraud matter. You have to tell the truth. You can't make misrepresentations of the kinds we've seen here.

And the scope of the problem we're facing, the size of the corporate entities and their alliances and trade associations and other groups is massive and it requires a multi-state effort. So I am very honored that my colleagues are here today assembling with us. We know that in Washington there are good people who want to do the right thing on climate change but everyone from President Obama on down is under a relentless assault from well-funded, highly aggressive and morally vacant forces that are trying to block every step by the federal government to take meaningful action. So today, we're sending a message that, at least some of us – actually a lot of us – in state government are prepared to step into this battle with an unprecedented level of commitment and coordination.

And I now want to turn it over to my great colleague, the co-convenor of this conference, Vermont Attorney General William Sorrell.

**AG Sorrell:**

I am pleased that the small state of Vermont joins with the big state of New York and are working together to make this gathering today a reality. Truth is that states, large and small, have critical roles to play in addressing environmental quality issues. General Schneiderman has mentioned our filing today in the D.C. Circuit on the Clean Power Plan case. Going back some time, many of the states represented here joined with the federal government suing American Electric Power Company, the company operating several coal-fired electric plants in the Midwest and largely responsible for our acid rain and other air quality issues in the eastern part of the United States, ultimately resulting in what I believe to date is the largest settlement in an environmental case in our country's history. With help from a number of these states, we successfully litigated Vermont's adoption of the so-called California standard

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for auto emissions in federal court in Vermont, now the standard in the country. And right down to the present day, virtually all of the states represented today are involved in looking at the alleged actions by Volkswagen and the issues relating to emissions from tens of thousands of their diesel automobiles.

But today we're talking about climate change which I don't think there's any doubt, at least in our ranks, is the environmental issue of our times. And in order for us to effectively address this issue, it's going to take literally millions of decisions and actions by countries, by states, by communities and by individuals. And, just very briefly, Vermont is stepping up and doing its part. Our legislature has set goals of 75% reduction – looking from a 1990 base line – a 75% reduction in greenhouse gas emissions by 2050. Similarly, our electric utilities have a goal of 75% use of renewable energy sources by 2032. So, we've been doing our part. Our presence here today is to pledge to continue to do our part. I'm mindful of the fact that I'm between you and the real rock star on this issue, and so I'm going to turn it back to General Schneiderman to introduce the next speaker.

**AG Schneiderman:** Thank you. Thank you. I'm not really a rock star.

[Laughter]

Thank you Bill. It's always a pleasure to have someone here from a state whose U.S. senator is from Brooklyn.

[Laughter]

And doing pretty well for himself. So, Vice President Gore has a very busy schedule. He has been traveling internationally, raising the alarm but also training climate change activists. He rearranged his schedule so he could be here with us today to meet with my colleagues and I. And there is no one who has done more for this cause, and it is a great pleasure to have him standing shoulder to shoulder with us as we embark on this new round in what we hope will be the beginning of the end of our addiction to fossil fuel and our degradation of the planet. Vice President Al Gore.

**VP Gore:** Thank you very much, Eric. Thank you. Thank you very much.

[Applause]

## **AGs United For Clean Power Press Conference**

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Thank you very much, Attorney General Schneiderman. It really and truly is an honor for me to join you and your colleagues here, Bill Sorrell of Vermont, Maura Healey of Massachusetts, Brian Frosh of Maryland, Mark Herring of Virginia, George Jepsen of [Connecticut] and Claude Walker from the U.S. Virgin Islands, and the ten (let's see 1, 2, 3, 4, 5) how many other – ten other states . . . eleven other state attorneys general offices that were represented in the meetings that took place earlier, prior to this press conference.

I really believe that years from now this convening by Attorney General Eric Schneiderman and his colleagues here today may well be looked back upon as a real turning point in the effort to hold to account those commercial interests that have been – according to the best available evidence – deceiving the American people, communicating in a fraudulent way, both about the reality of the climate crisis and the dangers it poses to all of us. And committing fraud in their communications about the viability of renewable energy and efficiency and energy storage that together are posing this great competitive challenge to the long reliance on carbon-based fuels. So, I congratulate you, Attorney General, and all of you, and to those attorneys general who were so impressively represented in the meetings here. This is really, really important.

I am a fan of what President Obama has been doing, particularly in his second term on the climate crisis. But it's important to recognize that in the federal system, the Congress has been sharply constraining the ability of the executive branch to fully perform its obligations under the Constitution to protect the American people against the kind of fraud that the evidence suggests is being committed by several of the fossil fuel companies, electric utilities, burning coal, and the like. So what these attorneys general are doing is exceptionally important. I remember very well – and I'm not going to dwell on this analogy – but I remember very well from my days in the House and Senate and the White House the long struggle against the fraudulent activities of the tobacco companies trying to keep Americans addicted to the deadly habit of smoking cigarettes and committing fraud to try to constantly hook each new generation of children to replenish their stock of customers who were dying off from smoking-related diseases. And it was a combined effort of the executive branch, and I'm proud that the Clinton-Gore administration played a role in that, but it was a combined effort in which the state attorneys general

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played the crucial role in securing an historic victory for public health. From the time the tobacco companies were first found out, as evidenced by the historic attorney generals' report of 1964, it took 40 years for them to be held to account under the law. We do not have 40 years to continue suffering the consequences of the fraud allegedly being committed by the fossil fuel companies where climate change is concerned.

In brief, there are only three questions left to be answered about the climate crisis. The first one is: Must we change, do we really have to change? We rely on fossil fuels for more than 80% of all the energy our world uses. In burning it we've reduced poverty and raised standards of living and built this elaborate global civilization, and it looks like it'll be hard to change. So naturally, people wonder: Do we really have to change? The scientific community has been all but unanimous for a long time now. But now mother nature and the laws of physics – harder to ignore than scientists – are making it abundantly clear that we have to change. We're putting 110 million tons of man-made heat trapping global warming pollution into the thin shell of atmosphere surrounding our planet every day, as if it's an open sewer. And the cumulative amount of that man-made global warming pollution now traps as much extra heat energy in the earth's system as would be released by 400,000 Hiroshima-class atomic bombs exploding every 24 hours on the surface of our planet.

It's a big planet, but that's a lot of energy. And it is the reason why temperatures are breaking records almost every year now. 2015 was the hottest year measured since instruments had been used to measure temperature. 2014 was the second hottest. 14 of the 15 hottest have been in the last 15 years. As the Attorney General mentioned, February continues the trend by breaking all previous records – the hottest in 1,632 months ever measured. Last December 29<sup>th</sup>, the same unnatural global warming fuel storm system that created record floods in the Midwest went on up to the Arctic and on December 29<sup>th</sup>, smack in the middle of the polar winter night at the North Pole, temperatures were driven up 50 degrees above the freezing point. So the North Pole started thawing in the middle of the winter night. Yesterday the announcement came that it's the smallest winter extent of ice ever measured in the Arctic.

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Ninety-three percent of the extra heat goes into the oceans of the world, and that has consequences. When Super Storm Sandy headed across the Atlantic toward this city, it crossed areas of the Atlantic that were nine degrees Fahrenheit warmer than normal and that's what made that storm so devastating. The sea level had already come up because of the ice melting, principally off Greenland and Antarctica. And as the Attorney General mentioned, that's a process now accelerating. But these ocean-based storms are breaking records now. I just came from the Philippines where Super Typhoon Haiyon created 4 million homeless people when it crossed much warmer waters of the Pacific. By the way, it was a long plane flight to get here and I happened to get, just before we took off, the 200-page brief that you all filed in support of the Clean Power Plan. Really excellent work. Footnotes took up a lot of those 200 pages so I'm not claiming to [have] read all 200 of them.

The same extra heat in the oceans is disrupting the water cycle. We all learned in school that the water vapor comes off the oceans and falls as rain or snow over the land and then rushes back to the ocean. That natural life-giving process is being massively disrupted because the warmer oceans put a lot more water vapor up there. And when storm conditions present themselves they, these storms will reach out thousands of kilometers to funnel all that extra humidity and water vapor into these massive record-breaking downpours. And occasionally it creates a snowpocalypse or snowmageddon but most often, record-breaking floods. We've had seven once-in-a-thousand-year floods in the last ten years in the U.S. Just last week in Louisiana and Arkansas, two feet of rain in four days coming again with what they call the Maya Express off the oceans. And the same extra heat that's creating these record-breaking floods also pull the soil moisture out of the land and create these longer and deeper droughts all around the world on every continent.

Every night on the news now it's like a nature hike through the Book of Revelation. And we're seeing tropical diseases moving to higher latitudes – the Zika virus. Of course the transportation revolution has a lot to do with the spread of Zika and Dengue Fever and Chikungunya and diseases I've never heard of when I was growing up and maybe, probably most of you never did either. But now, they're moving and taking root in the United States. Puerto Rico is part of the United States, by the way – not a state,

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but part of our nation. Fifty percent of the people in Puerto Rico are estimated to get the Zika virus this year. By next year, eighty percent. When people who are part of the U.S. territory, when women are advised not to get pregnant, that's something new that ought to capture our attention. And in large areas of Central America and South America, women are advised now not to get pregnant for two years until they try to get this brand new viral disease under control.

The list of the consequences continues, and I'm not going to go through it all, but the answer to that first question: "Do we have to change?" is clearly now to any reasonable thinking person: "yes, we have to change." Now the second question is: "Can we change?" And for quite a few years, I will confess to you that, when I answered that question yes, it was based on the projections of scientists and technologists who said, just wait. We're seeing these exponential curves just begin, solar is going to win, wind power is going to get way cheaper, batteries are going to have their day, we're going to see much better efficiency. Well now we're seeing these exponential curves really shoot up dramatically. Almost 75% of all the new investment in the U.S. in new generating capacity last year was in solar and wind – more than half worldwide. We're seeing coal companies go bankrupt on a regular basis now. Australia is the biggest coal exporter in the world. They've just, just the analysis there, they're not going to build any more coal plants because solar and wind are so cheap. And we're seeing this happen all around the world. But, there is an effort in the U.S. to slow this down and to bring it to a halt because part of the group that, again according to the best available evidence, has been committing fraud in trying to convince people that the climate crisis is not real, are now trying to convince people that renewable energy is not a viable option. And, worse than that, they're using their combined political and lobbying efforts to put taxes on solar panels and jigger with the laws to require that installers have to know the serial number of every single part that they're using to put on a rooftop of somebody's house, and a whole series of other phony requirements, unneeded requirements, that are simply for the purpose of trying to slow down this renewable revolution. In the opinion of many who have looked at this pattern of misbehavior and what certainly looks like fraud, they are violating the law. If the Congress would actually work – our democracy's been hacked, and that's another story, not the subject of this press conference – but if the Congress really would

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allow the executive branch of the federal government to work, then maybe this would be taken care of at the federal level. But these brave men and women, who are the attorneys general of the states represented in this historic coalition, are doing their job and – just as many of them did in the tobacco example – they are now giving us real hope that the answer to that third question: “Will we change?” is going to be “yes.” Because those who are using unfair and illegal means to try to prevent the change are likely now, finally, at long last, to be held to account. And that will remove the last barriers to allow the American people to move forward and to redeem the promise of our president and our country in the historic meeting in Paris last December where the United States led the global coalition to form the first global agreement that is truly comprehensive. If the United States were to falter and stop leading the way, then there would be no other leader for the global effort to solve this crisis. By taking the action these attorneys general are taking today, it is the best, most hopeful step I can remember in a long time – that we will make the changes that are necessary.

So, I’ll conclude my part in this by, once again, saying congratulations to these public servants for the historic step they are taking today. And on behalf of many people, who I think would say it’s alright for me to speak for them, I’d like to say thank you.

**AG Schneiderman:** Thank you very much, and now my other colleagues are going to say a few words. For whatever reason, I’ve gotten into the habit, since we always seem to do this, we do this in alphabetical order by state, which I learned when I first became an AG but I guess we’ll stick with it. Connecticut Attorney General George Jepsen who was our partner in the *Friedrichs* case and stood with me when we announced that we were filing in that case. We’ve done a lot of good work together. Attorney General Jepsen.

**AG Jepsen:** I’d like to thank Eric and Bill for their leadership on this important issue and in convening this conference and to recognize the man who has done more to make global warming an international issue than anybody on the entire planet – Vice President Al Gore. In the backdrop, in the backdrop of a very dysfunctional Congress, state attorneys general, frequently on a bipartisan, basis have shown that we can stand up and take action where others have not. The Vice President referenced the tobacco litigation, which was before my time but hugely important in setting the tone and the structures by

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which we do work together. Since becoming attorney general in 2011, we've taken on the big banks and their mortgage servicing issues, a \$25 billion settlement. We've taken on Wall Street's Standard & Poor's for mislabeling mortgage-backed securities – as a 20-state coalition – mislabeling mortgage-backed securities as AAA when in fact they were junk. Working together on data privacy issues, and now it's time that we stand up once again and take on what is the most important issue of our generation. We owe it to our children, our children's children, to step up and do the right thing, to work together and I'm committed to it. Thank you.

**AG Schneiderman:** Thank you. And now a relatively new colleague but someone who has brought incredible energy to this fight and who we look forward to working with on this and other matters for a long time to come. Maryland Attorney General Brian Frosh.

**AG Frosh:** Well, first thank you again to General Schneiderman and General Sorrell for putting together this group and it's an honor to be with you, Mr. Vice President. Thank you so much for your leadership. I'm afraid we may have reached that point in the press conference where everything that needs to be said has been said, but everyone who needs to say it hasn't said it yet.

[Laughter]

So, I will try to be brief. Climate change is an existential threat to everybody on the planet. Maryland is exceptionally vulnerable to it. The Chesapeake Bay bisects our state. It defines us geographically, culturally, historically. We have as much tidal shoreline as states as large as California. We have islands in the Chesapeake Bay that are disappearing. We have our capital, Annapolis, which is also the nuisance flood capital of the United States. It's under water way, way, way too often. It's extraordinarily important that we address the problem of climate change. I'm grateful to General Sorrell and General Schneiderman for putting together this coalition of the willing. I'm proud to be a part of it in addressing and supporting the President's Clean Power Plan. What we want from ExxonMobil and Peabody and ALEC is very simple. We want them to tell the truth. We want them to tell the truth so that we can get down to the business of stopping climate change and of healing the world. I think that as attorneys general, as the Vice President said, we have a unique ability to help bring that about and I'm very glad to be part of it.

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**AG Schneiderman:** Thank you. And, another great colleague, who has done extraordinary work before and since becoming attorney general working with our office on incredibly important civil rights issues, financial fraud issues, Massachusetts Attorney General Maura Healey.

**AG Healey:** Thank you very much General Schneiderman. Thank you General Schneiderman and General Sorrell for your leadership on this issue. It's an honor for me to be able to stand here today with you, with our colleagues and certainly with the Vice President who, today, I think, put most eloquently just how important this is, this commitment that we make. Thank you for your leadership. Thank you for your continuing education. Thank you for your inspiration and your affirmation.

You know, as attorneys general, we have a lot on our plates: addressing the epidemics of opiate abuse, gun violence, protecting the economic security and well-being of families across this country; all of these issues are so important. But make no mistake about it, in my view, there's nothing we need to worry about more than climate change. It's incredibly serious when you think about the human and the economic consequences and indeed the fact that this threatens the very existence of our planet. Nothing is more important. Not only must we act, we have a moral obligation to act. That is why we are here today.

The science – we do believe in science; we're lawyers, we believe in facts, we believe in information, and as was said, this is about facts and information and transparency. We know from the science and we know from experience the very real consequences of our failure to address this issue. Climate change is and has been for many years a matter of extreme urgency, but, unfortunately, it is only recently that this problem has begun to be met with equally urgent action. Part of the problem has been one of public perception, and it appears, certainly, that certain companies, certain industries, may not have told the whole story, leading many to doubt whether climate change is real and to misunderstand and misapprehend the catastrophic nature of its impacts. Fossil fuel companies that deceived investors and consumers about the dangers of climate change should be, must be, held accountable. That's why I, too, have joined in investigating the practices of ExxonMobil. We can all see today the troubling disconnect between what Exxon knew, what industry folks knew, and what

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the company and industry chose to share with investors and with the American public.

We are here before you, all committed to combating climate change and to holding accountable those who have misled the public. The states represented here today have long been working hard to sound the alarm, to put smart policies in place, to speed our transition to a clean energy future, and to stop power plants from emitting millions of tons of dangerous global warming pollution into our air. I will tell you, in Massachusetts that's been a very good thing. Our economy has grown while we've reduced greenhouse gas emissions and boosted clean power and efficiency. We're home to a state with an \$11 billion clean energy industry that employs nearly 100,000 people. Last year clean energy accounted for 15% of New England's power production. Our energy efficiency programs have delivered \$12.5 billion in benefits since 2008 and are expected to provide another \$8 billion over the next three years. For the past five years, Massachusetts has also been ranked number one in the country for energy efficiency. So we know what's possible. We know what progress looks like. But none of us can do it alone. That's why we're here today. We have much work to do, but when we act and we act together, we know we can accomplish much. By quick, aggressive action, educating the public, holding accountable those who have needed to be held accountable for far too long, I know we will do what we need to do to address climate change and to work for a better future. So, I thank AG Schneiderman for gathering us here today and for my fellow attorneys general in their continued effort in this important fight. Thank you.

**AG Schneiderman:** Thank you. And now another great colleague who speaks as eloquently as anyone I've heard about what's happening to his state, and a true hero of standing up in a place where maybe it's not quite as politically easy as it is to do it in Manhattan but someone who is a true aggressive progressive and a great attorney general, Mark Herring from Virginia.

**AG Herring:** Thank you, Eric. Good afternoon. In Virginia, climate change isn't some theoretical issue. It's real and we are already dealing with its consequences. Hampton Roads, which is a coastal region in Virginia, is our second most populated region, our second biggest economy and the country's second most vulnerable area as sea levels rise. The area has the tenth most valuable assets in the

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world threatened by sea level rise. In the last 85 years the relative sea level in Hampton Roads has risen 14 inches – that’s well over a foot – in just the last century.

Some projections say that we can expect an additional two to five feet of relative sea level rise by the end of this century – and that would literally change the face of our state. It would cripple our economy and it could threaten our national security as Norfolk Naval, the world’s largest naval base, is impacted. Nuisance flooding that has increased in frequency will become the norm. They call it blue sky flooding. Storm surges from tropical systems will threaten more homes, businesses and residents. And even away from the coast, Virginians are expected to feel the impact of climate change as severe weather becomes more dangerous and frequent. Just a few weeks ago, we had a highly unusual February outbreak of tornadoes in the Commonwealth that was very damaging and unfortunately deadly.

Farming and forestry is our number one industry in Virginia. It’s a \$70 billion industry in Virginia that supports around 400,000 jobs and it’s going to get more difficult and expensive. And, the Commonwealth of Virginia local governments and the navy are already spending millions to build more resilient infrastructure, with millions and millions more on the horizon. To replace just one pier at Norfolk Naval is about \$35 to \$40 million, and there are 14 piers, so that would be around a half billion right there.

As a Commonwealth and a nation, we can’t put our heads in the sand. We must act and that is what today is about. I am proud to have Virginia included in this first of its kind coalition which recognizes the reality and the pressing threat of man-made climate change and sea level rise. This group is already standing together to defend the Clean Power Plan – an ambitious and achievable plan – to enjoy the health, economic and environmental benefits of cleaner air and cleaner energy. But there may be other opportunities and that’s why I have come all the way from Virginia. I am looking forward to exploring ideas and opportunities, to partner and collaborate, if there are enforcement actions we need to be taking, if there are legal cases we need to be involved in, if there are statutory or regulatory barriers to growing our clean energy sectors and, ultimately, I want to work together with my colleagues here and back in Virginia to help combat climate change and to shape a more sustainable future.

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And for any folks who would say the climate change is some sort of made-up global conspiracy, that we're wasting our time, then come to Hampton Roads. Come to Norfolk and take a look for yourselves. Mayor Fraim would love to have you.

**AG Schneiderman:** Thank you. And our closer, another great colleague who has traveled far but comes with tremendous energy to this cause and is an inspiration to us all, U.S. Virgin Islands Attorney General Claude Walker.

**AG Walker:** Thank you. Thank you, General Schneiderman, Vice President Gore. One of my heroes, I must say. Thank you. I've come far to New York to be a part of this because in the Virgin Islands and Puerto Rico, we experience the effects of global warming. We see an increase in coral bleaching, we have seaweeds, proliferation of seaweeds in the water, all due to global warming. We have tourism as our main industry, and one of the concerns that we have is that tourists will begin to see this as an issue and not visit our shores. But also, residents of the Virgin Islands are starting to make decisions about whether to live in the Virgin Islands – people who have lived there for generations, their families have lived there for generations. We have a hurricane season that starts in June and it goes until November. And it's incredibly destructive to have to go through hurricanes, tropical storms annually. So people make a decision: Do I want to put up with this, with the power lines coming down, buildings being toppled, having to rebuild annually? The strengths of the storms have increased over the years. Tropical storms now transform into hurricanes. When initially they were viewed as tropical storms but as they get close to the land, the strength increases. So we're starting to see people make decisions about whether to stay in a particular place, whether to move to higher ground – which is what some have said – as you experience flooding, as you experience these strong storms. So we have a strong stake in this, in making sure that we address this issue.

We have launched an investigation into a company that we believe must provide us with information about what they knew about climate change and when they knew it. And we'll make our decision about what action to take. But, to us, it's not an environmental issue as much as it is about survival, as Vice President Gore has stated. We try as attorneys general to build a community, a safe community for all. But what good is that if

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annually everything is destroyed and people begin to say: Why am I living here?

So we're here today to support this cause and we'll continue. It could be David and Goliath, the Virgin Islands against a huge corporation, but we will not stop until we get to the bottom of this and make it clear to our residents as well as the American people that we have to do something transformational. We cannot continue to rely on fossil fuel. Vice President Gore has made that clear. We have to look at renewable energy. That's the only solution. And it's troubling that as the polar caps melt, you have companies that are looking at that as an opportunity to go and drill, to go and get more oil. Why? How selfish can you be? Your product is destroying this earth and your strategy is, let's get to the polar caps first so we can get more oil to do what? To destroy the planet further? And we have documents showing that. So this is very troubling to us and we will continue our fight. Thank you.

**AG Schneiderman:** Thank you and Eric. And I do want to note, scripture reports David was not alone in fact, Brother Walker. Eric and Matt will take on-topic questions.

**Moderator:** Please just say your name and publication.

**Press Person:** John [inaudible] with *The New York Times*. I count two people who have actually said that they're launching new investigations. I'm wondering if we could go through the list and see who's actually in and who is not in yet.

**AG Schneiderman:** Well, I know that prior to today, it was, and not every investigation gets announced at the outset as you know, but it had already been announced that New York and California had begun investigations with those stories. I think Maura just indicated a Massachusetts investigation and the Virgin Islands has, and we're meeting with our colleagues to go over a variety of things. And the meeting goes on into the afternoon. So, I am not sure exactly where everyone is. Different states have – it's very important to understand – different states have different statutes, different jurisdictions. Some can proceed under consumer protection law, some securities fraud laws, there are other issues related to defending taxpayers and pension funds. So there are a variety of theories that we're talking about and collaborating and to the degree to which we can cooperate, we share a common interest, and we will. But, one problem for journalists with investigations

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is, part of doing an investigation is you usually don't talk a lot about what you're doing after you start it or even as you're preparing to start it.

**Press Person:** Shawn McCoy with *Inside Sources*. A *Bloomberg Review* editorial noted that the Exxon investigation is preposterous and a dangerous affirmation of power. *The New York Times* has pointed out that Exxon has published research that lines up with mainstream climatology and therefore there's not a comparison to Big Tobacco. So is this a publicity stunt? Is the investigation a publicity stunt?

**AG Schneiderman:** No. It's certainly not a publicity stunt. I think the charges that have been thrown around – look, we know for many decades that there has been an effort to influence reporting in the media and public perception about this. It should come as no surprise to anyone that that effort will only accelerate and become more aggressive as public opinion shifts further in the direction of people understanding the imminent threat of climate change and other government actors, like the folks represented here step up to the challenge. The specific reaction to our particular subpoena was that the public reports that had come out, Exxon said were cherry picked documents and took things out of context. We believe they should welcome our investigation because, unlike journalists, we will get every document and we will be able to put them in context. So I'm sure that they'll be pleased that we're going to get everything out there and see what they knew, when they knew it, what they said and what they might have said.

**Press Person:** David [inaudible] with *The Nation*. Question for General Schneiderman. What do you hope to accomplish with your Exxon investigation? I'm thinking with reference to Peabody where really there was some disclosure requirements but it didn't do a great deal of [inaudible]. Is there a higher bar for Exxon? What are the milestones that you hope to achieve after that investigation?

**AG Schneiderman:** It's too early to say. We started the investigation. We received a lot of documents already. We're reviewing them. We're not prejudging anything, but the situation with oil companies and coal companies is somewhat different because the coal companies right now are, the market is already judging the coal industry very harshly. Coal companies, including Peabody, are teetering on the brink. The evidence that we advanced and what was specifically disclosed about Peabody were pretty clear cut examples of

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misrepresentations made in violation with the Securities and Exchange Commission, made to investors. It's too early to say what we're going to find with Exxon but we intend to work as aggressively as possible, but also as carefully as possible. We're very aware of the fact that everything we do here is going to be subject to attack by folks who have a huge financial interest in discrediting us. So we're going to be aggressive and creative but we are also going to be as careful and meticulous and deliberate as we can.

**VP Gore:**

Could I respond to the last couple of questions just briefly. And in doing so, I'd like to give credit to the journalistic community and single out the Pulitzer Prize winning team at *InsideClimate News*, also the *Los Angeles Times* and the student-led project at Columbia School of Journalism under Steve Coll. And the facts that were publicly presented during, in those series of articles that I have mentioned, are extremely troubling, and where Exxon Mobil in particular is concerned. The evidence appears to indicate that, going back decades, the company had information that it used for the charting of its plan to explore and drill in the Arctic, used for other business purposes information that largely was consistent with what the mainstream scientific community had collected and analyzed. And yes, for a brief period of time, it did publish some of the science it collected, but then a change came, according to these investigations. And they began to make public statements that were directly contrary to what their own scientists were telling them. Secondly, where the analogy to the tobacco industry is concerned, they began giving grants – according to the evidence collected – to groups that specialize in climate denial, groups that put out information purposely designed to confuse the public into believing that the climate crisis was not real. And according to what I've heard from the preliminary inquiries that some of these attorneys general have made, the same may be true of information that they have put out concerning the viability of competitors in the renewable energy space. So, I do think the analogy may well hold up rather precisely to the tobacco industry. Indeed, the evidence indicates that, that I've seen and that these journalists have collected, including the distinguished historian of science at Harvard, Naomi Oreskes wrote the book *The Merchants of Doubt* with her co-author, that they hired several of the very same public relations agents that had perfected this fraudulent and deceitful craft working for the tobacco companies. And so as someone who

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has followed the legislative, the journalistic work very carefully, I think the analogy does hold up.

**Press Person:** [inaudible] with *InsideClimate News*. Along the lines of talking about that analogy: from a legal framework, can you talk about a comparison, similarities and differences between this potential case and that of Big Tobacco?

**AG Schneiderman:** Well, again, we're at the early stages of the case. We are not pre-judging the evidence. We've seen some things that have been published by you and others, but it is our obligation to take a look at the underlying documentation and to get at all the evidence, and we do that in the context of an investigation where we will not be talking about every document we uncover. It's going to take some time, but that's another reason why working together collectively is so important. And we are here today because we are all committed to pursuing what you might call an all-levers approach. Every state has different laws, different statutes, different ways of going about this. The bottom line is simple. Climate change is real, it is a threat to all the people we represent. If there are companies, whether they are utilities or they are fossil fuel companies, committing fraud in an effort to maximize their short-term profits at the expense of the people we represent, we want to find out about it. We want to expose it, and we want to pursue them to the fullest extent of the law.

**Moderator:** Last one.

**Press Person:** Storms, floods will arise they are all going to continue to destroy property and the taxpayers . . .

**Moderator:** What's your name and . . .

**Press Person:** Oh, sorry. Matthew Horowitz from *Vice*. Taxpayers are going to have to pay for these damages from our national flood insurance claims. So if fossil fuel companies are proven to have committed fraud, will they be held financially responsible for any sorts of damages?

**AG Schneiderman:** Again, it's early to say but certainly financial damages are one important aspect of this but, and it is tremendously important and taxpayers – it's been discussed by my colleagues – we're already paying billions and billions of dollars to deal with the consequences of climate change and that will be one aspect of –

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early foreseeing, it's far too early to say. But, this is not a situation where financial damages alone can deal with the problem. We have to change conduct, and as the Vice President indicated, other places in the world are moving more rapidly towards renewables. There is an effort to slow that process down in the United States. We have to get back on that path if we're going to save the planet and that's ultimately what we're here for.

**Moderator:** We're out of time, unfortunately. Thank you all for coming.

**AG Schneiderman:** Thank you.

# EXHIBIT 3

**ATTORNEY GENERAL STRANGE LEADS DEAR COLLEAGUE LETTER TO FELLOW ATTORNEYS GENERAL OPPOSING USE OF SUBPOENAS TO ENFORCE THEIR CLIMATE AGENDA VIEWS**

(MONTGOMERY) – Alabama Attorney General Luther Strange led a 13-state Dear Colleague letter urging the nation’s Attorneys General to resist using their subpoena powers to target energy industries for their views in the heated climate change debate.

“State Attorneys General should not abuse subpoena power to silence speech or side with one industry against a competitor under investigation,” said Attorney General Strange. “Yet we have seen this very approach used by a group of Attorneys General in an apparent effort to advance a climate change agenda. This is a chilling abuse of power that must be stopped.”

“Several state Attorneys General recently held a press conference under the banner of ‘AGs United for Clean Power,’” the multi-state Dear Colleague letter said. “The media event highlighted an investigation into ‘whether fossil fuel companies misled investors and the public on the impact of climate change on their businesses.’ We think this effort by our colleagues to police the global warming debate through the power of the subpoena is a grave mistake.”

“We are concerned that our colleagues’ investigation undermines the trust the people have invested in Attorneys General to investigate fraud. Investigatory subpoenas were issued to at least one company and one non-profit believed to have made statements minimizing the risks of climate change. At the press conference, one of our colleagues noted that ‘[w]e are pursuing this as we would any other fraud matter.’ We routinely investigate fraud and have done so with many of the states present at the press conference. But this investigation is far from routine. We are unaware of any fraud case combining the following three characteristics: 1) the investigation targets a particular type of market participant; 2) the Attorneys General identify themselves with the competitors of their investigative targets; and 3) the investigation implicates an ongoing policy debate.”

The letter also questioned how one company’s minimizing climate change risk is fraud and yet another company’s exaggeration of climate change impact is not.

“First, this fraud investigation targets only ‘fossil fuel companies’ and only statements minimizing climate change risks. If it is possible to minimize the risks of climate change, then the same goes for exaggeration. If minimization is fraud, exaggeration is fraud.”

Attorney General Strange was joined by fellow Attorneys General from Alaska, Arizona, Arkansas, Louisiana, Michigan, Nebraska, Nevada, Oklahoma, South Carolina, Texas, Utah and Wisconsin in the Dear Colleague letter.

*A copy of the Dear Colleague letter is attached*

June 15, 2016

Dear Fellow Attorneys General:

Several state Attorneys General recently held a press conference under the banner of “AGs United for Clean Power.” The media event highlighted an investigation into “whether fossil fuel companies misled investors and the public on the impact of climate change on their businesses.”<sup>1</sup> We think this effort by our colleagues to police the global warming debate through the power of the subpoena is a grave mistake.

We all understand the need for a healthy environment, but we represent a wide range of viewpoints regarding the extent to which man contributes to climate change and the costs and benefits of any proposed fix. Nevertheless, we agree on at least one thing—this is not a question for the courts. Using law enforcement authority to resolve a public policy debate undermines the trust invested in our offices and threatens free speech.

We are concerned that our colleagues’ investigation undermines the trust the people have invested in Attorneys General to investigate fraud. Investigatory subpoenas were issued to at least one company and one non-profit believed to have made statements minimizing the risks of climate change.<sup>2</sup> At the press conference, one of our colleagues noted that “[w]e are pursuing this as we would any other fraud matter.”<sup>3</sup> We routinely investigate fraud, and have done so with many of the states present at the press conference. But this investigation is far from routine. We are unaware of any fraud case *combining* the following three characteristics: 1) the investigation targets a particular type of market participant; 2) the Attorneys General identify themselves with the competitors of their investigative targets; and 3) the investigation implicates an ongoing public policy debate.

<sup>1</sup> Press Release, New York State Attorney General, *A.G. Schneiderman, Former Vice President Al Gore And A Coalition Of Attorneys General From Across The Country Announce Historic State-Based Effort To Combat Climate Change* (March 29, 2016) (available at <http://www.ag.ny.gov/press-release/ag-schneiderman-former-vice-president-al-gore-and-coalition-attorneys-general-across>).

<sup>2</sup> See, e.g., Attorney General Schneiderman, Press Conference, AGs United For Clean Power (March 29, 2016) (confirming subpoena to ExxonMobil) (video available at <http://www.ag.ny.gov/press-release/ag-schneiderman-former-vice-president-al-gore-and-coalition-attorneys-general-across>); Subpoena to Competitive Enterprise Institute, *United States Virgin Islands, Office of the Attorney General v. ExxonMobil Oil Corp.*, Case No. 16-002469, Superior Court of the District of Columbia (April 4, 2016).

<sup>3</sup> Attorney General Schneiderman, Press Conference, AGs United For Clean Power, *supra* note 2.

First, this fraud investigation targets only “fossil fuel companies” and only statements minimizing climate change risks.<sup>4</sup> If it is possible to minimize the risks of climate change, then the same goes for exaggeration. If minimization is fraud, exaggeration is fraud. Some have indicated that Exxon Mobil’s securities disclosures regarding climate change may be inadequate.<sup>5</sup> We do not know the accuracy of these charges. We do know that Exxon Mobil discloses climate change and its possible implications as a business risk. *See* Exxon Mobil Corporation SEC Form 10-k, FY 2014 (listing “Climate change and greenhouse gas restrictions” as an item 1A risk factor). If Exxon’s disclosure is deficient, what of the failure of renewable energy companies to list climate change as a risk? *See, e.g.*, SolarCity Corporation SEC Form 10-k, FY 2014 (omitting from item 1A risk factors any mention of climate change or global warming). If climate change is perceived to be slowing or becoming less of a risk, many “clean energy” companies may become less valuable and some may be altogether worthless. Therefore, any fraud theory requiring more disclosure of Exxon would surely require more disclosure by “clean energy” companies.

Similarly, it has been asserted that “fossil fuel companies” may have funded non-profits who minimized the risks of climate change.<sup>6</sup> Does anyone doubt that “clean energy” companies have funded non-profits who exaggerated the risks of climate change? Under the stated theory for fraud, consumers and investors could suffer harm from misstatements by all energy-market participants and the non-profits they support. Yet only companies and non-profits allegedly espousing a particular viewpoint have been chosen for investigation.

Second, the Attorneys General have taken the unusual step of aligning themselves with the competitors of their investigative targets. The press conference was titled, “AGs United for Clean Power,” apparently to contrast with the power generated by the investigative targets.<sup>7</sup> One of our colleagues emphasized that she looked forward to working with those at the press conference to “advocate for a comprehensive portfolio of renewable energy sources.”<sup>8</sup> Furthermore, the media event featured a senior partner of a venture capital firm that invests in renewable energy companies.<sup>9</sup> If the focus is fraud,

<sup>4</sup> *See generally* Press Release, New York State Attorney General, *supra* note 1; Press Conference, AGs United For Clean Power, *supra* note 2.

<sup>5</sup> *See, e.g.*, Attorney General Healey, Press Conference, AGs United For Clean Power, *supra* note 2.

<sup>6</sup> *See, e.g.*, Attorney General Schneiderman, Press Conference, AGs United For Clean Power, *supra* note 2.

<sup>7</sup> *See generally* Press Release, New York State Attorney General, *supra* note 1; Press Conference, AGs United For Clean Power, *supra* note 2.

<sup>8</sup> Press Release, New York State Attorney General, *supra* note 1 (quoting Attorney General Madigan).

<sup>9</sup> *See* Press Release, New York State Attorney General, *supra* note 1 (noting presence of Vice President Gore); Press Conference, AGs United For Clean Power, *supra* note 2 (including remarks by Vice President Gore); Press Release, Kleiner Perkins Caufield & Byers, *Al Gore Joins KPCB as Partner and John Doerr Joins Generation’s Advisory Board* (November 12, 2007) (available at

such alignment by law enforcement sends the dangerous signal that companies in certain segments of the energy market need not worry about their misrepresentations. For example, though some of us may have investigated diesel emissions, we have not launched our investigations with other auto companies present or identified ourselves as “AGs United for Diesel Alternatives.” Implying a safe harbor for the “Clean Power” energy segment, which some estimate at \$200 billion, or approximately the size of the pharmaceutical industry, is a dangerous practice.<sup>10</sup>

Third, this investigation inescapably implicates a public policy debate and raises substantial First Amendment concerns. As our colleagues must know, a vigorous debate exists in this country regarding the risks of climate change and the appropriate response to those risks. Both sides are well-funded and sophisticated public policy participants. Whatever our country’s response, it will affect people, communities, and businesses that all have a right to participate in this debate. Actions indicating that one side of the climate change debate should fear prosecution chills speech in violation of a formerly bi-partisan First Amendment consensus. As expressed by Justice Brandeis, it has been a foundational principle that when faced with “danger flowing from speech ... the remedy to be applied is more speech, not enforced silence.” *Whitney v. California*, 274 U.S. 357, 377 (1927) (Brandeis, J., concurring). Here, the remedy chosen is silence through threat of subpoena. This threat distorts the debate and impoverishes consumers and the general public who may wish to better educate themselves by hearing and evaluating both sides.

Once the government begins policing viewpoints, two solutions exist. The first solution is to police all viewpoints equally. Another group of Attorneys General could use the precedent established by the “AGs United for Clean Power” to investigate fraudulent statements associated with competing interests. The subpoenas currently directed at some market participants could be met with a barrage of subpoenas directed at other market participants. No doubt a reasonable suspicion exists regarding a number of statements relating to the risks of climate change. Even in the press conference, a senior partner at Kleiner Perkins Caufield & Byers (“Kleiner Perkins”) identified “man-made global warming pollution” as “the reason” for 2015 temperatures, the spread of Zika, flooding in Louisiana and Arkansas, Super Storm Sandy, and Super Typhoon Haiyan.<sup>11</sup> Some evidence may support these statements. Other evidence may refute them. Do these statements increase the value of clean energy investments offered for sale by Kleiner Perkins? Should these statements justify an investigation into all contributions to environmental non-profits by Kleiner Perkins’s partners? Should these questions be

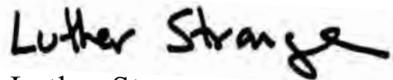
<https://www.generationim.com/media/pdf-generation-kpcb-12-11-07.pdf>); Kleiner Perkins Caufield & Byers public website, available at <http://www.kpcb.com/partner/al-gore> (confirming Vice President Gore’s present status as a “senior partner”).

<sup>10</sup> See, e.g., Informational Report, Environmental Defense Fund, *Climate* (2015), at 2 (noting “U.S. clean energy market grew ... to \$200 billion,” in 2014) (available at [https://www.edf.org/sites/default/files/AR2015/EDF\\_AR2015\\_climate.pdf](https://www.edf.org/sites/default/files/AR2015/EDF_AR2015_climate.pdf)).

<sup>11</sup> Vice President Gore, Press Conference, AGs United For Clean Power, *supra* note 2.

settled by our state courts under penalty of RICO charges? May it never be. As Justice Jackson noted, our “forefathers did not trust any government to separate the true from the false for us.” *Thomas v. Collins*, 323 U.S. 516, 545 (1945). We write to urge our colleagues to choose the second, and far superior, solution. Stop policing viewpoints.

Sincerely,



Luther Strange  
Attorney General  
State of Alabama



Bill Schuette  
Attorney General  
State of Michigan



Ken Paxton  
Attorney General  
State of Texas



Craig Richards  
Attorney General  
State of Alaska



Doug Peterson  
Attorney General  
State of Nebraska



Sean Reyes  
Attorney General  
State of Utah



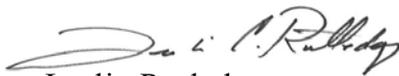
Mark Brnovich  
Attorney General  
State of Arizona



Adam Laxalt  
Attorney General  
State of Nevada



Brad Schimel  
Attorney General  
State of Wisconsin



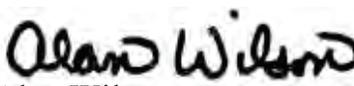
Leslie Rutledge  
Attorney General  
State of Arkansas



Scott Pruitt  
Attorney General  
State of Oklahoma



Jeff Landry  
Attorney General  
State of Louisiana



Alan Wilson  
Attorney General  
State of South Carolina

# EXHIBIT 4



# Establishing Accountability for Climate Change Damages: *Lessons from Tobacco Control*

Summary of the Workshop on Climate Accountability,  
Public Opinion, and Legal Strategies

Martin Johnson House  
Scripps Institution of Oceanography  
La Jolla, CA, June 14–15, 2012

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**Report Author**

This workshop summary was written by Seth Shulman, senior staff writer at the Union of Concerned Scientists.

**Workshop Organizers**

The workshop was conceived by Naomi Oreskes of the University of California–San Diego, Peter C. Frumhoff and Angela Ledford Anderson of the Union of Concerned Scientists, Richard Heede of the Climate Accountability Institute, and Lewis M. Branscomb of the John F. Kennedy School of Government at Harvard University and the Scripps Institution of Oceanography. Alison Kruger of the Union of Concerned Scientists coordinated workshop logistics.

*Organizational affiliations are for identification purposes only. The opinions expressed in this report are the sole responsibility of the participants quoted.*

**Acknowledgments**

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**The Union of Concerned Scientists** is the leading science-based nonprofit working for a healthy environment and a safer world. More information about UCS is available on the UCS website at [www.ucsusa.org](http://www.ucsusa.org).

**The Climate Accountability Institute** engages in research and education on anthropogenic climate change, dangerous interference with the climate system, and the contribution of fossil fuel producers’ carbon production to atmospheric carbon dioxide content. This encompasses the science of climate change, the civil and human rights associated with a stable climate regime not threatened by climate-destabilizing emissions of greenhouse gases, and the risks, liabilities, and disclosure requirements regarding past and future emissions of greenhouse gases attributable to primary carbon producers.

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## Preface

**The workshop sought to compare the evolution of public attitudes and legal strategies related to tobacco control with those related to anthropogenic climate change.**

**F**or many years after scientists first concluded that smoking causes cancer, the tobacco companies continued to win court cases by arguing, among other things, that smokers assumed the risk of smoking and that no specific cancer deaths could be attributed to smoking. At some point, however, the tobacco companies began to lose legal cases against them even though the science had not substantively changed. Juries began to find the industry liable because tobacco companies had known their products were harmful while they publicly denied the evidence, targeted youth, and manipulated nicotine levels.

To explore how this transformation happened, and to assess its implications for people working to address climate change, the Union of Concerned Scientists and the Climate Accountability Institute brought together about two dozen leading scientists, lawyers and legal scholars, historians, social scientists, and public opinion experts for a June 14–15, 2012, workshop at the Scripps Institution of Oceanography in La Jolla, CA.

Specifically, the workshop sought to compare the evolution of public attitudes and legal strategies related to tobacco control with those related to anthropogenic climate change, fostering an exploratory, open-ended dialogue about whether we might use the lessons from tobacco-related education, laws, and litigation to address climate change. The workshop explored which changes now being observed (e.g., increasing extreme heat, sea level rise) can be most compellingly attributed to human-caused climate change, both scientifically and in the public mind. Participants also considered options for communicating this scientific attribution of climate impacts in ways that would maximize public understanding and produce the most effective mitigation and adaptation strategies.

The workshop explored the degree to which the prospects for climate mitigation might improve with public acceptance (including judges and juries) of the causal relationships between fossil fuel production, carbon emissions, and climate change. Participants

debated the viability of diverse strategies, including the legal merits of targeting carbon producers (as opposed to carbon emitters) for U.S.-focused climate mitigation. And finally, the group sought to identify the most promising and mutually reinforcing intellectual, legal, and/or public strategies for moving forward. We are pleased to share the outcome of these preliminary workshop discussions. Among the many points captured in this report, we want to highlight the following:

- A key breakthrough in the public and legal case for tobacco control came when internal documents came to light showing the tobacco industry had knowingly misled the public. Similar documents may well exist in the vaults of the fossil fuel industry and their trade associations and front groups, and there are many possible approaches to unearthing them.
- Drawing upon the forthcoming “carbon majors” analysis by Richard Heede, it may be feasible and highly valuable to publicly attribute important changes in climate, such as sea level rise, to specific carbon producers. Public health advocates were effective in attributing the health impacts of smoking to major tobacco companies.
- While we currently lack a compelling public narrative about climate change in the United States, we may be close to coalescing around one. Furthermore, climate

## **Climate change may loom larger today in the public mind than tobacco did when public health advocates began winning policy victories.**

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change may loom larger today in the public mind than tobacco did when public health advocates began winning policy victories. Progress toward a stronger public narrative might be aided by use of a “dialogic approach” in which climate advocates work in partnership with the public. Such a narrative must be both scientifically robust and emotionally resonant to cut through the fossil fuel industry’s successful efforts to sow uncertainty and confusion.

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## Climate Accountability, Public Opinion, and Legal Strategies Workshop

*Martin Johnson House, Scripps Institution of Oceanography,  
La Jolla, CA, June 14–15, 2012*

# 1. Introduction

**Tobacco companies realized they did not need to prove their products were safe. Rather, they had only to implement a calculated strategy to foster doubt about the science.**

For decades after U.S. tobacco firms first became aware of strong scientific evidence linking smoking to cancer in the mid-1950s, the industry adopted a public relations strategy that knowingly sought to confuse people about the safety of its products. As we now know, tobacco industry lawyers long advised their clients that if they admitted to selling a hazardous product they would be vulnerable to potentially crippling liability claims. So, despite the scientific evidence, the industry developed and implemented a sophisticated disinformation campaign designed to deceive the public about the hazards of smoking and forestall governmental controls on tobacco consumption.

As time went on, a scientific consensus emerged about a multitude of serious dangers from smoking. On January 11, 1964, for instance, the U.S. government released the first report by the Surgeon General's Advisory Committee on Smoking and Health,

which specifically warned the public about the link between smoking and lung cancer.<sup>1</sup> Nonetheless, the tobacco industry's disinformation campaign continued. As internal documents have long since revealed, the tobacco companies quickly realized they did not need to prove their products were safe. Rather, they had only to implement a calculated strategy to foster doubt about the science in the minds of the public. As one infamous internal memo from the Brown & Williamson company put it: "Doubt is our product, since it is the best means of competing with the 'body of fact' that exists in the minds of the general public."<sup>2</sup> The industry also managed to convince juries that smoking was a voluntary act, that the public was well informed of "potential risks," and that smokers therefore only had themselves to blame for whatever harm may have occurred.

It has become increasingly clear during the past decade or more that the fossil fuel industry has adopted much the same strategy:

attempting to manufacture uncertainty about global warming even in the face of overwhelming scientific evidence that it is accelerating at an alarming rate and poses a myriad of public health and environmental dangers. Not only has the fossil fuel industry taken a page from the tobacco industry's playbook in its efforts to defeat action on climate change, it also shares with the tobacco industry a number of key players and a remarkably similar network of public relations firms and nonprofit "front groups" that have been actively sowing disinformation about global warming for years.<sup>3</sup>

At this pivotal moment for climate change, with international agreement all but stymied and governmental action in the United States largely stalled, the Union of Concerned Scientists and the Climate Accountability Institute sought to build a clearer understanding of the drivers of change that eventually proved effective against the tobacco industry. To be sure, lawyers played a huge role; scientific evidence played an important role as well. But notably, neither science nor legal strategies alone drove the changes in public understanding of the health dangers posed by smoking. Workshop participants were therefore asked to share their perspectives on a key question: given the power and resources of the tobacco industry, how *were* tobacco control efforts able to finally gain traction?

By gathering a distinguished and complementary group of experts, the Climate Accountability Workshop created the conditions for a well-informed discussion about the history of tobacco prevention as an example for those working on climate change: exploring how science in combination with the law, public advocacy, and possibly new technology can spur a seminal shift in public understanding and engagement on an issue of vital importance to the global community.

What follows is a summary of the workshop designed to highlight some of the major themes that emerged over the course of two days of structured dialogue. Because the discussion was often animated and wide-ranging, this report does not attempt to portray a comprehensive account of all the ideas presented, but rather the key findings that emerged.

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**When I talk to my students I always say, tobacco causes lung cancer, esophageal cancer, mouth cancer. . . . My question is: What is the "cancer" of climate change that we need to focus on?**

—Naomi Oreskes

## 2. Lessons from Tobacco Control: Legal and Public Strategies

**Both the tobacco industry and the fossil fuel industry have adopted a strategy of disseminating disinformation to manufacture uncertainty and forestall government action, and in so doing, have placed corporate interests above the public interest.**

**W**orkshop participants reviewed the history of tobacco control in the United States to identify lessons that might be applicable to action on global warming. The first important insight was that the history of tobacco control efforts stretches back much further than most people realize. The American Tobacco Company was broken up as a result of the Sherman Anti-Trust Act of 1890, and several U.S. states banned tobacco entirely between 1890 and 1920 in response to concerns that the powerful tobacco industry was paying off legislators. Those bans were all overturned after successful lobbying efforts by the industry, but a landmark 1900 legal case (*Austin v. Tennessee*) set an important precedent by upholding the legal right of states to ban tobacco.<sup>4</sup>

A second important insight was that the battle for tobacco control continues today, despite substantial gains over the past several decades. In a point made forcefully by Robert Proctor, a science historian who frequently serves as an expert witness in tobacco litigation, “Tobacco is not over.” While the number of cigarettes smoked worldwide may no longer be growing, an estimated 6 trillion were still sold and smoked in 2012. More than 45 million

Americans continue to smoke, some 8 million live with a serious illness caused by their smoking, and more than 400,000 die prematurely each year.<sup>5</sup>

A few principles emerged from the long fight for tobacco control. First, any legal strategies involving court cases require plaintiffs, a venue, and law firms willing to litigate—all of which present significant hurdles to overcome. Robert Proctor generalized about the history of tobacco-related litigation by noting that tobacco opponents typically won with simplicity but lost in the face of complexity. As he noted, it is worth remembering that, “The industry can win by making plaintiffs have to pass a thousand hurdles, any one of which can derail the whole effort.” Second, public victories can occur even when the formal point is lost. In one effort that sought to stop tobacco research at Stanford University, for instance, no formal ban was enacted but the public outcry led the Philip Morris company to stop its external research programs anyway.<sup>6</sup>

### **The Importance of Documents in Tobacco Litigation**

One of the most important lessons to emerge from the history of tobacco litigation is the

value of bringing internal industry documents to light. Roberta Walburn, a key litigator in the pathbreaking 1994 case *State of Minnesota and Blue Cross and Blue Shield of Minnesota v. Philip Morris et al.* [C1-94-8565], explained that her legal team, with strong backing from Minnesota Attorney General Hubert “Skip” Humphrey, made it a goal from the start of the lawsuit to use the process of legal discovery to gain access to Philip Morris’s internal documents and make them part of the public domain. Walburn noted that Humphrey was mocked and scorned by many of his colleagues for this emphasis, but it proved critical to achieving the landmark settlement.

For the previous four decades, the tobacco industry had not lost a single legal case nor been forced to release most of its internal documents. But attorneys began to see the tremendous value of the industry’s memos in an individual New Jersey smoker’s case in the 1980s, and when a paralegal leaked some internal documents in the early 1990s. By making such documents a key part of the Minnesota litigation, the legal discovery process ultimately brought some 35 million pages of industry documents to light.<sup>7</sup>

Of course, the release of so many documents also presented immense challenges, requiring the legal team to pore over them one page at a time. The industry also went to great lengths to hide documents throughout the discovery process, listing them under different corporate entities, “laundering” scientific documents by passing them through attorneys in order to claim attorney-client privilege, and playing word games in order to claim they didn’t have any documents on the topics sought by the plaintiffs. During pre-trial discovery in the Minnesota litigation, Walburn noted, Philip Morris was spending some \$1.2 million dollars every week in legal defense.

In the end, however, the documents proved crucial in helping to shift the focus of litigation away from a battle of the experts over the science of disease causation and toward an investigation of the industry’s conduct. As Roberta Walburn explained, their legal team was able to say to the judge and jury, “You don’t have to believe us or our experts; just look at the companies’ own words.” The strategy of prying documents from the industry also proved effective because once a lawsuit begins, litigants are required by law to retain evidence. The very first order issued by the judge in the Minnesota case was a document preservation order, which meant that the company could be held in contempt of court if it failed to comply. Companies are also required to preserve any documents they think might be pertinent to possible future litigation.

Today, the documents that have emerged from tobacco litigation have been collected in a single searchable, online repository: the so-called Legacy Tobacco Document Library (available at [legacy.library.ucsf.edu](http://legacy.library.ucsf.edu)) currently contains a collection of some 80 million pages. Stanton Glantz, a professor of cardiology at the University of California–San Francisco who directs the project, noted the importance of the decision to create an integrated collection accessible to all. One advantage of such a collection, he said, is that it becomes a magnet for more documents from disparate sources.

Because the Legacy Collection’s software and infrastructure is already in place, Glantz suggested it could be a possible home for a parallel collection of documents from the fossil fuel industry pertaining to climate change. He stressed the need to think carefully about which companies and which trade groups might have documents that could be especially useful. And he underscored the point that bringing documents to light must be

established as an objective independent of the litigation, or else the most valuable documents are not likely be made public.

### **Documents Helped Establish a Conspiracy**

The release of documents from the tobacco industry became front-page news in the 1990s. The headlines did not tout the fact that tobacco causes lung cancer, which had already been widely reported; instead, they focused on the tobacco industry's lies to the public, its efforts to target children in its marketing campaigns, and its manipulation of the amount of nicotine in cigarettes to exploit their addictive properties.<sup>8</sup> Many of these facts had not come to the public's attention until the industry's internal documents came to light.

Most importantly, the release of these documents meant that charges of conspiracy or racketeering could become a crucial component of tobacco litigation. Formerly secret documents revealed that the heads of tobacco companies had colluded on a disinformation strategy as early as 1953.<sup>9</sup>

Sharon Eubanks noted the importance of documents in a racketeering case against the tobacco industry she prosecuted during the Clinton administration. That case, *U.S.A v. Philip Morris, Inc.*, was filed after President Clinton directed his attorney general to attempt to recover from the tobacco industry the costs of treating smokers under Medicare. The Justice Department brought the case under the Racketeer Influenced and Corrupt Organizations (RICO) statute that was originally enacted to combat organized crime.

The U.S. District Court for the District of Columbia found Philip Morris and other tobacco companies charged in the case guilty of violating RICO by fraudulently covering up the health risks associated with smoking and

by marketing their products to children. The court imposed most of the requested remedies, and rejected the defendants' argument that their statements were protected by the First Amendment, holding that the amendment does not protect "knowingly fraudulent" statements. The tobacco companies appealed the ruling but a three-judge panel of the U.S. Court of Appeals for the District of Columbia unanimously upheld the decision in 2009.

### **Lessons for the Climate Community**

One theme to emerge from this review of tobacco litigation was the similarity between the tobacco industry's disinformation campaign and the fossil fuel industry's current efforts to sow confusion about climate change. As one participant put it, "The tobacco fight is now the climate fight." Both industries have adopted a strategy of disseminating disinformation to manufacture uncertainty and forestall governmental action, and in so doing, have placed corporate interests above the public interest. Several workshop participants presented detailed evidence of the close ties between the two industries in terms of personnel, nonprofit "front groups," and funders.

Given these close connections, many participants suggested that incriminating documents may exist that demonstrate collusion among the major fossil fuel companies, trade associations, and other industry-sponsored groups. Such documents could demonstrate companies' knowledge, for instance, that the use of their products damages human health and well-being by contributing to "dangerous anthropogenic interference with the climate system."<sup>10</sup>

Finally, participants agreed that most questions regarding how the courts might rule on climate change cases remain unanswered. Most participants also agreed that pursuing a

legal strategy against the fossil fuel industry would present a number of different obstacles and opportunities compared with those faced by litigants in the tobacco cases. As Roberta Walburn noted, however, both efforts do share an important public interest imperative: “People have been harmed and there should be justice,” she said. “If you want to right a wrong you have to be bold.”

### 3. Climate Legal Strategies: Options and Prospects

Tobacco started with a small box of documents. We used that to wedge open a large pattern of discovery. . . . It looks like where you are with climate is as good as it was with tobacco—probably even better. I think this is a very exciting possibility.

—Stanton Glantz

**A** wide variety of potential legal strategies were discussed at the workshop. Participants agreed that a variety of different approaches could prove successful in spurring action and engaging the public on global warming, with suggestions ranging from lawsuits brought under public nuisance laws (the grounds for almost all current environmental statutes) to libel claims against firms and front groups that malign the reputations of climate scientists.

Several participants warned of the potential polarizing effect of lawsuits. While it is never an easy decision to bring a lawsuit, they noted, litigants must understand that if they pursue such a course they should expect a protracted and expensive fight that requires careful planning. Among the issues discussed were the importance of seeking documents in the discovery process as well as the need to choose plaintiffs, defendants, and legal remedies wisely. Another issue of concern was the potential for a polarizing lawsuit to slow the broad cultural shift in public perception (see section 5).

#### Strategies to Win Access to Internal Documents

Having attested to the importance of seeking internal documents in the legal discovery phase of tobacco cases, lawyers at the workshop emphasized that there are many effective avenues for gaining access to such documents.

First, lawsuits are not the only way to win the release of documents. As one participant noted, congressional hearings can yield documents. In the case of tobacco, for instance, the infamous “Doubt is our product” document came out after being subpoenaed by Congress.<sup>11</sup> State attorneys general can also subpoena documents, raising the possibility that a single sympathetic state attorney general might have substantial success in bringing key internal documents to light. In addition, lawyers at the workshop noted that even grand juries convened by a district attorney could result in significant document discovery.

Jasper Teulings, general counsel for Greenpeace International, emphasized that the release of incriminating internal documents

from the fossil fuel industry would not only be relevant to American policy but could have widespread international implications.

### **Importance of Choosing Plaintiffs, Defendants, and Legal Remedies**

Matt Pawa, a leading litigator on climate-related issues, discussed his current case, *Kivalina v. ExxonMobil Corporation, et al.*, now pending on appeal. The lawsuit, brought under public nuisance law, seeks monetary damages from the energy industry for the destruction of the native village of Kivalina, AK, by coastal flooding due to anthropogenic climate change. Damages have been estimated by the U.S. Army Corps of Engineers and the U.S. Government Accountability Office between \$95 million and \$400 million.

The suit was dismissed by a U.S. district court in 2009 on the grounds that regulating global warming emissions is a political rather than a legal issue that needs to be resolved by Congress and the executive branch rather than the courts. An appeal was filed with the Ninth Circuit Court of Appeals in November 2009, but was rejected in September 2012. The plaintiffs have yet to determine whether to take further legal action, either by calling for an *en banc* review of the appeal verdict or by re-filing the case in state court.

Pawa noted that in representing Kivalina, he chose a plaintiff whose stake in the case is patently evident, as is the harm that has come to the village. Because those facts remain largely beyond dispute, it puts the focus of the case squarely on attributing the damage to the defendants. Pawa has used the principle of “joint and several” liability, which (in his words) holds that, “If two guys are outside a bar and the plaintiff gets beaten up and only one technically does it but both of them collude in the activity, they can both be held

responsible.” Because Exxon and the other corporate defendants in the Kivalina case are indisputably large emitters of heat-trapping gases, Pawa said he will argue that they “are basically like the two guys outside that bar.” To help with his argument of causation, Pawa will also argue that Exxon and the other defendants distorted the truth. He said that litigation not only allows him to pursue a remedy for some of those most vulnerable to the effects of climate change, but also serves as “a potentially powerful means to change corporate behavior.”

Jasper Teulings recounted the unusual and controversial case in which Greenpeace International helped representatives from Micronesia—an island nation threatened by rising sea levels—request a transboundary environmental impact assessment (TEIA) in the Czech Republic, hoping to prevent the Czech government from granting a 30-year permit extension for a coal-fired power plant. That action, he said, led to a national debate about global warming in a country led by a climate skeptic, and the Czech environment minister ultimately resigned as a result. The case also drew the attention of the international media, including the *Wall Street Journal*, *Economist*, and *Financial Times*.<sup>12</sup>

Participants weighed the merits of legal strategies that target major carbon *emitters*, such as utilities, versus those that target carbon *producers*, such as coal, oil, and natural gas companies. In some cases, several lawyers at the workshop noted, emitters are better targets for litigation because it is easy to establish their responsibility for adding substantial amounts of carbon to the atmosphere. In other cases, however, plaintiffs might succeed in cases against the producers who unearthed the carbon in the first place.

In lawsuits targeting carbon producers, lawyers at the workshop agreed, plaintiffs need

to make evidence of a conspiracy a prominent part of their case. Richard Ayres, an experienced environmental attorney, suggested that the RICO Act, which had been used effectively against the tobacco industry, could similarly be used to bring a lawsuit against carbon producers. As Ayres noted, the RICO statute requires that a claimant establish the existence of a “criminal enterprise,” and at least two acts of racketeering (with at least one having occurred within the past four years). It is not even clear, he added, whether plaintiffs need to show they were actually harmed by the defendant’s actions. As Ayres put it, “RICO is not easy. It is certainly not a sure win. But such an action would effectively change the subject to the campaign of deception practiced by the coal, gas, and oil companies.”

The issue of requesting an appropriate legal remedy was also discussed. As one of the workshop’s lawyers said, “As we think about litigation, we need to consider: what does our carbon system look like with climate stabilization? It has to be something positive. Only then can we figure out what strategies we need to pursue.” As important as this broad vision of a legal remedy is, this participant also emphasized the advantage of asking courts to do things they are already comfortable doing, noting that, “Even if your ultimate goal might be to shut down a company, you still might be wise to start out by asking for compensation for injured parties.”

## Other Potential Legal Strategies

### False advertising claims

Naomi Oreskes, a historian of science at the University of California–San Diego, brought up the example of the Western Fuels Association, an industry-sponsored front group that has run ads containing demonstrably false information. Oreskes noted that she has some of the

public relations memos from the group and asked whether a false advertising claim could be brought in such a case. Lawyers at the workshop said that public relations documents could probably be used as evidence in such a case but they cautioned that courts view claims designed to influence consumer behavior differently than they do those designed to influence legislative policy.

Some lawyers at the workshop did note that historical false advertising claims could be deemed relevant, especially if plaintiffs can show that the conduct has continued. In tobacco litigation, for example, plaintiffs have successfully gone back as far as four decades for evidence by establishing the existence of a continuing pattern by the tobacco industry.

Joe Mendelson, director of climate policy at the National Wildlife Federation, suggested that such a strategy might be employed to take on the coal industry’s advertising campaign, which has targeted swing states whose attorneys general are unlikely to call out the ads’ distortions. Such a legal case, Mendelson explained, might achieve a victory in terms of public education and engagement.

### Libel suits

Lawyers at the workshop noted that libel lawsuits can be an effective response to the fossil fuel industry’s attempts to discredit or silence atmospheric scientists. Pennsylvania State University’s Michael Mann, for instance, has worked with a lawyer to threaten libel lawsuits for some of the things written about him in the media, and has already won one such case in Canada. Matt Pawa explained that libel cases merely require the claimant to establish falsity, recklessness, and harm. “What could be more harmful than impugning the integrity of a scientist’s reputation?” Pawa asked. Roberta Walburn noted that libel suits can also serve

to obtain documents that might shed light on industry tactics.

### **Atmospheric trust litigation**

Mary Christina Wood, professor of law at the University of Oregon, discussed her involvement with so-called atmospheric trust litigation, a legal strategy she pioneered that is now unfolding in all 50 states. The goal of the litigation—to force massive reforestation and soil carbon sequestration that would return the planet to a sustainable level of atmospheric carbon dioxide (350 parts per million)—is grounded in the internationally recognized principle known as the Public Trust Doctrine, first enunciated by the Roman Emperor Justinian.

Under this doctrine, a state or third-party corporation can be held liable for stealing from or damaging a resource—in this case, the atmosphere—that is held as a public trust. The beneficiaries in the case are citizens—both current and future—who claim that the defendants (the state or federal government or third-party corporations) have a duty to protect and not damage that resource, which they oversee or for which they bear some responsibility.

Wood noted that this legal action has several promising features: it is being brought by children, can highlight local impacts of climate change because it is being brought in every state, and is flexible enough to be brought against states, tribes, the federal government,

or corporations. Wood said that while the atmospheric trust lawsuits are just starting, some 22 amicus briefs (in which law professors from around the country argue that the approach is legally viable) have already been filed.

### **Disagreement about the Risks of Litigation**

Despite widespread endorsement by workshop participants of the potential value in pursuing legal strategies against the fossil fuel industry, some of the lawyers present expressed concern about the risks entailed should these cases be lost. As one participant put it, “We have very powerful laws and we need to think strategically about them so they won’t be diminished by the establishment of a legal precedent or by drawing the attention of hostile legislators who might seek to undermine them.”

Others, such as Sharon Eubanks, took issue with this perspective. “If you have a statute, you should use it,” she said. “We had the case where people said, ‘What if you screw up RICO?’ But no matter what the outcome, litigation can offer an opportunity to inform the public.” Stanton Glantz concurred with this assessment. As he put it, “I can’t think of any tobacco litigation that backfired; I can’t think of a single case where litigation resulted in bad law being made.”

## 4. Attribution of Impacts and Damages: Scientific and Legal Aspects

**Why should taxpayers pay for adaptation to climate change? That is a sound bite that I don't hear used. Why should taxpayers bear the risk? Perhaps that question alone can help shift public perception.**

—Myles Allen

Several sessions at the workshop addressed a variety of vexing issues concerning the extent to which localized environmental impacts can be accurately attributed to global warming and how, in turn, global warming impacts might be attributed to specific carbon emitters or producers. Many challenges are involved in these kinds of linkages, from getting the science right to communicating it effectively.

Myles Allen, a climate scientist at Oxford University, suggested that while it is laudable to single out the 400 Kivalina villagers, all 7 billion inhabitants of the planet are victims of climate change. He noted, for instance, that while the United Nations Framework Convention on Climate Change makes an inventory of global warming emissions, it does not issue an inventory of who is being affected. As he put it, “Why should taxpayers pay for adaptation to climate change? That is a sound bite that I don't hear used. Why should taxpayers bear the risk? Perhaps that question alone can help shift public perception.”

Allen also noted that the scientific community has frequently been guilty of talking about the climate of the twenty-second century rather

than what's happening now. As a result, he said, people too often tend to perceive climate change as a problem for our grandchildren.

### **Challenges of Attributing Environmental Effects to Anthropogenic Climate Change**

Several of the climate scientists at the meeting addressed the scientific challenges involved in attributing specific environmental effects to anthropogenic climate change. For example, global warming, natural variability, population exposure, and population vulnerability are all factors in the disasters that make headlines. Myles Allen noted that while scientists can accurately speak about increases in average global temperature, such large-scale temperature measurements are difficult to link to specific individuals.

Claudia Tebaldi, a climate scientist at Climate Central, emphasized the problem of confounding factors: “If you want to have statistically significant results about what has already happened [on the health impacts of climate change],” she said, “we are far from being able to say anything definitive because the signal is so often overwhelmed by noise.”

Given that nearly all consequences have multiple causes, Tebaldi reviewed the difficulties entailed in efforts at so-called *single-step attribution* (in which a single variable is added or removed from a model), *multi-step attribution* (in which two or more attribution linkages are drawn), and *associative patterns of attribution* (in which linkages are mapped over time in order to detect possible patterns). She noted that the authors of the 2007 Intergovernmental Panel on Climate Change report were relatively comfortable attributing certain environmental phenomena to climate change: changes in snow/ice/frozen ground; increased runoff and anticipated snowmelt in spring; warmer water temperatures and changes in salinity, oxygen levels, and ocean acidification. But she added that it is still hard to say anything statistically significant about some key areas of concern.

Climate scientist Mike MacCracken expressed more optimism about the ability of scientists to identify patterns of changes. The traditional view, he explained, is that one cannot attribute a single weather event to human-induced climate change, but climate change reflects a difference in the frequency and intensity of weather events from the past—that is how the term is defined. So, as the distribution of weather events changes, we are seeing an increasing likelihood of what were once very rare events, but are likely to become much more frequent.

Myles Allen agreed that scientists could be far more confident about a group of events rather than a single event, but noted, “Then you are talking again about climate [as opposed to weather]. We can say with confidence how the risks are changing. Absolutely. And some harms can be caused by change in risk. But we are still talking about probabilities.” As an example, Allen cited work

**Absolutely crucial is real progress on regional and local consequences of climate change. We have general notions that the Southwest will be drier. But once the science is able to say with confidence what will happen in the states of Colorado and Arizona, then the people who live there will want to pressure their representatives to fix their problem. Then political people will be much more responsive to the issue. That will be real progress in the next few years.**

—Lew Branscomb

by Stefan Rahmstorf and Dim Coumou, who found an 80 percent probability that the July 2010 heat record would not have occurred without global warming.<sup>13</sup>

Others agreed that many different types of aggregate findings can be useful. Paul Slovic, for instance, cited the example of the book *At War with the Weather* by Howard Kunreuther. In studying economic losses from natural disasters, Kunreuther found an exponential increase in losses incurred over the last 10 or 20 years.<sup>14</sup> Again, multiple factors need to be teased apart, such as the growth in population exposed to natural disasters, increased infrastructure replacement costs, natural variability, and the influence of climate change.<sup>15</sup>

Mike MacCracken suggested that issues related to the science itself are distinct from how findings should be communicated to the public. “The challenge,” he said, “is finding an effective lexicon that scientists are comfortable with.” Along these lines, one participant suggested that it could be helpful to communicate findings framed as a discussion. For example, a farmer could ask a question

saying, “I’m concerned because I’m seeing *this* [particular local weather].” The scientist can comfortably respond: “You’re right to be concerned because we are seeing *this, this, and this* [aggregate effect or strong probability of anthropogenic warming].”

Lew Branscomb, a physicist, governmental policy expert, and one of the meeting’s organizers, suggested that the evolution of climate science is an important issue. As he put it, “Absolutely crucial is real progress on regional and local consequences of climate change. We have general notions that the Southwest will be drier. But once the science is able to say with confidence what will happen in the states of Colorado and Arizona, then the people who live there will want to pressure their representatives to fix their problem. Then political people will be much more responsive to the issue. That will be real progress in the next few years.”

### **Determining Appropriate Standards of Evidence**

A discussion arose at the workshop about the appropriate standard of evidence required when attributing specific environmental phenomena to global warming and establishing the culpability of carbon emitters and producers. Naomi Oreskes noted the important differences among standards of evidence in science, in law, and in public perception.

As she explained, “When we take these things to the public, I think we often make a category error. We take a standard of evidence applied internally to science and use it externally. That’s part of why it is so hard to communicate to the public.” Oreskes pointed out that the “95 percent proof rule” widely accepted among scientists might not be appropriate in this application. That standard of proof, she said, “is not the Eleventh Commandment. There is nothing in nature that taught us that

95 percent is needed. That is a social convention. Statistics are often used when we don’t understand the mechanisms of causation. But what if we do know what the mechanisms are? For instance, if we know how a bullet kills a human, we don’t need statistics to prove that bullets can kill.”

Oreskes went on to note that scientific knowledge in the field of climate science is very robust—more robust than in many other fields such as plate tectonics or relativity. This observation led her to wonder why climate scientists have been so reticent about communicating their results, and to postulate that in accepting such a high standard of proof, “The scientific community has been influenced by push-back from industry.”

Stanton Glantz drew a comparison to his work with the Centers for Disease Control establishing a link between smoking and breast cancer. “I fought CDC on the links between smoking and breast cancer,” he recalled. “There were 17 studies. How could you make a statement that there was no link? The epidemiologists focus on statistics but we already knew about the biology of breast cancer and damage to DNA and links to tobacco. My argument was that you needed to look at a whole body of evidence. . . . We compared the breast cancer evidence, which is stronger than the original lung cancer evidence, and that got accepted and became the default position. But the fact is, not everyone who smokes gets cancer.”

For climate change, Glantz said, all the pieces fit together and they represent a consistent body of evidence. He added that criminal trials use the standard of “beyond a reasonable doubt.” But as he put it, “Scientists have been making the ‘reasonable doubt’ standard higher and higher.”

Some of the scientists at the workshop, however, took issue with the idea that they

ought to apply different standards of proof to their work. Claudia Tebaldi, for instance, responded, “As a scientist I need to have two different standards? I don’t see that. I am not convinced that I should lower my standards of skepticism when I talk to the public. As a scientist I give you the probability. It is not my job to change my paper if the consequences are so bad. That is the job of a policy maker working with my results.”

Mary Christina Wood reminded the group that the medical profession is adept at juggling two very different standards: the standard of proof and the standard of care, and suggested that climate scientists might be able to do something similar. Dick Ayres agreed, emphasizing that, “Too high a standard of proof increases the burden on those who seek to protect public health.”

Myles Allen noted that a key problem always comes back to the issue of doubt. “If you grab a scientist off the street and ask whether we *could* have had this weather event without global warming, they will likely say yes, it could have been possible. So the reality is that there will always be a scientist available to fill that role in the court of law.” The vexing thing, Allen said, is “trying to make clear to the public that there are two uncertainties. We can be very certain about what is happening and yet very uncertain about what is going to happen tomorrow or next year.”

### **Attributing Environmental Damage to Carbon Producers**

Richard Heede, co-founder and director of the Climate Accountability Institute, presented a preview of a research project several years in the making, in which he has been quantifying the annual and cumulative global warming emissions attributable to each of the world’s major carbon producers. By closely reviewing

annual reports and other public sources of information from the energy sector, Heede is working to derive the proportion of the planet’s atmospheric carbon load that is traceable to the fossil fuels produced and marketed by each of these companies annually from 1864 to 2010. The work deducts for carbon sequestered in non-energy products such as petrochemicals, lubricants, and road oil, and quantifies annual and cumulative emissions to the atmosphere attributable to each company. The research is still awaiting peer review before it can be finalized and publicized.

Most of the workshop’s participants responded positively to Heede’s research. Matt Pawa thought the information could prove quite useful in helping to establish joint and several liability in tort cases, but he cautioned that, in practice, a judge would likely hesitate to exert joint and several liability against a carbon-producing company if the lion’s share of carbon dioxide in the atmosphere could *not* be attributed to that company specifically. Nevertheless, he said this kind of accounting would no doubt inspire more litigation that could have a powerful effect in beginning to change corporate behavior.

Other participants reacted positively to other aspects of Heede’s research. Angela Anderson, director of the climate and energy program at the Union of Concerned Scientists, noted for instance that it could potentially be useful as part of a coordinated campaign to identify key climate “wrongdoers.” Mary Christina Wood agreed, saying the preliminary data resonated strongly with her, making her feel like “Polluters did this and they need to clean this up.” Other participants noted that it could be helpful in the international realm by changing the narrative that currently holds nations solely responsible for the carbon emitted by parties within their own borders. Finding

the specific companies responsible for emissions, they said, cuts a notably different way.

One concern raised was that some in the “American middle” might perceive it as unfair to go after a company that didn’t know carbon dioxide was harmful for much of the extended period Heede reviewed. To get a sense of this, some suggested reaching out to someone like public opinion specialist Tony Leiserowitz who could undertake polling to see how such research might be received by different segments of the public.

Robert Proctor suggested that the most effective public communication about the research would use the simplest formulation possible. One effective strategy in the fight against tobacco, he observed, was equating a year’s production of cigarettes in a particular factory to a number of deaths. Anti-tobacco activists determined that there was one smoking-related death for every one million cigarettes produced. As Proctor explained, given that the industry made roughly one cent in profit per cigarette, that meant a company such as Philip Morris made \$10,000 in profit for every death its products caused. Proctor suggested a similar strategy could be adapted to link the largest corporate carbon producers to specific climate impacts. If numbers could be generated for how many deaths per year were caused by each degree rise in global temperature, for instance, a similar case could be made against a particular company that produced or emitted a known percentage of the carbon load contributing to global warming.

Picking up on this notion, Naomi Oreskes suggested that some portion of sea level rise could be attributed to the emissions caused by a single carbon-producing company. In essence, she suggested, “You might be able to say, ‘Here’s Exxon’s contribution to what’s happening to Key West or Venice.’” Myles Allen

agreed in principle but said the calculations required, while not complicated, were easy to get wrong.

Whether or not the attribution would hold up in court, Stanton Glantz expressed some enthusiasm about such a strategy, based on his experience with tobacco litigation. As he put it, “I would be surprised if the industry chose to attack the calculation that one foot of flooding in Key West could be attributed to ExxonMobil. They will not want to argue that you are wrong and they are really only responsible for one half-foot. That is not an argument they want to have.” For similar reasons, he said, tobacco companies have never challenged death estimates, noting, “Their PR people tell them not to do that, focusing instead on more general denial and other tactics.”

### **Evidence of Collusion and Prospects for Constructive Engagement**

Participants at the workshop also discussed one other aspect of attribution: the close connections among climate change deniers, the fossil fuel industry, and even the tobacco companies. John Mashey, a computer scientist and entrepreneur who has meticulously analyzed climate change deniers, presented a brief overview of some of his research, which traces funding, personnel, and messaging connections between roughly 600 individuals and 100 organizations in the climate change denial camp.<sup>16</sup> Mashey noted that looking closely at the relationships between these parties—via documents, meetings, e-mails, and other sources—can help clarify the extent of collusion involved in sowing confusion on the issue. Mashey cited, for instance, memos that have surfaced from a 1998 “climate denial” plan involving most of the major oil companies (under the auspices of the American Petroleum Institute) that set the

stage for much of the disinformation of the past 10 years.<sup>17</sup>

A number of participants ultimately agreed that the various linkages and attribution data could help build a broad public narrative along the following lines:

- We have a serious problem (as shown by the science)
- We know the people responsible are the same ones responsible for a campaign of confusion
- There are solutions, but we can't get to them because of the confusion these companies have funded

Finally, there was some fundamental disagreement over the potential for engagement with the fossil fuel industry. Richard Heede expressed optimism, saying, "I would love to envision constructive engagement with industry. That would mean convincing them to participate in a plan that 'could make life worth living for future generations.'"

Some veterans of the tobacco control campaign voiced skepticism, however. Stanton Glantz recalled two instances in which activists sought engagement with the industry. In one, the National Cancer Institute met with tobacco companies to try to persuade them to make less dangerous cigarettes. "The tobacco companies used it as an opportunity to undertake intelligence gathering about health groups and it was a disaster," he recalled. Glantz did note a fundamental difference between tobacco and climate change, however: while tobacco companies offer no useful product, he explained, "The fact is we do need some form of energy. Unless other alternative energy firms replace the current carbon producers, which seems unlikely, at some point there will likely have to be some kind of positive engagement. Less clear, however, is how best to create a political environment for that engagement to work."

## 5. Public Opinion and Climate Accountability

**The watershed moment was the congressional hearing when the tobacco companies lied and the public knew it. If that had occurred earlier, the public might not have so clearly recognized that the executives were lying. My question is: What do we know about how public opinion changed over time?**

—Peter Frumhoff

**T**hroughout several sessions, workshop participants discussed and debated the role of public opinion in both tobacco and climate accountability. It was widely agreed that, in the case of tobacco control, a turning point in public perception came at the 1994 “Waxman hearings” on the regulation of tobacco products.<sup>18</sup> On this highly publicized occasion, a broad swath of the populace became aware that the heads of the major tobacco companies had lied to Congress and the American public. Naomi Oreskes said tobacco litigation helped make this public narrative possible.

Participants grappled with the question of how climate advocates might create a similar narrative for global warming. While there was a good deal of debate about exactly what such a narrative should be, there was widespread agreement that the public is unlikely to be spurred into action to combat global warming on the basis of scientific evidence alone. Furthermore, climate change science is so complex that skeptics within the scientific community can create doubts in the public

mind without any assistance from the fossil fuel industry or other climate change deniers.

### **The Importance of Creating a Public Narrative**

Jim Hoggan, a public relations expert and co-founder of DeSmogBlog.com, explained the problem this way: “The public debate about climate change is choked with a smog of misinformation. Denial and bitter adversarial rhetoric are turning the public away from the issue. Communicating into such high levels of public mistrust and disinterest is tricky. We need to do some research into a new narrative.” Hoggan emphasized the importance of linking the industry’s “unjust misinformation” back to an overall narrative about sustainability, rather than getting mired in issues of whose fault climate change is and who should do what to ameliorate the situation. Noting the fact that there is broad and deep support for clean energy, Hoggan suggested the following narrative: “Coal, oil, and gas companies are engaging in a fraudulent attempt to stop the development of clean energy.”

Many participants agreed about the importance of framing a compelling public narrative. Dick Ayres added that the simple act of naming an issue or campaign can be important as well. After acid rain legislation passed in 1990, he recalled, an industry lobbyist told him, “You won this fight 10 years ago when you chose to use the words ‘acid rain.’”

Paul Slovic, a psychologist and expert on risk perception, cited his colleague Daniel Kahneman’s book *Thinking, Fast and Slow*, which has shown that people often tend to make snap judgments rather than stopping to analyze.<sup>19</sup> Though a degree of slow thinking is necessary to comprehend climate change, he said, people instead tend to go with their quick first impressions.

Having reviewed two boxes of documents obtained from tobacco marketers by the Justice Department for its RICO case against the tobacco companies, Slovic became convinced that the industry was decades ahead of academic psychologists in understanding the interplay of emotion and reason in decision making. The sophistication of the cigarette makers’ approach showed, he said, in the effectiveness with which they used images of beautiful people doing exciting things, or words like “natural” and “light” that conveyed health (in response to mounting evidence of smoking’s link to lung cancer).

Slovic emphasized that there are huge differences between tobacco and climate risks. “Every hazard is unique, with its own personality, so to speak,” he said. “Does it pose a risk to future generations? Does it evoke feelings of dread? Those differences can make an impact on strategy.” The feeling of dread, specifically, was an important feature in people’s perception of tobacco risks, since they equated smoking with lung cancer.

**Here is one possibility for a public narrative: “Coal, oil, and gas companies are engaging in a fraudulent attempt to stop the development of clean energy.”**

—Jim Hoggan

This differs from “doom-and-gloom” discussions about climate change, which can tend to turn people off rather than instilling dread. The difference is that climate change risks seem diffuse—distant in both time and location. The situation is even more complicated, Slovic added, by the fact that when people receive a benefit from an activity, they are more inclined to think the risk that activity carries is low. If they receive little benefit, they tend to think the risk is higher. As he explained, “The activities that contribute to climate change are highly beneficial to us. We love them; we are addicted to them.” That, he said, makes the problem of communicating the dangers of climate change all the more difficult.

### **Reaching People “Where They Live”**

Several participants emphasized the phenomenon of cultural cognition, including work on the subject by Dan Kahan at Yale Law School.<sup>20</sup> Cultural cognition research suggests that we all carry around with us a vision of a just social order for the world in which we live. Kahan’s work identifies a major division between those who tend toward a worldview based on structure and hierarchy, and those who tend toward a worldview based on egalitarianism. Another axis is individualism versus communitarianism (i.e., whether a higher value is placed on the welfare of the individual or the group). In Kahan’s conception, all of us have a blend of such attributes.

Attitudes on climate change are highly correlated with these views. As a result, it is difficult to change people's views on the issue because, when they receive information, they tend to spin it to reflect their favored worldview. In light of this research, several participants expressed concern that a revelation about documents from oil companies might not work to change many minds, given the power of such pre-existing worldviews.

Brenda Ekwurzel, a climate scientist at the Union of Concerned Scientists (UCS), recounted her organization's experience with this variable, explaining that UCS, as a science-based organization, contends with an "information fire hose" when it comes to climate change. As she put it, "We love data. We scientists tend to focus on the frontal lobe and we need communications folks to remind us that there are other parts of our brain too." She said she always wants to begin a discussion by saying, "Let's talk about climate change." But that, it turns out, is not necessarily the best starting point—she has learned that it's better to start with: "Let's talk about what you care about most." The answer is likely to be family, friends, livelihood, health, and recreation.

Ekwurzel highlighted polling data that have shown some 77 percent of people in Kahan's egalitarian/communitarian sector believe experts agree about climate change,

while 80 percent of those in the hierarchical/individualist camp believe experts disagree about climate change. To overcome that barrier, UCS staff responsible for communicating about climate change began experimenting, in one case addressing an issue of great concern to a very specific constituency: the correlation between August high school football practices in Texas and an increase in heat stroke among the student athletes.

This effort, launched to coincide with the first week of football practice in Texas and Oklahoma, proved remarkably successful, Ekwurzel said, drawing local media attention in a region the organization rarely reached. It also encouraged commentary from a different set of voices than those who normally talk about global-warming-related issues, such as medical professionals. It may have been a coincidence, Ekwurzel admitted, but within six weeks of this campaign the state of Texas decided to scale back high school football practices in the summer—and the message about the consequences of warmer summers in the region reached a largely untapped audience for UCS.<sup>21</sup>

### Identifying Wrongdoers

Participants at the workshop also discussed the benefits and risks associated with identifying wrongdoers as part of a public narrative. Some participants, such as Paul Slovic, argued that this could prove an effective strategy. Slovic cited research by Roy Baumeister and Brad Bushman suggesting that, when it comes to messages, "bad is stronger than good"—a finding that helps explain the tendency toward negative advertising in political campaigning.<sup>22</sup> Claudia Tebaldi said she believed "there is a big difference between convincing people there is a problem and mobilizing them. To mobilize, people often need to be outraged."

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**Every hazard is unique, with its own personality, so to speak. Does it pose a risk to future generations? Does it evoke feelings of dread? Those differences can make an impact on strategy.**

—Paul Slovic

On the other hand, several of the public opinion experts cautioned that “argument tends to trigger counter-argument.” By contrast, they pointed out, emotional messages don’t tend to trigger counter-emotions. “Abuse breeds abuse,” explained Dan Yankelovich, co-founder of Public Agenda, a nonpartisan group devoted to public opinion research and citizen education. “In this case, you have industry being abusive. But you do not want to demonize the industry. The objective ought to be to have the public take this issue so seriously that people change their behavior and pressure industry to alter their current practices. In the end, we want industry to be more receptive to this pressure, not less.”

For this reason and others, several participants expressed reservations about implementing an overly litigious strategy at this political moment. Perhaps the strongest proponent of this view was Yankelovich, who explained, “I am concerned about so much emphasis on legal strategies. The point of departure is a confused, conflicted, inattentive public. Are legal strategies the most effective strategies? I believe they are important after the public agrees how to feel about an issue. Then you can sew it up legally.” In the face of a confused, conflicted, and inattentive public, legal strategies can be a double-edged sword, he continued: “The more adversarial the discourse, the more minds are going to be closed.” In response to a comment by Richard Ayres, however, Yankelovich agreed that a legal strategy focused on the industry’s disinformation campaign could help advance public opinion on global warming, as it did in the case of tobacco.

Jim Hoggan advised, “It’s like that old adage that says, ‘Never get into a fight with a pig in public. The pig likes it. You both get dirty. And, after a while, people can’t tell the difference.’”

**I am concerned about so much emphasis on legal strategies. The point of departure is a confused, conflicted, inattentive public. Are legal strategies the most effective strategies? I believe they are important after the public agrees how to feel about an issue. Then you can sew it up legally. Legal strategies themselves are a double-edged sword. The more adversarial the discourse, the more minds are going to be closed.**

—Daniel Yankelovich

Dan Yankelovich also described his theory of the “public learning curve,” which holds that public opinion moves through three recognizable phases on issues like smoking or climate change. The first is the “consciousness-raising” phase, during which the media can help dramatically to draw attention to an issue. This is followed by the “working-through” phase, during which things bog down as the public struggles over how to adapt to painful, difficult change. Yankelovich noted a paucity of institutions that can help the public work through this phase, which is frequently marked by the kind of denial and wishful thinking recognizable today in public opinion about climate change. He argued that only when the public begins to move into the third phase of “thoughtful public judgment” can legal strategies prove most effective and ultimately produce laws and regulations.

As he explained, “My sense is we are not there yet on climate change. The media has not been a help. The opposition has been successful in throwing sand in the works. People are just beginning to enter the open-minded stage. We are not decades away but I don’t have enough empirical data. My sense is that it may take about three to five more years.”

### **The Prospects for a “Dialogic” Approach and Positive Vision**

Given the fact that the climate advocacy community has not yet coalesced around a compelling public narrative, Dan Yankelovich suggested that the topic could be a good candidate for engaging in a relatively new public opinion technique known as the “dialogic method,” in which representative groups holding different views on a subject meet over the course of a day or more to develop a narrative in an iterative fashion. The benefit of this method, he said, is that climate advocates could essentially work in partnership with the public “by having them help shape a narrative that is compelling.”

Yankelovich argued that the narrative must convey deep emotion to cut through the apathy and uncertainty prevalent in public opinion on the issue today, which has made it easier for the fossil fuel industry to sow confusion. In considering these emotional components of the narrative, he noted that anger is likely to be one of the major candidates but there may be others as well, adding that, “The notion of a custodial responsibility and concern also has deep resonance.” Finding the right public narrative, Yankelovich suggested, could help accelerate public opinion through the second phase of the curve within the next five years.

In one interesting example of mobilizing public opinion on an issue, Mary Christina Wood drew the group’s attention to the “victory speakers” campaign in World War II. When the U.S. government was contemplating entering the war, the threat of Nazi Germany seemed too far away to many Americans, who were reluctant to change their lives to mobilize for war. In response, the government orchestrated a campaign in which some 100,000 speakers, including Wood’s mother and grandmother, made five speeches each day about the need for U.S. involvement.<sup>23</sup> Wood suggested that the campaign helped mobilize the American people remarkably quickly.

Finally, several participants voiced strong support for the need to create a positive vision as part of the public narrative about climate change. As Naomi Oreskes put it, citing Ted Nordhaus and Michael Schellenberger’s article “The Death of Environmentalism,”<sup>24</sup> “Martin Luther King did not say, ‘I have a nightmare!’ King looked at a nightmare but he painted a positive vision. Abolitionists did not say, ‘We have to collapse the economy of the South,’ even if that is what happened. No one wants to hear you are a bad person or that the way you live is bad.” Lew Branscomb concurred, noting that, “There has got to be a future people think is worth struggling for.”



## 6. Conclusion

**There was widespread agreement among workshop participants that multiple, complementary strategies will be needed moving forward.**

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**W**orkshop participants unanimously agreed that the sessions yielded a productive and well-timed interdisciplinary dialogue. Participants from the scientific and legal communities seemed especially appreciative for the opportunity to engage so intensively with experts outside their usual professional circles. The only potential gaps identified by attendees were a lack of participants from the insurance industry and a lack of emphasis on the biotic effects of climate change.

Participants made commitments to continue the discussion and collaborate on a number of the efforts discussed at the meeting. In particular, several participants agreed to work together on some of the attribution work already under way, including efforts to help publicize attribution findings in a way that will be easy for the general public to understand, and build an advocacy component around those findings. Others proposed an informal subgroup to pursue Dan Yankelovich's suggestion of using the dialogic method in conjunction with public relations specialists to help develop an effective public narrative.

Participants also made commitments to try to coordinate future efforts, continue discussing strategies for gaining access to internal documents from the fossil fuel industry and its affiliated climate denial network, and to help

build an accessible repository for those documents that are obtained.

### Points of Agreement

There was widespread agreement among workshop participants that multiple, complementary strategies will be needed moving forward. For instance, in terms of what the "cancer" analog for global warming might be, participants generally accepted the proposition put forth by Angela Anderson that the answer might differ by region, with sea level rise instilling the most concern on the coasts, and extreme heat proving most compelling in the Midwest. Participants also agreed that it is better to focus on consequences of climate change happening now rather than on those projected for the distant future. Brenda Ekwurzel's anecdote about the public's engagement on the issue of high school football was offered as an example of the power that highlighting such immediate consequences can have.

Equally important was the nearly unanimous agreement on the importance of legal actions, both in wresting potentially useful internal documents from the fossil fuel industry and, more broadly, in maintaining pressure on the industry that could eventually lead to its support for legislative and regulatory responses to global warming. Some participants stated that pressure from the courts offers the best

current hope for gaining the energy industry's cooperation in converting to renewable energy.

Dan Yankelovich expressed a widely held sentiment when he noted what he called "a process of convergence" over the course of the workshop, in which participants with different expertise gradually incorporated broader perspectives on the problem at hand. "I know I found the tobacco example and the range of possible legal strategies very instructive," he said.

### Unresolved Issues

Perhaps the largest unresolved issues from the workshop were some disagreement over how adversarial in tone efforts targeting the fossil fuel industry should be, and the extent to which outrage can mobilize the public.

On the latter point, one participant noted, "Outrage is hugely important to generate. Language that holds carbon producers accountable should be an important part of the narrative we create." But a number of participants expressed reservations about any plans that "demonized" the fossil fuel industry.

Myles Allen, for instance, worried that too adversarial a tone "could hand a victory to the 'merchants of doubt.'" He explained that because the fossil fuel industry's disinformation has effectively muted a large portion of the electorate, "Our focus ought to be to bring as many of these people back to the table and motivate them to act. We need to somehow promote a debate among different parts of the legislature to get this happening."

Lew Branscomb agreed that efforts should not seek to demonize the fossil fuel industry, noting that, "There are a lot of companies in the oil and auto business, and some of the companies will come forward on the good side. We all need their cooperation. My notion is to try to find people in the industry producing

### It is possible to see glimmers of an emerging consensus on a strategy that incorporates legal action with a narrative that creates public outrage.

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carbon who will come around." To accomplish this, he suggested a strategy that emphasizes facts and doesn't impugn motives.

Brenda Ekwurzel lent some historical support to such a view by citing Adam Hochschild's book *Bury the Chains*, about the long campaign to end slavery. Hochschild noted, she said, that one of the most influential pamphlets published in the abolitionists' fight offered a dispassionate accounting of facts and details about the slave trade gathered from witnesses who had participated in it. This publication had no trace of the moral finger-wagging that had marked virtually all prior pamphlets. Instead, the facts—especially a famous diagram of a slave ship—carried the day and became widely accepted. Women in the United Kingdom, for instance, soon started serving tea using only sugar that had been certified as not having come from the slave trade.<sup>25</sup> "Maybe," Ekwurzel suggested, "we need an analogous effort to offer certified energy sources from suppliers who do not spread disinformation."

Mike MacCracken supported the need to "win the middle." As he noted, "We have had an international consensus of scientists agreeing to key facts since 1990."

Angela Anderson said she hoped UCS could contribute meaningfully to the public's "working-through" stage of the process outlined by Dan Yankelovich. She noted that local climate adaptation stories offer a way to sidestep the controversy, but acknowledged that it is still an open question whether this

strategy helps people work through the issue and ultimately accept climate science as fact. “This is our theory,” she said, “But we don’t have the research yet to prove this.” Anderson added that many people expect UCS, as a science-based organization, to correct misinformation about climate science. “I don’t want to abdicate that responsibility,” she said, “and I wrestle with this, wondering what is the most effective order in which to do things and the right tone?”

While many questions like these remain unresolved, the workshop made an important contribution to the quest for answers. And it is possible to see glimmers of an emerging consensus on a strategy that incorporates legal action (for document procurement and accountability) with a narrative that creates public outrage—not to demonize industry, but to illuminate the collusion and fraudulent activities that prevent us from building the sustainable future we need and our children deserve.

## Endnotes

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# Appendix A: Workshop Agenda

## Climate Accountability, Public Opinion, and Legal Strategies

*Martin Johnson House, Scripps Institution of Oceanography, La Jolla, CA*

*June 14-15, 2012*

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### Workshop Goals

- Compare the evolution of public attitudes and legal strategies for tobacco control and anthropogenic climate change. Can we use the lessons from tobacco education, laws, and litigation to address climate change?
- Explore which impacts can be most compellingly attributed to climate change, both scientifically and in the public mind, and consider options for communicating the scientific understanding of attribution in ways most useful to inform both public understanding and mitigation strategies.
- Explore the degree to which public (including judge and jury) acceptance of the causal relationships of climate impacts to fossil fuel production and/or emissions would increase the prospects for an effective strategy for U.S.-focused climate mitigation.
- Consider the viability of diverse strategies, including the legal merits of targeting carbon producers—as opposed to carbon emitters—for U.S.-focused climate mitigation.
- Identify promising legal and other options and scope out the development of mutually reinforcing intellectual, legal, and/or public strategies to further them.

**June 14, 2012**

- 7:45 a.m.** Meet in La Jolla Shores Hotel lobby for shuttle to workshop venue
- 8:00 a.m.** Coffee, light breakfast
- 8:30 a.m.** Welcome and charge to participants
- 9:00 a.m.** **Session 1. The Lay of the Land: Key Issues and Concepts**  
*Five presentations @ five minutes each, with limit of one image/visual aid; followed by moderated discussion*  
**Proctor:** A brief history of the tobacco wars: epidemiology, “doubt is our product,” litigation and other strategies  
**Allen:** Climate science and attribution  
**Heede:** Attribution of emissions to carbon producers  
**Pawa:** The legal landscape: fundamentals of law, climate change, damages, plaintiffs, and defendants  
**Slovic:** Public opinion and risk perception on tobacco and climate
- 10:30 a.m.** Break
- 11:00 a.m.** **Session 2. Lessons From Tobacco Control: Legal and Public Strategies**  
*Three presentations @ seven minutes each, with limit of one image/visual aid; followed by moderated discussion*  
**Sharon Eubanks, Stanton Glantz, Robert Proctor, Roberta Walburn:** Litigation, media strategies, coordination with grassroots efforts, etc.  
**Key issue:** What lessons can we draw from the history of public and legal strategies for controlling tobacco that might be applicable to address climate change?
- 12:30 p.m.** Lunch
- 1:30 p.m.** **Session 3. Attribution of Impacts and Associated Damages to Carbon and Climate Change: State of the Science and Expert Judgment**  
*Two presentations @ less than 10 minutes each; followed by moderated discussion*  
**On science:** Myles Allen and Claudia Tebaldi  
**Lead discussant:** Mike MacCracken  
**Key issue:** What impacts can be most compellingly attributed to carbon and climate change?
- 3:00 p.m.** Break
- 3:15 p.m.** **Session 4. Climate Legal Strategies: Options and Prospects**  
*Three presentations @ seven minutes each; followed by moderated discussion*  
**Presenters:** Matt Pawa, Mims Wood, Richard Ayres  
**Key issues:** What potential options for U.S.-focused climate litigation appear most promising? To what extent would greater public (including judge and jury) acceptance of the causal relationships of climate impacts to fossil fuel production and/or emissions enhance the prospects for success?

- 5:00 p.m.** Wrap up  
Shuttle service will be provided for the return trip to the hotel
- 6:30 p.m.** Drinks and dinner at the home of Lew and Connie Branscomb  
Shuttle will be provided from La Jolla Shores Hotel

## June 15, 2012

- 7:45 a.m.** Meet in La Jolla Shores Hotel lobby for shuttle to workshop venue
- 8:00 a.m.** Coffee, light breakfast
- 8:30 a.m.** **Session 5. Attribution of Emissions to Carbon Producers**  
*Presentation @ 10 minutes; followed by moderated discussion*  
Heede: Carbon majors analysis  
Lead discussant: Matt Pawa  
Key issue: Can new analyses increase the prospect for holding major carbon producers legally and publicly accountable?
- 9:30 a.m.** **Session 6. Innovative Strategies for Climate Accountability**  
*One to two presentations @ seven minutes each; followed by moderated discussion*  
Jim Hoggan, John Mashey  
Key issues: What potential options for U.S.-focused climate litigation appear most promising? To what extent would greater public (including judge and jury) acceptance of the causal relationships of climate impacts to fossil fuel production and/or emissions enhance the prospects for success? What types of non-litigation public pressure might enhance their prospects for success?
- 11:00 a.m.** Break
- 11:15 a.m.** **Session 7. Public Opinion and Climate Accountability**  
*Moderated discussion drawing from key perspectives in public opinion*  
Speakers: Dan Yankelovich, Paul Slovic, Brenda Ekwurzel  
Key issues: What is the role of public opinion in climate accountability?
- 12:45 p.m.** Lunch
- 2:00 p.m.** **Session 8. Discussion, outcomes, next steps**
- 4:00 p.m.** Wrap up  
Shuttle service will be provided for the return trip to the hotel
- 7:30 p.m.** Drinks and dinner at La Jolla Shores Hotel restaurant

## Appendix B: Participants

### Climate Accountability, Public Opinion, and Legal Strategies Workshop

June 14–15, 2012

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#### Workshop Organizers

**Naomi Oreskes**

*Professor of History and Science Studies,  
University of California–San Diego  
Adjunct Professor of Geosciences, Scripps  
Institution of Oceanography*

**Peter C. Frumhoff**

*Director of Science and Policy,  
Union of Concerned Scientists  
Cambridge, MA*

**Richard (Rick) Heede**

*Principal, Climate Mitigation Services  
Co-Founder and Director, Climate  
Accountability Institute  
Snowmass, CO*

**Lewis M. Branscomb**

*Aetna Professor of Public Policy and  
Corporate Management (emeritus), John  
F. Kennedy School of Government, Harvard  
University*

**Angela Ledford Anderson**

*Director, Climate and Energy Program,  
Union of Concerned Scientists  
Washington, DC*

#### Workshop Participants

**Myles Allen**

*Professor of Geosystem Science, School  
of Geography & the Environment,  
University of Oxford  
Environmental Change Institute, Oxford University  
Centre for the Environment*

**Richard (Dick) E. Ayres**

*Attorney, The Ayres Law Group  
Washington, DC*

**Brenda Ekwurzel**

*Climate Scientist and Assistant Director  
of Climate Research and Analysis,  
Union of Concerned Scientists  
Washington, DC*

**Sharon Y. Eubanks**

*Advocates for Justice, Chartered PC  
Senior Counsel, Sanford Wittels & Heisler, LLP  
Washington, DC*

**Stanton A. Glantz**

*Professor of Medicine, University of  
California–San Francisco  
University of California Center for  
Tobacco Control Research & Education*

**James (Jim) Hoggan**  
*President, Hoggan & Associates*  
 Vancouver, BC

**Michael (Mike) MacCracken**  
*Chief Scientist for Climate Change*  
*Programs, Climate Institute*  
 Washington, DC

**John Mashey**  
*Techviser*  
 Portola Valley, CA

**Joseph (Joe) Mendelson III**  
*Director of Policy, Climate and Energy*  
*Program, National Wildlife Federation*  
 Washington, DC

**Matt Pawa**  
*President, Pawa Law Group, PC*  
*Founder, The Global Warming Legal*  
*Action Project*  
 Newton Centre, MA

**Robert N. Proctor**  
*Professor of the History of Science,*  
*Stanford University*

**Paul Slovic**  
*Founder and President, Decision Research*  
 Eugene, OR

**Claudia Tebaldi**  
*Research Scientist, Climate Central*  
 Boulder, CO

**Jasper Teulings**  
*General Counsel/Advocaat, Greenpeace*  
*International*  
 Amsterdam

**Roberta Walburn**  
*Attorney*  
 Minneapolis, MN

**Mary Christina Wood**  
*Philip H. Knight Professor and Faculty*  
*Director, Environmental and Natural*  
*Resources Law Program, University of*  
*Oregon School of Law*

**Daniel (Dan) Yankelovich**  
*Chair and Co-Founder, Public Agenda*  
 San Diego, CA

### **Rapporteur**

**Seth Shulman**  
*Senior Staff Writer, Union of*  
*Concerned Scientists*  
 Cambridge, MA



© Brenda Ekwurzel

*Pictured (L to R): Stanton Glantz, Richard Heede, Roberta Walburn (obscured), James Hoggan, Sharon Eubanks, Peter Frumhoff, Richard Ayres (obscured), Angela Anderson, Mary Christina Wood, Lewis Branscomb, Claudia Tebaldi, Brenda Ekwurzel, Naomi Oreskes, Robert Proctor (obscured), Joseph Mendelson, Seth Shulman, John Mashey (obscured), Myles Allen, Alison Kruger, Michael MacCracken. Not pictured: Matt Pawa, Paul Slovic, Jasper Teulings, Daniel Yankelovich.*



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Website: [www.climateaccountability.org](http://www.climateaccountability.org)

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Climate Accountability Institute

# EXHIBIT 5

From: **Kenny Bruno** <kenny.bruno@verizon.net>  
Date: Tue, Jan 5, 2016 at 4:42 PM  
Subject: Exxon meeting DRAFT Agenda and logistics  
To: Lee Wasserman <lwasserman@rffund.org>, Bill McKibben <bill.mckibben@gmail.com>, Jamie Henn <jamie@350.org>, Rob Weissman <rweissman@citizen.org>, Bill Lipton <blipton@workingfamilies.org>, Dan Cantor <dcantor@workingfamilies.org>, John Passacantando <j.passacantando@gmail.com>, Kert Davies <kertmail@gmail.com>, won@ef.org, SEubanks@bordaslaw.com, lkrarup@vkrf.org, mp@pawalaw.com, bcampbell@clf.org, Stephen Kretzmann <steve@priceofoil.org>, Carroll Muffett <cmuffett@ciel.org>, Naomi Ages <naomi.ages@greenpeace.org>

Dear All,

If you are receiving this message then we believe you are attending the meeting this coming Friday Jan 8 regarding Exxon.

The meeting will take place at:

Rockefeller Family Fund

475 Riverside Dr entrance on Claremont @ 120th St. in Upper Manhattan, 1

Train to 116th St. from Penn Station

Please confirm whether you are attending in person (preferred, of course!) or

remotely. If remotely see instructions below.

Here is a DRAFT Agenda, your suggestions are welcome.

DRAFT Agenda

Exxon: Revelations & Opportunities

Friday January 8 11 AM – 3 PM

475 Riverside Dr @ 120th ST Manhattan

10:45: Arrival and Coffee

11:00 – 11:15 Introductions and purpose of the meeting (Lee)

**11:15-12:00 – Goals of an Exxon campaign**

What are our common goals? Examples include:

- o To establish in public's mind that Exxon is a corrupt institution that has pushed humanity (and all creation) toward climate chaos and grave harm.
- o To delegitimize them as a political actor
- o To force officials to disassociate themselves from Exxon, their money, and their historic opposition to climate progress, for example by refusing campaign donations, refusing to take meetings, calling for a price on carbon, etc.
- o To call into question climate advantages of fracking, compared to coal.
- o To drive divestment from Exxon.
- o To drive Exxon & climate into center of 2016 election cycle.

# EXHIBIT 6



MAURA HEALEY  
ATTORNEY GENERAL

THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF THE ATTORNEY GENERAL

ONE ASHBURTON PLACE  
BOSTON, MASSACHUSETTS 02108

TEL: (617) 727-2200  
www.mass.gov/ago

**CIVIL INVESTIGATIVE DEMAND**

*BY HAND DELIVERY*

Demand No.: 2016-EPD-36

Date Issued: April 19, 2016

Issued To: Exxon Mobil Corporation  
c/o Corporation Service Company, its Registered Agent  
84 State Street  
Boston, Massachusetts 02109

This Civil Investigative Demand ("CID") is issued to Exxon Mobil Corporation ("Exxon" or "You") pursuant to Massachusetts General Laws c. 93A, § 6, as part of a pending investigation concerning potential violations of M.G.L. c. 93A, § 2, and the regulations promulgated thereunder arising both from (1) the marketing and/or sale of energy and other fossil fuel derived products to consumers in the Commonwealth of Massachusetts (the "Commonwealth"); and (2) the marketing and/or sale of securities, as defined in M.G.L. c. 110A, § 401(k), to investors in the Commonwealth, including, without limitation, fixed- and floating rate-notes, bonds, and common stock, sold or offered to be sold in the Commonwealth.

This CID requires You to produce the documents identified in Schedule A below, pursuant to M.G.L. c. 93A, § 6(1). The Documents identified in Schedule A must be produced by May 19, 2016, by delivering them to:

I. Andrew Goldberg  
Assistant Attorney General  
Office of the Attorney General  
One Ashburton Place  
Boston, MA 02108

The documents shall be accompanied by an affidavit in the form attached hereto. AAG Goldberg and such other employees, agents, consultants, and experts of the Office of the Attorney General as needed in its discretion, shall review Your affidavit and the documents produced in conjunction with our investigation.

Demand No.: 2016-EPD-36  
Date Issued: April 19, 2016  
Issued To: Exxon Mobil Corporation

This CID also requires You to appear and give testimony under oath through Your authorized custodian of records that the documents You produce in response to this CID represent all of the documents called for in this CID; that You have not withheld any documents responsive to this CID; and that all of the documents You produce were records made in good faith and kept in the regular course of Your business, and it was the regular course of Your business to make and keep such records. This testimony will be taken on June 10, 2016, beginning at 9:30 a.m. at the Boston Office of the Attorney General, 100 Cambridge Street, 10<sup>th</sup> Floor, Boston, Massachusetts. The testimony will be taken by AAG Goldberg or an appropriate designee, before an officer duly authorized to administer oaths by the law of the Commonwealth, and shall proceed, day to day, until the taking of testimony is completed. The witness has the right to be accompanied by an attorney. Rule 30(c) of the Massachusetts Rules of Civil Procedure shall apply. Your attendance and testimony are necessary to conduct this investigation.

This CID also requires You to appear and give testimony under oath through one or more of Your officers, directors or managing agents, or other persons most knowledgeable concerning the subject matter areas enumerated in Schedule B, below. This testimony will be taken on June 24, 2016, beginning at 9:30 a.m. at the Boston Office of the Attorney General, 100 Cambridge Street, 10<sup>th</sup> Floor, Boston, Massachusetts. The testimony will be taken by AAG Goldberg or an appropriate designee, before an officer duly authorized to administer oaths by the law of the Commonwealth, and shall proceed, day to day, until the taking of testimony is completed. The witness has the right to be accompanied by an attorney. Rule 30(c) of the Massachusetts Rules of Civil Procedure shall apply. Your attendance and testimony are necessary to conduct this investigation.

Under G.L. c. 93A, § 6(7), You may make a motion prior to the production date specified in this notice, or within twenty-one days after this notice has been served, whichever period is shorter, in the appropriate court of law to modify or set aside this CID for good cause shown.

If the production of the documents required by this CID would be, in whole or in part, unduly burdensome, or if You require clarification of any request, please contact AAG Goldberg promptly at the phone number below.

Finally, please note that under G.L. c. 93A, §7, obstruction of this investigation, including the alteration or destruction of any responsive document after receipt of

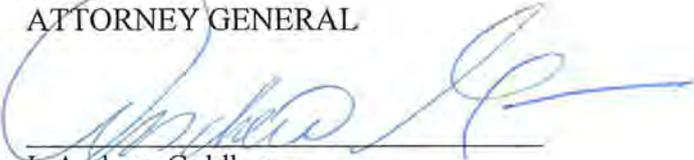
Demand No.: 2016-EPD-36  
Date Issued: April 19, 2016  
Issued To: Exxon Mobil Corporation

this CID, is subject to a fine of up to five thousand dollars (\$5,000.00). A copy of that provision is reprinted at Schedule C.

Issued at Boston, Massachusetts, this 19<sup>th</sup> day of April, 2016.

COMMONWEALTH OF  
MASSACHUSETTS

MAURA HEALEY  
ATTORNEY GENERAL

By: 

I. Andrew Goldberg  
Assistant Attorney General  
Office of the Attorney General  
One Ashburton Place  
Boston, MA 02108  
Tel. (617) 727-2200

Demand No.: 2016-EPD-36  
Date Issued: April 19, 2016  
Issued To: Exxon Mobil Corporation

## SCHEDULE A

### **A. General Definitions and Rules of Construction**

1. "Advertisement" means a commercial message made orally or in any newspaper, magazine, leaflet, flyer, or catalog; on radio, television, or public address system; electronically, including by email, social media, and blog post; or made in person, in direct mail literature or other printed material, or on any interior or exterior sign or display, in any window display, in any point of transaction literature, but not including on any product label, which is delivered or made available to a customer or prospective customer in any manner whatsoever.
2. "All" means each and every.
3. "Any" means any and all.
4. "And" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the CID all information or Documents that might otherwise be construed to be outside of its scope.
5. "Communication" means any conversation, discussion, letter, email, memorandum, meeting, note or other transmittal of information or message, whether transmitted in writing, orally, electronically or by any other means, and shall include any Document that abstracts, digests, transcribes, records or reflects any of the foregoing. Except where otherwise stated, a request for "Communications" means a request for all such Communications.
6. "Concerning" means, directly or indirectly, in whole or in part, relating to, referring to, describing, evidencing or constituting.
7. "Custodian" means any Person or Entity that, as of the date of this CID, maintained, possessed, or otherwise kept or controlled such Document.
8. "Document" is used herein in the broadest sense of the term and means all records and other tangible media of expression of whatever nature however and wherever created, produced or stored (manually, mechanically, electronically or otherwise), including without limitation all versions whether draft or final, all annotated or nonconforming or other copies, electronic mail ("e-mail"), instant messages, text messages, personal digital assistant or other wireless device messages, voicemail, calendars, date books, appointment books, diaries, books, papers, files, notes, confirmations, accounts statements, correspondence, memoranda, reports, records, journals, registers, analyses, plans, manuals, policies, telegrams, faxes, telexes, wires, telephone logs, telephone messages, message slips, minutes, notes or records or transcriptions of conversations or

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Communications or meetings, tape recordings, videotapes, disks, and other electronic media, microfilm, microfiche, storage devices, press releases, contracts, agreements, notices and summaries. Any non-identical version of a Document constitutes a separate Document within this definition, including without limitation drafts or copies bearing any notation, edit, comment, marginalia, underscoring, highlighting, marking, or any other alteration of any kind resulting in any difference between two or more otherwise identical Documents. In the case of Documents bearing any notation or other marking made by highlighting ink, the term Document means the original version bearing the highlighting ink, which original must be produced as opposed to any copy thereof. Except where otherwise stated, a request for "Documents" means a request for all such Documents.

9. "Entity" means without limitation any corporation, company, limited liability company or corporation, partnership, limited partnership, association, or other firm or similar body, or any unit, division, agency, department, or similar subdivision thereof.
10. "Identify" or "Identity," as applied to any Document means the provision in writing of information sufficiently particular to enable the Attorney General to request the Document's production through CID or otherwise, including but not limited to: (a) Document type (letter, memo, etc.); (b) Document subject matter; (c) Document date; and (d) Document author(s), addressee(s) and recipient(s). In lieu of identifying a Document, the Attorney General will accept production of the Document, together with designation of the Document's Custodian, and identification of each Person You believe to have received a copy of the Document.
11. "Identify" or "Identity," as applied to any Entity, means the provision in writing of such Entity's legal name, any d/b/a, former, or other names, any parent, subsidiary, officers, employees, or agents thereof, and any address(es) and any telephone number(s) thereof.
12. "Identify" or "Identity," as applied to any natural person, means and includes the provision in writing of the natural person's name, title(s), any aliases, place(s) of employment, telephone number(s), e-mail address(es), mailing addresses and physical address(es).
13. "Person" means any natural person, or any Entity.
14. "Refer" means embody, refer or relate, in any manner, to the subject of the document demand.

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15. "Refer or Relate to" means to make a statement about, embody, discuss, describe, reflect, identify, deal with, consist of, establish, comprise, list, or in any way pertain, in whole or in part, to the subject of the document demand.
16. "Sent" or "received" as used herein means, in addition to their usual meanings, the transmittal or reception of a Document by physical, electronic or other delivery, whether by direct or indirect means.
17. "CID" means this subpoena and any schedules, appendices, or attachments thereto.
18. The use of the singular form of any word used herein shall include the plural and vice versa. The use of any tense of any verb includes all other tenses of the verb.
19. The references to Communications, Custodians, Documents, Persons, and Entities in this CID encompass all such relevant ones worldwide.

#### **B. Particular Definitions**

1. "Exxon," "You," or "Your," means Exxon Mobil Corporation, and any present or former parents, subsidiaries, affiliates, directors, officers, partners, employees, agents, representatives, attorneys or other Persons acting on its behalf, and including predecessors or successors or any affiliates of the foregoing.
2. "Exxon Products and Services" means products and services, including without limitation petroleum and natural gas energy products and related services, offered to and/or sold by Exxon to consumers in Massachusetts.
3. "Carbon Dioxide" or "CO<sub>2</sub>" means the naturally occurring chemical compound composed of a carbon atom covalently double bonded to two oxygen atoms that is fixed by photosynthesis into organic matter.
4. "Climate" means the statistical description in terms of the mean and variability of relevant quantities, such as surface variables, including, without limitation, temperature, precipitation, and wind, on Earth over a period of time ranging from months to thousands or millions of years. Climate is the state, including a statistical description, of the Climate System. *See* Intergovernmental Panel on Climate Change (IPCC), 2012: Glossary of terms. In: *Managing the Risks of Extreme Events and Disasters to Advance Climate Change Adaptation* [Field, C.B., V. Barros, T.F. Stocker, D. Qin, D.J. Dokken, K.L. Ebi, M.D. Mastrandrea, K.J. Mach, G.-K. Plattner, S.K. Allen, M. Tignor, and P.M. Midgley (eds.)]. A Special Report of Working Groups I and II of the IPCC. Cambridge University Press, Cambridge, UK, and New York, NY, USA (the "IPCC Glossary"), p. 557.

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5. "Climate Change" means a change in the state of Earth's Climate that can be identified (e.g., by using statistical tests) by changes in the mean and/or the variability of its properties and that persists for an extended period, typically decades or longer. *See IPCC Glossary, p. 557.*
6. "Climate Model" means a numerical representation of the Climate System based on the physical, chemical, and biological properties of its components, their interactions, and feedback processes, and that accounts for all or some of its known properties. Climate models are applied as a research tool to study and simulate the climate, and for operational purposes, including monthly, seasonal, interannual, and longer-term climate predictions. *See IPCC Glossary, p. 557.*
7. "Climate Risk" means the risk that variables in the Climate System reach values that adversely affect natural and human systems and regions, including those that relate to extreme values of the climate variables such as high wind speed, high river water and sea level stages (flood), and low water stages (drought). These include, without limitation, such risks to ecosystems, human health, geopolitical stability, infrastructure, facilities, businesses, asset value, revenues, and profits, as well as the business risks associated with public policies and market changes that arise from efforts to mitigate or adapt to Climate Change.
8. "Climate Science" means the study of the Climate on Earth.
9. "Climate System" means the dynamics and interactions on Earth of five major components: atmosphere, hydrosphere, cryosphere, land surface, and biosphere. *See IPCC Glossary, p. 557.*
10. "Global Warming" means the gradual increase, observed or projected, in Earth's global surface temperature, as one of the consequences of radiative forcing caused by anthropogenic emissions.
11. "Greenhouse Gas" means a gaseous constituent of Earth's atmosphere, both natural and anthropogenic, that absorbs and emits radiation at specific wavelengths within the spectrum of infrared radiation emitted by the Earth's surface, the atmosphere, and clouds. Water vapor (H<sub>2</sub>O), carbon dioxide (CO<sub>2</sub>), nitrous oxide (N<sub>2</sub>O), methane (CH<sub>4</sub>), chlorofluorocarbons (CFCs), and ozone (O<sub>3</sub>) are the primary Greenhouse Gases in the Earth's atmosphere. *See IPCC Glossary, p. 560.*
12. "Greenhouse Gas Emissions" means the exiting to the atmosphere of Greenhouse Gas.
13. "Methane" or "CH<sub>4</sub>" means the chemical compound composed of one atom of carbon and four atoms of hydrogen. Methane is the main component of natural gas.

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14. "Radiative Forcing Effect" means the influence a factor has in altering the balance of incoming and outgoing energy in the Earth-atmosphere system and is an index of the importance of the factor as a potential climate change mechanism.
15. "Security" has the same meaning as defined in M.G.L. c. 110A, § 401(k), and includes, without limitation, any fixed- and floating rate-notes, bonds, and common stock, available to investors for purchase by Massachusetts residents.
16. "Sustainable Development" means development that meets the needs of the present without compromising the ability of future generations to meet their own needs. *See IPCC Glossary, p. 564.*
17. "Sustainability Reporting" means the practice of measuring, disclosing and being accountable to internal and external stakeholders for organizational performance towards the goals of Sustainable Development.
18. "Acton Institute for the Study of Religion and Liberty" or "Acton Institute" means the nonprofit organization by that name. Acton Institute is located in Grand Rapids, Michigan.
19. "American Enterprise Institute for Public Policy Research" or "AEI" means the nonprofit public policy organization by that name. AEI is based in Washington, D.C.
20. "Americans for Prosperity" means the nonprofit advocacy group by that name. Americans for Prosperity is based in Arlington, Virginia.
21. "American Legislative Exchange Council" or "ALEC" means the nonprofit organization by that name consisting of state legislator and private sector members. ALEC is based in in Arlington, Virginia.
22. "American Petroleum Institute" or "API" means the oil and gas industry trade association by that name. API is based in Washington, D.C.
23. "Beacon Hill Institute at Suffolk University" means the research arm of the Department of Economics at Suffolk University in Boston, Massachusetts, by that name.
24. "Center for Industrial Progress" or "CIP" means the for profit organization by that name. CIP is located in Laguna Hills, California.
25. "Competitive Enterprise Institute" or "CEI" means the nonprofit public policy organization by that name. CEI is based in Washington, D.C.

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26. "George C. Marshall Institute" means the nonprofit public policy organization by that name. George C. Marshall Institute is based in Arlington, Virginia.
27. "The Heartland Institute" means the nonprofit public policy organization by that name. The Heartland Institute is based in Arlington Heights, Illinois.
28. "The Heritage Foundation" means the nonprofit public policy organization by that name. The Heritage Foundation is based in Washington, D.C.
29. "Mercatus Center at George Mason University" means the university-based nonprofit public policy organization by that name. Mercatus Center at George Mason University is based in Arlington, Virginia.

### **C. Instructions**

1. **Preservation of Relevant Documents and Information; Spoliation.** You are reminded of your obligations under law to preserve Documents and information relevant or potentially relevant to this CID from destruction or loss, and of the consequences of, and penalties available for, spoliation of evidence. No agreement, written or otherwise, purporting to modify, limit or otherwise vary the terms of this CID, shall be construed in any way to narrow, qualify, eliminate or otherwise diminish your aforementioned preservation obligations. Nor shall you act, in reliance upon any such agreement or otherwise, in any manner inconsistent with your preservation obligations under law. No agreement purporting to modify, limit or otherwise vary your preservation obligations under law shall be construed as in any way narrowing, qualifying, eliminating or otherwise diminishing such aforementioned preservation obligations, nor shall you act in reliance upon any such agreement, unless an Assistant Attorney General confirms or acknowledges such agreement in writing, or makes such agreement a matter of record in open court.
2. **Possession, Custody, and Control.** The CID calls for all responsive Documents or information in your possession, custody or control. This includes, without limitation, Documents or information possessed or held by any of your officers, directors, employees, agents, representatives, divisions, affiliates, subsidiaries or Persons from whom you could request Documents or information. If Documents or information responsive to a request in this CID are in your control, but not in your possession or custody, you shall promptly Identify the Person with possession or custody.
3. **Documents No Longer in Your Possession.** If any Document requested herein was formerly in your possession, custody or control but is no longer available, or no longer exists, you shall submit a statement in writing under oath that: (a) describes

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in detail the nature of such Document and its contents; (b) Identifies the Person(s) who prepared such Document and its contents; (c) Identifies all Persons who have seen or had possession of such Document; (d) specifies the date(s) on which such Document was prepared, transmitted or received; (e) specifies the date(s) on which such Document became unavailable; (f) specifies the reason why such Document is unavailable, including without limitation whether it was misplaced, lost, destroyed or transferred; and if such Document has been destroyed or transferred, the conditions of and reasons for such destruction or transfer and the Identity of the Person(s) requesting and performing such destruction or transfer; and (g) Identifies all Persons with knowledge of any portion of the contents of the Document.

4. No Documents Responsive to CID Requests. If there are no Documents responsive to any particular CID request, you shall so state in writing under oath in the Affidavit of Compliance attached hereto, identifying the paragraph number(s) of the CID request concerned.
5. Format of Production. You shall produce Documents, Communications, and information responsive to this CID in electronic format that meets the specifications set out in Schedule D.
6. Existing Organization of Documents to be Preserved. Regardless of whether a production is in electronic or paper format, each Document shall be produced in the same form, sequence, organization or other order or layout in which it was maintained before production, including but not limited to production of any Document or other material indicating filing or other organization. Such production shall include without limitation any file folder, file jacket, cover or similar organizational material, as well as any folder bearing any title or legend that contains no Document. Documents that are physically attached to each other in your files shall be accompanied by a notation or information sufficient to indicate clearly such physical attachment.
7. Document Numbering. All Documents responsive to this CID, regardless of whether produced or withheld on ground of privilege or other legal doctrine, and regardless of whether production is in electronic or paper format, shall be numbered in the lower right corner of each page of such Document, without disrupting or altering the form, sequence, organization or other order or layout in which such Documents were maintained before production. Such number shall comprise a prefix containing the producing Person's name or an abbreviation thereof, followed by a unique, sequential, identifying document control number.
8. Privilege Placeholders. For each Document withheld from production on ground of privilege or other legal doctrine, regardless of whether a production is electronic or in hard copy, you shall insert one or more placeholder page(s) in the

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production bearing the same document control number(s) borne by the Document withheld, in the sequential place(s) originally occupied by the Document before it was removed from the production.

9. **Privilege.** If You withhold or redact any Document responsive to this CID of privilege or other legal doctrine, you shall submit with the Documents produced a statement in writing under oath, stating: (a) the document control number(s) of the Document withheld or redacted; (b) the type of Document; (c) the date of the Document; (d) the author(s) and recipient(s) of the Document; (e) the general subject matter of the Document; and (f) the legal ground for withholding or redacting the Document. If the legal ground for withholding or redacting the Document is attorney-client privilege, you shall indicate the name of the attorney(s) whose legal advice is sought or provided in the Document.
10. **Your Production Instructions to be Produced.** You shall produce a copy of all written or otherwise recorded instructions prepared by you concerning the steps taken to respond to this CID. For any unrecorded instructions given, you shall provide a written statement under oath from the Person(s) who gave such instructions that details the specific content of the instructions and any Person(s) to whom the instructions were given.
11. **Cover Letter.** Accompanying any production(s) made pursuant to this CID, You shall include a cover letter that shall at a minimum provide an index containing the following: (a) a description of the type and content of each Document produced therewith; (b) the paragraph number(s) of the CID request to which each such Document is responsive; (c) the Identity of the Custodian(s) of each such Document; and (d) the document control number(s) of each such Document.
12. **Affidavit of Compliance.** A copy of the Affidavit of Compliance provided herewith shall be completed and executed by all natural persons supervising or participating in compliance with this CID, and you shall submit such executed Affidavit(s) of Compliance with Your response to this CID.
13. **Identification of Persons Preparing Production.** In a schedule attached to the Affidavit of Compliance provided herewith, you shall Identify the natural person(s) who prepared or assembled any productions or responses to this CID. You shall further Identify the natural person(s) under whose personal supervision the preparation and assembly of productions and responses to this CID occurred. You shall further Identify all other natural person(s) able competently to testify: (a) that such productions and responses are complete and correct to the best of such person's knowledge and belief; and (b) that any Documents produced are authentic, genuine and what they purport to be.

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14. Continuing Obligation to Produce. This CID imposes a continuing obligation to produce the Documents and information requested. Documents located, and information learned or acquired, at any time after your response is due shall be promptly produced at the place specified in this CID.
15. No Oral Modifications. No agreement purporting to modify, limit or otherwise vary this CID shall be valid or binding, and you shall not act in reliance upon any such agreement, unless an Assistant Attorney General confirms or acknowledges such agreement in writing, or makes such agreement a matter of record in open court.
16. Time Period. Except where otherwise stated, the time period covered by this CID shall be from April 1, 2010, through the date of the production.

**D. Documents to be Produced**

1. For the time period from January 1, 1976, through the date of this production, Documents and Communications concerning Exxon's development, planning, implementation, review, and analysis of research efforts to study CO<sub>2</sub> emissions (including, without limitation, from fossil fuel extraction, production, and use), and the effects of these emissions on the Climate, including, without limitation, efforts by Exxon to:
  - (a) analyze the absorption rate of atmospheric CO<sub>2</sub> in the oceans by developing and using Climate Models;
  - (b) measure atmospheric and oceanic CO<sub>2</sub> levels (including, without limitation, through work conducted on Exxon's *Esso Atlantic* tanker);
  - (c) determine the source of the annual CO<sub>2</sub> increment that has been increasing over time since the Industrial Revolution by measuring changes in the isotopic ratios of carbon and the distribution of radon in the ocean; and/or
  - (d) assess the financial costs and environmental consequences associated with the disposal of CO<sub>2</sub> and hydrogen sulfide gas from the development of offshore gas from the seabed of the South China Sea off Natuna Island, Indonesia.
2. For the time period from January 1, 1976, through the date of this production, Documents and Communications concerning papers prepared, and presentations given, by James F. Black, at times Scientific Advisor in the Products Research Division of Exxon Research and Engineering, author of, among others, the paper *The Greenhouse Effect*, produced in or around 1978.

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3. For the time period from January 1, 1976, through the date of this production, Documents and Communications concerning the paper *CO<sub>2</sub> Greenhouse Effect A Technical Review*, dated April 1, 1982, prepared by the Coordination and Planning Division of Exxon Research and Engineering Company.
4. For the time period from January 1, 1976, through the date of this production, Documents and Communications concerning the paper *CO<sub>2</sub> Greenhouse and Climate Issues*, dated March 28, 1984, prepared by Henry Shaw, including all Documents:
  - (a) forming the basis for Exxon's projection of a 1.3 to 3.1 degree Celsius average temperature rise by 2090 due to increasing CO<sub>2</sub> emissions and all Documents describing the basis for Exxon's conclusions that a 2 to 3 degree Celsius increase in global average temperature could:
    - Be "amplified to about 10 degrees C at the poles," which could cause "polar ice melting and a possible sea-level rise of 0.7 meter[sic] by 2080"
    - Cause redistribution of rainfall
    - Cause detrimental health effects
    - Cause population migration
  - (b) forming the basis for Exxon's conclusion that society could "avoid the problem by sharply curtailing the use of fossil fuels."
5. Documents and Communications with any of Acton Institute, AEI, Americans for Prosperity, ALEC, API, Beacon Hill Institute at Suffolk University, CEI, CIP, George C. Marshall Institute, The Heartland Institute, The Heritage Foundation, and/or Mercatus Center at George Mason University, concerning Climate Change and/or Global Warming, Climate Risk, Climate Science, and/or communications regarding Climate Science by fossil fuel companies to the media and/or to investors or consumers, including Documents and Communications relating to the funding by Exxon of any of those organizations.
6. For the time period from September 1, 1997, through the date of this production, Documents and Communications concerning the API's draft *Global Climate Science Communications Plan* dated in or around 1998.
7. For the time period from January 1, 2007, through the date of this production, Documents and Communications concerning Exxon's awareness of, and/or response to, the Union of Concerned Scientists report *Smoke, Mirrors & Hot Air: How ExxonMobil Uses Big Tobacco's Tactics to Manufacture Uncertainty on Climate Science*, dated January 2007.

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8. For the time period from April 1, 1997, through the date of this production, Documents and Communications concerning the decision making by Exxon in preparing, and substantiation of, the following statements in the remarks *Energy – key to growth and a better environment for Asia-Pacific nations*, by then Chairman Lee R. Raymond to the World Petroleum Congress, Beijing, People’s Republic of China, 10/13/97 (the “Raymond WPC Statements”):
  - It is highly unlikely that the temperature in the middle of the next century will be significantly affected whether policies are enacted now or 20 years from now. (Raymond WPC Statements, p. 11)
  - Forecasts of future warming come from computer models that try to replicate Earth’s past climate and predict the future. They are notoriously inaccurate. None can do it without significant overriding adjustments. (Raymond WPC Statements, p. 10)
  - Proponents of the agreements [that could result from the Kyoto Climate Change Conference in December 1997] say they are necessary because burning fossil fuels causes global warming. Many people – politicians and the public alike – believe that global warming is a rock-solid certainty. But it’s not. (Raymond WPC Statements, p. 8)
  - To achieve this kind of reduction in carbon dioxide emissions most advocates are talking about, governments would have to resort to energy rationing administered by a vast international bureaucracy responsible to no one. (Raymond WPC Statements, p. 10)
  - We also have to keep in mind that most of the greenhouse effect comes from natural sources, especially water vapor. Less than a quarter is from carbon dioxide, and, of this, only four percent of the carbon dioxide entering the atmosphere is due to human activities – 96 percent comes from nature. (Raymond WPC Statements, p. 9)
9. Documents and Communications concerning Chairman Rex W. Tillerson’s June 27, 2012, address to the Council on Foreign Relations, including those sufficient to document the factual basis for the following statements:
  - Efforts to address climate change should focus on engineering methods to adapt to shifting weather patterns and rising sea levels rather than trying to eliminate use of fossil fuels.
  - Humans have long adapted to change, and governments should create policies to cope with the Earth’s rising temperatures.

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- Changes to weather patterns that move crop production areas around – we’ll adapt to that. It’s an engineering problem and it has engineering solutions.
  - Issues such as global poverty [are] more pressing than climate change, and billions of people without access to energy would benefit from oil and gas supplies.
10. Documents and Communications concerning Chairman Tillerson’s statements regarding Climate Change and Global Warming, on or about May 30, 2013, to shareholders at an Exxon shareholder meeting in Dallas, Texas, including Chairman Tillerson’s statement “What good is it to save the planet if humanity suffers?”
  11. Documents and Communications concerning Chairman Tillerson’s speech *Unleashing Innovation to Meet Our Energy and Environmental Needs*, presented to the 36<sup>th</sup> Annual Oil and Money Conference in London, England, 10/7/15 (the “2015 Oil and Money Conference Speech”), including Documents sufficient to demonstrate the factual basis for Chairman Tillerson’s representation that Exxon’s scientific research on Climate Change, begun in the 1970s, “led to work with the U.N.’s Intergovernmental Panel on Climate Change and collaboration with academic institutions and to reaching out to policymakers and others, who sought to advance scientific understanding and policy dialogue.”
  12. Documents and Communications concerning any public statement Chairman Tillerson has made about Climate Change or Global Warming from 2012 to present.
  13. Documents and Communications concerning changes in the design, construction, or operation of any Exxon facility to address possible variations in sea level and/or other variables, such as temperature, precipitation, timing of sea ice formation, wind speed, and increased storm intensity, associated with Climate Change, including but not limited to:
    - (a) adjustments to the height of Exxon’s coastal and/or offshore drilling platforms; and
    - (b) adjustments to any seasonal activity, including shipping and the movement of vehicles.
  14. Documents and Communications concerning any research, analysis, assessment, evaluation, Climate Modeling or other consideration performed by Exxon, or with funding provided by Exxon, concerning the costs for CO<sub>2</sub> mitigation, including,

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without limitation, concerning the 2014 Exxon report to shareholders *Energy and Carbon – Managing the Risks* (the “2014 Managing the Risks Report”).

15. Documents and Communications substantiating or refuting the following claims in the 2014 Managing the Risks Report:

- [B]y 2030 for the 450ppm CO<sub>2</sub> stabilization pathway, the average American household would face an added CO<sub>2</sub> cost of almost \$2,350 per year for energy, amounting to about 5 percent of total before-tax median income. (p. 9)
- These costs would need to escalate steeply over time, and be more than double the 2030 level by mid-century. (p. 9)
- Further, in order to stabilize atmospheric GHG concentrations, these CO<sub>2</sub> costs would have to be applied across both developed and undeveloped countries. (p. 9)
- [W]e see world GDP growing at a rate that exceeds population growth through [the year 2040], almost tripling in size from what it was globally in 2000 [fn. omitted]. It is largely the poorest and least developed of the world’s countries that benefit most from this anticipated growth. However, this level of GDP growth requires more accessible, reliable and affordable energy to fuel growth, and it is vulnerable populations who would suffer most should that growth be artificially constrained. (pp. 3 – 4)
- [W]e anticipate renewables growing at the fastest pace among all sources through [the year 2040]. However, because they make a relatively small contribution compared to other energy sources, renewables will continue to comprise about 5 percent of the total energy mix by 2040. Factors limiting further penetration of renewables include scalability, geographic dispersion, intermittency (in the case of solar and wind), and cost relative to other sources. (p. 6)
- In assessing the economic viability of proved reserves, we do not believe a scenario consistent with reducing GHG emissions by 80 percent by 2050, as suggested by the “low carbon scenario,” lies within the “reasonably likely to occur” range of planning assumptions, since we consider the scenario highly unlikely. (p. 16)

16. Documents and Communications that formed the basis for the following statements in Exxon’s January 26, 2016, press release on Exxon’s 2016 Energy Outlook:

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- In 2040, oil and natural gas are expected to make up nearly 60 percent of global supplies, while nuclear and renewables will be approaching 25 percent. Oil will provide one third of the world's energy in 2040, remaining the No. 1 source of fuel, and natural gas will move into second place.
  - ExxonMobil's analysis and those of independent agencies confirms our long-standing view that all viable energy sources will be needed to meet increasing demand.
  - The Outlook projects that global energy-related carbon dioxide emissions will peak around 2030 and then start to decline. Emissions in OECD nations are projected to fall by about 20 percent from 2014 to 2040.
17. Documents and Communications concerning any research, study, and/or evaluation by Exxon and/or any other fossil fuel company regarding the Climate Change Radiative Forcing Effect of natural gas (Methane), and potential regulation of Methane as a Greenhouse Gas.
  18. Documents and Communications concerning Exxon's internal consideration of public relations and marketing decisions for addressing consumer perceptions regarding Climate Change and Climate Risks in connection with Exxon's offering and selling Exxon Products and Services to consumers in Massachusetts.
  19. Documents and Communications concerning the drafting and finalizing of text, including all existing drafts of such text, concerning Greenhouse Gas Emissions and the issue of Climate Change or Global Warming filed with the U.S. Securities and Exchange Commission (the "SEC") by Exxon, including, without limitation, Exxon's Notices of Meeting; Form 10-Ks; Form 10-Qs; Form 8-Ks; Prospectuses; Prospectus Supplements; and Free Will Prospectuses; and/or contained in any offering memoranda and offering circulars from filings with the SEC under Regulation D (17 CFR § 230.501, et seq.).
  20. Documents and Communications concerning Exxon's consideration of public relations and marketing decisions for addressing investor perceptions regarding Climate Change, Climate Risk, and Exxon's future profitability in connection with Exxon's offering and selling Securities in Massachusetts.
  21. Documents and Communications related to Exxon's efforts in 2015 and 2016 to address any shareholder resolutions related to Climate Change, Global Warming, and how efforts to reduce Greenhouse Gas Emissions will affect Exxon's ability to operate profitably.
  22. For the time period from January 1, 2006, through the date of this production, Documents and Communications concerning Exxon's development of its program

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for Sustainability Reporting addressing Climate Change and Climate Risk, including, without limitation, regarding Exxon's annual "Corporate Citizenship Report" and Exxon's "Environmental Aspects Guide."

23. Documents and Communications concerning information exchange among Exxon and other companies and/or industry groups representing energy companies, regarding marketing of energy and/or fossil fuel products to consumers in light of public perceptions regarding Climate Change and Climate Risk.
24. Exemplars of all advertisements, flyers, promotional materials, and informational materials of any type, including but not limited to web-postings, blog-posts, social media-postings, print ads (including ads on op-ed pages of newspapers), radio and television advertisements, brochures, posters, billboards, flyers and disclosures used by or for You, Your employees, agents, franchisees or independent contractors to solicit or market Exxon Products and Services in Massachusetts, including but not limited to:
  - A copy of each print advertisement placed in the Commonwealth;
  - A DVD format copy of each television advertisement that ran in the Commonwealth;
  - An audio recording of each radio advertisement and audio portion of each internet advertisement;
  - A copy of each direct mail advertisement, brochure, or other written promotional materials;
  - A printout, screenshot or copy of each advertisement, information, or communication provided via the internet, email, Facebook, Twitter, You Tube, or other electronic communications system; and/or
  - A copy of each point-of-sale promotional material used by You or on Your behalf.
25. Documents and Communications sufficient to show where each of the exemplars in Demand No. 24 was placed and the intended or estimated consumers thereof, including, where appropriate, the number of hits on each internet page and all Commonwealth Internet Service Providers viewing same.
26. Documents and Communications substantiating the claims made in the advertisements, flyers, promotional materials, and informational materials identified in response to Demand Nos. 22 through 24.
27. Documents and Communications concerning Your evaluation or review of the impact, success or effectiveness of each Document referenced in Demand Nos. 22 through 24, including but not limited to Documents discussing or referring in any way to: (a) the effects of advertising campaigns or communications; (b) focus groups; (c) copy tests; (d) consumer perception; (e) market research; (f) consumer

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Issued To: Exxon Mobil Corporation

research; and/or (g) other study or survey or the reactions, perceptions, beliefs, attitudes, wishes, needs, or understandings of potential consumers of Exxon Products and Services in light of public perceptions of Climate Change, Greenhouse Gas Emissions, and Climate Risk.

28. Documents sufficient to show Exxon's organizational structure and leadership over time, including but not limited to organizational charts, reflecting all Exxon Entities in any way involved in:
  - (a) the marketing, advertisement, solicitation, promotion, and/or sale of Exxon Products and Services to consumers in the Commonwealth; and/or
  - (b) the marketing, advertisement, solicitation, promotion, and/or sale to investors of Exxon Securities in the Commonwealth.
29. Documents and Communications sufficient to identify each agreement entered into on or after April 1, 2010, through the present, between and among Exxon and the Commonwealth of Massachusetts, its agencies, and/or its political subdivisions, for Exxon to provide Exxon Products and Services in Massachusetts.
30. Documents sufficient to identify all claims, lawsuits, court proceedings and/or administrative or other proceedings against You in any jurisdiction within the United States concerning Climate Change and relating to Your solicitation of consumers of Exxon Products and Services and/or relating to Your solicitation of consumers of Exxon Securities, including all pleadings and evidence in such proceedings and, if applicable, the resolution, disposition or settlement of any such matters.
31. Documents sufficient to identify and describe any discussion or consideration of disclosing in any materials filed with the SEC or provided to potential or existing investors (e.g., in prospectuses for debt offerings) information or opinions concerning the environmental impacts of Greenhouse Gas Emissions, including, without limitation, the risks associated with Climate Change, and Documents sufficient to identify all Persons involved in such consideration.
32. Transcripts of investor calls, conferences or presentations given by You at which any officer or director spoke concerning the environmental impacts of Greenhouse Gas Emissions, including, without limitation, the risks associated with Climate Change.
33. Documents and Communications concerning any subpoena or other demand for production of documents or for witness testimony issued to Exxon by the New

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York State Attorney General's Office concerning Climate Change and Your marketing of Exxon Products and Services and/or Exxon Securities, including, through the date of Your production in response to this CID, all Documents produced to the New York State Attorney General's Office pursuant to any such subpoena or demand.

34. Documents sufficient to Identify all other federal or state law enforcement or regulatory agencies that have issued subpoenas or are otherwise currently investigating You concerning Your marketing of Exxon Products and Services to consumers and/or of Exxon Securities to investors.
35. Documents sufficient to Identify any Massachusetts consumer who has complained to You, or to any Massachusetts state or local consumer protection agency, concerning Your actions with respect to Climate Change, and for each such consumer identified, documents sufficient to identify each such complaint; each correspondence between You and such consumer or such consumer's representative; any internal notes or recordings regarding such complaint; and the resolution, if any, of each such complaint.
36. Documents and communications that disclose Your document retention policies in effect between January 1, 1976 and the date of this production.
37. Documents sufficient to Identify Your officers, directors and/or managing agents, or other persons most knowledgeable concerning the subject matter areas enumerated in Schedule B, below.
38. Documents sufficient to identify all natural persons involved in the preparation of Your response to this CID.

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**SCHEDULE B**

Pursuant to the terms of this CID, you are commanded to produce one or more witnesses at the above-designated place and time, or any agreed-upon adjourned place and time, who is or are competent to testify as to the following subject matter areas:

1. Your compliance with Massachusetts General Law Chapter 93A, § 2, and the regulations promulgated thereunder concerning, the marketing, advertising, soliciting, promoting, and communicating or sale of: (1) Exxon Products and Services in the Commonwealth and/or to Massachusetts residents; and (2) Securities in the Commonwealth and/or to Massachusetts residents.
2. The marketing, advertising, soliciting, promoting, and communicating or sale of Exxon Products and Services in the Commonwealth and/or to Massachusetts residents, including their environmental impacts with respect to Greenhouse Gas Emission, Climate Change and/or Climate Risk.
3. The marketing, advertising, soliciting, promoting, and communicating or sale of Securities in the Commonwealth and/or to Massachusetts residents, including as to Exxon's disclosures of risks to its business related to Climate Change.
4. All topics covered in the demands above.
5. Your recordkeeping methods for the demands above, including what information is kept and how it is maintained.
6. Your compliance with this CID.

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**SCHEDULE C**

**CHAPTER 93A. REGULATION OF BUSINESS PRACTICES FOR CONSUMERS  
PROTECTION**

**Chapter 93A: Section 7. Failure to appear or to comply with notice**

Section 7. A person upon whom a notice is served pursuant to the provisions of section six shall comply with the terms thereof unless otherwise provided by the order of a court of the commonwealth. Any person who fails to appear, or with intent to avoid, evade, or prevent compliance, in whole or in part, with any civil investigation under this chapter, removes from any place, conceals, withholds, or destroys, mutilates, alters, or by any other means falsifies any documentary material in the possession, custody or control of any person subject to any such notice, or knowingly conceals any relevant information, shall be assessed a civil penalty of not more than five thousand dollars.

The attorney general may file in the superior court of the county in which such person resides or has his principal place of business, or of Suffolk county if such person is a nonresident or has no principal place of business in the commonwealth, and serve upon such person, in the same manner as provided in section six, a petition for an order of such court for the enforcement of this section and section six. Any disobedience of any final order entered under this section by any court shall be punished as a contempt thereof.

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**SCHEDULE D**

*See attached "Office of the Attorney General - Data Delivery Specification."*

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**AFFIDAVIT OF COMPLIANCE WITH CIVIL INVESTIGATIVE DEMAND**

State of \_\_\_\_\_

County of \_\_\_\_\_

I, \_\_\_\_\_, being duly sworn, state as follows:

1. I am employed by \_\_\_\_\_ in the position of \_\_\_\_\_;
2. The enclosed production of documents and responses to Civil Investigative Demand 2016-EPD-36 of the Attorney General of the Commonwealth of Massachusetts, dated April 19, 2016 (the "CID") were prepared and assembled under my personal supervision;
3. I made or caused to be made a diligent, complete and comprehensive search for all Documents and information requested by the CID, in full accordance with the instructions and definitions set forth in the CID;
4. The enclosed production of documents and responses to the CID are complete and correct to the best of my knowledge and belief;
5. No Documents or information responsive to the CID have been withheld from this production and response, other than responsive Documents or information withheld on the basis of a legal privilege or doctrine;
6. All responsive Documents or information withheld on the basis of a legal privilege or doctrine have been identified on a privilege log composed and produced in accordance with the instructions in the CID;
7. The Documents contained in these productions and responses to the CID are authentic, genuine and what they purport to be;
8. Attached is a true and accurate record of all persons who prepared and assembled any productions and responses to the CID, all persons under whose personal supervision the preparation and assembly of productions and responses to the CID occurred, and all persons able competently to testify: (a) that such productions and responses are complete and correct to the best of such person's knowledge and belief; and (b) that any Documents produced are authentic, genuine and what they purport to be; and
9. Attached is a true and accurate statement of those requests under the CID as to

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which no responsive Documents were located in the course of the aforementioned search.

\_\_\_\_\_  
Signature of Affiant

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name of Affiant

Subscribed and sworn to before me

this \_\_ day of \_\_\_\_\_ 2016.

\_\_\_\_\_  
Notary Public

My commission expires:

\_\_\_\_\_



## Office of the Attorney General - Data Delivery Specification ONE – Production Load File

### I. General

1. Images produced to the Office of the Attorney General should be single page series IV TIFF images, 300 dpi or better quality. TIFFs may be Black & White or color.
2. Bates Numbers should be placed in the lower right hand corner unless to do so would obscure the underlying image. In such cases, the Bates number should be placed as near to that position as possible while preserving the underlying image. Bates numbers should contain no spaces, hyphens or underscores. Example: AG0000000001.
3. Spreadsheets and Powerpoint ESI should be produced as native ESI and name for the bates number associated with the first page of the item. If the item has a confidentiality designation, please **DO NOT** append it to the bates numbered file name. The designation should be stored in a field in the DAT.
4. For any ESI that exists in encrypted format or is password-protected, instructions on means for access should be provided with the production to the AGO. (For example, by supplying passwords.)
5. All records should include at least the following fields of created data:
  - a. Beginning Bates Number (where TIFF Images are produced)
  - b. Ending Bates Number
  - c. Beginning Attachment Range
  - d. Ending Attachment Range
  - e. RemovedFrom: If records were globally deduplicated, this field should contain a concatenated list of all custodians or sources which originally held the item.
  - f. MD5 Hash or other hash value
  - g. Custodian / Source
  - h. Original file path or folder structure
  - i. FamilyID
  - j. Path/Link to natives
  - k. Path/Link to text files (**do not produce inline text in the dat file**)
  - l. Redacted – Bit Character field (1 or 0 where 1=Yes and 0=No)
  - m. Production date
  - n. Volume name
  - o. Confidentiality or other treatment stamps
6. Email should be produced with at least the following fields of metadata:
  - a. TO
  - b. FROM
  - c. CC
  - d. BCC
  - e. Subject
  - f. Path to text file (**do not produce inline text in the dat file**)

## Office of the Attorney General - Data Delivery Specification ONE – Production Load File

- g. Sent Date (dates and times must be stored in separate fields)
  - h. Sent Time (dates and times must be stored in separate fields and without time zones)
  - i. File extension (.txt, .msg, etc.)
  - j. Attachment count.
7. eFiles should be produced with at least the following individual fields of metadata:
- a. Author
  - b. CreateDate (dates and times must be stored in separate fields)
  - c. CreateTime (dates and times must be stored in separate fields with no time zones or am/pm)
  - d. LastModifiedDate (dates and times must be stored in separate fields)
  - e. LastModifiedTime (dates and times must be stored in separate fields with no time zones or am/pm).
8. Deduplication (Removed From data field)
- a. If the producing entity wishes to deduplicate, exact hash value duplicates may be removed on a global basis if the producing entity provides a field of created data for each deduplicated item that provides a concatenated list of all custodians or other sources where the item was original located. This list should be provided in the RemovedFrom data field.
  - b. Any other form of deduplication must be approved in advance by the Office of the Attorney General.

### II. File Types and Load File Requirements

#### a. File Types

Data: Text, images and native files should each be delivered as subfolders in a folder named "DATA". See screen shot "Example Production Deliverable."

- Images: Single page TIFF images delivered in a folder named "IMAGES."
- Text: Multipage text files (one text file per document), delivered in a folder named "TEXT."
- Natives: Delivered in a folder named "NATIVES".

Load Files: Concordance format data load file and Opticon format image load file should be delivered in a folder named LOAD (at the same level as the folder DATA in the structure). See screen shot "Example Production Deliverable."

## Office of the Attorney General - Data Delivery Specification ONE – Production Load File

 Example Production Deliverable

-  VOL001
-  DATA
-  IMAGES
-  NATIVES
-  TEXT
-  LOAD

b. Fields to be Produced in ONE Data Load File – Concordance Format

Field Name	Description/Notes
BegBates	Starting Bates Number for document
EndBates	Ending Bates Number for document
BegAttach	Starting Bates Number of Parent document
EndAttach	Ending Bates Number of last attachment in family
FamilyID	Parent BegBates
Volume	Name of Volume or Load File
MD5Hash	
Custodian_Source	If the source is a human custodian, please provide the name: Last name, first name. If this results in duplicates, add numbers or middle initials Last name, first name, middle initial or # If the source is not a human custodian, please provide a unique name for the source. Ex: AcctgServer
FROM	Email
TO	Email
CC	Email
BCC	Email
Subject	Email
Sent Date	Email
Sent Time	Email
File Extension	
Attch Count	Email
Doc Type	Email, attachment
Original FilePath	Original location of the item at time of Preservation.
FileName	
CreateDate	Loose files or attachments. Date and Time must be in separate fields.
CreateTime	Loose files or attachments. Date and Time must be in separate fields and the Time field should not include Time Zone (EDT, EST etc)
LastModDate	Loose files or attachments (Date and Time must be in separate fields)
LastModTime	Loose files or attachments. Date and Time must be in separate fields and the Time field should not include Time Zone (EDT, EST, AM, PM etc)
Redacted	This is a Boolean/bit character field. Data value should be "0" or "1" where 0 = No and 1=Yes.
Confidentiality Designation	<b>NOTE: Do not append the Confidentiality Designation to the native file name</b>
RemovedFrom	Last name, first name with semi colon as separator Lastname,firstname; nextlastname, nextfirstname etc.

## Office of the Attorney General - Data Delivery Specification ONE – Production Load File

Encrypted_pwp	This is a single character field. Data value should be "N" or "Y". (File is or is not encrypted/password protected)
EncryptKey_password	For those files where Encrypted_pwp is Y, provide password or encryption key information in this field.
ProdDate	MM\DD\YYYY
TextLink	path to the text files should begin with TEXT\ TEXT\
NativeLink	path to the native files should begin with NATIVES\ NATIVES\

The Data load file for ONE is the same as a Concordance load file, with the same field delimiters ( ) and text qualifiers (b). Here is a screen shot of part of a ONE load file with the fields identified above:

```
bBeg Bates;bEnd Bates;bBeg Attach;bEnd Attach;bFamilyID;bVolume;bMD5Hash;bCustodian_Source;bFROM;bTOP;bCCP;bSCCP;bSubject;bSent Date;bSent Time;bFile Extension;bDr
bAG00004507;bAG00004510;bAG00004507;bAG00004512;bAG00004507;bVOL001;bDoe, John;bJohn.doe@someplace.com;bjdoe@somewhereelse.com;btheboss@someplace.com;b
bAG00004511;bAG00004512;bAG00004507;bAG00004512;bAG00004507;bVOL001;bDoe, John;bJohn.doe@someplace.com;bjdoe@somewhereelse.com;btheboss@someplace.com;b
```

**c. Fields required for an Images Load File – Opticon Format**

The Images load file for ONE is the same as an OPTICON load file. It contains these fields, although Folder Break and Box Break are often not used.

Field Name	Description/Notes
Alias	Imagekey/Image link - Beginning bates or ctrl number for the document
Volume	Volume name or Load file name
Path	relative path to Images should begin with IMAGES\ and include the full file name and file extension (tif, jpg)
Document Break	Y denotes image marks the beginning of a document
Folder Break	N/A - leave blank
Box Break	N/A - leave blank
Pages	Number of Pages in document

Here is a screen shot of an opticon load file format in a text editor with each field separated by a comma. Alias, Volume, Path, Document Break, Folder Break (blank), Box Break (blank), Pages.

```
AG00004507,VOL001,IMAGES\00\00\AG000004507.TIF,Y,,,4
AG00004508,VOL001,IMAGES\00\00\AG000004508.TIF,,,,
AG00004509,VOL001,IMAGES\00\00\AG000004509.TIF,,,,
AG00004510,VOL001,IMAGES\00\00\AG000004510.TIF,,,,
AG00004511,VOL001,IMAGES\01\00\AG000004511.TIF,Y,,,2
AG00004512,VOL001,IMAGES\01\00\AG000004512.TIF,,,,
```

Technical questions regarding this specification should be addressed to:

Diane E. Barry  
AAG / eDiscovery Attorney  
Office of the Attorney General  
One Ashburton Place  
Boston MA 02108

[Diane.E.Barry@state.ma.us](mailto:Diane.E.Barry@state.ma.us)

(617) 963-2120

# EXHIBIT 7

**Kline, Scot**

---

**From:** Lemuel Srolovic <Lemuel.Srolovic@ag.ny.gov>  
**Sent:** Wednesday, March 30, 2016 9:01 PM  
**To:** Matt Pawa  
**Cc:** Kline, Scot  
**Subject:** Re: Wall st journal

My ask is if you speak to the reporter, to not confirm that you attended or otherwise discuss the event.

Sent from my iPhone

> On Mar 30, 2016, at 6:31 PM, Matt Pawa <mp@pawalaw.com> wrote:

>

> Lem and Scot - a WSJ reporter wants to talk to me. I may not even talk to her at all but if I do I obviously will have no comment on anything discussed at the meeting. What should I say if she asks if I attended? No comment? Let me know.

>

> MP

>

> Matt Pawa

> Pawa Law Group, P.C.

> 1280 Centre Street, Suite 230

> Newton Centre, MA 02459

> (617) 641-9550

> (617) 641-9551 facsimile

> www.pawalaw.com

IMPORTANT NOTICE: This e-mail, including any attachments, may be confidential, privileged or otherwise legally protected. It is intended only for the addressee. If you received this e-mail in error or from someone who was not authorized to send it to you, do not disseminate, copy or otherwise use this e-mail or its attachments. Please notify the sender immediately by reply e-mail and delete the e-mail from your system.

# EXHIBIT 8

## TOLLING AGREEMENT

This Tolling Agreement (“AGREEMENT”) is entered into by and between the Attorney General of the Commonwealth of Massachusetts (the “COMMONWEALTH”) and Exxon Mobil Corporation, its predecessors, successors, assigns, subsidiaries, parents, and affiliates (collectively, “EXXON MOBIL” or the “COMPANY”). The COMMONWEALTH and EXXON MOBIL are referred to collectively herein as the “PARTIES.” This AGREEMENT is entered into with reference to the following facts and circumstances:

WHEREAS on April 19, 2016, the COMMONWEALTH served a Civil Investigative Demand, No. 2016-EPD-36 (the “CID”), invoking Massachusetts General Laws c. 93A, § 6, on EXXON MOBIL, by hand delivery to the COMPANY’s registered agent in Massachusetts;

WHEREAS it is the COMMONWEALTH’s position that the CID relates to a pending investigation (the “INVESTIGATION”) concerning potential violations by EXXON MOBIL of M.G.L. c. 93A, § 2, and the regulations promulgated thereunder arising both from (1) the marketing and/or sale of energy and other fossil fuel derived products to consumers in the COMMONWEALTH; and (2) the marketing and/or sale of securities, as defined in M.G.L. c. 110A, § 401(k), to investors in the COMMONWEALTH, including, without limitation, fixed- and floating rate-notes, bonds, and common stock, sold or offered to be sold in the COMMONWEALTH;

WHEREAS on June 15, 2016, EXXON MOBIL filed a Complaint for Declaratory and Injunctive Relief, as well as a Motion for a Preliminary Injunction, challenging the issuance of the CID, in the United States District Court for the Northern District of Texas, Fort Worth Division, No. 4:16-CV-469-K (the “TEXAS FEDERAL COURT CHALLENGE”);

WHEREAS on June 16, 2016, EXXON MOBIL filed a motion and petition, challenging the issuance of the CID, in the Massachusetts Suffolk Superior Court, Civil Action No. 16-1888F (the “MASSACHUSETTS STATE COURT CHALLENGE”);

WHEREAS the PARTIES agree that any time limit for the assertion of any claims arising from the INVESTIGATION that have not expired as of the EFFECTIVE DATE (as defined below) be tolled and postponed;

WHEREAS the COMMONWEALTH agrees that, with the exception of seeking the dismissal of the TEXAS FEDERAL COURT CHALLENGE and litigating any cross-motion to compel compliance in the MASSACHUSETTS STATE COURT CHALLENGE, and in consideration of EXXON MOBIL’s entering into this AGREEMENT, the COMMONWEALTH will not seek to enforce the CID until both the TEXAS FEDERAL COURT CHALLENGE and the MASSACHUSETTS STATE COURT CHALLENGE have been fully adjudicated, including through appeal;

NOW THEREFORE, the PARTIES hereby agree, in consideration of the foregoing and the mutual covenants contained herein, to be legally bound as follows:

1. The EFFECTIVE DATE of this AGREEMENT is June 18, 2016 (the “EFFECTIVE DATE”).
2. The PARTIES agree that with respect to any claims that might be brought by the COMMONWEALTH related to the INVESTIGATION, all limitations-period or time-related defenses, either in law or in equity, including but not limited to statute of limitations, statute of repose, and doctrines of laches (“TIME-RELATED DEFENSES”), are tolled for the period beginning on the EFFECTIVE DATE and during the pendency of the TEXAS FEDERAL COURT CHALLENGE and the MASSACHUSETTS STATE COURT CHALLENGE, through a date sixty (60) days after the date both the TEXAS FEDERAL COURT CHALLENGE and the MASSACHUSETTS STATE COURT CHALLENGE have been fully adjudicated, including through appeal;
3. The COMMONWEALTH agrees that, with the exception of seeking the dismissal of the TEXAS FEDERAL COURT CHALLENGE and litigating any cross-motion to

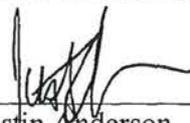
compel compliance in the MASSACHUSETTS STATE COURT CHALLENGE, it will not seek to enforce the CID and EXXON MOBIL need not comply with the CID until both the TEXAS FEDERAL COURT CHALLENGE and the MASSACHUSETTS STATE COURT CHALLENGE have been fully adjudicated, including through appeal;

4. This AGREEMENT shall not preclude EXXON MOBIL from asserting TIME-RELATED DEFENSES as to any claims that were time-barred before the EFFECTIVE DATE, if any such claims exist, and this AGREEMENT shall not revive any of the COMMONWEALTH's claims that were time-barred before the EFFECTIVE DATE, if any such claims exist;
5. Entry into this AGREEMENT by the COMMONWEALTH does not in any way limit the COMMONWEALTH's ability or right to assert in any suit or claim brought against EXXON MOBIL that the doctrine of fraudulent concealment, misrepresentation, and/or breach of any duty to disclose or any other doctrine or statute, may be applicable to toll or otherwise affect the running of any TIME-RELATED DEFENSE with respect to any cause of action arising out of or relating to the INVESTIGATION, or that no statute of limitation applies to claims brought by the COMMONWEALTH, subject to any applicable defenses by EXXON MOBIL to such arguments;
6. The AGREEMENT shall be governed, construed, enforced, and administered in accordance with the laws of the State of Massachusetts;
7. The AGREEMENT constitutes the entire agreement between the PARTIES with respect to the claims and matters covered. No prior statement, representation, promise, or inducement made by any PARTY on this subject matter that is not contained in this AGREEMENT shall be valid or binding;
8. The COMMONWEALTH and EXXON MOBIL represent and warrant that each has the full legal power and authority to bind each of the PARTIES, respectively;
9. This AGREEMENT shall not be altered or amended except in writing signed by the PARTIES;
10. This AGREEMENT may be executed by facsimile signature and in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument;
11. This AGREEMENT shall be binding on the PARTIES and their predecessors, successors, assigns, subsidiaries, parents, and affiliates;
12. The COMMONWEALTH and EXXON MOBIL each represents that it has the legal power, capacity and authority to enter into this AGREEMENT;

13. The COMMONWEALTH's entry into this AGREEMENT shall not waive or in any way impair any defense that the COMMONWEALTH might raise in the TEXAS FEDERAL COURT CHALLENGE, including sovereign immunity, Eleventh Amendment immunity and lack of personal jurisdiction, among others;
14. EXXON MOBIL's entry into this AGREEMENT shall not waive or in any way impair any claims or defenses that it might raise in the TEXAS FEDERAL COURT CHALLENGE or the MASSACHUSETTS STATE COURT CHALLENGE, except as expressly set forth herein with respect to TIME-RELATED DEFENSES;
15. The PARTIES agree that, other than to enforce the terms of this AGREEMENT, neither party shall use the AGREEMENT, the fact of its existence, or any of its terms to support any claim or argument in the TEXAS FEDERAL COURT CHALLENGE, the MASSACHUSETTS STATE COURT CHALLENGE, or in any other litigation between the PARTIES.

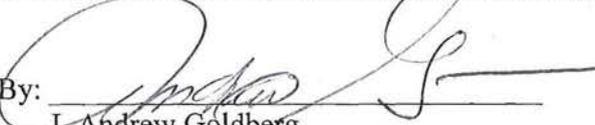
**On behalf of Exxon Mobil Corporation**

Date: 6/24/16

By:   
Justin Anderson  
Paul, Weiss, Rifkind, Wharton & Garrison LLP  
Thomas Frongillo  
Fish & Richardson, P.C.  
Counsel for Exxon Mobil Corporation

**On behalf of the Commonwealth of Massachusetts**

Date: 6/24/16

By:   
I. Andrew Goldberg  
Assistant Attorney General  
Office of the Attorney General  
Commonwealth of Massachusetts

# EXHIBIT 9



MAURA HEALEY  
ATTORNEY GENERAL

THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF THE ATTORNEY GENERAL

ONE ASHBURTON PLACE  
BOSTON, MASSACHUSETTS 02108

(617) 727-2200  
[www.mass.gov/ago](http://www.mass.gov/ago)

October 10, 2019

*By Hand Delivery*

Exxon Mobil Corporation  
Darren Woods, Chairman and Chief Executive Officer  
c/o Corporation Service Company, its Registered Agent  
84 State Street  
Boston, Massachusetts 02109

Dear Mr. Woods:

The Massachusetts Office of the Attorney General has reason to believe that Exxon Mobil Corporation (“ExxonMobil”) has violated the Massachusetts Consumer Protection Act (the “Act”), G.L. c. 93A, § 2, and applicable regulations by engaging in unfair or deceptive acts or practices in the marketing and/or sale of ExxonMobil-branded fossil fuel products to Massachusetts consumers and in the marketing and/or sale of ExxonMobil securities to Massachusetts investors. The Act, G.L. c. 93A, § 4, provides that the Attorney General may file a civil action to seek injunctive relief and restitution, obtain civil penalties, and recover the costs of investigation, including reasonable attorneys’ fees and costs, in order to address unfair or deceptive acts or practices in violation of the Act and applicable regulations.

This letter shall serve as notice, pursuant to the Act, G.L. c. 93A, § 4, that the Attorney General intends to commence an action against ExxonMobil for violations of the Act and applicable regulations. Representatives of the Attorney General’s Office are available to confer with ExxonMobil prior to the filing of this action. Should you choose to confer, any such discussions would be confidential settlement communications and inadmissible in any court pleadings or proceedings.



October 10, 2019

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If you are interested in seeking to resolve these claims prior to the Attorney General filing suit, please have your counsel contact me at [richard.johnston@mass.gov](mailto:richard.johnston@mass.gov) or 617-963-2028.

Sincerely,

A handwritten signature in black ink that reads "Richard A. Johnston". The signature is written in a cursive, flowing style.

Richard A. Johnston  
Chief Legal Counsel

cc: Thomas C. Frongillo, Esq., Pierce Bainbridge Beck Price & Hecht LLP (by hand)  
Caroline K. Simons, Esq., Orrick, Herrington & Sutcliffe LLP (by hand)  
Theodore V. Wells Jr., Esq., Paul, Weiss, Rifkind, Wharton & Garrison LLP (by email)  
Justin Anderson, Esq., Paul, Weiss, Rifkind, Wharton & Garrison LLP (by email)

# EXHIBIT 10

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP

1285 AVENUE OF THE AMERICAS  
NEW YORK, NEW YORK 10019-6064

TELEPHONE (212) 373-3000

LLOYD K. GARRISON (1946-1991)  
RANDOLPH E. PAUL (1946-1956)  
SIMON H. RIFKIND (1950-1995)  
LOUIS S. WEISS (1927-1950)  
JOHN F. WHARTON (1927-1977)

UNIT 5201, FORTUNE FINANCIAL CENTER  
5 DONGSANHUAN ZHONGLU  
CHAORYANG DISTRICT, BEIJING 100020, CHINA  
TELEPHONE (86-10) 5828-6300

HONG KONG CLUB BUILDING, 12TH FLOOR  
3A CHATER ROAD, CENTRAL  
HONG KONG  
TELEPHONE (852) 2846-0300

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TRACY A. ZACCONE  
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T. ROBERT ZOCHOWSKI, JR.

\*NOT ADMITTED TO THE NEW YORK BAR

October 14, 2019

By Email

Richard A. Johnston  
Chief Legal Counsel  
Office of the Massachusetts Attorney General  
One Ashburton Place  
Boston, MA 02108

Notice Letter to ExxonMobil

Dear Mr. Johnston:

We write on behalf of Exxon Mobil Corporation (“ExxonMobil”), in response to your letter, dated October 10, 2019, stating an intent to commence a civil action against ExxonMobil.

Your notice is highly unusual in light of existing circumstances. After reaching a tolling agreement with ExxonMobil over two years ago, your office relieved ExxonMobil of any obligation to respond to your Civil Investigative Demand (“CID”). Under the tolling agreement, your office agreed it would take no action to compel compliance with the CID’s discovery requests. And ExxonMobil has not provided your office with any discovery. To the extent you intend to obtain that discovery now through a civil suit, your action would violate the letter and spirit of the tolling agreement. It would be an improper attempt to

obtain the discovery requested in the CID and therefore a breach of the agreement. ExxonMobil reserves the right to seek any and all appropriate remedies under the circumstances, including specific performance and rescission.

Even more troubling is your office's decision to sue ExxonMobil without having reviewed a single document from ExxonMobil or having interviewed a single ExxonMobil employee. It appears your office has decided to charge the company without any consideration or concern for the underlying facts. The timing of your notice provides further cause for concern that improper motives animate your office's decision to file suit. We view the sending of your notice on the eve of both oral argument before the U.S. Court of Appeals for the Second Circuit and trial before Justice Ostrager in New York Supreme Court to be an act of harassment consistent with the claims in our lawsuit now before the Second Circuit. We also view the timing of your letter as further proof of the collusive conduct between your office and the New York Attorney General's office, as set forth in ExxonMobil's federal complaint. Neither ExxonMobil nor, we suspect, the courts or any objective observer will view the timing of your letter as a mere coincidence unconnected to the upcoming Second Circuit argument and New York State trial. It is far more likely to be seen for what it is: the freshest evidence of your office's participation in a conspiracy with other state attorneys general.

We trust this letter serves as an adequate reminder that your office has a continuing obligation to preserve all documents and communications that might be relevant to the lawsuit now before the Second Circuit or the CID enforcement proceeding pending in the Massachusetts Superior Court. This obligation extends to any communication relating to your decision to send the letter advising ExxonMobil of your intent to file a lawsuit, including any communications with the New York Attorney General, other state attorney generals, or third parties. It also requires the preservation of all documents and communications relating to the tolling agreement between your office and ExxonMobil.

We accept your offer to meet and confer about the notice. We propose to do so following the conclusion of the New York State trial in mid-November, less than a month away.

Finally, we request that you refrain in the future from communicating directly with ExxonMobil's Chief Executive Officer, Darren Woods, or other ExxonMobil employees. As you are well aware, ExxonMobil is represented by counsel, and ethical rules prohibit direct contact with represented clients.

Sincerely,

/s/ Theodore V. Wells, Jr.  
Theodore V. Wells, Jr.

cc: Thomas C. Frongillo

# EXHIBIT 11

Form 3300-1  
(September 1978)

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT

**OIL AND GAS LEASE OF SUBMERGED LANDS  
UNDER THE OUTER CONTINENTAL SHELF LANDS ACT**

Office	Serial number
Los Angeles, CA	OCS-P 0329
Cash bonus	Rental rate
\$17,115,000.00	\$3.00 per acre
Minimum royalty rate	Royalty rate Fixed
\$3.00 per acre	Sliding Scale
Work commitment	Profit share rate

This lease is effective as of **SEP 1 1979** (hereinafter called the "Effective Date") by and between the United States of America (hereinafter called the "Lessor"), by the Manager, Pacific OCS Office, Bureau of Land Management, its authorized officer, and

Exxon Corporation

100%

(hereinafter called the "Lessee"). In consideration of any cash payment heretofore made by the Lessee to the Lessor and in consideration of the promises, terms, conditions, and covenants contained herein, including the Stipulation(s) numbered 1-A, 2, 3, 4, 5, 6 and 8 attached hereto, the Lessee and Lessor agree as follows:

**Sec. 1. Statutes and Regulations.** This lease is issued pursuant to the Outer Continental Shelf Lands Act of August 7, 1953, 67 Stat. 462 as amended; 43 U.S.C. 1331 et. seq. (hereinafter called the "Act"). The lease is issued subject to the Act; Sections 302 and 303 of the Department of Energy Organization Act, 91 Stat. 578, 42 U.S.C. 7152 and 7153; all regulations issued pursuant to such statutes and in existence upon the effective date of this lease; all regulations issued pursuant to such statutes in the future which provide for the prevention of waste and the conservation of the natural resources of the Outer Continental Shelf, and the protection of correlative rights therein; and all other applicable statutes and regulations.

**Sec. 2. Rights of Lessee.** The Lessor hereby grants and leases to the Lessee the exclusive right and privilege to drill for, develop, and produce oil and gas resources, except helium gas, in the submerged lands of the Outer Continental Shelf described as follows:

All Block 52N 76W, OCS Leasing Map, Channel Islands Area, CAL-Map No. 6A

containing approximately 5760.00 acres or  
These rights include:

(a) the nonexclusive right to conduct within the leased area geological and geophysical explorations in accordance with applicable regulations;

(b) the nonexclusive right to drill water wells within the leased area, unless the water is part of geopressured-geothermal and associated resources, and to use the water produced therefrom for operations pursuant to the Act free of cost, on the condition that the drilling is conducted in accordance with procedures approved by the Director of the United States Geological Survey or the Director's delegate (hereinafter called the "Director"); and

(c) the right to construct or erect and to maintain within the leased area artificial islands, installations, and other devices permanently or temporarily attached to the seabed and other works and structures necessary to the full enjoyment of the lease, subject to compliance with applicable laws and regulations.

Sec. 3. Term. This lease shall continue for an initial period of five years from the Effective Date of the lease and so long thereafter as oil or gas is produced from the leased area in paying quantities, or drilling or well reworking operations, as approved by the Lessor, are conducted thereon.

Sec. 4. Rentals. The Lessee shall pay the Lessor, on or before the first day of each lease year which commences prior to a discovery in paying quantities of oil or gas on the leased area, a rental of \$3.00 per acre (per hectare) or fraction thereof.

Sec. 5. Minimum Royalty. The Lessee shall pay the Lessor at the expiration of each lease year which commences after a discovery of oil and gas in paying quantities, a minimum royalty of \$3.00 per acre (per hectare) or fraction thereof or, if there is production, the difference between the actual royalty required to be paid with respect to such lease year and the prescribed minimum royalty, if the actual royalty paid is less than the minimum royalty.

Sec. 6. Royalty on Production. (a) ~~The Lessee shall pay a fixed royalty of \_\_\_\_\_ percent in amount to value of production saved, removed, or sold from the leased area.~~ Gas of all kinds (except helium) is subject to royalty. The Lessor shall determine whether production royalty shall be paid in amount or value.

(b) The value of production for purposes of computing royalty on production from this lease shall never be less than the fair market value of the production. The value of production shall be the estimated reasonable value of the production as determined by the Lessor, due consideration being given to the highest price paid for a part or for a majority of production of like quality in the same field or area, to the price received by the Lessee, to posted prices, to regulated prices, and to other relevant matters. Except when the Lessor, in its discretion, determines not to consider special pricing relief from otherwise applicable Federal regulatory requirements, the value of production for the purposes of computing royalty shall not be deemed to be less than the gross proceeds accruing to the Lessee from the sale thereof. In the absence of good reason to the contrary, value computed on the basis of the highest price paid or offered at the time of production in a fair and open market for the major portion of like-quality products produced and sold from the field or area where the leased area is situated, will be considered to be a reasonable value.

(c) When paid in value, royalties on production shall be due and payable monthly on the last day of the month next following the month in which the production is obtained, unless the Lessor designates a later time. When paid in amount, such royalties shall be delivered at pipeline connections or in tanks provided by the Lessee. Such deliveries shall be made at reasonable times and intervals and, at the Lessor's option, shall be effected either (i) on or immediately adjacent to the leased area, without cost to the Lessor, or (ii) at a more convenient point closer to shore or on shore, in which event the Lessee shall be entitled to reimbursement for the reasonable cost of transporting the royalty substance to such delivery point. The Lessee shall not be required to provide storage for royalty paid in amount in excess of tankage required when royalty is paid in value. When royalties are paid in amount, the Lessee shall not be held liable for the loss or destruction of royalty oil or other liquid products in storage from causes over which the Lessee has no control.

Sec. 7. Payments. The Lessee shall make all payments to the Lessor by check, bank draft, or money order unless otherwise provided by regulations or by direction of the Lessor. Rentals, royalties, and any other payments required by this lease shall be made payable to the United States Geological Survey and tendered to the Director, except that filing charges, bonuses, first year's rental, and other payments due upon lease issuance, shall be made payable to the Bureau of Land Management and remitted to the Manager of the appropriate field office of that Bureau.

Sec. 8. Bonds. The Lessee shall maintain at all times the bond(s) required by regulation prior to the issuance of the lease and shall furnish such additional security as may be required by the Lessor if, after operations have begun, the Lessor deems such additional security to be necessary.

hectares (hereinafter referred to as the "leased area").

Sec. 9. Plans. The Lessee shall conduct all operations on the leased area in accordance with approved exploration plans, and approved development and production plans as are required by regulations. The Lessee may depart from an approved plan only as provided by applicable regulations.

Sec. 10. Performance. The Lessee shall comply with all regulations and orders relating to exploration, development, and production. After due notice in writing, the Lessee shall drill such wells and produce at such rates as the Lessor may require in order that the leased area or any part thereof may be properly and timely developed and produced in accordance with sound operating principles.

Sec. 11. Directional Drilling. A directional well drilled under the leased area from a surface location on nearby land not covered by this lease shall be deemed to have the same effect for all purposes of the lease as a well drilled from a surface location on the leased area. In those circumstances, drilling shall be considered to have been commenced on the leased area when drilling is commenced on the nearby land for the purpose of directionally drilling under the leased area, and production of oil or gas from the leased area through any directional well surfaced on nearby land or drilling or reworking of any such directional well shall be considered production or drilling or reworking operations on the leased area for all purposes of the lease. Nothing contained in this Section shall be construed as granting to the Lessee any interest, license, easement, or other right in any nearby land.

Sec. 12. Safety Requirements. The Lessee shall (a) maintain all places of employment within the leased area in compliance with occupational safety and health standards and, in addition, free from recognized hazards to employees of the Lessee or of any contractor or subcontractor operating within the leased area;

(b) maintain all operations within the leased area in compliance with regulations intended to protect persons, property, and the environment on the Outer Continental Shelf; and

(c) allow prompt access, at the site of any operation subject to safety regulations, to any authorized Federal inspector and shall provide any documents and records which are pertinent to occupational or public health, safety, or environmental protection as may be requested.

Sec. 13. Suspension and Cancellation. (a) The Lessor may suspend or cancel this lease during the initial lease term or thereafter pursuant to Section 5 of the Act and compensation shall be paid when provided by the Act.

(b) The Lessor may, upon recommendation of the Secretary of Defense, during a state of war or national emergency declared by Congress or the President of the United States, suspend operations under the lease, as provided in Section 12(c) of the Act, and just compensation shall be paid to the Lessee for such suspension.

Sec. 14. Indemnification. The Lessee shall indemnify the Lessor for, and hold it harmless from, any claim, including claims for loss or damage to property or injury to persons caused by or resulting from any operation on the leased area conducted by or on behalf of the Lessee. However, the Lessee shall not be held responsible to the Lessor under this section for any loss, damage, or injury caused by or resulting from:

(a) negligence of the Lessor other than the commission or omission of a discretionary function or duty on the part of a Federal agency whether or not the discretion involved is abused; or

(b) the Lessee's compliance with an order or directive of the Lessor against which an administrative appeal by the Lessee is filed before the cause of action for the claim arises and is pursued diligently thereafter.

Sec. 15. Disposition of Production. (a) As provided in Section 27(a)(2) of the Act, the Lessor shall have the right to purchase not more than 16-2/3 percent by volume of the oil and gas produced pursuant to the lease at the regulated price, or if no regulated price applies, at the fair market value at the well head of the oil and gas saved, removed, or sold, except that any oil or gas obtained by the Lessor as royalty or net profit share shall be credited against the amount that may be purchased under this subsection.

(b) As provided in Section 27(d) of the Act, the Lessee shall take any Federal oil or gas for which no acceptable bids are received, as determined by the Lessor, and which is not transferred to a Federal agency pursuant to Section 27(a)(3) of the Act, and shall pay to the Lessor a cash amount equal to the regulated price, or if no regulated price applies, the fair market value of the oil or gas so obtained.

(c) As provided in Section 8(b)(7) of the Act, the Lessee shall offer 20 percent of the crude oil, condensate, and natural gas liquids produced on the lease, at the market value and point of delivery as provided by regulations applicable to Federal royalty oil, to small or independent refiners as defined in the Emergency Petroleum Allocation Act of 1973.

(d) In time of war, or when the President of the United States shall so prescribe, the Lessor shall have the right of first refusal to purchase at the market price all or any portion of the oil or gas produced from the leased area, as provided in Section 12(b) of the Act.

Sec. 16. Unitization, Pooling and Drilling Agreement. When in such time as the Lessor may prescribe, the Lessee shall subscribe to and operate under a unit, pooling, or drilling agreement embracing all or part of the lands subject to this lease as the Lessor may determine to be appropriate or necessary. Where any provision of a unit, pooling, or drilling agreement, approved by the Lessor, is inconsistent with a provision of this lease, the provision of the agreement shall govern.

Sec. 17. Equal Opportunity Clause. During the performance of this lease, the Lessee shall fully comply with paragraphs (1) through (7) of Section 202 of Executive Order 11246, as amended (reprinted in 41 CFR 60-1.4(a)), and the implementing regulations, which are for the purpose of preventing employment discrimination against persons on the basis of race, color, religion, sex, or national origin. Paragraphs (1) through (7) of Section 202 of Executive Order 11246, as amended, are incorporated in this lease by reference.

Sec. 18. Certification of Nonsegregated Facilities. By entering into this lease, the Lessee certifies, as specified in 41 CFR 60-1.8, that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. As used in this certification, the term "segregated facilities" means, but is not limited to, any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise. The Lessee further agrees that it will obtain identical certifications from proposed contractors and subcontractors prior to award of contracts or subcontracts unless they are exempt under 41 CFR 60-1.5.

Sec. 19. Reservations to Lessor. All rights in the leased area not expressly granted to the Lessee by the Act, the regulations, or this lease are hereby reserved to the Lessor. Without limiting the generality of the foregoing, reserved rights include:

(a) the right to authorize geological and geophysical exploration in the leased area which does not unreasonably interfere with or endanger actual operations under the lease, and the right to grant such easements or rights-of-way upon, through, or in the leased area as may be necessary or appropriate to the working of other lands or to the treatment and shipment of products thereof by or under authority of the Lessor;

(b) the right to grant leases for any minerals other than oil and gas within the leased area, except that operations under such leases shall not unreasonably interfere with or endanger operations under this lease;

(c) the right, as provided in Section 12(d) of the Act, to restrict operations in the leased area or any part thereof which may be designated by the Secretary of Defense, with approval of the President, as being with an area needed for national defense, and so long as such designation remains in effect no operations may be conducted on the surface of the leased area or the part thereof included within the designation except with the concurrence of the Secretary of Defense. If operations or production under this lease within, any design-

payments of rentals and royalty prescribed by this lease likewise shall be suspended during such period of suspension of operations and production, and the term of this lease shall be extended by adding thereto any such suspension period, and the Lessor shall be liable to the Lessee for such compensation as is required to be paid under the Constitution of the United States.

Sec. 20. Transfer of Lease. The Lessee shall file for approval with the appropriate field office of the Bureau of Land Management any instrument of assignment or other transfer of this lease, or any interest therein, in accordance with applicable regulations.

Sec. 21. Surrender of Lease. The Lessee may surrender this entire lease or any officially designated subdivision of the leased area by filing with the appropriate field office of the Bureau of Land Management a written relinquishment, in triplicate, which shall be effective as of the date of filing. No surrender of this lease or of any portion of the leased area shall relieve the Lessee or its surety of the obligation to pay all accrued rentals, royalties, and other financial obligations or to abandon all wells on the area to be surrendered in a manner satisfactory to the Director.

Sec. 22. Removal of Property on Termination of Lease. Within a period of one year after termination of this lease in whole or in part, the Lessee shall remove all devices, works, and structures from the premises no longer subject to the lease in accordance with applicable regulations and orders of the Director. However, the Lessee may, with the approval of the Director, continue to maintain devices, works, and structures on the leased area for drilling or producing on other leases.

Sec. 23. Remedies in Case of Default. (a) Whenever the Lessee fails to comply with any of the provisions of the Act, the regulations issued pursuant to the Act, or the terms of this lease, the lease shall be subject to cancellation in accordance with the provisions of Section 5(c) and (d) of the Act and the Lessor may exercise any other remedies which the Lessor may have, including the penalty provisions of Section 24 of the Act. Furthermore, pursuant to Section 8(c) of the Act, the Lessor may cancel the lease if it is obtained by fraud or misrepresentation.

(b) Nonenforcement by the Lessor of a remedy for any particular violation of the provisions of the Act, the regulations issued pursuant to the Act, or the terms of this lease shall not prevent the cancellation of this lease or the exercise of any other remedies under paragraph (a) of this section for any other violation or for the same violation occurring at any other time.

Sec. 24. Unlawful Interest. No member of, or Delegate to, Congress, or Resident Commissioner, after election or appointment, or either before or after they have qualified, and during this continuance in office, and no officer, agent, or employee of the Department of the Interior, except as provided in 43 CFR Part 7, shall be admitted to any share or part in this lease or derive any benefit that may arise therefrom. The provisions of Section 3741 of the Revised Statutes, as amended, 41 U.S.C. 22, and the Act of June 25, 1948, 62 Stat. 702, as amended, 18 U.S.C. 431-433, relating to contracts made or entered into, or accepted by or on behalf of the United States, from a part of this lease insofar as they may be applicable.

\* For amendment to Sec. 6.(a) "Royalty on Production" see rider attached.

EXXON CORPORATION

(Lessee)

*W. M. Selvidge*  
(Signature of Authorized Officer)

W. M. SELVIDGE

(Name of Signatory)

ATTORNEY-IN-FACT

(Title)

AUGUST 14, 1979

(Date)

P. O. Box 2180  
Houston, Texas 77001

(Address of Lessee)

THE UNITED STATES OF AMERICA, Lessor

*William E. Grant*  
(Signature of Authorized Officer)

Manager, Pacific OCS Office  
Bureau of Land Management

(Name of Signatory)

WILLIAM E. GRANT

(Title)

AUG 28 1979

(Date)

SEAL

(Signature of Lessee)

Rider for Amendment to Sec. 6.(a) of Lease Form 3300-1 (September 1978)

Sec. 6. Royalty on Production. (a) The Lessee agrees to pay the lessor a royalty of that percent in amount or value of production saved, removed or sold from the leased area as determined by the sliding scale royalty formula as follows. When the quarterly value of production, adjusted for inflation, is less than or equal to \$13.236229 million, a royalty of 16.66667 percent in amount or value of production saved, removed or sold will be due on the unadjusted value or amount of production. When the adjusted quarterly value of production is equal to or greater than \$13.236230 million, but less than or equal to \$1662.854082 million, the royalty percent due on the unadjusted value or amount of production is given by

$$R_j = b[\text{Ln}(V_j/S)]$$

where

$R_j$  = the percent royalty that is due and payable on the unadjusted amount or value of all production saved, removed or sold in quarter  $j$

$b$  = 10.0

$\text{Ln}$  = natural logarithm

$V_j$  = the value of production in quarter  $j$ , adjusted for inflation, in millions of dollars

$S$  = 2.5

When the adjusted quarterly value of production is equal to or greater than \$1662.854083 million, a royalty of 65.00000 percent in amount or value of production saved, removed or sold will be due on the unadjusted quarterly value of production. Thus, in no instance will the quarterly royalty due exceed 65.00000 percent in amount or value of quarterly production saved, removed or sold.

In determining the quarterly percent royalty due,  $R_j$ , the calculation will be rounded to five decimal places (for example, 18.17612 percent). This calculation will incorporate the adjusted quarterly value of production,  $V_j$ , in millions of dollars, rounded to the sixth digit, i.e., to the nearest dollar (for example, 15.392847 millions of dollars).

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT

Stipulations for Oil and Gas Lease Sale #48  
Outer Continental Shelf  
Southern California

TRACT NO. 48-026      BLOCK NO. 52N 76W      MAP NO. CAL 6A      OCS-P 0329,

The area described in Section 2 of this instrument is subject to the following stipulation:

Stipulation No. 1-A

(a) The lessee agrees that prior to operating or causing to be operated on its behalf boat or aircraft traffic into individual, designated warning areas, the lessee shall coordinate and comply with instructions from the Commander, Space and Missile Test Center (SAMTEC) and the Commander, Pacific Missile Test Center (PMTTC), or other appropriate military agency. Such coordination and instruction will provide for positive control of boats and aircraft operating into the warning areas at all times.

(b) The lessee, recognizing that mineral exploration and exploitation and recovery operations on the leased areas of submerged lands can impede tactical military operations, hereby recognizes and agrees that the United States reserves and has the right to temporarily suspend operations of the lessee under this lease in the interests of national security requirements. Such temporary suspension of operations, including the evacuation of personnel, and appropriate sheltering of personnel not evacuated (an appropriate shelter shall mean the protection of all lessee personnel for the entire duration of any Department of Defense activity from flying or falling objects or substances), will come into effect upon the order of the Supervisor, after consultation with the Commander, Space and Missile Test Center (SAMTEC) and the Commander, Pacific Missile Test Center (PMTTC), or other appropriate military agency, or higher authority, when national security interests necessitate such action. It is understood that any temporary suspension of operations for national security may not exceed seventy-two hours; however, any such suspension may be extended by order of the Supervisor. During such periods equipment may remain in place.

(c) The lessee agrees to control his own electromagnetic emissions and those of his agents, employees, invitees, independent contractors or subcontractors emanating from individual, designated defense warning areas in accordance with requirements specified by the Commander, Space and Missile Test Center (SAMTEC) and the Commander, Pacific Missile Test Center (PMTTC), or other appropriate military agency, to the degree necessary to prevent damage to, or unacceptable interference with, Department of Defense flight, testing or operational activities conducted within individual, designated warning areas. Necessary monitoring, control, and coordination with the lessee, his agents, employees, invitees, independent contractors or subcontractors, will be effected by the Commander of the appropriate onshore military installation conducting operations in the particular warning area: Provided, however, that control of such electromagnetic emissions shall permit at least one continuous channel of communication between a lessee, its agents, employees, invitees, independent contractors or subcontractors and onshore facilities.

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT

Stipulations for Oil and Gas Lease Sale #48  
Outer Continental Shelf  
Southern California

TRACT NO. 48-026      BLOCK NO. 52N 76W      MAP NO. CAL 6A      OCS-P 0329

The area described in Section 2 of this instrument is subject to the following stipulation:

Stipulation No. 2

Whether or not compensation for such damage or injury might be due under a theory of strict or absolute liability or otherwise, the lessee assumes all risks of damage or injury to persons or property, which occurs in, on, or above the Outer Continental Shelf, to any person or persons or to any property of any person or persons who are agents, employees or invitees of the lessee, its agents, independent contractors or subcontractors doing business with the lessee in connection with any activities being performed by the lessee in, on, or above the Outer Continental Shelf, if such injury or damage to such person or property occurs by reason of the activities of any agency of the U.S. Government, its contractors, or subcontractors, or any of their officers, agents or employees, being conducted as a part of, or in connection with, the programs and activities of the Space and Missile Test Center (SAMTEC), the Pacific Missile Test Center (PMTTC), or other appropriate military agency.

Notwithstanding any limitations of the lessee's liability in section 14 of the lease, the lessee assumes the risk whether such injury or damage is caused in whole or in part by any act or omission, regardless of negligence or fault, of the United States, its contractors or subcontractors, or any of their officers, agents, or employees. The lessee further agrees to indemnify and save harmless the United States against all claims for loss, damage, or injury sustained by the lessee, and to indemnify and save harmless the United States against all claims for loss, damage, or injury sustained by the agents, employees, or invitees of the lessee, its agents or any independent contractors or subcontractors doing business with the lessee in connection with the programs and activities of the aforementioned military installations and agencies, whether the same be caused in whole or in part by the negligence or fault of the United States, its contractors, or subcontractors, or any of their officers, agents, or employees and whether such claims might be sustained under theories of strict or absolute liability or otherwise.

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT

Stipulations for Oil and Gas Lease Sale #48  
Outer Continental Shelf  
Southern California

TRACT NO. 48-026      BLOCK NO. 52N 76W      MAP NO. CAL 6A      OCS-P 0329

The area described in Section 2 of this instrument is subject to the following stipulation:

Stipulation No. 3

If the Supervisor, having reason to believe that a site, structure or object of historical or archaeological significance, hereinafter referred to as a "cultural resource," may exist in the lease area, gives the lessee written notice that the lessor is invoking the provisions of this stipulation, the lessee shall upon receipt of such notice comply with the following requirements:

Prior to any drilling activity or the construction or placement of any structure for exploration or development on the lease, including but not limited to, well drilling and pipeline and platform placement, hereinafter in this stipulation referred to as "operation," the lessee shall conduct remote sensing surveys to determine the potential existence of any cultural resource that may be affected by such operations. All data produced by such remote sensing surveys as well as other pertinent natural and cultural environmental data shall be examined by a qualified marine survey archaeologist to determine if indications are present suggesting the existence of a cultural resource that may be adversely affected by any lease operation. A report of this survey and assessment prepared by the marine survey archaeologist shall be submitted by the lessee to the Supervisor and the Manager, Bureau of Land Management (BLM), Outer Continental Shelf (OCS) Office for review.

If such cultural resource indicators are present the lessee shall (1) locate the site of such operation so as not to adversely affect the identified location; or (2) establish, to the satisfaction of the Supervisor, on the basis of further archaeological investigation conducted by a qualified marine survey archaeologist or underwater archaeologist using such survey equipment and techniques as deemed necessary by the Supervisor, either that such operation shall not adversely affect the location identified or that the potential cultural resource suggested by the occurrence of the indicators does not exist.

A report of this investigation prepared by the marine survey archaeologist or underwater archaeologist shall be submitted to the Supervisor and the Manager, BLM OCS Office for their review. Should the Supervisor determine that the existence of a cultural resource which may be adversely affected by such operation is sufficiently established to warrant protection, the lessee shall take no action that may result in an adverse effect on such cultural resource until the Supervisor has given directions as to its preservation.

The lessee agrees that if any site, structure, or object of historical or archaeological significance should be discovered during the conduct of any operations on the leased area, he shall report immediately such findings to the Supervisor and make every reasonable effort to preserve and protect the cultural resource from damage until the Supervisor has given directions as to its preservation.

UNITED STATES  
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BUREAU OF LAND MANAGEMENT

Stipulations for Oil and Gas Lease Sale #48  
Outer Continental Shelf  
Southern California

TRACT NO. 48-026      BLOCK NO. 52N 76W      MAP NO. CAL 6A      OCS-P 0329

The area described in Section 2 of this instrument is subject to the following stipulation:

Stipulation No. 4

(a) Wells: Subsea well-heads and temporary abandonments, or suspended operations that leave protrusions above the sea floor, shall be protected, if feasible, by a shroud which will allow commercial trawl gear to pass over the structure without snagging or otherwise damaging the structure or the fishing gear. Latitude and longitude coordinates of these structures along with water depths, shall be submitted to the Supervisor. The coordinates of such structures will be determined by the lessee utilizing state-of-the-art navigation systems with accuracy of at least  $\pm$  50 feet (15.25 meters) at 200 miles (322 kilometers).

(b) Pipelines: All pipelines, unless buried, including gathering lines, shall have a smooth-surface design. In the event that an irregular pipe surface is unavoidable due to the need for valves, anodes or other structures, they shall be protected by shrouds which will allow trawl gear to pass over the object without snagging or otherwise damaging the structure or the fishing gear.

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Outer Continental Shelf  
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TRACT NO. 48-026      BLOCK NO. 52N 76W      MAP NO. CAL 6A      OCS-P 0329

The area described in Section 2 of this instrument is subject to the following stipulation:

Stipulation No. 5

(a) If the Supervisor has reason to believe that areas of special biological interest in the lease area contain biological communities or species of such extraordinary or unusual value (even though unquantifiable) that no threat of damage, injury, or other harm to the community or species would be acceptable, he shall give the lessee written notice that the lessor is invoking the provisions of this stipulation and the lessee shall comply with the following requirements: Prior to any drilling activity or the construction or placement of any structure for exploration or development on lease areas including, but not limited to, well drilling and pipeline and platform placement, hereinafter referred to as "operation," the lessee shall conduct site specific surveys as approved by the Supervisor and in accordance with prescribed biological survey requirements to determine the existence of any special biological resource including, but not limited to:

- (1) Very unusual, rare, or uncommon ecosystems or ecotones.
- (2) A species of limited regional distribution that may be adversely affected by any lease operations

If the results of such surveys suggest the existence of a special biological resource that may be adversely affected by any lease operation, the lessee shall: (1) relocate the site of such operation so as not to adversely affect the resources identified; (2) establish to the satisfaction of the Supervisor, on the basis of the site-specific survey, either that such operation will not have a significant adverse effect upon the resource identified or that a special biological resource does not exist. The Supervisor will review all data submitted and determine, in writing, whether a special biological resource exists or may be significantly affected by lessee's operations. The lessee may take no action until the Supervisor has given the lessee written directions on how to proceed.

(b) The lessee agrees that if any area of biological significance should be discovered during the conduct of any operations on the leased area, he shall report immediately such findings to the Supervisor, and make every reasonable effort to preserve and protect the biological resource from damage until the Supervisor has given the lessee directions with respect to its protection.

UNITED STATES  
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Stipulations for Oil and Gas Lease Sale #48  
Outer Continental Shelf  
Southern California

TRACT NO. 48-026      BLOCK NO. 52N 76W      MAP NO. CAL 6A      OCS-P 0329

The area described in Section 2 of this instrument is subject to the following stipulation:

Stipulation No. 6

(a) Pipelines will be required, (1) if pipeline rights-of-way can be determined and obtained, (2) if laying of such pipelines is technologically feasible and environmentally preferable, and (3) if, in the opinion of the lessor, pipelines can be laid without net social loss, taking into account any incremental costs of pipelines over alternative methods of transportation and any incremental benefits in the form of increased environmental protection or reduced multiple use conflicts. The lessor specifically reserves the right to require that any pipeline used for transporting production to shore be placed in certain designated management areas. In selecting the means of transportation, consideration will be given to any recommendation of the intergovernmental planning program for leasing and management of transportation of Outer Continental Shelf oil and gas with the participation of Federal, State, and local government and the industry. Where feasible, and environmentally preferable, all pipelines, including both flow lines and gathering lines for oil and gas, shall be buried to a depth suitable for adequate protection from water currents, sand waves, storm scouring, fisheries' trawling gear, and other uses as determined on a case-by-case basis.

(b) Following the completion of pipeline installation, no crude oil production will be transported by surface vessel from offshore production sites, except in the case of emergency. Determinations as to emergency conditions and appropriate responses to these conditions will be made by the Supervisor. Where the three criteria set forth in the first sentence of this stipulation are not met and surface transportation must be employed, all vessels used for carrying hydrocarbons to shore from the leased area will conform with all standards established for such vessels, pursuant to the Ports and Waterways Safety Act of 1972 (46 U.S.C., 391a), as amended.

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT

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Outer Continental Shelf  
Southern California

TRACT NO. 48-026      BLOCK NO. 52N 76W      MAP NO. CAL 6A      OCS-P 0329

The area described in Section 2 of this instrument is subject to the following stipulation:

Stipulation No. 8

(a) The royalty rate on production saved, removed or sold from this lease is subject to consideration for reduction under the same authority that applies to all other oil and gas leases on the Outer Continental Shelf (30 CFR 250.12 (e)). The Director, Geological Survey, may grant a reduction for only one year at a time. Reduction of royalty rates will not be approved unless production has been underway for one year or more.

(b) Although the royalty rate specified in Sec. 6 (a) of this lease or as subsequently modified in accordance with applicable regulations and stipulations is applicable to all production under this lease, not more than 16 2/3 percent of the production saved, removed or sold from the lease area may be taken as royalty in amount, except as provided in Sec. 15 (d) of this lease: the royalty on any portion of the production saved, removed or sold from the lease in excess of 16 2/3 percent may only be taken in value of the production saved, removed or sold from the lease area.

# EXHIBIT 12



United States Department of the Interior **RECEIVED**

BUREAU OF OCEAN ENERGY MANAGEMENT

Gulf of Mexico OCS Region  
 1201 Elmwood Park Boulevard  
 New Orleans, LA 70123-2394

JUN 16 2016

**LAND**

OCS-G 35896

	Offering Date 03/23/2016	Map Area and Block Number NG15-06 - Walker Ridge - 274
<b>DECISION</b>	Rental \$63,360.00	Balance of Bonus \$1,920,096.00
	Total Amount Due	\$1,983,456.00

**Exxon Mobil Corporation**  
**Post Office Box 4778**  
**Houston, Texas 77210-4778**

**LEASE FORMS TRANSMITTED FOR EXECUTION**

Pursuant to Section 8 of the Outer Continental Shelf Lands Act (67 Stat. 462; 43 U.S.C. 1337) as amended (92 Stat. 629), and the regulations pertaining thereto (30 CFR 556), your bid for the block described above is accepted. Accordingly, in order to perfect your rights hereunder, the following actions must be taken:

1. A signatory, authorized pursuant to the qualification records on file with the Bureau of Ocean Energy Management (BOEM), Gulf of Mexico Region (GOMR), Adjudication Section, must execute on behalf of the Lessee, each of the three lease forms attached hereto; and return same to the BOEM GOMR Office of Leasing and Plans, Adjudication Section.
2. You must pay, by Electronic Funds Transfer, the balance of the bonus and the first year's rental indicated above, by following the detailed instructions contained on the BOEM website for the specific lease sale this Decision Letter pertains to or on the Payment Information Webpage found on the Office of Natural Resources and Revenue (ONRR) website. Payment must be received by the Federal Reserve Bank of New York no later than noon, eastern standard time, on the 11th business day after receipt of this decision (30 CFR 556.47). That day is **July 1, 2016**.

You must comply with the two requirements enumerated above not later than the 11th business day after receipt of this decision. Failure to comply with the above requirements will result in forfeiture of the 1/5 bonus deposit and your rights to acquire the lease.

Additionally, you must comply with bonding requirements according to 30 CFR 556, Subpart I, and with the regulations at 30 CFR 550.143, addressing designations of operator.

**IMPORTANT:** *The lease form requires the attachment of the CORPORATE SEAL to all leases executed by corporations.*

  
 \_\_\_\_\_  
 Regional Director

June 15, 2016

Attachments

Date \_\_\_\_\_

1

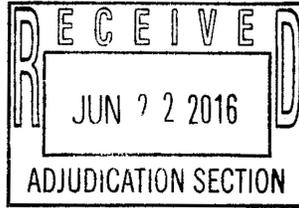
Lease # 6007160

UNITED STATES  
 DEPARTMENT OF THE INTERIOR  
 BUREAU OF OCEAN ENERGY MANAGEMENT  
**OIL AND GAS LEASE OF SUBMERGED LANDS  
 UNDER THE OUTER CONTINENTAL SHELF LANDS ACT**

Office New Orleans, LA	Serial number OCS-G 35896
Cash bonus  <b>\$2,400,120.00</b>	Rental rate per acre, hectare or fraction thereof <b>See Addendum</b>
Minimum royalty rate per acre, hectare or fraction thereof  <b>\$11.00 per acre</b>	Royalty rate <b>18 3/4 percent</b> Profit share rate

**Paperwork Reduction Act of 1995 statement:** *This form does not constitute an information collection as defined by 44 U.S.C. 3501 et seq., and therefore does not require approval by the Office of Management and Budget.*

This lease is effective as of **JUL 01 2016** (hereinafter called the "Effective Date") and shall continue for an initial period of **ten** years (hereinafter called the "Initial Period") by and between the United States of America (hereinafter called the "Lessor"), by the **Regional Director, Gulf of Mexico OCS Region**, Bureau of Ocean Energy Management (BOEM), its authorized officer, and **Exxon Mobil Corporation** **100%**



(hereinafter called the "Lessee"). In consideration of any cash payment heretofore made by the Lessee to the Lessor and in consideration of the promises, terms, conditions, and covenants contained herein, including the Stipulation(s) numbered **8** attached hereto, the Lessee and Lessor agree as follows:

**Sec. 1. Statutes and Regulations.** This lease is issued pursuant to the Outer Continental Shelf Lands Act of August 7, 1953; 43 U.S.C.1331 *et seq.*, as amended, (hereinafter called "the Act"). This lease is subject to the Act, regulations promulgated pursuant thereto, and other statutes and regulations in existence upon the Effective Date of the lease, and those statutes enacted (including amendments to the Act or other statutes) and regulations promulgated thereafter, except to the extent they explicitly conflict with an express provision of this lease. It is expressly understood that amendments to existing statutes and regulations, including but not limited to the Act, as well as the enactment of new statutes and promulgation of new regulations, which do not explicitly conflict with an express provision of this lease may be made and that the Lessee bears the risk that such may increase or decrease the Lessee's obligations under the lease.

In accordance with the regulations at 2 CFR, parts 180 and 1400, the Lessee must comply with the U.S. Department of the Interior's debarment and suspension (nonprocurement) requirements and must communicate this requirement to comply with these regulations to all persons with whom the Lessee does business as it relates to this lease by including this term as a condition when entering into contracts and transactions with others.

**Sec. 2. Rights of Lessee.** The Lessor hereby grants and leases to the Lessee the exclusive right and privilege to drill for, develop, and produce oil and gas resources, except helium gas, in the submerged lands of the Outer Continental Shelf containing approximately **5,760.000000** acres or hectares (hereinafter referred to as the "leased area"), described as follows:

**All of Block 274, Walker Ridge, OCS Official Protraction Diagram, NG 15-06.**

**This lease is amended by addendum pursuant to the Final Notice of Sale for Outer Continental Shelf (OCS) Oil and Gas Lease Sale 241. The addendum shall become a part of the lease and supersede any inconsistent provisions of the lease form.**

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Note: 1

Verified lease and updated obligations and provisions in QLS. No further action necessary. 11/2/16 CSC.

These rights include:

- (a) the nonexclusive right to conduct within the leased area geological and geophysical explorations in accordance with applicable regulations;
- (b) the nonexclusive right to drill water wells within the leased area, unless the water is part of geopressured-geothermal and associated resources, and to use the water produced therefrom for operations pursuant to the Act free of cost, on the condition that the drilling is conducted in accordance with procedures approved by the Secretary of the Interior or the Secretary's delegate (hereinafter called the "Secretary"); and
- (c) the right to construct or erect and to maintain within the leased area artificial islands, installations, and other devices permanently or temporarily attached to the seabed and other works and structures necessary to the full enjoyment of the lease, subject to compliance with applicable laws and regulations.

**Sec. 3. Term.** This lease shall continue from the Effective Date of the lease for the Initial Period and so long thereafter as oil or gas is produced from the leased area in paying quantities, or drilling or well reworking operations, as approved by the Lessor, are conducted thereon, or as otherwise provided by regulation.

**Sec. 4. Rentals.** The Lessee shall pay the Lessor on or before the first day of each lease year before the discovery of oil or gas on the lease, then on or before the last day of each full lease year in which royalties on production are not due, a rental as shown on the face hereof.

**Sec. 5. Minimum Royalty.** The Lessee shall pay the Lessor on or before the last day of each lease year beginning with the year in which royalty-bearing production commences, and notwithstanding any royalty suspension that may apply, a minimum royalty as shown on the face hereof, with credit applied for actual royalty paid during the lease year. If actual royalty paid exceeds the minimum royalty requirement, then no minimum royalty payment is due.

**Sec. 6. Royalty on Production.**

- (a) The Lessee shall pay a royalty as shown on the face hereof in amount or value of production saved, removed, or sold from the leased area. Gas (except helium) and oil of all kinds are subject to royalty. All helium produced shall remain the property of the United States. The Lessee is liable for royalty payments on oil or gas lost or wasted from a lease site when such loss or waste is due to negligence on the part of the operator of the lease, or due to the failure to comply with any rule or regulation, order, or citation issued under the Federal Oil and Gas Royalty Management Act of 1982 or the Act. The Lessor shall determine whether production royalty shall be paid in amount or value.
- (b) The value of production for purposes of computing royalty shall be the reasonable value of the production as determined by the Lessor. The value upon which royalty will be paid is established under 30 CFR Chapter XII or applicable successor regulations.
- (c) When paid in value, royalties on production shall be due and payable monthly on the last day of the month next following the month in which the production is obtained, unless the Lessor designates a later time. When paid in amount, such royalties shall be delivered at pipeline connections or in tanks provided by the Lessee. Such deliveries shall be made at reasonable times and intervals and, at the Lessor's option, shall be effected either (i) on or immediately adjacent to the leased area, without cost to the Lessor, or (ii) at a more convenient point closer to shore or on shore, in which event the Lessee shall be entitled to reimbursement for the reasonable cost of transporting the royalty production to such delivery point.

**Sec. 7. Payments.** The Lessee shall make all payments (rentals, royalties and any other payments required by this lease) to the Lessor by electronic transfer of funds unless otherwise provided by regulations or by direction of the Lessor. Rentals, royalties, and any other payments required by this lease shall be made payable to the Office of Natural Resources Revenue and tendered to the Lessor. Determinations made by the Lessor as to the amount of payment due shall be presumed to be correct and payable as due.

**Sec. 8. Bonds.** The Lessee shall at all times maintain the bond(s) required by regulation prior to the issuance of the lease. The Lessee shall furnish such additional security as may be required by the Lessor if, after operations have begun, the Lessor determines additional security is necessary to ensure compliance with Lessee's obligations under this lease and the regulations.

**Sec. 9. Plans.** The Lessee shall conduct all operations on the lease or unit in accordance with an approved exploration plan (EP), development and production plan (DPP) or development operations coordination document (DOCD), approval conditions, and any other applicable requirements provided by law or regulation. The Lessee may depart from an approved plan only as provided by applicable regulations.

**Sec. 10. Diligence and Prevention of Waste.**

- (a) The Lessee must exercise diligence in the development of the leased area and in the production of wells located thereon and must prevent unnecessary damage to, loss of, or waste of leased resources.
- (b) The Lessee shall comply with all applicable laws, regulations and orders related to diligence, sound conservation practices and prevention of waste. EPs, DPPs and DOCDs, are to conform to sound conservation practices to preserve, protect, and develop minerals resources and maximize the ultimate recovery of hydrocarbons from the leased area.

**Sec. 11. Directional Drilling.** A directional well drilled under the leased area from a surface location on nearby land not covered by this lease shall be deemed to have the same effect for all purposes of the lease as a well drilled from a surface location on the leased area. Drilling shall be considered to have been commenced on the leased area when drilling is commenced on the nearby land for the purpose of directionally drilling under the leased area, and production of oil or gas from the leased area through any directional well surfaced on nearby land or drilling or reworking of any such directional well shall be considered production or drilling or reworking operations on the leased area for all purposes of the lease. Nothing contained in this Section shall be construed as granting to the Lessee any interest, license, easement, or other right in any nearby land.

**Sec. 12. Safety and Inspection Requirements.** The Lessee shall:

- (a) maintain all places of employment within the leased area in compliance with occupational safety and health standards and, in addition, free from recognized hazards to employees of the Lessee or of any contractor or subcontractor operating within the lease area;
- (b) maintain all operations within the leased area in compliance with regulations or orders intended to protect persons, property and the environment on the Outer Continental Shelf; and
- (c) allow prompt access, at the site of any operation subject to safety regulations, to any authorized Federal inspector and provide any documents and records that are pertinent to occupational or public health, safety, or environmental protection as may be requested.

**Sale 241 Lease Addendum – R23**  
**Leases in Water Depths Greater Than or Equal To 1,600 Meters**

*This lease is amended by addendum pursuant to the Final Notice of Sale for OCS Oil and Gas Lease Sale 241. The addendum shall become a part of the lease and supersede any inconsistent provisions of the lease form.*

**Sec. 4. Rentals.**

Notwithstanding the language in Sec. 4 of the lease instrument, annual rental rates are as follows:

<b>Rental Rates per Acre or Fraction Thereof</b>	
<b>Years 1-5</b>	<b>Years 6, 7, &amp; 8+</b>
\$11.00	\$16.00

**Stipulation No. 8 – Protected Species**

A. The Endangered Species Act (16 U.S.C. 1531 *et seq.*) and the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1361 *et seq.*) are designed to protect threatened and endangered species and marine mammals and apply to activities on the Outer Continental Shelf (OCS). The OCS Lands Act (43 U.S.C. 1331 *et seq.*) provides that the OCS should be made available for expeditious and orderly development subject to environmental safeguards, in a manner which is consistent with the maintenance of competition and other national needs (see 43 U.S.C. 1332). The Bureau of Ocean Energy Management (BOEM) and the Bureau of Safety and Environmental Enforcement (BSEE) comply with these laws on the OCS.

B. The lessee and its operators must:

- 1) Collect and remove flotsam resulting from activities related to exploration, development, and production of this lease;
- 2) Post signs in prominent places on all vessels and platforms used as a result of activities related to exploration, development, and production of this lease detailing the reasons (legal and ecological) why release of debris must be eliminated;
- 3) Observe for marine mammals and sea turtles while on vessels, reduce vessel speed to 10 knots or less when assemblages of cetaceans are observed, and maintain a distance of 91 meters or greater from whales and a distance of 45 meters or greater from small cetaceans and sea turtles;
- 4) Employ mitigation measures prescribed by BOEM/BSEE or the National Marine Fisheries Service (NMFS) for all seismic surveys, including the use of an “exclusion zone” based upon the appropriate water depth, ramp-up and shutdown procedures, visual monitoring, and reporting;
- 5) Identify important habitats, including designated critical habitat, used by listed species (e.g., sea turtle nesting beaches, piping plover critical habitat), in oil spill contingency planning and require the strategic placement of spill cleanup equipment to be used only by personnel trained in less-intrusive cleanup techniques on beaches and bay shores; and
- 6) Immediately report all sightings and locations of injured or dead protected species (e.g., marine mammals and sea turtles) to the appropriate stranding network. If oil and gas industry activity is responsible for the injured or dead animal (e.g., because of a vessel strike), the responsible parties should remain available to assist the stranding network. If the injury or death was caused by a collision with the lessee’s vessel, the lessee must notify BSEE within 24 hours of the strike.

C. BOEM and BSEE issue Notices to Lessees and Operators (NLTs), which more fully describe measures implemented in support of the above-mentioned implementing statutes and regulations, as well as measures identified by the U.S. Fish and Wildlife Service and NMFS arising from, among others, conservation recommendations, rulemakings pursuant to the MMPA, or

consultation. The lessee and its operators, personnel, and subcontractors, while undertaking activities authorized under this lease, must implement and comply with the specific mitigation measures outlined in NTL No. 2012-JOINT-G01 (Vessel Strike Avoidance and Injured/Dead Protected Species Reporting), NTL No. 2012-JOINT-G02 (Implementation of Seismic Survey Mitigation Measures and Protected Species Observer Program), and NTL No. 2015-BSEE-G03 (Marine Trash and Debris Awareness and Elimination). At the lessee's option, the lessee, its operators, personnel, and contractors may comply with the most current measures to protect species in place at the time an activity is undertaken under this lease, including, but not limited to, new or updated versions of the NTLs identified in this paragraph. The lessee and its operators, personnel, and subcontractors will be required to comply with the mitigation measures, identified in the above referenced NTLs, and any additional measures in the conditions of approvals for their plans or permits.

**Sec. 13. Suspension or Cancellation.**

(a) The Lessor may suspend or cancel this lease pursuant to section 5 of the Act, and compensation shall be paid when provided by the Act.

(b) The Lessor may, upon recommendation of the Secretary of Defense, during a state of war or national emergency declared by Congress or the President of the United States, suspend operations under the lease, as provided in section 12(c) of the Act, and just compensation shall be paid to the Lessee for such suspension.

**Sec. 14. Indemnification.** The Lessee shall indemnify the Lessor for, and hold it harmless from, any claim, including claims for loss or damage to property or injury to persons caused by or resulting from any operation on the leased area conducted by or on behalf of the Lessee. However, the Lessee shall not be responsible to the Lessor under this section for any loss, damage, or injury caused by or resulting from:

- (a) negligence of the Lessor other than the commission or omission of a discretionary function or duty on the part of a Federal Agency whether or not the discretion involved is abused; or
- (b) the Lessee's compliance with an order or directive of the Lessor against which an administrative appeal by the Lessee is filed before the cause of action for the claim arises and is pursued diligently thereafter.

**Sec. 15. Disposition of Production.**

(a) As provided in section 27(a)(2) of the Act, the Lessor shall have the right to purchase not more than 16 2/3 percent by volume of the oil and gas produced pursuant to the lease at the regulated price or, if no regulated price applies, at the fair market value at the wellhead of the oil and gas saved, removed, or sold, except that any oil or gas obtained by the Lessor as royalty or net profit share shall be credited against the amount that may be purchased under this subsection.

(b) Pursuant to section 27(b) and (c) of the Act, the Lessor may offer and sell certain oil and gas obtained or purchased pursuant to a lease. As provided in section 27(d) of the Act, the Lessee shall take any Federal oil or gas for which no acceptable bids are received, as determined by the Lessor, and which is not transferred to a Federal Agency pursuant to section 27(a)(3) of the Act, and shall pay to the Lessor a cash amount equal to the regulated price or, if no regulated price applies, the fair market value of the oil or gas so obtained.

(c) As provided in section 8(b)(7) of the Act, the Lessee shall offer 20 percent of the crude oil, condensate, and natural gas liquids produced on the lease, at the market value and point of delivery as provided by regulations applicable to Federal royalty oil, to small or independent refiners as defined in the Emergency Petroleum Allocation Act of 1973.

(d) In time of war or when the President of the United States shall so prescribe, the Lessor shall have the right of first refusal to purchase at the market price all or any portion of the oil or gas produced from the leased area, as provided in section 12(b) of the Act.

**Sec. 16. Unitization, Pooling, and Drilling Agreements.** Within such time as the Lessor may prescribe, the Lessee shall subscribe to and operate under a unit, pooling, or drilling agreement embracing all or part of the lands subject to this lease as the Lessor may determine to be appropriate or necessary. Where any provision of a unit, pooling, or drilling agreement, approved by the Lessor, is inconsistent with a provision of this lease, the provision of the agreement shall govern.

**Sec. 17. Equal Opportunity Clause.** During the performance of this lease, the Lessee shall fully comply with paragraphs (1) through (7) of section 202 of Executive Order 11246, as amended (reprinted in 41 CFR 60-1.4(a)), and the implementing regulations, which are for the purpose of preventing employment discrimination against persons on the basis of race, color, religion, sex, or national origin. Paragraphs (1) through (7) of section 202 of Executive Order 11246, as amended, are incorporated in this lease by reference.

**Sec. 18. Certification of Nonsegregated Facilities.** By entering into this lease, the Lessee certifies, as specified in 41 CFR 60-1.8, that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. As used in this certification, the term "facilities" means, but is not limited to, any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees. Segregated facilities include those that are segregated by explicit directive or those that are in fact segregated on the basis of race, color, religion, sex, or national origin, because of habit, local custom, or otherwise; provided, that separate or single-user restrooms and necessary dressing or sleeping areas shall be provided to assure privacy as appropriate. The Lessee further agrees that it will obtain identical certifications from proposed contractors and subcontractors prior to awarding contracts or subcontracts unless they are exempt under 41 CFR 60-1.5.

**Sec. 19. Reservations to Lessor.** All rights in the leased area not expressly granted to the Lessee by the Act, the regulations, or this lease are hereby reserved to the Lessor. Without limiting the generality of the foregoing, reserved rights included:

(a) the right to authorize geological and geophysical exploration in the leased area that does not unreasonably interfere with or endanger actual operations under the lease, and the right to grant such easements or rights-of-way upon, through, or in the leased area as may be necessary or appropriate to the working of other lands or to the treatment and shipment of products thereof by or under authority of the Lessor;

(b) the right to grant leases for any minerals other than oil and gas, and to issue leases or grants for renewable energy or alternative uses within the leased area, except that operations under such leases or grants shall not unreasonably interfere with or endanger operations under this lease; and

(c) the right, as provided in section 12(d) of the Act, to restrict operations in the leased area or any part thereof, which may be designated by the Secretary of Defense, with approval of the President, as being within an area needed for national defense and, so long as such designation remains in effect, no operations may be conducted on the surface of the leased area or the part thereof included within the designation except with the concurrence of the Secretary of Defense. If operations or production under this lease within any designated area are suspended pursuant to this paragraph, any payments of rentals and royalty prescribed by this lease likewise shall be suspended. During such period of suspension of operations and production, the term of this lease shall be extended by adding thereto any such suspension period, and the Lessor shall be liable to the Lessee for such compensation as is required to be paid under the Constitution of the United States.

**Sec. 20. Assignment of Lease.** The Lessee shall file for approval with the appropriate regional BOEM OCS office any instrument of assignment or other transfer of any rights or ownership interest in this lease in accordance with applicable regulations.

**Sec. 21. Relinquishment of Lease.** The Lessee may relinquish this lease or any officially designated subdivision thereof by filing with the appropriate regional BOEM OCS office a written relinquishment, in triplicate, that shall be effective on the date it is filed. No relinquishment of this lease or of any portion of the leased area shall relieve the Lessee of the continuing obligation to pay all accrued rentals, royalties, and other financial obligations or to plug all wells and remove

all platforms and other facilities on the area to be relinquished in accordance with applicable regulations.

**Sec. 22. Decommissioning.**

(a) When wells, platforms, pipelines or other facilities are no longer useful for operations, the Lessee shall permanently plug such wells, remove such platforms and other facilities, decommission such pipelines, and clear the seafloor of all associated obstructions created by the lease operations.

(b) The Secretary may determine that a well, platform, pipeline or other facility is no longer useful and require its immediate decommissioning.

(c) All platforms and other facilities shall be removed within 1 year after the lease terminates unless the Lessor grants approval to conduct other activities.

(d) All decommissioning operations shall be conducted in accordance with applicable laws and regulations and in a manner that is safe, does not unreasonably interfere with other uses of the OCS, and does not cause undue or serious harm or damage to the human, marine, or coastal environment.

**Sec. 23. Remedies in Case of Default.**

(a) Whenever the Lessee fails to comply with any of the provisions of the Act, the regulations issued pursuant to the Act, or the terms of this lease, the lease shall be subject to cancellation in accordance with the provisions of section 5(c) and (d) of the Act and the Lessor may

exercise any other remedies that the Lessor may have, including, but not limited to the penalty provisions of section 24 of the Act. Furthermore, pursuant to section 8(o) of the Act, the Lessor may cancel the lease if it is obtained by fraud or misrepresentation.

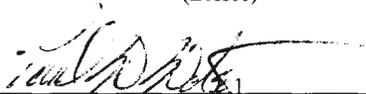
(b) Nonenforcement by the Lessor of a remedy for any particular violation of the provisions of the Act, the regulations issued pursuant to the Act, or the terms of this lease shall not prevent the cancellation of this lease or the exercise of any other remedies under paragraph (a) of this section for any other violation or for the same violation occurring at any other time.

**Sec. 24. Unlawful Interest.** No member of, or delegate to, Congress, or Resident Commissioner, after election or appointment, or either before or after they have qualified and during their continuance in office, and no officer, agent, or employee of the Department of the Interior, except as provided in 43 CFR Part 20, shall be admitted to any share or part in this lease or derive any benefit that may arise therefrom, except to the extent that such benefit is obtained by the general public as well. The provisions of Section 3741 of the Revised Statutes, as amended, 41 U.S.C. 22, and the Act of June 25, 1948, 62 Stat. 702, as amended, 18 U.S.C. 431-433, relating to contracts made or entered into, or accepted by or on behalf of the United States, form a part of this lease insofar as they may be applicable.

\*\*\*

Exxon Mobil Corporation

(Lessee)



(Signature of Authorized Officer)

Paul W. Watson

(Name of Signatory)

Attorney-in-Fact

(Title)

June 20, 2016

(Date)

THE UNITED STATES OF AMERICA, Lessor



(Signature of Authorized Officer)

Michael A. Celata

(Name of Signatory)

Regional Director

(Title)

JUN 30 2016

(Date)

Post Office Box 4778  
Houston, Texas 77210-4778

(Address of Lessee)

*If this lease is executed by a corporation, it must bear the corporate seal*



# EXHIBIT 13

**Summons,**  
***Commonwealth v. Exxon Mobil Corp.,***  
**No. 19-03333-BLS1 (Suffolk Super. Ct.)**

Commonwealth of Massachusetts

SUFFOLK, SS.

TRIAL COURT OF THE COMMONWEALTH  
SUPERIOR COURT DEPARTMENT  
CIVIL DOCKET NO. 19-3333

COMMONWEALTH OF MASSACHUSETTS, PLAINTIFF(S),

v.

EXXON MOBIL CORPORATION, DEFENDANT(S)

SUMMONS

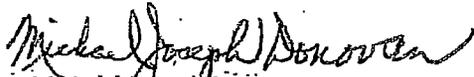
THIS SUMMONS IS DIRECTED TO Exxon Mobil Corporation (Defendant's name)

**You are being sued.** The Plaintiff(s) named above has started a lawsuit against you. A copy of the Plaintiff's Complaint filed against you is attached to this summons and the original complaint has been filed in the Suffolk Superior Court. **YOU MUST ACT PROMPTLY TO PROTECT YOUR RIGHTS.**

1. **You must respond to this lawsuit in writing within 20 days.** If you do not respond, the court may decide the case against you and award the Plaintiff everything asked for in the complaint. You will also lose the opportunity to tell your side of the story. You must respond to this lawsuit in writing even if you expect to resolve this matter with the Plaintiff. **If you need more time to respond, you may request an extension of time in writing from the Court.**
2. **How to Respond.** To respond to this lawsuit, you must file a written response with the court and mail a copy to the Plaintiff's Attorney (or the Plaintiff, if unrepresented). You can do this by:
  - a. Filing your **signed original** response with the Clerk's Office for Civil Business, Suffolk Superior Court, 12th Floor 3 Pemberton Sq. Boston, MA 02108 (address), by mail or in person, **AND**
  - b. Delivering or mailing a copy of your response to the Plaintiff's Attorney/Plaintiff at the following address: Assistant Attorney General I. Andrew Goldberg, Office of the Attorney General, One Ashburton Place, 18th Floor, Boston, MA 02108.
3. **What to include in your response.** An "Answer" is one type of response to a Complaint. Your Answer must state whether you agree or disagree with the fact(s) alleged in each paragraph of the Complaint. Some defenses, called affirmative defenses, must be stated in your Answer or you may lose your right to use them in court. If you have any claims against the Plaintiff (referred to as **counterclaims**) that are based on the same facts or transaction described in the Complaint, then you must include those claims in your Answer. Otherwise, you may lose your right to sue the Plaintiff about anything related to this lawsuit. If you want to have your case heard by a jury, you must **specifically** request a jury trial in your Answer or in a written demand for a jury trial that you must send to the other side and file with the court no more than 10 days after sending your Answer. You can also respond to a Complaint by filing a "**Motion to Dismiss**," if you believe that the complaint is legally invalid or legally insufficient. A Motion to Dismiss must be based on one of the legal deficiencies or reasons listed under Mass. R. Civ. P. 12. If you are filing a Motion to Dismiss, you must also comply with the filing procedures for "Civil Motions" described in the rules of the Court in which the complaint was filed, available at [www.mass.gov/courts/case-legal-res/rules-of-court](http://www.mass.gov/courts/case-legal-res/rules-of-court).

- 4. **Legal Assistance.** You may wish to get legal help from a lawyer. If you cannot get legal help, some basic information for people who represent themselves is available at [www.mass.gov/courts/selfhelp](http://www.mass.gov/courts/selfhelp).
- 5. **Required information on all filings:** The "civil docket number" appearing at the top of this notice is the case number assigned to this case and must appear on the front of your Answer or Motion to Dismiss. You should refer to yourself as the "Defendant."

Witness Hon. Judith Fabricant, Chief Justice on 24 October, 2019.

  
Michael Joseph Donovan  
Clerk-Magistrate

Note: The number assigned to the Complaint by the Clerk-Magistrate at the beginning of the lawsuit should be indicated on the summons before it is served on the Defendant.

### PROOF OF SERVICE OF PROCESS

I hereby certify that on \_\_\_\_\_, 20\_\_\_\_, I served a copy of this summons, together with a copy of the complaint in this action, on the defendant named in this summons, in the following manner (See Mass. R. Civ. P. 4 (d)(1-5)):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dated: \_\_\_\_\_, 20\_\_\_\_

Signature: \_\_\_\_\_

N.B. TO PROCESS SERVER:

PLEASE ENTER THE DATE THAT YOU MADE SERVICE ON THE DEFENDANT IN THIS BOX — BOTH ON THE ORIGINAL SUMMONS AND ON THE COPY OF THE SUMMONS SERVED ON THE DEFENDANT.

**Civil Action Cover Sheet,  
*Commonwealth v. Exxon Mobil Corp.,*  
No. 19-03333-BLS1 (Suffolk Super. Ct.)**



CIVIL ACTION COVER SHEET	DOCKET NO(S) <b>B.L.S.</b> <i>19-3333</i>	Trial Court Of Massachusetts Superior Court Department County: SUFFOLK
PLAINTIFF(S) COMMONWEALTH OF MASSACHUSETTS	<b>RECEIVED</b>	
DEFENDANT(S) EXXON MOBIL CORPORATION	<b>OCT 24 2019</b>	
ATTORNEY, FIRM NAME, ADDRESS AND TELEPHONE Board of Bar Overseers number Richard A. Johnston; AAG, BBO No. 253240, Melissa A. Hoffer, AAG, BBO No. 641667, Christophe G. Courchesne, AAG, BBO No. 660507, Glenn Kaplan, AAG, BBO No. 567308, Shennan Kavanagh, AAG, BBO No. 655174, I. Andrew Goldberg, AAG, BBO No. 560843, and Timothy Reppucci, AAG, BBO No. 678629 Office of the Massachusetts Attorney General, One Ashburton Place, 18th Fl., Boston, MA 02108 Ph: (617) 727-2200	ATTORNEY (if known)  SUPERIOR COURT CIVIL MICHAEL JOSEPH DONOVAN CLERK/MAGISTRATE	
Origin Code Original Complaint		
TYPE OF ACTION AND TRACK DESIGNATION (See reverse side) CODE NO. TYPE OF ACTION (specify) TRACK IS THIS A JURY CASE? * _____ BJ1 Claim by Commonwealth against business (B) <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
The following is a full and detailed statement of the facts on which plaintiff relies to determine eligibility in to The Business Litigation Session.		
The Commonwealth of Massachusetts ("Commonwealth") commences this action pursuant to the Massachusetts Consumer Protection Act (the "Act"), G.L. c. 93A, § 2 and § 4, against the defendant Exxon Mobil Corporation ("ExxonMobil") for its violations of the Act and applicable regulations arising out of ExxonMobil's engaging in deceptive acts or practices in the marketing and/or sale of ExxonMobil-branded fossil fuel products to Massachusetts consumers and in the marketing and/or sale of ExxonMobil securities to Massachusetts investors. Given the scope of the conduct alleged in the attached Complaint, the complex facts, the voluminous anticipated discovery, and the likely need for substantial case management, the Commonwealth respectfully submits that this case is eligible for, and should be accepted into, The Business Litigation Session.		
* A Special Tracking Order shall be created by the Presiding Justice of the Business Litigation Session at the Rule 16 Conference.		
PLEASE IDENTIFY, BY CASE NUMBER, NAME AND COUNTY, ANY RELATED ACTION PENDING IN THE SUPERIOR COURT DEPARTMENT:		
"I hereby certify that I have complied with the requirements of Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1:18) requiring that I provide my clients with information about court-connected dispute resolution services and discuss with them the advantages and disadvantages of the various methods." Signature of Attorney of Record		
DATE: October 24, 2019		

**CIVIL ACTION COVER SHEET  
INSTRUCTIONS**

**SELECT CATEGORY THAT BEST DESCRIBES YOUR CASE**

- |  |  |
|--|--|
| <p>BA.1 claims relating to the governance and conduct of internal of entities</p> <p>BA2. claims relating to employment agreements</p> <p>BA3. claims relating to liability of shareholders, directors, officers, partners etc.</p> <p>BB.1 shareholder derivative claims</p> <p>BB.2 claims relating to or arising out of securities transactions</p> <p>BC.1 claims involving mergers, consolidation, sales of assets, issuance of debt, equity and like interests</p> <p>BD.1 claims to determine the use or status of, or claims involving, intellectual property</p> <p>BD.2 claims to determine the use or status of, or claims involving, confidential, property or trade secret information</p> <p>BD.3 claims to determine the use or status, or claims involving restrictive covenants</p> | <p>BE.1 claims involving breaches of contract or fiduciary, fraud, misrepresentation business torts or other violations involving business relationships</p> <p>BF.1 claims under the U.C.C. involving complex issues</p> <p>BG.1 claims arising from transactions with banks, investment bankers</p> <p>BH.1 claims for violation of antitrust or other trade regulation laws</p> <p>BH.2 claims of unfair trade practices involving complex issues</p> <p>BL.1 malpractice claims by business enterprises against professionals</p> <p>BJ.1 claims by or against a business enterprise to which a government entity is a party</p> <p>BK.1 other commercial claims, including insurance, construction, real estate and consumer matters involving complex issues</p> |
|--|--|

TRANSFER YOUR SELECTION TO THE FACE SHEET

EXAMPLE:

CODE NO.	TYPE OF ACTION (SPECIFY)	TRACK	IS THIS A JURY CASE?	
		*		
BD3	Restrictive covenants	(B)	Yes	No

**DUTY OF THE PLAINTIFF.** The plaintiff, or plaintiff's counsel, shall set forth, in the face sheet a statement specifying in full detail the facts upon which the plaintiff then relies for "presumptive" entry into the Business Litigation Session. A copy of the civil action cover sheet shall be served on all defendants, together with the complaint.

**DUTY OF THE DEFENDANT.** Should the defendant contest the entry into the Business Litigation Session, the defendant shall file with the answer (or dispositive motion) a statement specifying why the action does not belong in the Business Litigation Session. Such Statement shall be served with the answer (or dispositive motion).

**A CIVIL ACTION COVER SHEET MUST BE FILED WITH EACH COMPLAINT.**

**FAILURE TO COMPLETE THIS COVER SHEET THOROUGHLY AND ACCURATELY MAY RESULT IN THE TRANSFER OF THIS ACTION FROM THE BUSINESS LITIGATION SESSION TO ANOTHER APPROPRIATE SESSION OF THE SUPERIOR COURT.**

\* A special tracking order shall be created by the presiding justice of the Business Litigation Session at the Initial Rule 16 Conference.

**Complaint,**  
***Commonwealth v. Exxon Mobil Corp.,***  
**No. 19-03333-BLS1 (Suffolk Super. Ct.)**

RECEIVED

COMMONWEALTH OF MASSACHUSETTS

OCT 24 2019

SUFFOLK, ss.

SUPERIOR COURT COURT-CIVIL  
CIVIL ACTION NO. JOSEPH DONOVAN  
CLERK/MAGISTRATE

19-3333

COMMONWEALTH OF MASSACHUSETTS, )

Plaintiff, )

v. )

EXXON MOBIL CORPORATION, )

Defendant. )

COMPLAINT

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## I. INTRODUCTION

1. For many years, Exxon Mobil Corporation (“ExxonMobil” or the “Company”), the world’s largest publicly traded oil and gas company, systematically and intentionally has misled Massachusetts investors and consumers about climate change. In order to increase its short-term profits, stock price, and access to capital, ExxonMobil has been dishonest with investors about the material climate-driven risks to its business and with consumers about how its fossil fuel products cause climate change—all in violation of Massachusetts law.

2. The Commonwealth of Massachusetts (“Commonwealth”), through its Attorney General, brings this action pursuant to the Massachusetts Consumer Protection Act, G.L. c. 93A, §§ 1-11 (“Chapter 93A”) and related regulations, to hold ExxonMobil accountable for misleading the state’s investors and consumers. ExxonMobil’s Chapter 93A violations have taken the form of both significant factual misstatements and the failure to make disclosures to investors and consumers that would have been material to decisions by Massachusetts investors to purchase, sell, retain, and price ExxonMobil securities and by Massachusetts consumers to purchase ExxonMobil fossil fuel products that cause climate change.

3. ExxonMobil’s pattern of deception came to light through a series of media articles in 2015. After the Attorney General’s Office served ExxonMobil with a civil investigative demand regarding the matters raised by the articles, ExxonMobil sued the Attorney General in both this Court and a non-Massachusetts federal court to prevent her from obtaining documents from the Company. This Court, and later the Supreme Judicial Court, upheld the Attorney General’s authority to investigate the matter,<sup>1</sup> and the U.S. Supreme Court denied ExxonMobil’s

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<sup>1</sup> *Exxon Mobil Corp. v. Attorney General*, 479 Mass. 312 (2018).

*certiorari* petition for review of that decision.<sup>2</sup> A federal district court summarily dismissed ExxonMobil’s federal action, and ExxonMobil has appealed that decision.<sup>3</sup> For more than three years, ExxonMobil has refused to comply with the Attorney General’s demand for documents, but her investigation proceeded.

4. As set forth in more detail below, internal ExxonMobil and other documents made public by the media and/or obtained during the course of the Attorney General’s investigation reveal a systematic effort by the Company, reminiscent of the tobacco industry’s long denial campaign about the dangerous effects of cigarettes, to mislead both investors and consumers in Massachusetts.

5. Decades ago, ExxonMobil’s predecessor company, Exxon Corporation (“Exxon”), brought the power and expertise of its sophisticated research and engineering division to the issue of climate change, so that it could gain a better understanding of the climate-related risks to its business. Exxon’s scientific experts were among the earliest to understand the risks posed by increasing greenhouse gas emissions, also known as GHG emissions, which include emissions of carbon dioxide (“CO<sub>2</sub>”), methane, nitrous oxide, and fluoridated gases. From the late 1970s onward, Exxon scientists and management knew that Exxon’s oil (including petroleum), natural gas, and related hydrocarbon products (together, “fossil fuels”) were the leading cause of climate change, and that climate change, if unabated, would have potentially “catastrophic”—as one Exxon scientist put it thirty-seven years ago—impacts on the global environment and human communities.

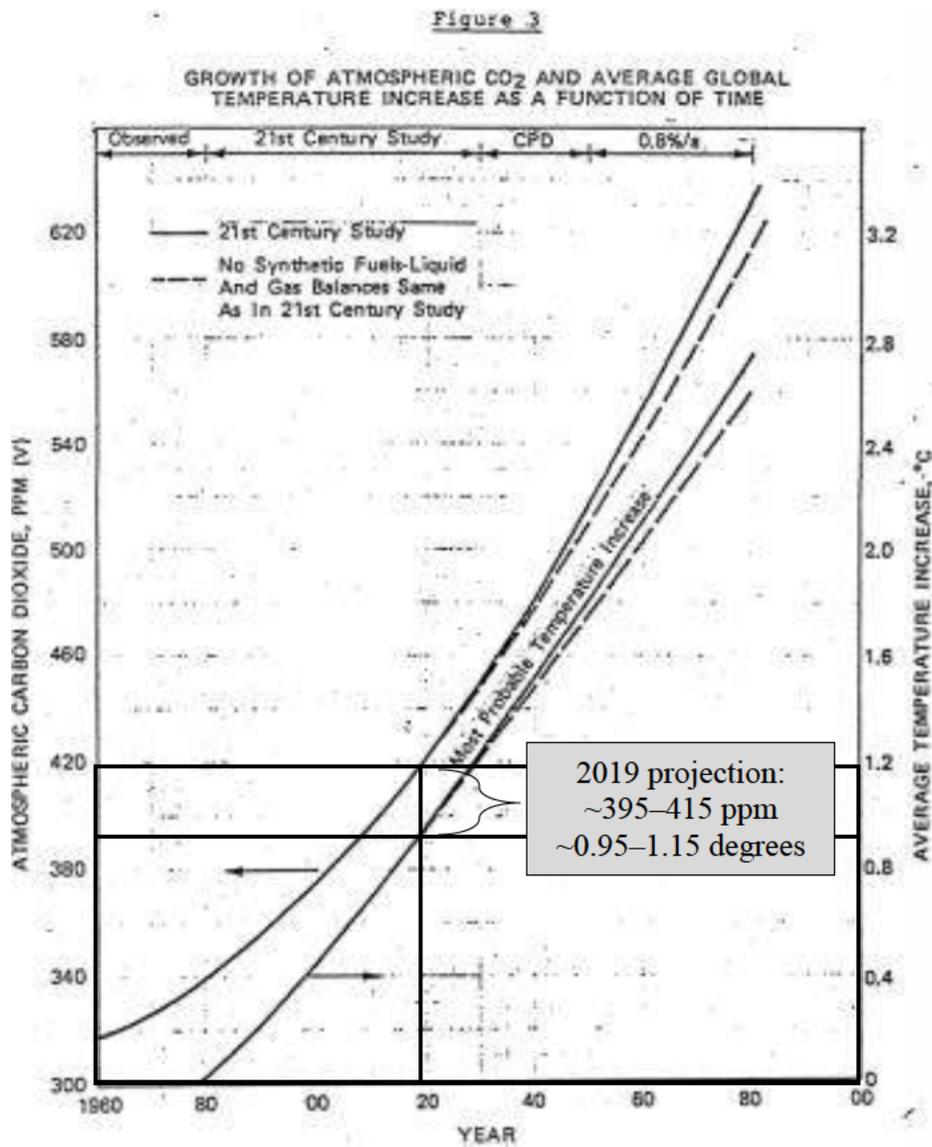
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<sup>2</sup> 2019 WL 113105, 586 U.S. \_\_ (Jan. 7, 2019).

<sup>3</sup> *Exxon Mobil Corp. v. Schneiderman*, 316 F. Supp. 3d 679 (S.D.N.Y. 2018), *appeal pending sub nom.*, *Exxon Mobil Corp. v. Healey*, No. 18-1170 (2d Cir.).

6. On May 11, 2019, concentrations of carbon dioxide in the atmosphere surpassed 415 parts per million, the highest level in three million years: in other words, the highest level in human history.

7. Exxon’s scientists predicted this very result thirty-seven years ago, as depicted in this 1982 Exxon Vu-graph chart, which shows atmospheric carbon dioxide reaching near 415 parts per million (ppm) in 2019 (legend added):



8. The astonishing accuracy of Exxon’s prediction demonstrates that Exxon understood the likely rate of acceleration of atmospheric carbon dioxide concentration—and the concomitant impact on global average temperatures—if nothing was done to reduce greenhouse gas emissions.

9. As early as 1978, Exxon confirmed that there was general scientific agreement that humankind was influencing the global climate through carbon dioxide released from burning fossil fuels, and Exxon recognized an urgent need to assess the possible impact of what it referred to as the “greenhouse effect” on Exxon’s business. Similarly, in 1979, Exxon recognized that the rate of carbon dioxide increase meant there was a limited window before decisions would need to be made regarding necessary changes in energy strategy to shift away from fossil fuels. At that time, Exxon concluded that, if it became necessary to avoid increasing existing atmospheric carbon dioxide levels to prevent significant climate change, dramatic changes in global patterns of energy use, including the world’s demand for the Company’s fossil fuel products, would be required.

10. In 1980, an expert retained by Exxon and the U.S. oil industry’s trade organization advised them that (i) global average temperatures were expected to rise 2.5 degrees Celsius (“C”) (4.5 degrees Fahrenheit (“F”)) by 2038, and that such a change would have “major economic consequences,” “bring[ing] world economic growth to a halt,” and (ii) by 2067, temperatures would increase by 5 degrees C (9 degrees F), if emissions continued unabated, a change that would have “globally catastrophic effects.” Exxon understood that, if actions to address climate change were delayed until the effects of climate change were discernable, then it was likely that such actions would occur too late to be effective.

11. Equally significant, Exxon recognized that there were a limited number of options for reducing the build-up of atmospheric carbon dioxide, and that measures such as energy conservation and shifting to renewable sources represented the only reasonably viable options. An Exxon scientist advised management in 1981 that it was “distinctly possible” that, over the long term, climate change will “produce effects which will indeed be catastrophic (at least for a substantial fraction of the earth’s population).” Exxon’s scientists also told management that climate change could be “[m]itigat[ed]” by sharply reducing fossil fuel use.

12. Despite its knowledge that continued high rates of fossil fuel combustion would disrupt systems necessary for human survival, including the global water distribution balance, agriculture, and fisheries, ExxonMobil engaged in a decades-long, intentional, tobacco-industry style effort to deceive investors and consumers, including Massachusetts investors and consumers, by sowing doubt about the very climate science Exxon itself had helped to develop and by advertising alleged environmental benefits—not the risks—associated with normal use of its fossil fuel products.

13. By the late 1980s, Exxon made a strategic decision to emphasize uncertainty in climate science to deflect increasing pressures to rein in fossil fuel use. With that decision, Exxon began to lead a multi-million dollar, extremely successful consumer deception campaign, repeatedly taking public positions, either directly or through paid proxies, that contradicted the climate science Exxon itself had helped to develop. As a focal point of its strategy, Exxon and additional corporations and trade groups representing the oil, coal, and automobile industries formed the Global Climate Coalition. ExxonMobil’s other corporate predecessor, Mobil Oil Corporation (“Mobil”), was also a member. The Global Climate Coalition launched an aggressive public relations effort aimed at duping the public into believing that, contrary to

Exxon's internal scientific knowledge, the role of greenhouse gases in climate change was not well understood.

14. Exxon and Mobil made multiple statements to investors and consumers that sought to undermine climate science and that conflicted with their own internal knowledge. For example, in 1996, Exxon published "*Global warming: who's right? Facts about a debate that's turned up more questions than answers.*" In speeches and publications, Exxon's then-Chief Executive Officer ("CEO"), Lee Raymond, represented that "[c]urrently, the scientific evidence is inconclusive as to whether human activities are having a significant effect on the global climate," referred to the fact that fossil fuel combustion causes climate change as an "unproven theory," and urged opposition to efforts to reduce fossil fuel consumption and support for expansion of efforts to develop fossil fuels. In 1997, Mr. Raymond represented in a speech that "the case for so called global warming is far from air tight," and "[i]t is highly unlikely that the temperature in the middle of the next century will be significantly affected whether policies are enacted now or 20 years from now."

15. In 1998, Exxon, with the oil industry's trade organization, founded the "Global Climate Science Communications Team," a group formed for the express purpose of causing the public and policymakers to doubt the science of climate change. Exxon and its collaborators laid out in the Global Climate Science Communications Plan the criteria by which they would know when their efforts to sow doubt had been successful. "Victory," they wrote, "will be achieved when average citizens 'understand' (recognize) uncertainties in climate science," and "recognition of uncertainty becomes part of the 'conventional wisdom.'" Exxon published "*Global Climate Change: Everyone's debate,*" that tracked almost verbatim the strategies set forth in the Global Climate Science Communications Plan. The report asked, "Does the tiny

portion of greenhouse gases caused by burning fossil fuels have a measurable effect on worldwide climate? No one knows for sure.”

16. While Exxon, Mobil, and the front groups they funded led the attack on climate science, noted scientific bodies issued increasingly urgent warnings about the dire consequences that will result if greenhouse gas emissions are not substantially curtailed. Consistent with Exxon’s prior, undisclosed research, the International Energy Agency and others concluded that, to limit warming to a safer level, the world must shift away from reliance on fossil fuels. Specifically, in 2012, the International Energy Agency warned that two-thirds of the world’s proven fossil fuel reserves must remain unburned if humanity is to avert catastrophic climate change.

17. Having engaged in decades of deceiving the world about climate change to evade full recognition of the science’s ramifications for the Company’s business model, ExxonMobil’s pattern of deception continues today through several interrelated unlawful efforts to mislead investors and consumers, including Massachusetts investors and consumers, about climate change risks. It is these efforts over the last decade that give rise to ExxonMobil’s violations of Chapter 93A alleged in this Complaint. Collectively, as with its historic and ongoing deception campaigns about the science, the objective of ExxonMobil’s efforts is to preserve the Company’s short-term profits in a carbon-dominated world economy, no matter the dire long-term consequences for the Company’s investors or for the consumers who buy its products.

18. In its communications with investors, including the Company’s supposed disclosures about climate change, now and in recent years ExxonMobil has failed to disclose the full extent of the risks of climate change to the world’s people and economies, the fossil fuel industry, and the Company. In some cases, ExxonMobil has denied or misleadingly downplayed

those risks. Through these misrepresentations, ExxonMobil has deceptively sought to overstate the value and sustainability of its business and is continuing to do so.

19. ExxonMobil now tells investors all the time that climate change risks are a management priority for the Company. And yet, ExxonMobil deceptively disseminates long-term forecasts of future growth in demand for fossil fuels. In light of these forecasts, the Company asserts to investors that virtually none of its fossil fuel assets are at risk during the global transition to cleaner energy that is now underway.

20. In these and other assurances, ExxonMobil wholly ignores, and fails to disclose to investors, the catastrophic risks that climate change presents to its business and to global economic and social systems—including unprecedented human migrations, resource scarcity, wealth destruction, armed conflict, and escalating human suffering—which have been internally apparent to the Company for more than forty years.

21. In the coming decades, these catastrophic “systemic” impacts threaten to impose ruinous societal costs, cascade throughout the world’s economies, and decimate the overall value of the world’s financial markets, and with them, ExxonMobil’s global business and the holdings of the Company’s Massachusetts investors.

22. Estimates of climate-related costs are mounting. In 2018, 215 of the world’s largest companies reported a potential financial impact from climate-related risks of almost \$1 trillion. That number does not include ExxonMobil because the Company failed to report any such numbers.

23. Rather than honestly disclose and mitigate climate change risks, ExxonMobil’s misrepresentations about and failures to disclose those risks have delayed the needed transition

to clean energy around the world and make these existential climate-driven threats to the global economy more likely to occur.

24. The magnitude of ExxonMobil's deception with respect to its global fossil fuel demand growth projections is staggering. For example, in its 2018 Outlook for Energy, the Company represented, with oil and gas fueling more than half of global energy demand through 2040, that demand "will continue to rise through 2040 . . . led by the expanding economies in the Asia Pacific region," with "[c]ontinuing urbanization and a significant expansion of the middle class, particularly in China and India."

25. In early June of 2019, the Northern Indian city of Churu reached 122 degrees Fahrenheit. Also in June, the city of Chennai, with a population of nine million, ran out of water; Bangalore, Hyderabad, and Delhi, together home to sixty million, are also facing water scarcity. Climate-driven droughts and changes in the monsoon season are a major contributor to these crises. As financial analysts are now beginning to recognize, emerging economies, like India, may be too stressed by climate change to actually "emerge"—an eventuality that would have not only dire humanitarian impacts, but would sharply decrease demand for ExxonMobil's fossil fuel products, presenting a significant risk to ExxonMobil's business. Despite the fact that ExxonMobil has known for decades that climate change would wreak havoc with global water cycles and cause droughts, nowhere does the Company disclose the potentially enormous impacts of such physical and related societal risks to its business.

26. In service of the same effort to deceive the Company's investors regarding the catastrophic risks of climate change, ExxonMobil also has deceived investors with misleading statements about how it incorporated climate change risks into its financial and business planning.

27. In particular, ExxonMobil faced, and continues to face, serious risks that its fossil fuel businesses were and remain poorly positioned for governmental and other measures that would limit greenhouse gas emissions, therefore reducing demand for its fossil fuel products. Chief among those risks for ExxonMobil and its shareholders is the risk that the Company's most important assets—its oil and gas reserves—will become “stranded,” i.e., rendered economically incapable of being developed because of governmental limits on emissions and other measures that increase the cost of developing fossil fuel reserves and shift demand away from fossil fuels. When those reserves cease to have future value, other things being equal, ExxonMobil securities are likely to decline in value as well, perhaps dramatically, much as the market value of coal companies has collapsed in recent years as the deployment of cleaner, more efficient fuel sources has reduced expected future coal demand.

28. ExxonMobil assured its Massachusetts and other investors that it had accounted for such risk by building into its business planning what is known as a proxy cost of carbon, which accounts for the likelihood of increasing costs from policies that will tax or regulate greenhouse gas emissions from ExxonMobil's operations and fossil fuel products. These investors have included Massachusetts-based ExxonMobil shareholders, such as State Street Corporation, Wellington Management Group, Fidelity Investments, Boston Trust Walden Company (formerly known as both Boston Trust & Investment Management Company and Walden Asset Management), and Arjuna Capital.

29. ExxonMobil repeatedly and expressly has represented in writing and orally and otherwise implied to Massachusetts investors—including in reports specifically prepared by ExxonMobil to address these investors' concerns about climate-driven risks to ExxonMobil's business—that it applied an escalating proxy cost of carbon in its business planning, investment

decisions, oil and gas reserve assessment, impairment analyses, and projections of future oil and gas demand. ExxonMobil has claimed that, notwithstanding the additional anticipated costs it expected to incur as a result of increased efforts to reduce greenhouse gas emissions, its businesses would continue to meet growing demand for fossil fuel energy around the world and its reserves were not at risk of becoming stranded.

30. ExxonMobil did not, in fact, apply the proxy cost of carbon internally in the amounts or manner it represented, and in some cases at all. In planning oil and gas projects and in calculating its oil and gas reserves, ExxonMobil has variously:

- i) applied a lower, undisclosed proxy cost based on internal guidance;
- ii) applied even lower costs based on existing regulations and held those costs flat for decades into the future, in lieu of applying an escalating proxy cost; or
- iii) applied no cost associated with greenhouse gas emissions at all.

ExxonMobil also directly or indirectly misrepresented its use of proxy costs in its impairment analyses for its marginally economic assets and its projections of future oil and gas demand.

31. Thus, while its internal practices applied proxy costs unevenly, if at all, ExxonMobil has portrayed itself to investors as conservative in its approach, asserting that it has incorporated the climate change financial risk to its business by applying a proxy cost that would reduce future cash flows and their volatility, thereby accounting for and mitigating the risk. Because these assurances understated the material risks of climate change to the Company's business, they were material to Massachusetts investors' decisions regarding their holdings of ExxonMobil securities. In this regard, ExxonMobil's misrepresentations falsely justified to investors its riskiest long-term investments, including Canadian bitumen oil sands projects ("oil sands") now comprising more than a quarter of its publicly disclosed global fossil fuel reserves.

32. ExxonMobil's omissions and misrepresentations to investors about the systemic risks of climate change and its use of a proxy cost of carbon are material because disclosure of those risks and the Company's actual practices would influence the decisions of Massachusetts investors to purchase, sell, retain, or price ExxonMobil securities.

33. ExxonMobil's omissions and misrepresentations to investors about the systemic risks of climate change and its use of a proxy cost of carbon have been and are therefore materially false and misleading in violation of Chapter 93A.

34. In its marketing and sales of ExxonMobil products to Massachusetts consumers, ExxonMobil likewise has failed and continues to fail to disclose in its advertisements and promotional materials that the development, refining, and normal consumer use of ExxonMobil fossil fuel products emit large volumes of greenhouse gases, which are causing global average temperatures to rise and destabilizing the global climate system. ExxonMobil has misrepresented and continues to misrepresent the supposed climate and environmental *benefits* of its fossil fuel products—a deceptive marketing tactic that violates Chapter 93A.

35. ExxonMobil's representations in its advertising and promotional materials that consumer use of its Synergy™ and “green” Mobil 1™ products reduces greenhouse gas emissions are highly deceptive, since ExxonMobil fails to disclose the fact that production and consumer use of such transportation fuels is a leading cause of climate change that endangers public health and consumer welfare, and thus any purported environmental benefit associated with the use of those products is illusory.

36. In addition, ExxonMobil's relentless “greenwashing” marketing campaigns target consumers with messaging regarding ExxonMobil's purported environmental stewardship, corporate leadership in the realm of environmental and climate protection, and innovative clean

energy research, while failing to disclose that ExxonMobil is spending little on clean energy development, and instead is secretly opposing actions to reduce greenhouse gas emissions and ramping up production of fossil fuels that cause climate change. ExxonMobil's greenwashing is deceptive because it presents a false picture of ExxonMobil to consumers that is contradicted by ExxonMobil's actions and the massive environmental harms caused by the Company's production, refining, and sales of fossil fuels.

37. ExxonMobil's misleading representations and omissions to consumers are material because disclosure of information that ExxonMobil knows regarding the dangerous climate effects of using ExxonMobil's fossil fuel products would influence the purchasing behavior of Massachusetts consumers.

38. ExxonMobil's misrepresentations and omissions to consumers have been and are therefore materially false and misleading in violation of Chapter 93A and the Attorney General's implementing regulations.

39. The gravity of ExxonMobil's historic and continuing unlawful actions cannot be overstated; the world lost forty critical years to develop and deploy new technologies that would allow an orderly transition away from fossil fuels. ExxonMobil's deception deprived investors and consumers of the central facts so essential to their investment and purchasing choices: the knowledge that continued investment in ExxonMobil's fossil fuel business and production and use of ExxonMobil's fossil fuel products would bring about cataclysmic outcomes for humankind, many of the world's species, and the global economy.

40. Ed Garvey, a former Exxon scientist who worked for the Company from 1978 to 1983 conducting climate change research, was unequivocal in a recent interview that Exxon

knew forty years ago that climate change was happening, and that humans were contributing to it by burning fossil fuels:

The issue was not were we going to have a problem. The issue was simply how soon and how fast and how bad was it going to be. Not if. Nobody at Exxon when I was there was discussing that. It was just OK, how fast is it going to come?

41. Mr. Garvey noted that Exxon reversed course from its initial plans in the 1970s and early 1980s to act on its knowledge of the dangers of climate change and sound the alarm about continued reliance on fossil fuels, despite its knowledge of the harm that would result:

We [were] going to be an energy company and we recognize this problem [of climate change] and so we [were] going to help direct the country away from fossil fuels . . . [but Exxon] just said well we just want to make money on oil and we don't really care what happens. I mean, it upsets me, I don't know what else I can say.

42. ExxonMobil continues to deceive investors and consumers today. While the world reels from devastating climate disruption, and there are increasing calls on governments to declare a climate emergency, ExxonMobil continues to do what it has done for the past forty years—mislead and obfuscate, while delaying and downplaying the need for any immediate action to mitigate climate change. ExxonMobil is misrepresenting and failing to disclose to its investors the climate risks that the world and ultimately its business faces. And in its consumer marketing materials, ExxonMobil now falsely holds itself out as a leader in finding climate solutions, all while pursuing record levels of fossil fuel production, sales, and profits.

43. For ExxonMobil's violations of Chapter 93A with respect to Massachusetts investors and consumers, the Commonwealth requests, *inter alia*, comprehensive equitable remedies to stop ongoing investor and consumer deceptions by ExxonMobil and substantial monetary penalties for past misconduct.

## **II. PARTIES**

44. The plaintiff is the Commonwealth, acting by and through the Massachusetts Office of the Attorney General (the “Attorney General”).

45. The Attorney General, with offices at One Ashburton Place, Boston, Massachusetts, is the chief legal officer of the Commonwealth. The Attorney General is authorized to bring this action and seek the relief requested pursuant to her authority under G.L. c. 12, §§ 3 and 11D, and G.L. c. 93A, § 4.

46. ExxonMobil is a New Jersey corporation and has its principal place of business at 5959 Las Colinas Boulevard, Irving, Texas, 75039. It is registered to do business in Massachusetts as a foreign corporation and maintains a registered agent for service of process with the Corporation Service Company, 84 State Street, Boston, Massachusetts, 02109.

47. ExxonMobil is the corporation formed on November 30, 1999, by the merger of Exxon (formerly the Standard Oil Company of New Jersey) and Mobil (formerly the Standard Oil Company of New York). As the surviving entity of the merger, ExxonMobil is liable for its own conduct, as well as the conduct of both Exxon and Mobil. As used in this complaint, “ExxonMobil” or the “Company” may refer to Exxon, Mobil, and/or ExxonMobil depending on the context.

## **III. JURISDICTION AND VENUE**

48. This Court has jurisdiction over the subject matter of this action and to grant the relief requested pursuant to G.L. c. 212, § 4, G.L. c. 214, § 1, and G.L. c. 93A, § 4.

49. This Court has personal jurisdiction over the defendant, ExxonMobil, pursuant to the Massachusetts long-arm statute, G.L. c. 223A, § 3, and the U.S. and Massachusetts Constitutions because, as set forth in detail below, ExxonMobil transacts business and causes

harm in the Commonwealth, and the causes of action arise out of and relate to ExxonMobil's business here.

50. Venue lies in this Court pursuant to G.L. c. 93A, § 4, and G.L. c. 223, § 5.

51. This proceeding is in the public interest, and pursuant to G.L. c. 93A, § 4, the Attorney General has provided ExxonMobil with written notice at least five days before commencing suit and has given ExxonMobil an opportunity to confer regarding the Commonwealth's claims in this action.

#### **IV. THE CONTEXT FOR THIS ACTION: EXXONMOBIL'S FOSSIL FUEL BUSINESS, ITS HISTORY OF CLIMATE DECEPTION, AND THE CLIMATE CHANGE CRISIS**

##### **A. ExxonMobil's Global Fossil Fuel Business and Its Role in Climate Change**

52. Since 1999, when Exxon and Mobil merged, ExxonMobil has been the world's largest investor-owned oil and gas company. As of December 31, 2018, there were approximately 4.27 billion shares of ExxonMobil common stock issued and outstanding.

53. As of May 15, 2019, ExxonMobil ranked eleventh on Forbes's Global 2000 list of the world's largest public companies with a market capitalization of \$343.43 billion.

54. ExxonMobil is an integrated oil and gas company, meaning that it locates, extracts, refines, transports, markets, and sells fossil fuel products.

55. ExxonMobil has three primary business segments: "upstream" exploration and production operations; "downstream" refinery and retail operations; and its chemical business, which include the manufacturing and sale of various fossil fuel products that it advertises and sells to Massachusetts consumers.

56. ExxonMobil has been selling oil, gas, and other fossil fuel products for ultimate use by industry, governments, and individual consumers across the globe for more than a century, including in Massachusetts.

57. Over the last several decades, ExxonMobil has sold billions of barrels of oil, trillions of cubic feet of natural gas, and millions of tons of coal.

58. From 2001 through 2017 alone, ExxonMobil sold more than 42 billion barrels of petroleum products and earned more than \$5.6 trillion in sales and other operating revenue.

59. From 2001 through 2016, ExxonMobil sold, on average, approximately 8 percent of the total barrels of petroleum products consumed per day globally. In some years, ExxonMobil supplied close to 10 percent of global oil demand.

60. Between 2013 and 2018, ExxonMobil's upstream business was responsible for, on average, more than half of the Company's global earnings and more than 80 percent of its capital expenditures.

61. Most of ExxonMobil's assets are in the form of its global reserves of oil and gas, and the vast majority of its upstream business consists of the Company's producing activities in connection with these reserves. These reserves are ultimately intended to become finished petroleum products to be sold in both wholesale and retail markets, including in Massachusetts.

62. As of the end of 2017, ExxonMobil claimed proved reserves of 21.2 billion oil-equivalent barrels and a resource base of 97 billion oil-equivalent barrels.

63. As of the end of 2018, ExxonMobil claimed proved reserves of 24.3 billion oil-equivalent barrels and that it had added 1.3 billion oil-equivalent barrels to its resource base in that year.

64. As discussed in more detail in Sections IV.B and C, emissions of greenhouse gases, like carbon dioxide, are causing an increase in the Earth's global average surface and ocean temperatures.

65. Production, refining, and use (combustion) of ExxonMobil's fossil fuel products are a major source of dangerous greenhouse gases, including carbon dioxide (released, e.g., when ExxonMobil gasoline is burned in an internal combustion engine) and methane (released when ExxonMobil produces and transports natural gas).

66. In recent decades, ExxonMobil's operations and the use of its fossil fuel products have been one of the single largest sources of greenhouse gases emitted into the earth's atmosphere.

67. For just the period from 1988 to 2015, ExxonMobil was the largest emitter of greenhouse gases (including those emitted through the use of its products) among all U.S. companies and among global producers of fossil fuel products that are majority owned by non-governmental investors. ExxonMobil was the fifth largest emitter by this measure among all global producers.

68. Each of ExxonMobil's business segments generates its own greenhouse gas emissions. For example, ExxonMobil reported total "net equity greenhouse gas emissions" of 122 million CO<sub>2</sub>-equivalent metric tons in 2017. In recent years, the greenhouse gas emissions from ExxonMobil's upstream operations have increased.

69. Greenhouse gas emissions from ExxonMobil's fossil fuel businesses and the use of its products are a major cause of global climate change.

**B. ExxonMobil's Longstanding Internal Scientific Knowledge of the Causes and Consequences of Climate Change and Public Deception Campaigns**

*1. ExxonMobil has known since the 1970s that use of its fossil fuel products would have potentially "catastrophic" effects for humankind and that efforts to reduce the use of fossil fuels in response to climate change would pose a threat to ExxonMobil's bottom line.*

70. For at least forty years, ExxonMobil and its management has been aware that increased carbon dioxide emissions would impact the climate and that such climatic effects and

consequent societal responses would be the primary factor limiting future use of fossils fuels for energy.

71. In the late 1970s, Exxon developed and spent hundreds of thousands of dollars on a sophisticated in-house research and development project to study carbon dioxide emissions and the greenhouse effect.

72. A May 1978 internal Exxon memorandum prepared by Exxon scientists confirmed that “there is general scientific agreement that the most likely manner in which mankind is influencing the global climate is through carbon dioxide release from the burning of fossil fuels.”

73. Exxon scientists understood then that, due to rising carbon dioxide emissions, there was a limited timeframe for planning and decision-making. “Present thinking,” they warned in the May 1978 memorandum, “holds that man has a time window of five to ten years before the need for hard decisions regarding changes in energy strategies might become critical.”

74. The “changes in energy strategies” Exxon’s scientists were contemplating were shifts away from reliance on fossil fuels to meet energy needs.

75. Exxon’s scientific research program included equipping a tanker ship, the Esso Atlantic, with equipment necessary to undertake a large-scale ocean sampling program with the goal of better understanding the role of the oceans in serving as a sink for carbon dioxide emissions.

76. From the late 1970s onward, Exxon was concerned about the implications of climate change for its business. Exxon’s rationale for initiating its climate change research project and tanker sampling program was set forth in a number of internal Exxon documents,

including a 1978 letter that described Exxon's "need to assess the possible impact of the greenhouse effect on Exxon business."

77. In a 1979 presentation by Exxon to the National Oceanic and Atmospheric Administration, Exxon described the rationale for its climate change research as "develop[ing] expertise to assess the possible impact of the greenhouse effect on Exxon business," and informing Exxon management of risks.

78. By 1979, Exxon had undertaken an analysis of how the fuel mix could be switched to meet a range of potential carbon dioxide emissions caps, and, in an October 1979 internal Exxon document, concluded that if it became "necessary to maintain atmospheric [carbon dioxide] levels to prevent significant climate changes, dramatic changes in patterns of energy use would be required."

79. Specifically, Exxon concluded, "[w]orld fossil fuel resources other than oil and gas could never be used to an appreciable extent."

80. In 1979, atmospheric carbon dioxide concentrations were still below 340 ppm, but steadily climbing.

81. In Appendix A, "Ecological Consequences of Increased CO<sub>2</sub> Levels," attached to the October 1979 analysis described in Paragraph 78, Exxon summarized existing research describing environmental effects anticipated when atmospheric carbon dioxide concentrations reached 500 and 580 ppm, respectively.

82. At 500 ppm, according to the Appendix A summary, environmental effects included (i) a global temperature increase of 3 degrees F, "which is the equivalent of a 1°-4° southerly shift in latitude"; (ii) Southwest states would be hotter, "probably by more than 3° Fahrenheit," and drier; (iii) the "flow of the Colorado River would diminish and the southwest

water shortage would become much more acute;” (iv) most glaciers in the North Cascades and Glacier National Park would melt, and there would be less winter snow pack in the Cascades, Sierras, and Rockies, necessitating a major increase in storage reservoirs; (v) “[m]arine life would be markedly changed,” and it would “become increasingly difficult” to maintain salmon and steelhead runs in the Columbia River system; and (vi) the “rate of plant growth in the Pacific Northwest would increase.”

83. At 580 ppm, (i) “[g]lobal temperatures would be 9°F above 1950 levels”; (ii) most areas would receive more rainfall, and “snow would be rare in the contiguous states, except on higher mountains”; (iii) ocean levels “would rise four feet”; (iv) melting of the polar ice caps “could cause tremendous redistribution of weight and pressure exerted on the earth’s crust” which could “trigger major increases in earthquakes and volcanic activity resulting in even more atmospheric CO<sub>2</sub> and violent storms”; (v) the “Arctic Ocean would be ice free for at least six months each year, causing major shifts in weather patterns in the northern hemisphere;” and (vi) the “present tropics” would be hotter and less habitable, but the “present [temperate]” latitude would be warmer and more habitable.

84. In a draft July 1980 communications plan regarding Exxon’s climate change research program, Exxon scientists recognized that “future public decisions aimed at controlling the build-up of atmospheric [carbon dioxide] could impose limits on fossil fuel combustion.” Central objectives of the proposed plan were “[t]o establish Exxon’s credibility as a leading authority on CO<sub>2</sub> / Greenhouse science, particularly among opinion leaders who are not scientists,” and to “help bring about better public understanding of the CO<sub>2</sub> / Greenhouse Effect.”

85. Exxon's Research & Engineering division calculated, in 1980, that a doubling of pre-industrial levels of atmospheric carbon dioxide (from 280 ppm to 560 ppm) was projected to occur by about 2060, and included its estimate in an internal memorandum dated December 1980.

86. According to Exxon's scientists, as set forth in the December 1980 memorandum, "[t]he most widely accepted calculations" showed that a doubling would result in a global average temperature increase of 3 +/- 1.5 degrees C. Other climatological factors expected to occur with a doubling of carbon dioxide included disturbances in the global water distribution balance, which "will have [a] dramatic impact on soil moisture, and in turn, on agriculture."

87. Describing in the December 1980 memorandum the proceedings of a scientific workshop on climate change, Exxon's scientists discussed how the potential harm from climate change would compare with similar existential threats to human survival, such as "a nuclear holocaust or world famine."

88. In a section of the memorandum titled "Future Scenarios and Their Consequences [f]or Exxon," the scientists reviewed "unlikely" scenarios, such as "stopping all fossil fuel combustion at the 1980 rate" and "maintaining the pre-1973 fuel growth rate." Consistent with their prior observations, Exxon's scientists underscored that new technologies, like solar and nuclear, would need about 50 years to penetrate and achieve about half of the total market.

89. As of at least 1980, Exxon participated as a member of the American Petroleum Institute ("API") in the "AQ-9" Task Force. Climate change expert Dr. J.A. Laurman made a presentation to the group, including Exxon, at a meeting that took place on February 29, 1980. Dr. Laurman's presentation was attached to the minutes of the February 29, 1980 meeting.

90. During his presentation to the AQ-9 Task Force, including Exxon, Dr. Laurman confirmed that it appeared that reducing fossil fuel use immediately would ease the problem of climate change, and that remedial action would take a long time to be effective.

91. During his presentation to the AQ-9 Task Force, including Exxon, Dr. Laurman also relayed that global average temperatures were expected to rise 2.5 degrees C (4.5 degrees F) by 2038, a change that would have “major economic consequences,” “bring[ing] world economic growth to a halt,” and that by 2067, temperatures would increase by 5 degrees C (9 degrees F), if emissions continued unabated, a change that would have “globally catastrophic effects.” Dr. Laurman emphasized that there was a very limited timeframe in which to take action to transition away from climate change-causing fossil fuels.

92. In an August 1980 internal memorandum prepared by Exxon subsidiary Imperial Oil Limited (Esso Canada), titled, “*Review of Environmental Protection Activities for 1978-1979*,” and copied to Exxon’s Houston office, Exxon’s subsidiary concluded “[t]here is no doubt that increases in fossil fuel usage and decreases in forest cover are aggravating the potential problem of increased CO<sub>2</sub> in the atmosphere.”

93. In December 1980, a leading Exxon scientist submitted Exxon’s comments on a draft statement of findings and recommendations by the National Commission on Air Quality CO<sub>2</sub> Workshop. Exxon expressed comfort with the draft, whose findings included that the net consequences of carbon dioxide-induced changes in climate would be “adverse to the stability of human and natural communities,” and that if action to address climate change was delayed until the effects of climate change were discernable, “then it is likely that they will occur too late to be effective.”

94. In its comments, Exxon recognized that “it is likely that policy actions to control the growth of atmospheric CO<sub>2</sub> levels will need to be taken with imperfect knowledge of the possibility and consequences of CO<sub>2</sub>-induced climate change.”

95. Exxon also expressed comfort with the policy recommendations of the draft, which called for the United States to enter into international agreements to further research climate change and to undertake measures to control carbon dioxide emissions over the long term, and for the United States to provide greater support for developing alternatives to fossil fuels.

96. In a February 5, 1981, internal Exxon memorandum, Exxon scientists recognized that there were a limited number of options for reducing the build-up of atmospheric carbon dioxide, and that “[i]ndirect control measures, such as energy conservation or shifting to renewable sources, represent the only options that might make sense.”

97. As Exxon’s understanding deepened, its scientists’ warnings became more urgent. In an August 1981 internal memorandum, an Exxon scientist advised that it was “distinctly possible” that, over the long term, climate change will “produce effects which will indeed be catastrophic (at least for a substantial fraction of the earth’s population).”

98. The API, which included Exxon and Mobil among its members at the time, stated in a March 1982 report, “*Climate Models and CO<sub>2</sub> Warming: A Selective Review and Summary*,” that “[r]egardless of complexity, all climate model studies indicate that a doubling of CO<sub>2</sub> will produce a significant increase in the global and annual mean temperature of the earth.”

99. In 1982, the then-chair of Mobil, Rawleigh Warner, Jr., authored an article titled “*Energy and the Environment: the Next Decade*,” in which he wrote, “I recognize that [the greenhouse effect] too may become a serious issue for the future . . . . I believe [efforts

underway] can supply us with the information to deal with this problem well before the catastrophic consequences which some predict can happen . . . . New issues, such as acid rain and the danger of carbon dioxide buildup, need to be carefully monitored, and action taken if necessary.”

100. In an internal September 1982 memorandum, a chief Exxon scientist set forth his unequivocal assessment that (i) there was a “clear scientific consensus” that a doubling of atmospheric carbon dioxide from pre-industrial levels “would result in an average global temperature rise of  $(3.0 \pm 1.5) ^\circ\text{C}$ ” (8.1-2.7 degrees F); (ii) temperature increases were predicted to be distributed unevenly, with higher than average temperature elevations at the poles; (iii) there was “unanimous agreement in the scientific community that a temperature increase of this magnitude would bring about significant changes in the earth’s climate, including rainfall distribution and alternations in the biosphere”; (iv) based on projections of future fossil fuel consumption, a doubling of atmospheric carbon dioxide would occur sometime in the latter half of the 21st century; and (v) the results of Exxon’s own research were “in accord with the scientific consensus on the effect of increased atmospheric [carbon dioxide] on climate.”

101. In the September 1982 memorandum, Exxon’s scientists cited work by a Massachusetts Institute of Technology professor, Reginald Newell, that seemed in conflict with the scientific consensus and endeavored to demonstrate that Exxon’s own research “appears to reconcile” Newell’s work with the consensus scientific opinion. Thus, Exxon itself contributed to strengthening the scientific consensus on climatic effects of CO<sub>2</sub> emissions.

102. Exxon’s scientists also had a keen understanding, reflected in the September 1982 memorandum, of the implications of Exxon’s climate research on Exxon’s business, and of the potential for Exxon’s research to attract media attention, due to the “connection between Exxon’s

major business and the role of fossil fuel combustion in contributing to the increase of atmospheric CO<sub>2</sub>.”

103. In the September 1982 memorandum, Exxon’s chief scientist encouraged the continuation of Exxon’s climate research because of the potential for Exxon’s research to “affect[ ] future energy scenarios,” and also because “our ethical responsibility is to permit the publication of our research in the scientific literature,” consistent with Exxon’s purported “ethical credo on honesty and integrity.”

104. In October 1982 remarks at the Ewing Symposium, the president of Exxon Research & Engineering recognized the scientific consensus on the fundamental science of climate change, and astutely observed that the real uncertainty concerned how it would affect Exxon: “It is ironic that the biggest uncertainties about the CO<sub>2</sub> buildup are not in predicting what the climate will do, but in predicting what people will do. The scientific community is apparently reaching some consensus about the general mechanisms of the greenhouse effect. It is considerably less agreed on how much fossil fuels mankind will burn . . . .”

105. Exxon’s management was fully apprised of the research and scientific conclusions of its scientists and was provided with memoranda summarizing their findings.

106. A 1982 memorandum that was “given wide circulation to Exxon management,” detailed anticipated and potential impacts associated with the projected temperature increases expected to result from increasing atmospheric carbon dioxide concentrations, including droughts, or, as Exxon’s scientists put it, “disturbances in the existing global water distribution balance [that] would have dramatic impact on soil moisture, and in turn, on agriculture”; desertification; and “potentially catastrophic events that must be considered,” such as melting of

the Antarctic ice sheet, which, according to Exxon, could cause a five-meter sea level rise and “flooding on much of the U.S. East Coast, including the State of Florida and Washington D.C.”

107. The 1982 memorandum urged further study of human health effects associated with climate change, including “stress associated with climate[-]related famine or migration.” In the memorandum, Exxon also identified the need to examine methods for “alleviating environmental stress on renewable resource production—food, fiber, animal[s], agriculture, tree crops, etc.”

108. The 1982 memorandum acknowledged concerns that “once the [greenhouse] effects are measurable, they might not be reversible.” The memorandum made clear that “[m]itigation of the ‘greenhouse effect’ would require major reductions in fossil fuel.”

109. The 1982 memorandum concluded that there was time for additional study and monitoring before specific action was taken, and that specific action likely would constitute curtailment of fossil fuel consumption.

110. In a February 1984 presentation by one of Exxon’s climate scientists titled, “*Corporate Research Program in Climate / CO<sub>2</sub>-Greenhouse*,” a key objective for Exxon’s climate change research program was identified as “provid[ing] Exxon with a source of expertise in an area which could have major impact on future business environment.”

111. In a March 1984 Exxon Research & Engineering Vu-graph presentation titled “*CO<sub>2</sub> Greenhouse and Climate Issues*,” a leading Exxon scientist prepared graphs documenting the causal relationship between increasing atmospheric carbon dioxide concentrations and increasing average global temperatures, one of which was a version of the graph depicted in Paragraph 7 above, which appeared in the 1982 memorandum described in Paragraphs 106 through 109 above.

112. The March 1984 presentation listed the potential effects of warming, including redistribution of rainfall, accelerated growth of pests and weeds, detrimental human health effects, and human population migration.

113. Exxon's scientist observed in the March 1984 presentation that the Massachusetts Institute of Technology and Stanford University recommended that "[w]e must start talking to policy makers," and that the universities had suggested "extreme reduction in fossil fuel use through conservation and alternate technologies using electricity." MIT and Stanford, according to Exxon, believed that international debate on legislation was needed.

114. Exxon's scientist concluded the March 1984 presentation with the stark warning that "[w]e can either adapt our civilization to a warmer planet or avoid the problem by sharply curtailing the use of fossil fuels."

115. Thus it is evident that by the early 1980s, Exxon and its management knew that climate change presented dramatic risks to human civilization and the environment as well as a major potential constraint on fossil fuel use.

**2. *ExxonMobil has masterminded and implemented a tobacco industry-style campaign to sow doubt and confusion among the public, including investors and consumers of its products, about the climate science Exxon helped to develop.***

116. Despite its early, unequivocal science-based understanding of the role of fossil fuels produced, refined, and marketed by Exxon in causing climate change, by the late 1980s and early 1990s, Exxon began to disavow the Company's knowledge of climate change and the potentially "catastrophic" effects of climate change on human civilization and global environments well researched by Exxon's own scientists, and well understood by its management.

117. Like the tobacco companies before it, which “were disseminating advertisements, publications, and public statements denying any adverse health effects of smoking and promoting their ‘open question’ strategy of sowing doubt,” at the same time they “internally acknowledged as fact that smoking causes disease and other health hazards,”<sup>4</sup> ExxonMobil began a sophisticated, multi-million dollar campaign to sow doubt about whether climate change was occurring, and what role, if any, fossil fuel use played in causing climate change.

**a) Exxon formulated the “Exxon Position”: emphasize uncertainty.**

118. An August 1988 Exxon internal memorandum, captioned “The Greenhouse Effect,” captures Exxon’s intentional decision to misrepresent both its knowledge of climate change and the role of Exxon’s products in causing climate change.

119. The August 1988 memorandum confirmed that “[c]limate models predict a 1.5 [degree] C to 4.5 [degree] C global temperature increase in 100 years—depending on the projected growth in fossil fuel use.” It also confirmed that the “principal greenhouse gases are by-products of fossil fuel combustion.”

120. Notwithstanding that conclusion, the August 1988 memorandum set forth an “Exxon Position” in which Exxon would “[e]mphasize the uncertainty in scientific conclusions regarding the potential enhanced Greenhouse effect.” The August 1988 memorandum also made clear that Exxon “has not modified its energy outlook or forecasts to account for possible changes in fossil fuel demand or utilization due to the [g]reenhouse effect.”

121. In other words, Exxon would continue to project large growth in fossil fuel consumption, despite the warnings of its own scientists that curtailing fossil fuel use was necessary to avoid the potentially “catastrophic” impacts of climate change.

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<sup>4</sup> *United States v. Philip Morris USA Inc.*, 566 F.3d 1095, 1106 (D.C. Cir. 2009).

122. In a February 1989 presentation to the Exxon Board of Directors titled, “*Potential Enhanced Greenhouse Effects: Status and Outlook*,” an Exxon manager represented to its Board that “the 3 warmest years on record occurred in the 1980s. If this trend persists it could signal that enhanced greenhouse warming is finally becoming detectable.” During the presentation, the manager reported that “[c]onsensus predictions call for warming between 1.5-4.5 [degrees] C for doubled CO<sub>2</sub> with greater warming at the poles . . . . No one knows how to evaluate the absolute uncertainty in the numbers.”

123. In the February 1989 presentation, the Exxon manager advised Exxon’s board that the “Enhanced Greenhouse is still deeply imbedded in scientific uncertainty, and we will require substantial additional investigation to determine the degree to which its effects might be experienced in the future.”

124. Exxon also confirmed its knowledge that “[f]ossil fuels contribute most of the CO<sub>2</sub>,” yet downplayed the implications of these facts, advising its board that “more rational responses will require efforts to extend the science and increase emphasis on costs and political realities to frame ‘adaptive’ measures which are doable and move towards constructive options.”

**b) Exxon and major fossil fuel interests formed the Global Climate Coalition to distort climate science and deceive the public and consumers.**

125. In or around 1989, Exxon and other corporations and trade groups representing the oil, coal, and auto industries formed the Global Climate Coalition. Exxon and the other entities funded the operations of the Global Climate Coalition. Exxon helped orchestrate the work of the Global Climate Coalition and received ongoing information about its activities.

126. Through an active public relations campaign ultimately targeting the public, including investors and consumers of fossil fuels, the Global Climate Coalition developed and distributed messaging material to members of the media that represented that, contrary to

Exxon's internal knowledge, the role of greenhouse gases in climate change was not well understood.

127. One tactic used by Exxon and the Global Climate Coalition to generate doubt about the validity of climate science was to create the false impression of a scientific debate over the legitimacy of climate science and over the role greenhouse gas emissions have in increasing global average temperatures. Background materials provided by the Global Climate Coalition to journalists for ultimate dissemination to the public, for example, pointed out that "scientists differ" on the role of greenhouse gases in climate change.

128. In funding the Global Climate Coalition and other similar organizations that published misinformation about the risks of climate change, Exxon directly contributed to deception of investors and consumers about the risks of climate change and the harmful consequences associated with the production and use of Exxon's fossil fuel products.

**c) Contrary to its internal knowledge, ExxonMobil mounted an aggressive public attack on climate science and downplayed the role of its products—fossil fuels—in causing climate change.**

129. In December 1995, Mobil authored on behalf of the Global Climate Coalition a memorandum critiquing the IPCC's statement that "the balance of evidence suggests that there is a discernible human influence on global climate." Contrary to Global Climate Coalition member Exxon's own scientific research and its historic agreement with the scientific consensus on climate change, the Global Climate Coalition argued that the IPCC's statement went "beyond what can be justified by current scientific knowledge."

130. In "public education" materials published by Exxon in 1996 and titled, "*Global warming: who's right? Facts about a debate that's turned up more questions than answers,*" Exxon described the purported benefits of a warming world, representing that (i) rising temperatures "could be part of the natural fluctuations that occur over long periods of time"; (ii)

computer-based climate models have been “unable to represent current temperatures and climate accurately”; (iii) computer models had begun to forecast “less extreme temperature rises” caused by greenhouse gas emissions; (iv) “a warmer world would be far more benign than many imagine”; (v) one study “suggests that a moderate warming would reduce mortality rates in the U.S., so a slightly warmer climate would be more healthful”; (vi) climate modeling “suggests that the number of hurricanes and their average wind speed will decline”; (vii) there was a “tremendous amount of uncertainty” about climate change; and (viii) “dramatic action now may be premature” since “[t]echnological advances will make greenhouse emissions reductions easier in the future.”

131. In May 1996, Exxon’s then-CEO, Lee Raymond, represented in a speech to the Economic Club of Detroit that, “[c]urrently, the scientific evidence is inconclusive as to whether human activities are having a significant effect on the global climate.”

132. In a 1996 article he authored and titled, “*Climate Change: don’t ignore the facts,*” Mr. Raymond criticized international efforts then underway “to cut the use of fossil fuels, based on the unproven theory that they affect the earth’s climate.” Mr. Raymond wrote, in stark conflict with Exxon’s own internal knowledge, that “[p]roponents of the global warming theory say that higher levels of greenhouse gases—especially carbon dioxide—are causing world temperatures to rise and that burning fossil fuels is the reason . . . . Yet scientific evidence remains inconclusive as to whether human activities affect global climate.”

133. In a November 1996 speech at the annual meeting of API in Washington, D.C., Mr. Raymond claimed that the “theory” that the use of fossil fuels is affecting Earth’s climate was “unproved.” Mr. Raymond represented that “scientific evidence remains inconclusive as to

whether human activities affect global climate.” Mr. Raymond urged opposition to efforts to reduce fossil fuel use, and expansion of efforts to develop fossil fuels.

134. Mr. Raymond continued to publicly contradict Exxon’s own research. In a 1997 speech to the World Petroleum Congress held that year in Beijing, Mr. Raymond told the audience of chief executive officers, international business leaders, heads of state, and members of the media that “[m]any people—politicians and the public alike—believe that global warming is a rock-solid certainty. But it’s not.”

135. Mr. Raymond represented in the Beijing speech that climate change computer models were “notoriously inaccurate,” “the case for so called global warming is far from air tight,” and “[i]t is highly unlikely that the temperature in the middle of the next century will be significantly affected whether policies are enacted now or 20 years from now.”

136. The year 1997 was the warmest of all years prior to 1997 for which temperature records existed. Yet, in the 1997 Beijing speech, Mr. Raymond stated that “the earth is cooler today than it was 20 years ago.”

137. On May 31, 2000, at ExxonMobil’s first shareholder meeting after the Exxon-Mobil merger, Mr. Raymond, having become ExxonMobil’s CEO, came prepared to publicly dispute the scientific conclusions regarding climate change that Exxon had reached over twenty years earlier.

138. At the meeting, Mr. Raymond answered a shareholder comment about scientific consensus on the need for a “long-term solution to global warming,” by showing a slide regarding a petition he said, falsely, was “signed by seventeen thousand scientists [and stating that] ‘[t]here is no convincing scientific evidence that any release of carbon dioxide, methane, or other greenhouse gases is causing or will in the foreseeable future cause catastrophic heating of

the earth's atmosphere and disruption of the earth's climate.” By that time, this petition had been thoroughly discredited, counting among its supporting “scientists” numerous fake signatories such as fictional characters from the “Star Wars” movies and pop singer “Dr.” Geri Halliwell of the Spice Girls.

139. In his response to the shareholder, Mr. Raymond continued:

So contrary to the assertion that has just been made that everybody agrees, it looks like at least seventeen thousand scientists don't agree. My point is not that these seventeen thousand are right and you're wrong. Your point is you're right and I'm wrong. I'm not saying you're wrong. What I am saying is there is a substantial difference of view in the scientific community as to what exactly is going on . . . . We're not going to follow what is politically correct . . . .

140. Mr. Raymond then presented other slides showing what were supposedly global temperatures graphed over time:

That's the earth's temperature as best these scientists are able to estimate what it was for the past three thousand years. It's been a long time since I went to graduate school. But if you just eyeball that, you could make a case statistically that, in fact, the temperature is going down. I am not asserting that. Similarly, I reject the assertion that it's going up.

141. The information in the slides consisted of (i) an outdated summary of twenty years of satellite temperature data that had been corrected in 1998 and, as corrected, showed rising temperatures and (ii) a temperature record for the waters of the Sargasso Sea, not the “earth,” developed in research regarding evidence of certain natural climate variability in connection with ocean temperatures there.

142. In a December 2000 letter presented to ExxonMobil to rebuke Mr. Raymond for his misleading presentation, a senior scientist at the Massachusetts-based Woods Hole Oceanographic Institution explained that the Company had used the Sargasso Sea research, which he had authored, in a misleading manner to downplay the urgency of climate change. The

Woods Hole scientist wrote that “it is very misleading to use [my Sargasso Sea] data to argue against important climate changes that began a century ago. . . . I would have to say I believe ExxonMobil has been misleading in its use of the Sargasso Sea data. There’s really no way those results bear on the question of human-induced climate warming . . . . [T]he sad thing is that a company with the resources of ExxonMobil is exploiting the data for political purposes . . . .”

**d) Despite its knowledge of likely adverse human health effects of climate change, Exxon promoted doubt and false debate over public health risks.**

143. In September 1996, D.J. Devlin of Exxon Biomedical Sciences, Inc., prepared a presentation titled “*Purported Impact of Climate Change on Human Health*,” addressing the then-increasing interest in human health impacts of climate change. The presentation appears to have been circulated to Global Climate Coalition members.

144. The Exxon Biomedical Sciences presentation described what it referred to as the “Advocates’ Hypothesis,” which it described as “beliefs” that greenhouse gases were increasing, primarily due to fossil fuel use, and causing global average temperature to increase, which would lead to climatic changes, which would, in turn, directly and indirectly affect human health.

145. That “hypothesis” included assertions that human health would be directly impacted by climatic changes, including suffering and death due to thermal extremes and physical and psychological injuries and death due to weather-related disasters. Hypothesized indirect effects included increased range and activity of disease vectors and infective agents; increase in waterborne diseases through disturbances in freshwater ecosystems; population displacement due to rising sea level; regional declines in food production and weather disasters leading to increase in malnutrition, injuries, infections, and civil strife; increase in pollen and spores leading to increase in asthma, allergies and other respiratory diseases; and increase in

particulates and ozone leading to increased hospitalizations and deaths from cardiopulmonary diseases.

146. In a section titled “Conclusions,” the Exxon Biomedical Sciences presentation asserted that a “Balanced View” with respect to potential climate change health impacts was not evident in peer-reviewed journals and media accounts, and that it was “Extremely Difficult to Quantify” the general consensus that public health would be affected by climate-induced changes. Noting that the subject of climate change human health impacts is a “Potentially Emotional” issue, the presentation’s final section, titled “Potential Next Steps,” recommended that “Scientific Leaders with Diverse Views” be identified and encouraged to actively participate in “Debate,” and to “Promote [the] Concept of Relative Risk,” emphasizing the relative “Significance of Climate Impacts Vs. Other Disease Factors.”

147. The Exxon Biomedical Sciences presentation outlined a specific strategy for misleading the public by minimizing concern over the public health impacts of climate change, creating a false debate among so-called experts, and presenting climate-driven public health risk as less significant in comparison to other disease factors.

- e) **Exxon, with a veteran of the tobacco industry’s deception campaign, formed the Global Climate Science Communications Team to cause the public to doubt whether climate change was occurring and whether humans had a role in causing it.**

148. In or around 1998, Exxon joined with API, Chevron Corporation, Southern Company, and various climate denial front groups to establish the “Global Climate Science Communications Team,” a group formed for the express purpose of causing the public and decision makers to doubt the science of climate change.

149. Steven Milloy, representing “The Advancement of Sound Science Coalition,” or TASSC, was a founding member of the Global Climate Science Communications Team. TASSC

was originally founded by the Philip Morris tobacco company to fight smoking restrictions by discrediting the scientific link between exposure to second-hand cigarette smoke (passive smoking) and increased rates of cancer and heart disease. On the recommendation of its then-public relations firm, APCO, which advised Philip Morris that the tobacco company would not be a credible voice on the issue of smoking and public health, Philip Morris had launched TASSC with the goal of creating the false impression that it was a grassroots citizen's group fighting overregulation. The Philip Morris-conceived TASSC, renamed The Advancement of Sound Science Center, went on to become a corporate and Exxon-funded fake grassroots citizen group spreading doubt about climate science.

150. Myron Ebell, whom the *Financial Times* described in 2010 as “one of America’s most prominent climate-change skeptics” also was a founding member of the Global Climate Science Communications Team, representing “Frontiers of Freedom” where he was then-policy director.

151. Deploying the tactics of the tobacco industry’s campaign to sow doubt about the public health dangers of smoking, Exxon and the Global Climate Science Communications Team crafted a plan to convince the public that the scientific basis for climate change was in doubt.

152. In an April 3, 1998, document titled “Global Climate Science Communications Plan,” to which Exxon employee Randy Randol had contributed, Exxon and its collaborators maintained, despite Exxon’s longstanding scientific knowledge to the contrary, that it was “not known for sure whether (a) climate change actually is occurring, or (b) if it is, whether humans really have any influence on it.”

153. The Plan identified “strategies and tactics” to be used by Exxon and its collaborators, including to (i) “[d]evelop and implement a national media relations program to

inform the media about uncertainties in climate science; to generate national, regional and local media coverage on the scientific uncertainties”; (ii) “[d]evelop a global climate science information kit for media including peer-reviewed papers that undercut the ‘conventional wisdom’ on climate science”; (iii) “[p]roduce . . . a steady stream of op-ed columns”; and (iv) “[d]evelop and implement a direct outreach program to inform and educate members of Congress . . . and school teachers/students about uncertainties in climate science.”

154. Exxon and its collaborators laid out in the Global Climate Science Communications Plan the criteria by which they would know when their efforts to sow doubt had been successful. “Victory,” they wrote, “will be achieved when average citizens ‘understand’ (recognize) uncertainties in climate science,” and “recognition of uncertainty becomes part of the ‘conventional wisdom.’”

155. The Global Climate Science Communications Team understood that, as a Brown and Williamson tobacco company internal memo famously observed, “[d]oubt is our product since it is the best means of competing with the ‘body of fact’ that exists in the mind of the general public. It is also the means of establishing a controversy.”

156. Later in 1998, Exxon published a report for the public titled, “*Global climate change: everyone’s debate*,” that faithfully tracked the strategies set forth in the Global Climate Science Communications Plan. The report asked, “Does the tiny portion of greenhouse gases caused by burning fossil fuels have a measurable effect on worldwide climate? No one knows for sure.”

**f) ExxonMobil spent millions on an unprecedented “advertorial” campaign in *The New York Times* casting doubt on climate science, urging delay on climate action, and mocking technologies that provide alternatives to fossil fuels.**

157. ExxonMobil’s strategy to sow doubt about climate change made use of “advertorials,” advertisements specifically designed to appear to readers as if they were actual opinions published in the opinion section of *The New York Times*.

158. Mobil had purchased advertorials since 1970, and ExxonMobil continued to purchase them after Mobil’s merger with Exxon. The advertorials typically ran every Thursday and appeared periodically through at least 2004.

159. In remarks made by Mobil’s then-chair, Rawleigh Warner Jr., in various speeches during the 1970s, Mr. Warner bragged that one of the most effective ways to “explain complex subjects” to the public was to buy advertising space, specifically, the “quarter-page advertisement” Mobil published “every Thursday, year-round, on the page opposite the editorial page of *The New York Times*.” Mr. Warner told his audiences that Mobil had “taken the offensive,” in purchasing these “essay-type ads,” which are “an integral part of an editorial section that is ‘must’ reading.” Mr. Warner referred to the pieces as “advocacy advertising.”

160. During the decades in which the advertorials appeared in *The New York Times*, *The New York Times* had a circulation among tens of thousands of readers in Massachusetts. In this way, ExxonMobil actively endeavored to confuse Massachusetts investors and consumers with the advertorials’ messages.

161. As the fossil fuel industry sought to address growing public concern about climate change, which could result in regulation that would decrease demand for fossil fuel products, the advertorials became a centerpiece of ExxonMobil’s efforts to deceive the public about the science of climate change and the issue’s significance to investors and consumers.

162. ExxonMobil's use of these advertorials to shift public perception was among the most significant and longest regular—in this case, weekly—uses of media to influence public and stakeholder opinion in modern U.S. history.

163. A substantial number of the advertorials specifically sought to minimize concern about climate change, urging delay in regulatory action to control greenhouse gas emissions, and criticizing and questioning the very consensus scientific position on climate change that Exxon had helped to develop and accepted.

164. Among the messaging the Company used to sow doubt about climate change, ExxonMobil's advertorials mocked the known scientific consensus about climate change and disparaged concerns about the known catastrophic risks associated with it. For example, as early as 1984, an advertorial titled "*Lies they tell our children,*" described as a "lie" and among "the myths of the 1960s and 1970s" still being perpetuated by schools the coming "horror[]" that "a greenhouse effect . . . would melt polar ice caps and devastate U.S. coastal cities."

165. ExxonMobil's advertorials deceptively asserted that the science was uncertain, notwithstanding what ExxonMobil itself knew about the impending risks from climate change. In 1993, an advertorial titled "*Apocalypse no,*" stated that, although "[f]or the first half of 1992, America was inundated by the media with dire predictions of global warming catastrophes . . . the media hype proclaiming that the sky was falling did not properly portray the consensus of the scientific community." The advertorial went on to criticize "[t]he lack of solid scientific data" and state that "the jury's still out on whether drastic steps to curb CO<sub>2</sub> emissions are needed," as "the phenomenon—and its impact on the economy—are important enough to warrant considerably more research before proposing actions we may later regret." "Perhaps," said the advertorial, "the sky isn't falling, after all."

166. In a series of advertorials published in the fall of 1997, the advertorials repeatedly emphasized a narrative of scientific uncertainty that ExxonMobil knew to be false, saying that:

- a. “[t]he science of climate change is too uncertain to mandate a plan of action” (*“Reset the alarm”*);
- b. “[w]e don’t know enough about the factors that affect global warming and the degree to which—if any—that man-made emissions (namely, carbon dioxide) contribute to increases in Earth’s temperature” (*“Climate change: a prudent approach”*);
- c. “climatologists are still uncertain how—or even if—the buildup of man-made greenhouse gases is linked to global warming” (*“Climate change: where we come out”*); and
- d. “there is a high degree of uncertainty over timing and magnitude of the potential impacts that man-made emissions of greenhouse gases have on climate” (*“Climate change: a degree of uncertainty”*).

167. Other advertorials counseled against taking action to reduce emissions and fossil fuel reliance and presented delay as the prudent choice, despite ExxonMobil’s internal knowledge that there was a limited window in time for shifting away from fossil fuels. In 1996, an advertorial titled *“Less heat, more light on climate change”* warned that international action to stem climate change “may well outrun science and common sense”:

The greenhouse effect is a natural phenomenon . . . [and] makes our planet habitable. Naturally occurring greenhouse gases—predominantly water vapor—account for 95 to 97 percent of the current effect. The other 3 to 5 percent is attributable to man’s activities . . . .

The concentration of greenhouse gases is building up slowly—less than 0.5 percent annually for CO<sub>2</sub>—and that gives us time to implement effective mitigation measures.

168. Again and again, the advertorials warned that “havoc” would result from hasty action on climate change (e.g., “*Climate change: we’re all in this together*,” 1996; “*A policy agenda for tomorrow*,” 1996; “*Stop, look and listen before we leap*,” 1997), calling for “[b]etter science and flexible timing” and “tak[ing] the time to do it right” because “the underlying science and economics continue to signal caution” and “there is no consensus on what constitutes ‘dangerous levels’ of emissions” (e.g., “*A policy agenda for tomorrow*,” 1996; “*Climate change: Let’s get it right*,” 1997; “*Stop, look and listen before we leap*,” 1997).

169. In 2000, ExxonMobil continued to use advertorials to deny the science of climate change, repeating long-debunked tropes about the lack of reliability of weather forecasts as indicative of science’s inability “to make reliable predictions about future changes” and the “academic studies and field experiments” supposedly showing that “increased levels of carbon dioxide” would benefit the world by “promot[ing] crop and forest growth” (e.g., “*Unsettled Science*”). Contrary to its own internal knowledge and the warnings of its own scientists in the 1970s and early 1980s, ExxonMobil’s advertorials continued to claim that, in light of “gaps in scientific understanding,” “there is not enough information” about climate change “to justify . . . dramatically reducing the use of energy now” (e.g., “*The Path Forward on Climate Change*,” “*Do No Harm*”).

170. As late as 2004, an ExxonMobil advertorial, “*Weather and climate*,” stated that “scientific uncertainties continue to limit our ability to make objective, quantitative determinations regarding the human role in recent climate change or the degree and consequences of future change.”

- g) While Exxon funded a public campaign of climate denial, privately it relied on climate science and climate models to prospect for fossil fuels, obtain intellectual property rights, and protect fossil fuel infrastructure.**

171. Professor Martin Hoffert, a former New York University physicist who researched climate change as an Exxon consultant, recalled in a recent interview that “even though we were writing all these papers which were basically supporting the idea that climate change from CO<sub>2</sub> emissions was going to change the climate of the earth according to our best scientific understanding, the front office [of Exxon], which was concerned with promoting the products of the company, was also supporting people that we called climate change deniers. . . to support the idea that the CO<sub>2</sub> Greenhouse was a hoax.”

172. Professor Hoffert explained that Exxon had a lot of data showing that the carbon dioxide in the atmosphere was increasing, even though the temperature of the earth hadn’t increased yet. He recalled that “[w]e had various mathematical models, very advanced computer models, from which we could sort of figure out how the climate of the earth might change in some future time if we kept burning hydrocarbons for energy.”

173. These models were so reliable, in fact, that Exxon and Mobil were using them to prospect for fossil fuels.

174. For example, at the 1992 Canada / United States Symposium on the Impacts of Climate Change on Resource Management of the North, Ken Croasdale of Esso Resources, Calgary (Exxon subsidiary Imperial Oil), presented a paper, *Climate Change Impacts on Northern Offshore Petroleum Operations*. Mr. Croasdale was, at that time, a senior ice researcher for Exxon’s Canadian subsidiary and was leading a team of researchers and engineers to determine how climate change would impact the economics of Exxon’s Arctic operations. In

1991, he had told an audience of engineers that the increase in atmospheric greenhouse gases was “due to the burning of fossil fuels,” and that “[n]obody disputes this fact.”

175. According to the U.S. Geological Survey, the Arctic holds about one-third of the world’s untapped natural gas and approximately thirteen percent of the world’s undiscovered oil, making it a potentially extremely lucrative target for fossil fuel exploration. Because most of the Arctic’s fossil fuel deposits are located offshore, however, the cost of extracting those resources had been prohibitive.

176. In his 1992 presentation, Exxon’s Croasdale reviewed climate modeling projections that showed potential changes in the Beaufort Sea due to “global warming,” including warmer air temperatures, decrease in first-year and multiyear ice thickness, and a longer ice-free open water season—increasing from 60 to 90 or even 150 days.

177. At the time Mr. Croasdale presented the paper, the Beaufort Sea typically experienced nine months of ice cover and a limited open water season that made conventional offshore oil drilling uneconomic. The changes projected by climate models to take place in the Beaufort Sea as a result of climate change, however, were expected to change the economic potential for Arctic exploration, largely benefitting companies like Exxon, because “if ice conditions become less severe as predicted, then offshore petroleum operations will become easier and less costly.” In particular, Mr. Croasdale relayed that a “shorter, less severe ice season would push exploration costs lower and more towards the use of floating systems.” The paper noted, as well, that some of the anticipated impacts of climate change, like permafrost melting and instability, could lead to higher operating costs for oil and gas trunk lines.

178. Mr. Croasdale’s team at Exxon used the same global circulation climate models developed by the Canadian Atmospheric Environment Service and NASA’s Goddard Institute for Space Studies that Exxon publicly reviled and dismissed as unproven.

179. Within a few years of Mr. Croasdale’s presentation, and just two years after Exxon’s then-CEO Raymond proclaimed to an audience in Beijing that climate change computer models were “notoriously inaccurate,” Exxon sought to patent technology based on that modeling that would facilitate year-round drilling in Arctic offshore locations, like the Beaufort Sea. For example, U.S. Patent 6,374,764, assigned to ExxonMobil Upstream Research Company, filed in 1999, and issued in 2002, described a design to allow for the installation of a deck on an offshore oil platform in severe Arctic conditions. According to the patent, “[t]he invention is useful in any offshore environment but is particularly suited for economic development of offshore hydrocarbon reserves in severe [A]rctic regions.”

180. Exxon also filed in 1999 U.S. Patent 6,371,695, assigned to ExxonMobil Upstream Research Company and issued in 2002, which described a caisson (footings affixed to the sea floor that support drilling and production decks above) to make offshore oil platforms more resistant to severe storms and ice loads so that these platforms could be used for year-round operations in the Arctic. In 2007, ExxonMobil obtained WIPO Patent WO2007/126477, assigned to ExxonMobil Upstream Research Company, which described a mobile, year-round drilling system “for drilling offshore wells and/or performing other offshore activities at multiple, successive locations in an [A]rctic or sub-[A]rctic environment.”

181. The modeling-based predictions Exxon relied on for the Beaufort Sea have been highly accurate—indeed, the Beaufort Sea has experienced some of the largest sea ice losses in the Arctic, and its open water season has substantially increased.

182. Exxon also used climate science and modeling to protect its existing infrastructure. Beginning in or around 1996, while Exxon was working in concert with the fossil fuel industry to reposition climate science as uncertain and minimize public concern over climate change, Exxon's subsidiary, Imperial Oil, and Mobil—which would merge with Exxon three years later, in 1999—were incorporating climate science into engineering projects.

183. For example, Mobil engineers ensured that the Sable gas field project, which was at the time owned jointly by Mobil, Imperial Oil, and Shell, was designed to make structural allowances for rising temperatures and sea levels caused by climate change.

184. Maclaren Plansearch, the firm hired by Mobil to prepare the environmental assessment for Sable, used engineering standards that incorporated the potential impacts of global warming on sea level rise, and the assessment accounted for the likelihood of climate change-driven increased storm intensity.

185. Similarly, Imperial Oil provided financial and technical support for scientific assessments of the impact of climate change on permafrost degradation in the Mackenzie Valley, a site of major oil refining and exploration for the Company. That research occurred prior to and contemporaneous with an effort by Imperial Oil and other oil companies to develop a natural gas pipeline from the Beaufort Sea across the Mackenzie Valley.

186. In fact, Esso Resources Canada Ltd. (an Imperial Oil subsidiary) had been funding research into the effects of climate warming caused by increased greenhouse gas emissions on the Mackenzie Valley and Mackenzie Delta since at least 1989 in order to understand how climate change would affect fossil fuel development in that region.

**h) Through the 2000s and 2010s, ExxonMobil used proxies, employed other indirect means, and itself continued to make statements that cast doubt on the role of fossil fuels in causing climate change.**

187. In recent years, ExxonMobil has continued to downplay and obscure the risks posed by climate change.

188. Following a July 2006 meeting with ExxonMobil, in September 2006, the Royal Society of London for Improving Natural Knowledge (“Royal Society”), the independent scientific academy of the United Kingdom and oldest scientific academy in continuous existence in the world, revealed in a letter to ExxonMobil that the Company had funded thirty-nine groups in the United States to spread doubt and confuse the public about the science of climate change.

189. The September 2006 Royal Society letter documented that ExxonMobil had spent more than \$2.9 million in 2005 alone to fund these groups.

190. The Royal Society expressed concern “about the support that ExxonMobil has been giving to organisations that have been misinforming the public about the science of climate change.”

191. In its letter, the Royal Society specifically criticized the Company for making misleading statements in its Corporate Citizenship Report that warming observations are based on expert judgment rather than objective statistical methods. The Royal Society letter pointed out that statements in ExxonMobil’s documents “are not consistent with the scientific literature that has been published on this issue,” i.e., the role greenhouse gas emissions and human activity have in climate change, and documented that ExxonMobil’s public statements regarding the uncertainty of climate science were contradicted by recent research by ExxonMobil’s own scientists: “What is even more surprising about your documents’ lack of consistency with the IPCC’s assessment is that one of ExxonMobil’s employees, Haroon Kheshgi, was one of the

contributing authors on Chapter 12 [of the IPCC Third Assessment Report],” the Royal Society wrote, “[which] points out that ‘The warming over the last 50 years due to anthropogenic greenhouse gases can be identified despite uncertainties . . . .’”

192. Until at least 2009, ExxonMobil also funded fringe research without any significant support in the scientific community to cast doubt on the role of fossil fuels in causing climate change. For example, ExxonMobil funded research by Wei-Hock Soon, a part-time Harvard-Smithsonian Center for Astrophysics employee who holds a degree in aerospace engineering and claimed variations in the sun’s energy was the primary cause of recent global warming, not human activity, including the combustion of fossil fuels. Mr. Soon presented his conclusions to the U.S. Congress, state legislatures, and the media in a manner that was intended to reach the general public. According to media reports, Mr. Soon accepted over a million dollars from ExxonMobil and other companies in the fossil fuel industry, and he failed to disclose that conflict of interest in his published scientific research papers. In correspondence with his funders, Mr. Soon described many of his scientific papers as “deliverables” he completed in exchange for their money.

193. According to 2007 testimony to the U.S. House of Representatives Committee on Science and Technology, Subcommittee on Investigations and Oversight, by Harvard University’s Dr. James McCarthy, ExxonMobil funded a network of forty-three organizations “to distort, manipulate and suppress climate science, so as to confuse the American public about the reality and urgency of the global warming problem, and thus forestall a strong policy response.” Its funding of such groups that deny and downplay climate change, including funding of the American Council on Science and Health, continues today.

194. In addition to recent funding of third parties with a track record of climate change denial at odds with the Company's own longstanding understanding of the science, ExxonMobil's senior-most management continues to downplay climate change risks, as well.

195. At a June 2012 speech to the Council on Foreign Relations, available to Massachusetts investors and consumers on the Internet, then-ExxonMobil CEO Rex Tillerson told his audience, comprised of investment professionals and journalists among others, that there are "much more pressing priorities" than climate change, and that climate change is an "engineering problem, and it has engineering solutions."

196. Despite the longstanding scientific consensus that warming impacts increase with rising atmospheric carbon dioxide concentrations, and ExxonMobil's own internal knowledge, at ExxonMobil's 2015 annual shareholders meeting, Mr. Tillerson represented that "we don't really know what the climate effects of 600 ppm [parts per million of carbon dioxide] versus 450 ppm will be, because the [climate] models simply are not that good."

### **C. The Existential Threat of Climate Change**

197. The pre-industrial concentration of carbon dioxide in the atmosphere was about 280 ppm; 316 ppm in 1958, 340 ppm in 1980, 400 ppm in 2015, 405 ppm in 2017, and 415 ppm in 2019—the highest concentration reached in millions of years.

198. The five hottest years on record have all occurred since 2010; the ten warmest years occurred since 1998; and the twenty warmest years since 1995. 2016 was the hottest year on record, followed by 2015, 2017, and 2018.

199. To date, global average air temperatures have risen approximately 1 degree C (1.8 degrees F) above preindustrial temperatures due to human activity, including combustion of fossil fuels.

200. In 1994, the United Nations Framework Convention on Climate Change (“Convention”) entered into force; there are 197 parties to the Convention, including the United States. The Convention’s objective was to stabilize the atmospheric concentration of greenhouse gases “at a level that would prevent dangerous anthropogenic interference with the climate system.” Between 1994 and the present, the Convention has received reports from the Intergovernmental Panel on Climate Change (“IPCC”), the international body for assessing the science related to climate change, which was established to provide policymakers with regular assessments of the scientific basis of climate change, its impacts and future risks, and options for adaptation and mitigation.

201. The IPCC has concluded that the warming of the climate system is unequivocal and that since the 1950s, many of the changes observed are unprecedented over decades to millennia. The atmosphere and oceans are warming, snow and ice cover is shrinking, and sea levels are rising.

202. The IPCC has concluded that emissions of carbon dioxide from fossil fuel combustion and industrial processes contributed about seventy-eight percent of the total greenhouse gas emissions increase from 1970 to 2010.

203. Because burning fossil fuels is responsible for nearly four-fifths of the increase in greenhouse gas emissions over the past decades, efforts have been undertaken to estimate how much of the world’s proven, economically recoverable fossil fuel reserves (oil, gas, and coal) may be produced and burned while still staying on course to limit warming to safer levels. Those estimates of burnable reserves have declined over time; in the ten-year period from 2009 to 2019, estimates have declined precipitously, from half of recoverable reserves in 2009, to about one-fifth of those reserves in 2018.

204. In 2009, the journal *Nature* published a study that sought to answer the question of how much of the world's proven, economically-recoverable fossil fuel reserves could be burned if humankind seeks to avoid warming in excess of 2 degrees C (3.6 degrees F) relative to pre-industrial levels, by then the internationally-recognized target for mitigating climate change risks, impacts, and damages. The study found that, to meet that temperature stabilization target, fewer than half of those reserves could be burned. The study confirmed that fossil fuels will not run out before we reach the point when we can no longer burn them, if we seek to avoid warming greater than 2 degrees C. It also made clear that if all such reserves were burned, humankind would exceed the allowable carbon dioxide emissions to meet that target, the world's so-called "carbon budget," by two to three times.

205. In 2012, the International Energy Agency's World Energy Outlook for the first time announced that *no more than one-third* of proven reserves of fossil fuels could be consumed prior to 2050 if the world aimed to achieve the goal of limiting warming to a safer level of 2 degrees C (3.6 degrees F). In other words, two-thirds of the world's known reserves must remain unburned. The following year, in 2013, the IPCC issued its first ever carbon budget, which determined that, to meet the 2 degree C target, the world could emit no more than an additional 485 gigatons of carbon, again underscoring the fact that substantial portions of known reserves cannot be burned if humanity is to avert catastrophic climate change.

206. In 2014, the IPCC finalized its Fifth Assessment Report, which concluded, among other things, that:

Continued emission of greenhouse gases will cause further warming and long-lasting changes in all components of the climate system, increasing the likelihood of severe, pervasive and irreversible impacts for people and ecosystems. Limiting climate change would require substantial and sustained reductions in greenhouse gas emissions which, together with adaptation, can limit climate change

risks. . . . Without additional mitigation efforts beyond those in place today, and even with adaptation, warming by the end of the 21st century will lead to high to very high risk of severe, widespread and irreversible impacts globally.

207. As discussed in more detail below, in 2015, the nations of the world adopted the Paris Agreement, which aims to keep the global temperature increase well below 2 degrees C above pre-industrial levels and to pursue efforts to limit it to 1.5 degrees C.

208. In October 2018, the IPCC issued a gravely urgent report that concluded, with a high degree of scientific confidence, that if the current pace of emissions continues, warming will reach 1.5 degrees C (2.7 degrees F) above pre-industrial levels between 2030 and 2052. The IPCC stressed that warming above that level brings significantly increased risk for all relevant parameters—including human health, food security, economic productivity, water supply, national security, adaptation needs, drought, sea level rise, biodiversity, species loss and extinction, ecosystem impacts, and ocean temperature and acidity.

209. A co-chair of one of the IPCC working groups on the October 2018 IPCC report explained that “[o]ne of the key messages that comes out very strongly from this report is that we are already seeing the consequences of [one degree Celsius] of global warming through more extreme weather, rising sea levels and diminishing Arctic sea ice, among other changes.”

210. The October 2018 IPCC report was unequivocal in its conclusion that the world must reduce global carbon dioxide emissions dramatically well before 2030 if we are to maintain temperature increase below 1.5 degrees C (2.7 degrees F). In this regard, the October 2018 IPCC report concluded that to have an even chance of meeting the 1.5 degrees C target, the world can emit no more than an additional 158 gigatons of carbon, which is equivalent to about twenty percent of the world’s known fossil fuel reserves. In other words, about eighty percent of those reserves cannot be burned to stay within a carbon budget that would likely meet the 1.5 C target.

211. It appears that any production from new oil and gas fields, other than those already in production or under development, is not compatible with a 1.5 degree C target. As a result, all of the \$4.9 trillion in forecasted capital expenditures for new oil and gas fields industry-wide is incompatible with the goal of limiting warming to 1.5 degrees C.

212. On November 23, 2018, the thirteen federal agencies that comprise the U.S. Global Change Research Program (“USGCRP”) issued Volume II of the Fourth National Climate Assessment (“Assessment”). The Assessment was produced by over 300 federal and non-federal experts, reviewed by the thirteen federal USGCRP member agencies, and peer reviewed by the National Academies of Sciences, Engineering, and Medicine.

213. The Assessment concluded that “[t]he impacts of climate change are already being felt in communities across the country” and would intensify in the future:

More frequent and intense extreme weather and climate-related events, as well as changes in average climate conditions, are expected to continue to damage infrastructure, ecosystems, and social systems that provide essential benefits to communities. Future climate change is expected to further disrupt many areas of life, exacerbating existing challenges to prosperity posed by aging and deteriorating infrastructure, stressed ecosystems, and economic inequality. Impacts within and across regions will not be distributed equally. People who are already vulnerable, including lower-income and other marginalized communities, have lower capacity to prepare for and cope with extreme weather and climate-related events and are expected to experience greater impacts.

214. With respect to economic impacts in the United States, the Assessment warned that “rising temperatures, sea level rise, and changes in extreme events are expected to increasingly disrupt and damage critical infrastructure and property, labor productivity, and the vitality of our communities.”

215. As a result of these impacts, and with continued growth in greenhouse gas emissions, the Assessment concluded that “annual losses in some economic sectors are projected

to reach hundreds of billions of dollars by the end of the century—more than the current gross domestic product (GDP) of many U.S. states” —or in the worst-case scenario, more than ten percent of gross domestic product in the United States as a whole. Such U.S. economic losses will be severe: serious declines in U.S. crop production, including an estimated seventy-five percent decrease in southern Midwest corn production; decreased dairy production (the U.S. dairy industry experienced heat-stress-related losses of about \$1.2 billion in 2010 alone); \$230 million in losses to the shellfish industry by century’s end due to ocean acidification; an estimated loss of half a billion labor hours in the Southeast by that time, due to extremely hot temperatures; and at least \$1 trillion in U.S. coastal real estate at risk.

216. Climate change impacts drive and intensify other societal risks. The World Economic Forum’s Global Risks Report for 2019—an annual survey of almost 1,000 world business and other leaders—identified extreme weather and the failure of climate change mitigation and adaptation measures as the top two likeliest global risks, i.e., events or conditions that, if they occur, can cause significant negative impact for several countries or industries within the next 10 years. The Report identifies climate change risks as interconnected with other global risks, such as large-scale involuntary migrations, food and water crises, the spread of infectious disease, failures of national, regional, or global governance, interstate conflict, state collapse or crisis, profound social instability, and financial risks, including asset bubbles, fiscal crises, and failures of financial mechanisms or institutions.

217. Globally, credible recent estimates of future climate-related costs are overwhelming. Valuations of the risks climate change poses to manageable assets worldwide (i.e., those held outside banks) range from \$4.2 to \$43.0 trillion in net present value terms, depending on the discount rates used, which is up to 30 percent of the value of global

manageable assets today. A similar accounting by Moody's Analytics, using IPCC data reflecting warming of only 2 degrees C, projected global climate-related costs of \$69 trillion by the end of this century.

218. Should greenhouse gas emissions cause global temperatures to rise by 3.7 degrees C by the end of the century, by one recent estimate that accounts for market impacts, non-market impacts, impacts due to sea level rise, and impacts associated with large-scale discontinuities, the net present value of climate change impacts will be \$551 trillion, more than all the wealth that currently exists in the world.

219. In the IPCC's high-emission scenario, according to another peer-reviewed estimate, climate change will reduce global economic output by 23 percent by the end of the century. Near the equator, in countries like India where ExxonMobil confidently projects massive new demand for fossil fuels, the projected impacts are effectively cataclysmic: in India, a *92 percent* reduction in economic output from climate change. It is expected, according to other research, that such reductions have a "ripple effect" throughout the world that cascade through concomitant reductions in the economic output of the world's other national economies.

220. The largest source of U.S. anthropogenic greenhouse gas emissions is fossil fuel combustion. In 2016, fossil fuel combustion accounted for 76 percent of U.S. greenhouse gas emissions, and in 2017, nearly half of U.S. energy-related carbon dioxide emissions (by far the dominant contributor to overall greenhouse gas emissions) came from combustion of petroleum products, such as those marketed and sold by ExxonMobil.

221. As ExxonMobil knew decades ago, if humankind is to avoid dangerous levels of warming, we must "sharply curtail" the use of fossil fuels, which means that the majority of the

world's proven, economically recoverable fossil fuel reserves—the Company's most valuable asset—must remain unburned.

**D. Climate Change Is Having Major Impacts on Massachusetts.**

222. Climate change is having, and will continue to have, increasingly serious, life-threatening, and costly impacts on the people of the Commonwealth, as well as the lands, waters, coastline, species, natural resources, infrastructure, and other assets owned by the Commonwealth and its political subdivisions, or in which the Commonwealth has sovereign and proprietary interests. As discussed more fully in Section V, these impacts also threaten the value of Massachusetts investor holdings.

223. In Massachusetts, climate change is likely to increase flooding, harm ecosystems, disrupt fishing and farming, and increase certain risks to public health, and is indeed already having these effects.

224. Temperatures in Massachusetts have warmed by an average of 1.3 degrees C (2.34 degrees F) since 1895, almost twice as much as the rest of the contiguous forty-eight states.

225. The Northeast has seen the country's largest increases in heavy precipitation events, with some areas in Massachusetts experiencing an increasing trend in the number of days with two inches of precipitation or more from 1970-2008.

226. Flooding has increased in association with extreme precipitation events, causing costly property damage and putting fish, wildlife, and their habitats at increased risk.

227. Increasing incidence and severity of coastal storms in Massachusetts is consistent with the trends expected as greenhouse gas concentrations in the atmosphere increase and the climate continues to warm. Recent sea level rise along the Northeast coast, including Massachusetts, has been three to four times the global rate. As a coastal state, Massachusetts is particularly vulnerable to sea level rise caused by climate change, which is already exacerbating

coastal flooding and erosion from storm events and will eventually inundate low-lying communities, including the City of Boston.

228. Since 1990, Massachusetts has been affected by numerous major weather disasters, including Superstorm Sandy, a post-tropical storm in 2012 that was made more harmful by climate change, due in part to higher baseline sea level. Impacts from Superstorm Sandy in Massachusetts included strong winds, record storm tide heights, flooding of coastal areas, loss of power for 385,000 residents, and an estimated \$375 million in property losses.

229. In January 2018, the storm surge from a powerful winter storm caused major coastal flooding and resulted in a high tide in Boston of 15.16 feet, the highest tide since records began in 1921, even surpassing the infamous Blizzard of 1978. This storm caused an estimated \$1.1 billion in property damage across the United States, including in Massachusetts.

230. More intense storms have increased the price of electricity to Massachusetts residents as Massachusetts utilities pass along to consumers the significant costs of preparing for and restoring service after severe weather events.

231. More intense storms also threaten the aging combined sewer and stormwater systems serving many Massachusetts cities such as Boston and Lowell. Heavy precipitation and coastal flooding can overwhelm these systems and release untreated sewage to rivers and coastal waters, threatening public health and water quality.

232. In Boston alone, cumulative damage to buildings, building contents, and associated emergency costs could potentially be as high as \$94 billion between 2000 and 2100, depending on the sea level rise scenario and which adaptive actions are taken.

233. The Executive Director of the Boston Green Ribbon Commission, which is tasked with developing climate change adaptation plans for Boston, recently wrote that “even large,

affluent cities do not currently have the financial capacity in place” to pay for such plans. This finding was part of one of eighteen research papers compiled and released in October 2019 by the Federal Reserve Bank of San Francisco, which research, according to *The New York Times*, collectively constitutes “one of the most specific and dire accountings of the dangers posed to businesses and communities in the United States” by climate change.

234. As the Gulf of Maine is warming much faster than other water bodies, key cold-water ocean fisheries, including cod and lobster, that are important to the Massachusetts economy are in decline within their historic fishing grounds.

235. Climate change also adversely affects the Commonwealth’s natural resources.

236. For example, rising sea level, combined with increased erosion rates, threatens Massachusetts’ barrier beach and dune systems, since barrier beaches will be more susceptible to erosion and overwash, and in some cases, breaching.

237. Such breaching will place at risk extensive areas of developed shoreline located behind these barrier spits and islands, such as the shorelines of Plymouth, Duxbury, Kingston, Cape Cod, and Plum Island. Engineered structures, such as seawalls designed to stabilize shorelines, could be overtopped.

238. The cost of maintaining and upgrading these engineering structures and replenishing dunes and beaches damaged by erosion will increase as sea levels rise, requiring investments of millions of dollars by state and local taxpayers.

239. Large areas of critical coastal and estuarine habitat, including the North Shore’s Great Marsh—the largest continuous stretch of salt marsh in New England, extending from Cape Ann to New Hampshire—are threatened by sea level rise. Losing coastal wetlands will harm coastal ecosystems and the species that depend on them.

240. Climate change also threatens Massachusetts wildlife. The arrival of migratory birds is occurring earlier in Massachusetts, and as a result, the foods and nesting sites those birds rely upon may not yet be available. This dis-synchronicity will impede reproductive success and is predicted to lead to destabilization of certain bird populations and extinctions.

241. Trees and plants are blooming earlier, and these changes may have adverse consequences for pollination success, as well as the health of pollinator species.

242. Climate change also poses a significant and growing threat to the health and well-being of the Commonwealth's residents and results in directly-attributable physical and mental suffering and health care-related expenses.

243. Hotter temperatures in Massachusetts will increase the number, intensity, and duration of heat waves and lead to poorer air quality.

244. Warmer temperatures increase ground level ozone, which impairs lung function and results in increased hospital admissions and emergency room visits for people suffering from asthma, particularly children.

245. Currently, Massachusetts has the nation's highest incidence of pediatric asthma; among Massachusetts children in kindergarten to eighth grade, more than twelve percent suffer from pediatric asthma. About twelve percent of Massachusetts' adult population suffers from asthma. Climate change is expected to continue to worsen symptoms for people with asthma in the Commonwealth.

246. More extreme heat also increases risks associated with cardiovascular disease, Type II diabetes, renal disease, nervous disorders, emphysema, epilepsy, cerebrovascular disease, pulmonary conditions, mental health conditions, and death.

247. More frequent and more severe heat waves directly increase the risk of heat-related diseases like exhaustion and deadly heat stroke. The risk is highest for our most vulnerable citizens, for example, the very young and very old. For all ages, extreme heat events increase risk of disease and death, and place additional stress on our health care facilities.

248. Climate-change-related extreme weather events are becoming more common and threaten human health. This occurs both at the time of the event, for example through direct trauma, drowning, and structure collapse, and over longer time periods, by increasing mental health conditions, including anxiety and post-traumatic stress, and rates of suicide.

249. Extreme weather-related events in the United States impact the Commonwealth's world-class health care systems by disrupting critical supply chains and threatening catastrophic disruptions to our health care infrastructure, as occurred when Superstorm Sandy devastated leading hospitals in New York City.

250. Climate change is increasing the range of vectors (such as ticks and mosquitoes) that transmit human diseases. The incidence of vector-borne diseases, including Lyme, Rocky Mountain Spotted Fever, Zika Virus, and West Nile Virus, is rapidly increasing in the United States. In Massachusetts, those diseases include Lyme and West Nile Virus. The health impacts of these diseases can include heart dysfunction, permanent neurological injury, and death.

251. Climate change-related increases in sea surface temperatures are increasing the range of disease-causing bacteria along the coast of New England. *Vibrio* is one example. Humans may be exposed to *Vibrio* through direct contact, such as by swimming in contaminated water, or indirectly, for example, by consuming contaminated seafood. *Vibrio* species cause a range of human diseases including gastrointestinal disease and devastating skin and systemic infections, which can result in permanent disability or death.

252. The current and future climate change harms threatening Massachusetts and the massive climate adaptation costs that the state and its municipalities are facing are driven by global emissions of greenhouse gases, including from the development and use of ExxonMobil products. The delay arising from ExxonMobil's long disinformation campaign regarding climate change exacerbated and will continue to exacerbate those climate change risks for the Commonwealth and its residents.

**V. EXXONMOBIL IS DECEIVING MASSACHUSETTS INVESTORS ABOUT THE RISKS TO ITS BUSINESS FROM CLIMATE CHANGE AND RELATED REGULATION BY FAILING TO DISCLOSE THE DANGERS THOSE RISKS POSE TO THE WORLD'S FINANCIAL MARKETS AND MISREPRESENTING ITS BUSINESS PRACTICES.**

253. ExxonMobil's deception of the public about the science and risks of climate change has manifested in a distinct and self-serving disinformation campaign to persuade investors, including Massachusetts investors, that ExxonMobil securities are safer and more profitable investments over the short and long terms than other potential investments, notwithstanding ExxonMobil's knowledge of the myriad risks that climate change poses to global populations, ecosystems, and economies, and its business model—the development, production, transportation, and sale of fossil fuels.

254. In recent years, ExxonMobil has cast itself as a conservative but proactive contributor to efforts to reduce the greenhouse gas emissions that cause climate change. The very first page of ExxonMobil's 2017 Summary Annual Report states that “[t]here’s a dual challenge facing our industry: meeting growing demand for energy, while at the same time *reducing environmental impacts – including the risks of climate change*. It’s a challenge our industry must help solve. ExxonMobil is committed to doing our part” (emphasis added). The first page of ExxonMobil's 2018 Summary Annual Report describes the same “dual challenge.”

255. ExxonMobil has told current and potential investors in its securities, including Massachusetts investors, that it is aware of the potential risks to its business from climate change but has taken and is taking appropriate steps to fully disclose and properly account for the risks that climate change regulation and related market transitions pose to its business. For example, in its 2014 publication, *Energy and Carbon – Managing the Risks*, ExxonMobil stated that it “takes the risk of climate change seriously, and continues to take meaningful steps to help address the risk and to ensure our facilities, operations, and investments are managed with this risk in mind.”

256. ExxonMobil has sought to reassure investors that the Company has fully accounted for the potential for rising costs and risks to its business as the world’s governments impose new regulations and pricing mechanisms that render fossil fuels increasingly uneconomic and uncompetitive relative to cleaner, less emission-intensive energy resources.

257. In these reassurances to investors, ExxonMobil has deceptively omitted, denied, or downplayed a broader set of climate change-related risks, which it understood and predicted with near-perfect foresight in the 1970s and 1980s, that threaten the world’s financial markets, the fossil fuel industry, and the Company’s business. As discussed in Section IV.C above, these risks are potentially cataclysmic for the world, with devastating economic, societal, and environmental costs.

258. The systemic risk climate change poses to the world’s financial markets is comparable to, and could well exceed, the impact of the 2008 global financial crisis, when a subprime mortgage crisis in the United States exposed that banks had taken excessive and undisclosed risks, triggering a global financial panic resulting in the deepest economic recession since the Great Depression. As ExxonMobil found in its early research, the multiple impacts of climate change include ocean acidification, species loss, and impacts to agriculture and world

food production. The interplay of such impacts will create a cascade of tipping points that could lead to the collapse of elements of human societies, including financial markets. According to Christiana Figueres, who led the U.N. Framework Convention on Climate Change during the negotiation of the Paris Agreement, “[t]he pensions, life insurances and nest eggs of billions of ordinary people depend on the long-term security and stability of institutional investment funds. Climate change increasingly poses one of the biggest long-term threats to those investments and the wealth of the global economy.”

259. A top U.S. financial regulator sitting on the Commodity Futures Trading Commission recently warned, in the same vein, that it is abundantly clear that climate change is posing financial risk to the stability of the financial system, because more frequent and extreme climate-driven weather events will make it difficult or impossible for large providers of financial products, like mortgages, home insurance, and pensions to shift risk out of their portfolios. Representatives of the central banks of England, Canada, Europe, and others have sounded similar alarms.

260. In sharp contrast with this reality, ExxonMobil’s omissions and misrepresentations to investors present a deceptive narrative of long-term growth in fossil fuel demand and minimal risk to the Company from climate change impacts. In particular, because its disclosures ignore the nature and extent of climate change risks that are systemic in nature, ExxonMobil fails to disclose that the climatic changes that its own business model exacerbates are putting the geopolitical and societal stability of civilization, and the value of the world’s financial markets, at increasing risk. These material risks that ExxonMobil fails to disclose endanger the portfolios, pensions, and retirement savings of the Company’s Massachusetts investors.

261. In addition, ExxonMobil has deliberately told investors a distinct series of falsehoods about its business planning and practices, all calculated to downplay the risks to its business and to overstate the value and economic feasibility of its business and assets in an increasingly carbon-constrained world. As discussed below, for years, ExxonMobil has systematically misrepresented the ways it is incorporating a major climate change risk—the future costs of climate change regulation—into the Company’s economic projections about its investments, the economic feasibility of its fossil fuel reserves and resource base, its valuations and assessments of when and whether its assets are uneconomic or “impaired,” and its projections of global energy demand. In particular, ExxonMobil told investors that it was employing in such analyses a high and escalating “proxy cost” of carbon when, in fact, it was applying some lower proxy cost, in some instances held flat rather than increasing, or failing to incorporate any cost of carbon at all.

262. ExxonMobil’s omissions and misrepresentations have been material because, among other things, they have been contemporaneous with a rising tide of recent efforts and advocacy by many investors, including prominently among them Massachusetts investors, described below, to secure greater disclosures of climate risks and planning from companies like and including specifically ExxonMobil.

263. ExxonMobil omitted and misrepresented material climate change risks in a manner that favored the Company’s ongoing and risky investments in some of the most emission-intensive fossil fuel projects in the world, including Canadian oil sands projects.

264. The omissions and misrepresentations allowed ExxonMobil to distort and evade the discipline of the financial markets; to put its investors, including its Massachusetts investors,

at risk of losses; and to market its securities to new and existing investors who were more likely to buy and maintain investments based on the Company's public representations.

265. As detailed below, ExxonMobil's omissions and misrepresentations to investors, including Massachusetts investors, about the systemic risks of climate change and its use of proxy costs violate Chapter 93A's proscription of deceptive statements on material matters that influence investment decisions.

**A. Massachusetts Investors Are Heavily Invested in ExxonMobil.**

266. ExxonMobil offers its securities, including its common stock and debt instruments, directly to Massachusetts investors.

267. ExxonMobil actively markets and sells its securities in Massachusetts to Massachusetts investors and has done so within the period from 2012 to present, as well as earlier.

268. ExxonMobil securities are also purchased and sold in public and private capital markets, including by Massachusetts investors, and ExxonMobil's statements to investors are intended to influence those transactions.

269. Massachusetts-based institutional investors and investment managers, collectively, hold millions of shares of ExxonMobil common stock worth billions of dollars, both in their own accounts and on behalf of individual investors.

270. Massachusetts-based institutional investors that hold ExxonMobil common stock include State Street Corporation and its affiliates ("State Street"), Wellington Management Group LLP and its affiliates ("Wellington"), FMR LLC and its affiliates ("Fidelity Investments"), and Boston Trust Walden Company ("Walden").

271. From at least 1999 until present, State Street has held millions of shares of ExxonMobil common stock and been one of the most significant investors in Exxon.

272. As of September 30, 2018, State Street was the third-largest institutional investor in ExxonMobil common stock, holding 208,622,266 shares with a total value of approximately \$17.7 billion.

273. From at least 1999 until present, Wellington, either under its current or former names, has held millions of shares of ExxonMobil common stock and been a significant investor in the Company.

274. As of September 30, 2018, Wellington was the fifth-largest institutional investor in ExxonMobil common stock, holding 53,342,250 shares with a total value of approximately \$4.5 billion.

275. From at least 1994 until present, Fidelity Investments, either under its current or former names, has held millions of shares of ExxonMobil common stock and been a significant investor in the Company.

276. As of September 30, 2018, Fidelity Investments was the eleventh-largest institutional investor in ExxonMobil common stock, holding 41,616,726 shares of ExxonMobil common stock with a total value of approximately \$3.5 billion.

277. Fidelity Investments offers ExxonMobil stock as part of its extensive mutual fund offerings, including, for example, its Fidelity Independence Fund.

278. From at least 2012 until present, Walden has held millions of dollars in ExxonMobil common stock.

279. As of September 30, 2018, Walden held millions of dollars in ExxonMobil common stock.

280. The Massachusetts Pension Reserves Investment Trust has a significant investment in ExxonMobil securities, purchased through its Massachusetts-based investment managers.

281. ExxonMobil and its representatives communicate regularly with institutional and other Massachusetts investors through standard securities filings with the U.S. Securities and Exchange Commission (“SEC”), earnings calls, the yearly shareholder meeting, emails, investor conference calls, and in-person meetings, among other means.

282. In recent years, ExxonMobil has sold short-term, fixed-rate notes directly to Massachusetts investors.

283. ExxonMobil also sells long and short-term corporate bonds directly to Massachusetts investors.

284. Additionally, at least since 2014, ExxonMobil, either directly or through intermediaries like underwriters, dealers, or agents, has publicly offered long-term debt instruments to investors, including investors located in or doing business in Massachusetts.

285. On March 17, 2014, ExxonMobil filed with the SEC a Form S-3 shelf-registration statement to register the offering of debt securities.

286. On March 17, 2014, March 3, 2015, and February 29, 2016, ExxonMobil filed with the SEC prospectus supplements (“2014–2016 Prospectus Supplements”) to the prospectus filed on March 17, 2014 pursuant to Rule 424(b)(2) of the Securities Act of 1933.

287. State Street and Fidelity Investments each purchased and, as of October 31, 2018, held 30-year, 10-year, 7-year, and 5-year ExxonMobil bonds that ExxonMobil had announced as part of its 2014–2016 Prospectus Supplements.

288. Wellington purchased and, as of October 31, 2018, held 7-year and 3-year ExxonMobil bonds that ExxonMobil had announced as part of its 2014–2016 Prospectus Supplements.

289. John Hancock Investment Management Services, LLC (“John Hancock”), an owner of mutual funds and based in Boston, Blue Cross Blue Shield of Massachusetts HMO Blue, Inc., a Massachusetts nonprofit corporation located in Boston, and a number of other Massachusetts-based businesses purchased and, as of October 31, 2018, held ExxonMobil bonds that ExxonMobil had announced as part of its 2014–2016 Prospectus Supplements.

290. As described in further detail below, ExxonMobil has substantial, continuing contacts with Massachusetts institutional investors and other Massachusetts shareholders with respect to climate change risks, in addition to other topics relating to the operations of the Company, its future business projects, and the overall value of the Company.

**B. Climate Change Risks Threaten the World’s Financial Markets and the Holdings of Massachusetts Investors in ExxonMobil Securities.**

291. Climate change risks affect the global economy, the world’s financial markets, asset owners, the fossil fuel industry, and ExxonMobil’s business, and therefore the ExxonMobil holdings of Massachusetts investors.

292. As classified in the investment community, climate change risks include “physical risks,” such as the impacts of extreme weather, heat waves, and sea level rise on physical infrastructure, and “transition risks,” such as climate change regulations and associated costs and, particularly for fossil fuel companies like ExxonMobil, market shifts away from fossil fuels to cleaner energy resources.

293. Energy companies, including fossil fuel companies like ExxonMobil, face both physical and transition risks from climate change. In the parlance of the Financial Stability

Board's Task Force on Climate-related Financial Disclosures, such physical risks include the "acute" risks of increasingly severe extreme weather events and the "chronic" risks of changing precipitation, weather patterns, rising mean temperatures, and rising sea levels. These physical risks threaten to reduce revenues, increase costs, and put company assets at risk of devaluation or write-offs. Transition risks to energy companies include "policy and legal" risks, "technology" risks, "market" risks, and "reputation" risks, as the world increasingly prices greenhouse gas emissions, regulates existing products and services, substitutes existing products with lower emission alternatives, shifts consumer choices away from fossil fuel products and services, and sees increased stigmatization of the fossil fuel sector. These transition risks threaten to increase costs, reduce demand for fossil fuel products and services, diminish available capital, and trigger asset re-pricing, write-offs, and impairments, as well as early retirement of existing facilities.

294. As set forth in Paragraphs 217 through 219 above, credible estimates of the total global costs of climate-related physical and transition risks have reached many trillions of dollars and up to 30 percent of all manageable assets, in net present value terms. Climate change also threatens global and national economic output, with potential reductions in output exceeding reductions experienced during the Great Depression and widely exceeding those during the more recent Great Recession.

295. Risks on this scale threaten the stability of the world's financial markets now and in the future, especially because of the scope, scale, and systemic nature of likely and potential climate change impacts. Such risks also threaten economic and geopolitical stability more generally, including by increasing the risk of armed conflicts and their terrible economic consequences throughout the world. These threats may also be nonlinear in nature in that steadily increasing climate change impacts may cross "tipping points" and trigger abrupt, severe, and

even catastrophic changes to financial and social systems. For the purposes of this Complaint, these threats to societal and financial market stability are referred to collectively as “systemic risks.”

296. A current member of the U.S. Commodity Futures Trading Commission recently commented that the financial risks from climate change are comparable to those posed by the failures of mortgage financing that triggered the 2008 global financial crisis: “If climate change causes more volatile frequent and extreme weather events, you’re going to have a scenario where these large providers of financial products—mortgages, home insurance, pensions—cannot shift risk away from their portfolios... It’s abundantly clear that climate change poses financial risk to the stability of the financial system.”

297. In March 2019, the Federal Reserve Bank of San Francisco published an “Economic Letter” discussing the “increasing financial risks from climate change,” highlighting that many financial firms have “substantial climate-based credit risk exposure.” If “broadly correlated across regions or industries,” the Letter concluded, “the resulting climate-based risk could threaten the stability of the financial system as a whole and be of macroprudential concern.”

298. On April 17, 2019, in an open letter to the world’s financial markets that accompanied the public release of a report recommending steps that the financial sector should take to address climate risks, the Governor of the Bank of England, Mark Carney, and the Governor of Banque de France, François Villeroy de Galhau, summarized these risks as follows:

The catastrophic effects of climate change are already visible around the world. From blistering heatwaves in North America to typhoons in south-east Asia and droughts in Africa and Australia, no country or community is immune. These events damage infrastructure and private property, negatively affect health, decrease productivity and destroy wealth. And they are extremely costly: insured losses have

risen five-fold in the past three decades. The enormous human and financial costs of climate change are having a devastating effect on our collective wellbeing.

The impact of climate change has compelled governments to act. Catalysed by the Paris agreement, governments around the world are putting policies in place to limit the global rise in temperatures to 2C, and preferably as close to 1.5C as possible. The actions undertaken by individual countries will deliver a collective transition to a low-carbon economy. But this transition brings its own risks. Carbon emissions have to decline by 45% from 2010 levels over the next decade in order to reach net zero by 2050. This requires a massive reallocation of capital. If some companies and industries fail to adjust to this new world, they will fail to exist.

The prime responsibility for climate policy will continue to sit with governments. And the private sector will determine the success of the adjustment. But as financial policymakers and prudential supervisors, we cannot ignore the obvious risks before our eyes. . . .

[T]o support the market and regulators in adequately assessing the risks and opportunities from climate change, robust and internationally consistent disclosure is vital. . . .

We recognise that the challenges we face are unprecedented, urgent and analytically difficult. The stakes are undoubtedly high, but the commitment of all actors in the financial system to act on these recommendations will help avoid a climate-driven “Minsky moment” – the term we use to refer to a sudden collapse in asset prices.

The organizer of the Network for Greening the Financial System, a coalition of 34 central banks and supervisors representing five continents, half of global greenhouse gas emissions, and the supervision of two-thirds of the global systemically important banks and insurers, joined the letter.

299. In May 2019, the Bank of Canada issued its annual Financial System Review, identifying climate change as one of the key vulnerabilities in the Canadian financial system, stating that “[c]limate change continues to pose risks to both the economy and the financial system. These include physical risks from disruptive weather events and transition risks from

adapting to a lower-carbon global economy.” Of particular concern, according to the Bank of Canada, is that “asset prices may not fully reflect carbon-related risk”:

If assets are mispriced, correct incentives will not be in place to manage and mitigate risks. Rapid repricing might cause fire sales and interact with other vulnerabilities—like excessive leverage—destabilizing the financial system. Better transparency could help alleviate this risk.

300. Also in May 2019, the European Central Bank (“ECB”) published its semiannual Financial Stability Review, with a special feature on climate change risks to the financial system. It likewise sounded the alarm that physical risks could “erode collateral and asset values” so significantly that “there is a risk that certain losses may become uninsurable.” As to transition risks, the ECB warned that the affected firms and sectors could experience “abrupt asset price decreases,” leading to “uncertainty” and “procyclical market dynamics, including fire sales of carbon-intensive assets, and potentially also liquidity problems,” as well as increased credit risk as carbon-intensive firms lose profits and potentially default on their debts.

301. In September 2019, the United Nations-supported Principles for Responsible Investment (“PRI”) investor initiative, which comprises over 2,000 institutional investors and investment firms around the world, with over \$80 trillion in assets under management, released research showing that “[f]inancial markets today have not adequately priced-in the likely near-term policy response to climate change,” leaving investor portfolios exposed to significant risks. In reaching this conclusion, PRI forecasted that, “as the realities of climate change become increasingly apparent, it is inevitable that governments will be forced to act more decisively than they have so far . . . [with] a response by 2025 that will be forceful, abrupt, and disorderly . . . .”

302. In 2018, the international non-profit CDP (formerly the Carbon Disclosure Project), in its annual questionnaire to the world’s companies, requested all respondents to provide a quantitative figure for the potential financial impact of risks and opportunities from

climate change, consistent with the recommendations of the Financial Stability Board's Task Force on Climate-related Financial Disclosures. In 2018, 215 of the world's largest companies, with a combined market capitalization of \$16.95 trillion, reported to CDP a potential financial impact from climate-related risks of almost \$1 trillion.

303. Systemic risk to financial markets is not a distant threat and is already evident in impacts to U.S. housing and municipal bond markets. Home insurers have ceased underwriting home insurance in certain communities following extreme climate-driven weather events, with significant financial risk implications for home mortgage providers. A recent report concluded that several U.S. municipalities face significant climate risk that could affect credit ratings, due to lost property tax and other revenue. For example, after Hurricane Harvey, Moody's downgraded Port Arthur due to a "weak liquidity position that is exposed to additional financial obligations from the recent hurricane damage, that are above and beyond the city's regular scope of operations," and after Hurricane Katrina, S&P Global Ratings downgraded New Orleans due to considerable emigration and an associated 22 percent decline in taxable assessed value.

304. Because the systemic risks identified above threaten the entire fossil fuel industry and also the world's financial markets, they directly threaten the holdings of Massachusetts investors in ExxonMobil securities.

**C. The Long-term Value of ExxonMobil's Business and Reserves Is at Risk from Climate Change, Including from Regulatory and Market Responses.**

305. Although enormously lucrative over time, the success of ExxonMobil's business has depended on a world overwhelmingly reliant on fossil fuels. The risks of climate change and regulatory responses to it pose an existential threat to that business model and therefore to investments in ExxonMobil securities, including by Massachusetts investors.

306. ExxonMobil's own greenhouse gas emissions pose significant risks to its business because, among other things, increasing regulation and pricing of those emissions by governments around the world to mitigate global climate change will, at minimum, increase ExxonMobil's costs of developing and operating its businesses and may also limit ExxonMobil's legal and economic ability to extract hydrocarbons from existing and planned facilities—threatening the value of its reserves and resource base, on which its market capitalization depends.

307. In addition, governmental action to regulate and price emissions will reduce market and customer demand for ExxonMobil's fossil fuel products. At the same time, cleaner energy businesses with lower or no greenhouse gas emissions will increasingly gain a competitive advantage over ExxonMobil's fossil fuel businesses.

***1. Fossil fuel companies like ExxonMobil face escalating regulatory and market responses to climate change, which are necessary to avert catastrophic warming.***

308. By 2007, ten governmental entities including the European Union had adopted policies, regulations, taxes, or other fees imposing a cost on greenhouse gas emissions. By 2014, the number had grown to 36, and in 2019 to 57, throughout the world. These initiatives would cover at least 11 gigatons of CO<sub>2</sub> equivalent greenhouse gas emissions, or about 20 percent of global emissions. In 2018, the total value of such emission pricing mechanisms was about \$82 billion, representing a 56 percent increase compared to the 2017 value of \$52 billion. ExxonMobil has operations in many of these jurisdictions, including the European Union, Canada, and California, increasingly subjecting ExxonMobil's operations to additional costs from greenhouse gas regulations. These mechanisms also tend to shift demand for energy to less emission-intensive fuel sources, and thus away from ExxonMobil's fossil fuel resources, putting ExxonMobil's core business revenues at risk.

309. These efforts to put a price or other regulatory controls on greenhouse gas emissions gained significant momentum when, in 2015, the nations of the world adopted the Paris Agreement, which aims to keep the global temperature increase well below 2 degrees Celsius above pre-industrial levels and to pursue efforts to limit it to 1.5 degrees Celsius. The Paris Agreement requires that each participating nation formulate a nationally determined contribution and a plan to reduce greenhouse gas emissions and pursue domestic measures to achieve that contribution. 186 nations and the European Union, representing nearly 97 percent of global greenhouse gas emissions, have ratified or acceded to the Paris Agreement, and a further 10 parties have signed but not ratified or acceded to the agreement.

310. The United States is a party to the Paris Agreement through at least 2020, notwithstanding the current federal administration's stated intent to withdraw from the agreement. In recent years, numerous states, including states where ExxonMobil maintains operations, have enacted increasingly aggressive measures to reduce greenhouse gas emissions. States with forty percent of the U.S. population have joined the U.S. Climate Alliance, committing to implementation of policies to meet the Paris Agreement goals for reducing carbon pollution and advancing clean energy.

311. As discussed in Paragraph 301 above, PRI recently forecast that major further policy responses to price or reduce greenhouse gas emissions are very likely by 2025 and ultimately "inevitable."

312. Governments' current and future efforts to reduce greenhouse gas emissions through regulation and/or the impositions of carbon fees or taxes, including under the Paris Agreement, present meaningful risks to the demand for ExxonMobil's products and the overall economics of its business. For example, as the IPCC Fifth Assessment report noted in 2014,

“[m]itigation policy could devalue fossil fuel assets and reduce revenues for fossil fuel exporters, but differences between regions and fuels exist. . . . Most mitigation scenarios are associated with reduced revenues from coal and oil trade for major exporters.”

313. In particular, as discussed in Section IV.C above, limiting global temperature increases to the objectives of the Paris Agreement will mean that substantial portions of the world’s known fossil fuel reserves cannot be burned. That reality poses significant risks to the shareholders of fossil fuel companies. These investors face the obvious risk of assets—existing facilities and known reserves—being stranded as demand for fossils fuels decreases in a scenario where the world transitions to a low carbon future.

314. ExxonMobil’s ongoing investment in fossil fuel assets appears to reflect and reinforce the trend across the fossil fuel industry, in which planned production growth rates are on average about ten percentage points above the level of oil and gas demand projected by the International Energy Agency. As discussed in more detail in Section V.B, investors also face risk from continued overinvestment in fossil fuels under a business as usual scenario, since the failure to transition to a low carbon economy means not only humanitarian crises and ecological destruction from climate change, but also the devastating financial costs of large scale, global climate disruption.

315. Outside the fossil fuel industry, however, the deployment of clean energy technologies is accelerating around the world, and the costs of those technologies are declining. Nationwide, installed wind and solar power in the United States more than *quintupled* from 2008 to 2018. Wind alone provided a record 6.5 percent of the nation’s electricity needs in 2018. Since 2009, the levelized cost of energy for wind power has fallen 69 percent, to as low as 2.9

cents/kilowatt-hour, with long-term contracts now available at *average* prices of 2 cents/kilowatt-hour.

316. This trend toward clean energy resources can have devastating economic impacts on energy companies that fail to adapt and on their investors. Between 2015 and 2018, for example, General Electric lost a reported \$193 billion, almost three-quarters of its market capitalization, following major declines in its coal and natural gas power generation businesses. Those businesses are now effectively stranded because they failed to account for growth in renewable energy and energy efficiency and the decoupling of coal and natural gas demand from economic growth.

317. These market trends away from fossil fuels are economically inconsistent over the long term with the development of additional or costly fossil fuel resources, including ExxonMobil's oil sands projects.

**2. *ExxonMobil's most valuable assets are its fossil fuel resources.***

318. The total estimated amount of oil or gas in a hydrocarbon reservoir is referred to as the volume of the hydrocarbon "in place." Only the fraction of the hydrocarbons in place that is technologically and commercially feasible to recover can be classified as "reserves" on a company's financial statements as that term is defined by the oil and gas industry, accounting standards, and financial regulators.

319. Oil and gas reserves represent the future cash flow of an upstream oil and gas business. Accordingly, the successful discovery, development, production, and ongoing replacement of oil and gas reserves are all critical factors influencing the long-term financial health of an oil and gas company with an upstream business.

320. Over the near term, investors and market analysts use the reserve amounts reported by oil and gas companies to value their upstream businesses and to predict their revenue

and earnings. Reserve quantities, types, and replacement ratios can have significant effects on an oil and gas company's stock price and bond ratings.

321. As defined by the SEC and the Financial Accounting Standards Board, "proved reserves" are the amount of hydrocarbons in a particular reservoir which geologic and engineering data demonstrate with reasonable certainty to be recoverable in future years from known reservoirs under existing economic and operating conditions, and this amount is disclosed as "proved reserves" in oil and gas companies' public financial statements.

322. Depending on changing economic conditions, including higher than previously expected future costs, previously-classified proved reserves may become not economically producible. If any of the company's proved reserves no longer qualify as "proved" based on economic conditions at the end of the new reporting period, the company must disclose a revision of the previously estimated quantity of proved reserves. This revision is often referred to as a "de-booking" of proved reserves.

323. Proved reserves are a primary indicator of a fossil fuel company's value and are correlated with the company's market capitalization. As oil, gas, and other fossil fuel products making up those reserves are extracted and sold, the company's reserves are correspondingly reduced. Therefore, a company's ongoing replacement of proved reserves is critical to the company's long-term ability to continue or grow its output and sales of fossil fuels.

324. An oil and gas company's proved reserves represent a subset of its total oil and gas "resources," or "resource base." ExxonMobil defines and reports to investors its resource base as "the total remaining estimated quantities of oil and gas that are expected to be ultimately recoverable, which includes quantities of oil and gas that are not yet classified as proved reserves under SEC definitions, but that [it] believes will ultimately be developed." The resource base

includes so-called “company reserves,” which are calculated based on internal guidelines rather than under SEC rules. ExxonMobil’s “resource base” is particularly significant because it represents the main source of potential future additions to proved reserves.

325. While SEC proved reserves estimates must be based on historical oil and gas prices and current costs, company reserves and resource base assessments are based on a company’s own internally-determined price and cost projections.

326. Where oil and gas assets are listed in ExxonMobil’s financial reports, whether as proved reserves or other resources, the company’s economic ability to recover them is affected by changes to market conditions, project costs, technological advancements, or other factors. To assess the impact of those changes on the value of its assets, ExxonMobil must conduct evaluations on at least an annual basis, consistent with applicable accounting standards, to test whether its assets are “impaired,” i.e., that any given asset’s undiscounted future cash flows are less than its carrying value. Where such evaluations determine that assets are “impaired,” the company must “write down” the asset to its fair market value and take an impairment charge for the difference between that value and its book value, reducing its reported earnings for that reporting period.

**3. *ExxonMobil’s 2017 de-booking and impairments of fossil fuel assets illustrate the material risks to investors inherent in the Company’s costly and polluting fossil fuel investments.***

327. In recent years, ExxonMobil has invested many billions of dollars in developing new hydrocarbon resources, despite low oil prices and the world’s diminishing carbon budget, discussed above, and the consequent imperative, reflected in the Paris Agreement and other governmental actions around the world, for the global economy to make drastic reductions in fossil fuel use.

328. ExxonMobil has staked its business model on these new investments, even as their value is highly sensitive to changes in the changing global market for fossil fuels. As discussed below, recent events show that ExxonMobil's costliest and most carbon-intensive projects are economically marginal in the current market, and ExxonMobil has sought to avoid and delay acknowledging to investors that the value of these assets is at risk.

329. In particular, ExxonMobil has spent billions of dollars on investments in Canadian oil sands projects operated by its majority-owned subsidiary, Imperial Oil.

330. Canadian oil sands require more energy to exploit than conventional oil resources and therefore generate 17 percent more greenhouse gas emissions, according to a recent U.S. State Department estimate. Accordingly, oil sands assets are more sensitive to the requirements and costs of climate-change regulation than other oil assets. Oil sands also are generally costlier to exploit than conventional oil resources, meaning that companies need to obtain a higher oil price in the market to recover their costs.

331. Together with Arctic oil resources, oil sands are at the end of the global supply curve, meaning that other supplies are more economic and will tend to serve global oil demand first. In a world where the quantity and trends in global oil demand are uncertain as fossil fuel alternatives and greater energy efficiency gain ground, and global oil markets may not require oil sands supplies to meet that demand, the economics of long-term investments in oil sands are highly vulnerable to relatively small variations in project costs and demand projections. These investments are therefore at a higher risk of being "stranded" by either escalating costs, such as from climate regulations, or insufficient oil demand, based on the world's needed transition to cleaner energy sources, in the future.

332. Investors recognize that investments in oil sands and similarly costly types of reserves pose a risk to ExxonMobil financially, especially if oil prices remain flat or decline.

333. ExxonMobil invested more than \$20 billion in capital expenditures at its open-pit oil sands mining operation at Kearl Lake in Alberta, Canada (“Kearl”)—its single largest investment in Canadian oil sands resources. Kearl is comprised of six oil sands leases covering about 75 square miles, in the Athabasca oil sands deposit. Raw bitumen from Kearl is mined, crushed, chemically cleaned, heated, and processed on site, and then diluted with a blend of petroleum diluent and shipped via pipeline or rail, including to refineries owned and operated by ExxonMobil or its subsidiaries in Canada or the United States. By 2015, the 3.6 billion barrels of purportedly proved reserves at Kearl represented approximately 14 percent of ExxonMobil’s claimed proved reserves worldwide.

334. ExxonMobil’s Canadian oil sands assets also constitute a significant amount of ExxonMobil’s resource base.

335. Alberta implemented the Specific Gas Emitters Regulation in 2007, mandating a 12 percent reduction in greenhouse gas emissions intensity from large industrial facilities, including oil sands facilities. Any emissions beyond the threshold for regulation were subject to a \$20 CDN per ton CO<sub>2</sub>-equivalent tax, increasing to 20 percent reduction and \$30 CDN per ton beginning January 1, 2018. Alberta recently replaced the Specific Gas Emitters Regulation with the Carbon Competitiveness Incentive Regulation, which requires accelerating reductions in emissions from high-emitting industries like oil sands facilities and similar compliance options as the prior regulation, including purchasing credits for excess emissions of \$30 CDN per ton.

336. Investors have often asked ExxonMobil detailed questions about the performance and risk profile of individual investments, including Kearl and other oil sands assets.

ExxonMobil presented information about Kearn specifically at each of its last eight annual analyst meetings in New York City.

337. In mid-2014, global oil market prices began a rapid fall. By early 2016, prices had declined 70 percent, one of the largest and most sustained oil price declines in modern history. Significant factors included oversupply and weakening demand for oil.

338. Lower oil prices resulted in significant reserve de-bookings and impairments across the oil industry during 2015 and 2016.

339. Through the fall of 2016, ExxonMobil bucked the trend of fossil fuel company de-bookings and impairments and repeatedly asserted that there were no reductions in its reserves or resource base or impairments of its assets.

340. In August 2015, Mr. Tillerson stated in an interview that “[w]e don’t do write downs. If you look at our history, we do not write our investments down. A lot of other people are very quick to want to write things down because it kind of improves things going forward . . . . [W]e are not going to bail you out by writing it down. That is the message to our organization. They all understand that.”

341. In February 2016, ExxonMobil stated in its 10-K filing for 2015 that it “does not view temporarily low prices or margins as a trigger event for conducting impairment tests.” Nonetheless, ExxonMobil reported that “in late 2015, the Corporation undertook an effort to assess its major long-lived assets most at risk for potential impairment,” and that the “assessment . . . indicate[d] that the future undiscounted cash flows associated with these assets substantially exceed the carrying value of the assets.” In addition, the 2015 Form 10-K stated that “Management views the Corporation’s financial strength as a competitive advantage,” and further stated (emphasis added):

The Corporation has an active asset management program in which underperforming assets are either improved to acceptable levels or considered for divestment. The asset management program includes a disciplined, regular review to ensure that all assets are contributing to the Corporation's strategic objectives. The result is an efficient capital base, and *the Corporation has seldom had to write down the carrying value of assets, even during periods of low commodity prices.*

342. ExxonMobil referred investors to the position on potential impairments in its 2015 10-K as late as mid-September 2016.

343. In March 2016, ExxonMobil completed a \$12 billion public debt offering, in part to fund its capital investment plans in new fossil fuel resources around the world. As discussed above in Section V.A, Massachusetts investors were among the buyers of ExxonMobil's debt securities during this offering.

344. In April 2016, ExxonMobil lost its AAA credit rating, a rating it had held since the Great Depression. In the downgrade, Standard and Poor's stated that the "company's debt level has more than doubled in recent years, reflecting high capital spending on major projects in a high commodity price environment and dividends and share repurchases that substantially exceeded internally generated cash flow."

345. As late as September 2016, an analyst at Fidelity Investments recognized ExxonMobil's ability to avoid write-downs as a positive trait: "XOM has had the best returns in the sector, and has not taken write-downs – therefore, it does not appear over capitalized."

346. On October 28, 2016, ExxonMobil issued an earnings release announcing its financial results for the third quarter ended September 30, 2016. In the release, ExxonMobil disclosed that nearly *twenty percent* of the Company's proved oil and gas reserves, including those associated with the Kearl oil sands operations in Canada, might no longer satisfy the SEC's

“proved reserves” definition at year-end, which would require such assets to be “de-booked” as proved reserves.

347. On February 22, 2017, ExxonMobil announced its 2016 year-end reserves in a press release, confirming that *all* of its proved reserves at Kearn were being de-booked:

As a result of very low prices during 2016, certain quantities of liquids and natural gas no longer qualified as proved reserves under SEC guidelines. These amounts included the entire 3.5 billion barrels of bitumen at Kearn in Alberta, Canada.

In total, as of December 31, 2016, as it first forecast in October 2016, ExxonMobil had de-booked nearly twenty percent of its total global proved reserves at the end of 2015.

348. On May 24, 2017, S&P Global Ratings issued a negative outlook on ExxonMobil’s credit, citing “higher-than-previously expected leverage.”

349. More recently, in August 2019, ExxonMobil lost its position among the top-ten largest companies on the S&P 500 index for the first time in the index’s nearly ninety-year history, a sign of its significant underperformance relative to the overall market. In 2009, the Company was the top company on the index, comprising five percent of its market value.

350. The recent track record of ExxonMobil’s oil sands investments illustrates the high sensitivity of the Company’s recent hydrocarbon projects to material financial risks over the short and long terms, including higher-than-expected costs, lower-than-expected demand and prices, and increasing climate risks, as well as management’s practice of downplaying the risks to its projects—and overstating their future returns—for as long as possible.

**4. *Energy companies use a proxy cost of carbon to account for anticipated costs of future climate change policy.***

351. According to a 2017 report by CDP, an internal carbon price is used by companies representing 79 percent of the market capitalization of the energy sector, more than any sector other than the utility sector. The energy sector has “more exposure to material risk

related to the use of fossil fuel–based energy” and “fundamentally rel[ies] on the extraction and combustion of fossil fuels, leaving [it] exposed to carbon asset risks—investments and reserves that may never be economic to use or extract in the future.” To address this risk, many companies in the energy sector “have been measuring carbon risks as a part of every-day business for several years.”

352. An internal carbon price is a type of “proxy cost,” i.e., a cost that is included in economic projections as a proxy, or stand-in, for the likely effects of expected future events.

353. To take one example of how a proxy cost of carbon should influence company planning, a proxy cost increases the company’s projection of the costs of any project with associated greenhouse gas emissions over the planned life of the project. All other things being equal, use of a proxy cost should make projects with higher emissions less favorable for company investment than projects with lower emissions. In the case of future upstream oil and gas projects that rely on company reserves, the use of a proxy cost may influence the economics underlying the classification of those reserves as “proved” or some other classification.

354. A proxy cost of carbon also affects the fair value calculations underlying the determination of whether a company asset is “impaired” and/or certain conditions exist that would trigger an impairment evaluation in the first place.

355. As distinct from the use of a proxy cost of carbon in assessing the future costs associated with project-related greenhouse gas emissions, a proxy cost also is used as an important input to a company’s macroeconomic projections of energy demand and energy pricing. These projections, in turn, also affect expectations of project viability.

356. Applying a proxy cost of carbon changes the relative prices of energy alternatives and can shift projected demand away from oil and other high-carbon fuel sources towards lower-

emission resources. For example, the use of a proxy cost of carbon in such projections would increase the price of (and therefore depress consumer demand for) gasoline and diesel fuel, incentivizing consumers to travel less or to shift toward electric vehicles, ride-sharing, and public transit. Likewise, the use of a proxy cost of carbon would increase the projected price of and depress the demand for heating oil, boosting the market for cleaner space-heating options, such as investments in efficient boilers and electric air-source heat pumps.

357. By way of illustration, given the carbon dioxide emissions associated with gasoline, a proxy cost of \$80 per metric ton of carbon dioxide adds \$0.71 to the projected price of each gallon of gasoline.

358. Economic modeling of energy demand incorporating a proxy cost of carbon should therefore show lower demand for oil than modeling without such a proxy cost, particularly when cleaner energy alternatives cost less or oil demand is elastic (i.e., oil users elect to consume less in response to higher prices), diminishing projected returns and project viability of the most expensive resources. With decreasing demand for oil, the most expensive projects to develop would become stranded assets, and therefore be removed from estimates of economic reserves and resources.

359. As discussed below, ExxonMobil has represented to investors, including Massachusetts investors, that, since 2007, it has used a proxy cost of carbon and other greenhouse gas emissions to account for the future costs of climate-change regulation in its business planning (including in projecting energy demand), investment decisions, reserve calculations, and impairment evaluations, when in fact ExxonMobil failed to do so consistently with its representations.

**D. Massachusetts Investors Have a Strong Interest in Accurate Disclosure of Climate Change Risks to the World’s Financial Markets, the Fossil Fuel Industry, and ExxonMobil’s Business and Assets.**

360. ExxonMobil’s omissions and misrepresentations regarding climate risks, detailed below, are material in that they influence investment decisions by Massachusetts investors and others, especially because they are occurring at a time of (i) waves of financial pressure on the most costly oil and gas projects, which cascade through the various measures companies and investors use to evaluate the financial health of their assets, (ii) growing investor attention to climate change risks and advocacy for greater disclosure of and responses to those risks by companies, especially fossil fuel companies with high levels of sensitivity to climate change regulation and/or to climate change impacts, and (iii) significant investor engagement with ExxonMobil in particular over its exposure to climate change risks, including by Massachusetts-based investors.

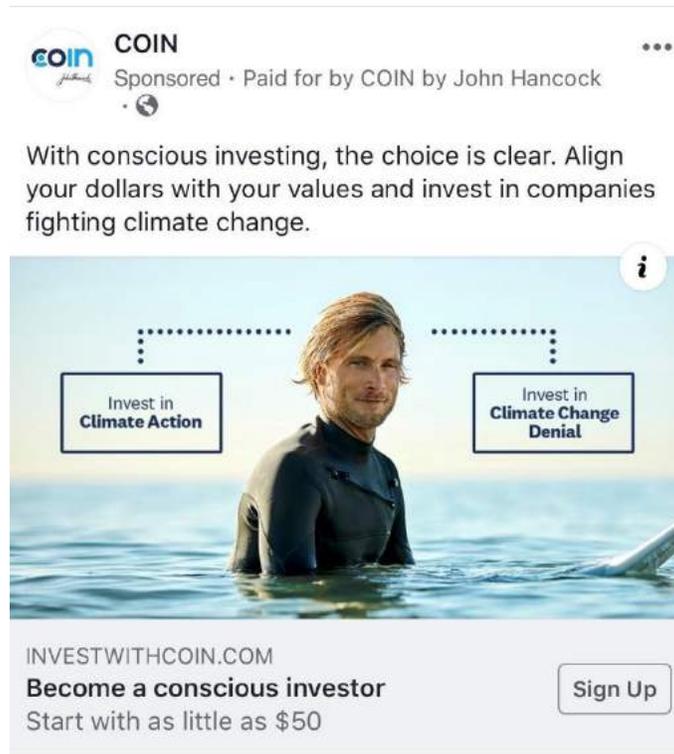
***1. Climate risks are important and material to Massachusetts investors, including Massachusetts investors in ExxonMobil securities.***

361. Climate risk disclosures have been an increasing focus of investors, including both the investment community as a whole and the substantial group of investors focused on the environmental, social, and governance (“ESG”) factors informing investment decisions. According to a recent estimate, ESG-focused investing now includes over \$30.7 trillion in assets under management. U.S.-domiciled assets using ESG strategies in 2018 were valued at \$12 trillion, comprising 26 percent of the assets under professional management in the United States in that year.

362. Massachusetts investors, including firms like Walden, Arjuna Capital (“Arjuna”), Calvert Research and Management (a subsidiary of Eaton Vance), Green Century Capital Management, and Trillium Asset Management, are at the vanguard of ESG investing. Major

Massachusetts institutional investors like State Street, Wellington, Fidelity Investments, and John Hancock have ESG funds and are integrating ESG factors into their investment decisions and guidance to client investors, across all asset classes.

363. For example, John Hancock recently launched a “conscious investing platform” named “COIN” that provides investors a “personalized mix of companies whose impact is aligned with their values” based on “extensive review on how well [the companies’] goals, business revenues, and corporate conduct support positive change” on, among other issues, “climate action.” To market this platform to investors, John Hancock has advertised this offering on social media as a means of “invest[ing] in companies fighting climate change” and “climate action” as opposed to “invest[ing] in climate change denial,” with the post reproduced below.



364. In addition, over 2,000 institutional investors and investment firms around the world, with over \$80 trillion in assets under management, have signed the United Nations-supported PRI. The signatories include major ExxonMobil investors, including State Street,

Wellington, and Fidelity Investments. By signing the PRI, these firms have committed to incorporate ESG issues into their investment analysis and decision-making, and climate change is the “highest priority” among these issues.

365. As affirmed by a growing body of peer-reviewed analysis, ESG factors that are important to an industry, such as climate risk management in the energy sector, are material to company financial performance, valuation, and investment outcomes. In the words of the Sustainability Accounting Standards Board, “[r]esearch and market evidence continues to show the connection between sustainable business practices and market performance. In response, a number of initiatives have emerged to spur businesses to improve their climate-related performance, their climate-related disclosure, or both.”

366. Accurate disclosure of climate change risk and related data is critical to investors so that they can make informed investment decisions.

367. Institutions, pension funds, sovereign wealth funds, and mutual funds with \$96 trillion of invested capital support the preeminent annual survey of global companies regarding their greenhouse gas emissions and strategies for addressing climate change administered by CDP.

368. Ratings agencies, like S&P Global Ratings, consider environmental factors material to their ratings analysis for integrated oil companies.

369. The need for accurate disclosure relates not only to climate-related risks that will manifest over the long term but also those that are currently occurring and will occur in the near-term.

370. The Financial Stability Board’s Task Force on Climate-related Financial Disclosures has issued guidance on how to integrate climate risk and opportunities into corporate

financial reporting. In particular, following the Paris Agreement, the Task Force developed and published in 2017 a standardized framework for climate-related financial disclosure. The Task Force specifically highlighted the near-term nature of the risk to oil and gas companies as a driving force behind the importance of climate risk disclosure.

371. In 2018 and 2019, CDP's questionnaire sought quantitative and other climate risk information aligned with the Task Force's recommendations. After reporting to CDP in prior years, ExxonMobil did not respond to CDP's questionnaire in 2018 or 2019.

372. Dissatisfied with the fossil fuel industry's, including ExxonMobil's, response to climate change risks, more than 1,000 institutional investors with \$8 trillion in assets have made the choice to divest their positions in fossil fuel companies. These investors include the sovereign wealth fund of Norway, New York City's and London's pension funds, colleges, universities, philanthropic foundations, museums, and religious institutions.

373. For example, the University of California announced in September 2019 that its \$13.4 billion endowment and \$70 billion pension fund would sell all fossil fuel holdings because, their managers said, "hanging on to [such] assets is a financial risk" and such investments "posed a long-term risk to generating strong returns for [the University's] diversified portfolios."

374. Insofar as they damage companies' reputations for their social responsibility and environmental stewardship, and thus their societal "license to operate," divestment efforts pose an additional climate-related risk to oil and gas companies.

375. In 2018, an oil major that competes with ExxonMobil acknowledged that divestment campaigns and related efforts pose a material risk to its business and the price of its securities.

376. And in July 2019, the Secretary General of the Organization of the Petroleum Exporting Countries stated in a meeting of the group that, as extreme weather events linked to the climate crisis become more common, “there is a growing mass mobilization of world opinion . . . against oil,” which is “perhaps the greatest threat to our industry going forward,” and was beginning to “dictate policies and corporate decisions, including investment in the industry.”

377. Investors recently have divested their holdings in ExxonMobil in particular. In June 2019, for example, Legal & General Group, an ExxonMobil shareholder with over \$1 trillion in total assets under management and approximately \$2 billion in ExxonMobil holdings as of March 2019, began to divest from ExxonMobil in 19 of the firm’s funds and to ask its clients to divest additional holdings. According to a Legal & General representative, its divestment was to “hold Exxon[Mobil] accountable for something that’s really material for their future.”

378. ExxonMobil’s shareholders and bondholders, including Massachusetts-based investors, often hold ExxonMobil securities for long periods of time and are concerned with the financial health of the Company and returns on their investments over both the short and long terms.

379. ExxonMobil markets its securities to long-term investors with the constant refrain that the Company is focused on creating “long-term shareholder value.”

380. For example, Mr. Tillerson told market analysts in 2016 that “[w]e really are trying to undertake the most attractive opportunities that we see, thinking about them in terms of 30 years. . . . [W]e are not for the short term shareholder, necessarily. That’s not what we build the business around. It’s not how we run the business. We run the business for people that are

going to own these shares a very long time, that we hope the shares are in the trust that they leave their children and their grandchildren.”

381. With focus on both short- and long-term value, major Massachusetts institutional investors have called for companies to treat climate-related risks as they would any other material risk and for disclosure to investors of relevant information regarding those risks and companies’ plans for successfully managing them.

382. According to a 2017 publication by State Street’s investment management division, “boards should regard climate change as they would any other significant risk to the business and ensure that a company’s assets and its long-term business strategy are resilient to the impacts of climate change. . . . As a long-term investor, [State Street] expects boards, particularly in high-impact sectors, to consider climate risk as they would any other material risk to the sustainability of their business. We believe that *it is important for these companies to give investors information that is relevant in helping them gain comfort that climate risk is being managed by the board*” (emphasis added).

383. State Street’s investment managers stated in the 2017 publication that the way that companies integrate climate risk into long-term strategy is “particularly important” in the oil and gas sector “where long investment horizons could render assets stranded.” They also asserted that the “[c]osts of controlling emissions to meet targets should be considered when making capital allocation decisions to arrive at the true cost of an asset.” The State Street managers also stated that “carbon price assumptions are important” because they “provide insights into how companies account for climate risk in the planning process” and “are key in helping companies identify potential stranded assets and mitigate the risk of investing in assets that may become stranded in the future.”

384. In the parlance of the 2017 publication, State Street's investment managers consider ExxonMobil a "high-impact sector" company. State Street called on ExxonMobil and other such companies to "disclos[e] the average and range of carbon price assumptions" and "discuss[] impacts of scenario-planning on long-term capital allocation decisions." State Street shared the publication containing these statements with ExxonMobil through email.

385. In the words of a State Street senior managing director who is its head of ESG Investments and Asset Stewardship, State Street is "trying to mitigate ESG risk" and engages with investee companies "to understand the impact of board discussion around climate change on long-term strategy and capital allocation." According to this State Street director, investors inquiring with State Street about the firm's offerings are increasingly asking that ESG concerns like climate risk be "integrated into [their] entire portfolio[s]" because "it isn't about ESG for the sake of ESG—it's the material risk posed by ESG."

386. With respect to fixed-income securities, the State Street director said that "[w]hen something ESG-related does go wrong, it can severely impact the return of your bond. Particularly with long-term bonds, the probability of something going wrong over a long horizon is high if the risk is not mitigated or properly managed." The State Street director has also explained that engagement with companies regarding ESG occurs "at the time we make the decision to invest."

387. State Street's focus on ESG risk is not limited to long-term, fixed-income investments, however. The State Street director has explained that "ESG risks are as important to shareholders as they are to bondholders," and "ESG scores are going to be as important in driving investor dollars into shares as credit scores are for fixed income."

388. Wellington likewise is focused on climate change as a material investment risk. According to the CEO of Wellington, “[w]e see it as our fiduciary duty to take into consideration issues that may impact the immediate or long-term financial performance of our clients’ portfolios. Climate change is one of many themes that falls into this category.” Wellington recently announced an initiative with the Woods Hole Research Center to integrate climate science and asset management, with a focus on “creating quantitative models” to analyze the effects of climate change on the world’s financial markets” and “developing investor tools and innovative analytical methods seeking to improve climate risk assessment and investment outcomes.”

389. A fixed-income analyst at Fidelity Investments recognized the impact that climate-related risks could have on ExxonMobil in particular. In one report from September 2016, a Fidelity Investments analyst wrote in a “Liquidity Update” on ExxonMobil: “Economic factors, climate change policies and changing technology could all have a negative impact on demand for energy (oil, gas, LNG) . . . . We are monitoring demand trends carefully – this is an area of concern for us over the next 5 years.”

390. Fossil fuel companies’ disclosures of climate risk also may affect the value of securities that are held over short timeframes, because market responses to such disclosures may contribute to lower market capitalization, bond rating changes, and altered perceptions of such companies’ creditworthiness.

**2. *ExxonMobil’s Massachusetts investors and the Company have engaged directly on climate change risks and its use of a proxy cost of carbon, including in Massachusetts.***

391. ExxonMobil is aware of the importance of climate risk to Massachusetts-based investors because it has had substantial and purposeful continuing contacts with Massachusetts institutional investors and other Massachusetts holders of its securities that include discussions of

climate risk and specifically of the proxy cost of carbon used by ExxonMobil when evaluating its assets or potential investments.

392. Having recognized the increase in ESG-focused investing and demands for disclosure of ESG-related information, ExxonMobil has been working with investor advisory groups that include members representing Massachusetts institutional investors on matters related to the Company's impact on climate change, climate change's impact on the Company's business, and the potential for climate change regulation to impact the Company.

393. In 2011, ExxonMobil established its External Citizenship Advisory Panel, which consisted of five to six independent experts tasked with providing feedback to the Company on the development of its citizenship activities, strategy, and communications.

394. The Boston-based Director of ESG Shareowner Engagement at Walden ("Walden ESG Director") was a member of ExxonMobil's External Citizenship Advisory Panel.

395. At least since 2012, ExxonMobil has had extensive contacts with the Walden ESG Director regarding the Company's engagement with ESG investing advisors, the Company's messaging and public statements concerning climate change and the Company's approach to climate change risks posed to its business.

396. At least since 2014, ExxonMobil reached out to the Walden ESG Director to consult with him about the organization of the Company's regular meetings with ESG shareholders, regarding specifically either the list of invitees or the topics to be discussed at such meetings.

397. For example, in 2014, Brian Tinsley, then Manager, Shareholder Relations at ExxonMobil, emailed the Walden ESG Director to consult with him about the invitees and invitation to a December 2, 2014 ESG shareholder meeting, which was focused on the risk of

climate change and which included a discussion of the Company's proxy cost of carbon and "carbon asset risk."

398. In 2015, Robert Luetzgen, a Manager in the Office of the Secretary at ExxonMobil, emailed the Walden ESG Director to ask for his "thoughts on how best to develop a list of topics to discuss" at an ESG shareholder meeting set for February 12, 2016. The agenda for that meeting included a discussion of the "outcomes and impacts" of the Paris Agreement and the "Company perspective on risks that others claim."

399. In 2016, Mr. Tinsley emailed the Walden ESG Director to consult with him about the date, the invitees, and the invitation to an ESG shareholder meeting set for December 2, 2016. Mr. Tinsley also asked the Walden ESG Director to forward agenda suggestions for the meeting.

400. Massachusetts institutional investors have recently engaged with ExxonMobil regarding climate change in a variety of other ways, including in Massachusetts.

401. In 2015, Mr. Tillerson met in-person with a representative of Fidelity Investments during which they discussed, among other issues, climate change. During that meeting, Mr. Tillerson described the 2015 media coverage related to ExxonMobil and its historic climate knowledge as "nonsense."

402. In late 2015, a Wellington managing director and industry analyst attended a breakfast with Mr. Tillerson, during which Mr. Tillerson relayed, in Wellington's words, that Massachusetts Institute of Technology scientists with whom ExxonMobil works have advised the Company that "the jury is still out," on climate change, meaning that the science remains uncertain.

403. Responding to an internal Wellington summary of the breakfast with Mr. Tillerson, Wellington's then-director of investment research observed that "Exxon[Mobil] is in so deep on this that their CEO may be pursuing the best strategy for shareholders by continuing to say that there is just too much uncertainty, but after decades of keeping the argument from reaching a fever pitch, I think the risks of these institutions being impaired by the public and government are rising very quickly. Many of our clients are going to come to the same conclusion in one way or another and virtually all of them are going to be under pressure to do so."

404. In 2016, Brian Conjelko, then Manager, Investor Relations at ExxonMobil, emailed a Wellington representative on behalf of himself and then-ExxonMobil Vice President of Investor Relations and Secretary Jeffrey Woodbury to request a meeting regarding, among other things, the potential for increased Company disclosures regarding climate change. The ensuing discussion included a discussion of ExxonMobil's views on the Paris Agreement's 2 degree C target and the costs of carbon dioxide mitigation.

405. In 2016, an energy analyst at Fidelity Investments met with Mr. Tillerson, and they discussed, among other topics, Mr. Tillerson's view on so-called "Anti-Energy" advocates. Mr. Tillerson expressed his skepticism about the viability of renewable energy and his confidence in ExxonMobil's business model in the context of proposals to increase the use of renewables.

406. In March 2017, Mr. Woodbury, Mr. Luetgen, and other ExxonMobil representatives traveled to Boston to meet with representatives of State Street about a number of issues, including the impact of climate change and climate change-related regulation on the Company's business. ExxonMobil and State Street specifically discussed the Company's proxy

cost of carbon, write-down of certain assets, and investments in carbon capture and sequestration technology. ExxonMobil management requested the meeting.

407. In October 2017, an analyst at Wellington hosted Mr. Woodbury and other ExxonMobil representatives at a meeting in Boston to discuss a number of issues. An investment manager focused on ESG investing at Wellington also attended the meeting and asked questions about climate risk disclosures. After the meeting ended, Mr. Woodbury further discussed with the ESG manager her questions about the type of climate risk disclosures ExxonMobil might implement.

408. In September or October 2017, an energy analyst at Fidelity Investments hosted Mr. Woodbury and other ExxonMobil representatives in Boston to discuss ExxonMobil's investment options and its long-term outlook on energy markets. During this meeting, ExxonMobil discussed its views on sustained oil demand in light of renewables and other energy alternatives. ExxonMobil also discussed its research into algae biofuels and carbon capture technology.

409. In October 2017, ExxonMobil CEO Darren Woods, Mr. Woodbury, and other ExxonMobil representatives traveled to Boston to meet with representatives of State Street about a number of issues, including the impact of climate change and climate change regulation on the Company's business. ExxonMobil and State Street specifically discussed the Company's proxy cost of carbon and investments in carbon capture and sequestration technology. ExxonMobil management requested the meeting.

410. In 2018, ExxonMobil embarked on what it described as an "East Coast roadshow . . . regarding [its] Energy Outlook and . . . report on impacts of climate change."

411. As part of this “roadshow,” in February 2018, Mr. Woodbury, Mr. Luetgen, and other ExxonMobil representatives again traveled to Boston to meet with representatives of State Street, including a member of its investment team, about a number of issues, including the impact of climate change and climate-change regulation on the Company’s business. ExxonMobil and State Street specifically discussed ExxonMobil’s strategic projection of energy demand, how ExxonMobil considers and helps its customers manage emissions arising from the use and combustion of fossil fuel products, the Company’s stress testing of assets, and its investments in carbon capture and sequestration technology. ExxonMobil management requested the meeting.

412. Also as part of this “roadshow,” in February 2018, Mr. Woodbury, Mr. Luetgen, and other ExxonMobil representatives met with representatives of Wellington in Boston specifically to discuss the impact of climate change and climate-change regulation on the Company’s business.

413. At ExxonMobil’s 2019 annual shareholder meeting on May 29, 2019, Mr. Woods offered the following assurances regarding the Company’s management of climate change risks (emphasis added):

I think the Board takes responsibility for the oversight of all company risk, including climate-related risk. We take that responsibility very seriously. We have a comprehensive framework to assess our business risk including the change and the risk associated with climate change. And for more than a decade, at least 1 session of the full Board each year is dedicated solely to climate issues. It’s also a frequent topic of conversations in review at other sessions of the Board as circumstances warrant. The Board committees are also empowered to provide additional insight on the risk faced by the company. The Board audit committee assesses our overall risk management approach. The public issues and contributions committee regularly reviews safety, health and environmental performance, including the steps taken to identify and manage climate-related risk. *Given the already established risk*

*assessment process and structure, the Board is confident that this matter is appropriately addressed . . . .*

414. Thus, ExxonMobil made numerous representations to these Massachusetts investors regarding climate risks and the Company's use of a proxy cost of carbon and greenhouse gas emissions in business decisions, and these communications constitute substantial, purposeful, and continuing contacts with Massachusetts institutional investors, including physically within the state itself, with regard to these issues.

**E. ExxonMobil Is Deceiving Massachusetts Investors by Failing to Disclose the Systemic Risks of Climate Change to the Global Economy, the World's Financial Markets, the Fossil Fuel Industry, and the Company's Business.**

415. ExxonMobil has employed a broad strategy of deceptive communications to Massachusetts investors and others, inherent in its Outlook for Energy and climate risk disclosures, that have helped shape investor expectations of the risks of climate change to the global economy, the world's financial markets, the fossil fuel industry, and ExxonMobil's business. The strategy is a pernicious outgrowth of ExxonMobil's decades-long corporate campaign to establish itself as a preeminent thought leader on energy trends and policies.

416. ExxonMobil's supposed climate risk disclosures together assert that ExxonMobil has accounted for and is responsibly managing climate change risks and that, in any event, they pose no meaningful threat to the Company's business model, its assets, or the value of its securities. This is the case, ExxonMobil's disclosures claim, because fossil fuel demand is fated to grow in the coming decades, clean energy alternatives are not and will not in the near future be competitive with fossil fuels, and the world's governments are unlikely to constrain fossil fuel use to limit global warming to the level those governments have agreed is necessary to avert the most harmful potential consequences of climate change.

417. These communications are deceptive because they deny or ignore the numerous systemic risks that climate change presents to the global economy, the world's financial markets, the fossil fuel industry, and ultimately ExxonMobil's own business, as detailed in Sections IV.C, V.B, and V.C above, despite the Company's longstanding scientific understanding of the potentially "catastrophic" nature of these risks.

418. According to recent research, these systemic risks threaten comparable or even greater shocks to the world's financial markets as the 2008 global financial crisis, during which the U.S. subprime mortgage crisis threatened the solvency of the world's major banks and triggered a global financial panic. As set forth in Section V.B above, central bankers and regulators are increasingly calling for greater recognition and disclosure of such systemic risks, which are already manifesting in the unavailability of insurance for low-lying real estate assets and ratings downgrades of municipal bonds for communities affected by extreme weather events.

419. The systemic risks of climate change threaten, in particular, the long-term holdings of Massachusetts investors in ExxonMobil securities.

420. ExxonMobil has never publicly acknowledged or accounted for the way these systemic risks would affect its business, the fossil fuel industry, the world's financial markets, or the global economy, on which ExxonMobil's projections of ever-increasing fossil fuel demand rest.

421. Full and accurate disclosure of these risks by ExxonMobil would influence investment decisions by the Company's Massachusetts investors with respect to ExxonMobil securities.

***1. ExxonMobil has long understood the extent of likely and potential climate change impacts but has never disclosed to its investors the systemic risks of these impacts.***

422. Decades ago, ExxonMobil already was developing an understanding of many of these potentially systemic climate-related risks to society, the world economy, the financial system, the fossil fuel industry, and the Company's business and assets.

423. As recounted in Section IV.B above, as of at least 1980, Exxon participated in the "AQ-9 Task Force," a meeting at which climate change expert Dr. J.A. Laurman explained that global average temperatures were expected to rise 2.5 degrees C (4.5 degrees F) by 2038, a change that would have "major economic consequences," "bring[ing] world economic growth to a halt," and that, by 2067, temperatures would increase by 5 degrees C (9 degrees F), if emissions continued unabated, a change that would have "globally catastrophic effects."

424. Likewise, as recounted in Section IV.B above, in the early 1980s, Exxon recognized that the net consequences of carbon dioxide-induced changes in climate would be "adverse to the stability of human and natural communities," and an Exxon scientist advised that it was "distinctly possible" that, over the long term, climate change will "produce effects which will indeed be catastrophic (at least for a substantial fraction of the earth's population)." In that same timeframe, Exxon's management was advised of the anticipated and potential impacts associated with the projected temperature increases expected to result from increasing atmospheric carbon dioxide concentrations, including droughts, or as Exxon's scientists put it, "disturbances in the existing global water distribution balance [that] would have dramatic impact on soil moisture, and in turn, on agriculture"; desertification; accelerated growth of pests and weeds; detrimental human health effects; and human population migration.

425. As discussed above, the heating of the global climate is on precisely the track that Exxon scientists forecasted decades ago, and, consistent with those predictions, the adverse impacts and costs of climate change are rapidly increasing.

426. Despite its early scientific understanding of the massive scope of potential climate-related risks to society and the global economy—and the role of its products and business in creating them, ExxonMobil has never accurately disclosed to its investors, even in recent years, the systemic risks from climate change, including the risks they present to the society, the global economy, the world's financial markets, the fossil fuel industry, or ultimately Company's business and assets. In failing to disclose this information, ExxonMobil has also failed to disclose to investors the nature of its contingency planning, if any, to respond to these risks.

**2. *ExxonMobil's climate risk disclosures deceptively deny, ignore, and downplay the systemic risks of climate change, including to its business model.***

427. ExxonMobil's disclosures to investors regarding climate change tell a misleading story—at complete odds with its historic knowledge regarding the systemic risks of climate change—of very little, if any, risk to ExxonMobil's fossil fuel business. The story is, at bottom, a continuation of its other public-facing campaigns to deny climate change that began in the late 1980s. ExxonMobil's self-serving account of growing demand for its fossil fuel products, the inadequacy and implausibility of cleaner alternatives, and little risk of asset-stranding or other wealth destruction is deceptive.

428. For the market as a whole, ExxonMobil's climate risk disclosures have obscured and had the effect of worsening the systemic risks identified by regulators to the world's financial system, which threaten the ExxonMobil holdings of Massachusetts investors.

429. With escalating investor and regulator concerns about climate change, there is growing recognition that certain companies, and in particular ExxonMobil, have not fully or adequately accounted for climate change risks in public disclosures.

430. ExxonMobil's affirmative disclosures, which incorporate its energy forecasts, not only fail to disclose these risks; in many cases, the disclosures deceptively deny and downplay these risks.

431. Under the guise of thought leadership and economic expertise, ExxonMobil's energy projections comprise a comprehensive, forward-looking set of expectations about future economic conditions and energy resources. It is among the only energy companies in the world that compile and produce such detailed projections. By design, ExxonMobil's projections are closely watched and credited by investors, analysts, and other market participants.

432. With these projections as their foundation, ExxonMobil's climate risk disclosures fail to disclose any meaningful risk from climate change to society, the global economy, the oil and gas sector, or the Company's business and assets, and they downplay the significance of all the climate-related risks that the Company does acknowledge.

433. ExxonMobil's energy and climate risk disclosures deceptively seek to reassure the Company's investors, including its Massachusetts investors, that climate change does not pose the very risks to their ExxonMobil investments that the Company understood as early as the 1970s.

434. On the first page of ExxonMobil's 2014 publication *Managing the Risks*, which it issued to address investor concerns regarding the Company's climate risk management, the Company states that "we are confident that none of our hydrocarbon reserves are now or will

become ‘stranded’” and that “producing these assets is essential to meeting growing energy demand worldwide. . . .”

435. *Managing the Risks* expressly rejects the potential for renewable energy to displace fossil fuels through 2040, stating that “renewable sources, such as solar and wind, despite very rapid growth rates, cannot scale up quickly enough to meet global demand growth while at the same time displacing more traditional sources of energy.”

436. Consistent with this conclusion about renewable energy, *Managing the Risks* describes the Company’s conclusions that risks to its business from policy responses to climate change are “highly unlikely” because:

the scenario where governments restrict hydrocarbon production in a way to reduce GHG emissions 80 percent during the Outlook period [through 2040] is highly unlikely. The Outlook demonstrates that the world will require all the carbon-based energy that ExxonMobil plans to produce during the Outlook period. Also . . . we do not anticipate society being able to supplant traditional carbon-based forms of energy with other energy forms, such as renewables, to the extent needed to meet this carbon budget during the Outlook period . . . .

[W]e do not believe a scenario consistent with reducing GHG emissions by 80 percent by 2050, as suggested by the “low carbon scenario,” lies within the “reasonably likely to occur” range of planning assumptions, since we consider the scenario highly unlikely . . . .

[T]he company does not believe current investments in new reserves are exposed to the risk of stranded assets, given the rising global need for energy . . . .

437. In 2014, ExxonMobil also issued the publication *Energy and Climate*, which contains similar representations to investors about the Outlook for Energy, the limits of renewable energy, and its position that climate-related risks will not constrain its planned development of fossil fuels.

438. *Energy and Climate* describes how, because “ExxonMobil’s business is energy,” ExxonMobil “actively engage[s] society on requirements for the exploration, development, production and distribution of energy to meet the demands of a growing global population.” In the Company’s words, this engagement is “broad and multi-faceted,” including: (i) participating in “efforts to improve the efficiency, effectiveness and environmental footprint of the energy business, its processes and products” through “a multitude of professional organizations”; (ii) “proactively engaging regulators on regimes and approaches that can improve the safety, reliability and sustainability of operations”; (iii) engaging “the public and thought-leaders on energy issues,” including the Outlook for Energy, which is “but one of the many ways that ExxonMobil engages society on energy requirements”; (iv) on climate change, engaging “both with policy makers and the public” through remarks by “our senior executives” including Mr. Tillerson and taking “numerous opportunities to articulate [the Company’s climate] policy positions in our annual Energy Outlook, Corporate Citizenship Report, and Carbon Disclosure Project submission, and through executive speeches, advertising, publications, media interviews and other policy fora”; (v) conducting “scientific, economic and technological research on climate change for nearly 30 years” to “improve scientific understanding, assess policy options and achieve technological breakthroughs that reduce GHG emissions,” including “more than 45 papers in peer-reviewed literature” and the participation of ExxonMobil scientists as “authors and review editors in assessments of the IPCC since its inception”; and (vi) “[s]upporting major [climate-related] projects at a wide range of institutions,” including universities, consultancies, and research centers.

439. These efforts together constitute a sophisticated, global, multi-decade effort to influence financial markets, among others, to credit ExxonMobil’s representations about climate

change and its risks and to accept ExxonMobil's supposed expert conclusions about energy trends and, specifically, ExxonMobil's self-serving global energy demand projections.

440. Consistent with the representations in *Managing the Risks and Energy and Climate*, ExxonMobil's later disclosures continue to assert that the Company will face virtually no meaningful transition risks from climate change because aggressive regulatory action is unlikely, renewable energy sources are uncompetitive, and fossil fuel demand and investment will continue to grow.

441. ExxonMobil's 2018 Outlook for Energy projects that, through 2040, "oil grows and continues to be the primary source of energy for transportation and as a feedstock for chemicals" and "[n]atural gas also grows, with increasing use in power generation, as utilities look to switch to lower-emissions fuels." Specifically, "[n]atural gas grows the most of any energy type, reaching a quarter of all demand," and "[o]il will continue to play a leading role in the world's energy mix, with growing demand driven by commercial transportation needs and feedstock requirements for the chemicals industry."

442. In addition, ExxonMobil projects, through 2040, growth in global liquids production of 20 percent "to meet demand growth," including "growth in natural gas liquids, tight oil, deepwater, oil sands and biofuels." As for natural gas, ExxonMobil projects global natural gas demand to grow "by about 40 percent, as its share of the world's energy mix rises from 23 percent to 26 percent between 2016 and 2040."

443. ExxonMobil's 2019 Outlook for Energy, issued in August 2019, repeats these projections in all relevant respects.

444. In these projections, ExxonMobil ignores the systemic risks to the fossil fuel industry presented by sudden or dramatic changes to the industry's economic health. An

illustrative example is the reversal of fortunes of thermal coal mining and coal-fired electric generation in the United States, where coal consumption was 44 percent lower in 2018 than its 2007 peak. Over roughly the last year, major global banking and insurance entities including the European Bank for Reconstruction and Development, Chubb, Zurich Insurance Group, Hannover Re, Allianz Group, Munich Re, Swiss Re, and the insurance unit of BNP Paribas all have announced that they are limiting investment or underwriting in those businesses, rendering many coal companies uninsurable and unbankable by many of the world's major financial institutions.

445. Similar changes in the future could affect investment plans in other parts of the fossil fuel industry, including the oil and gas sector. In this regard, major global financial company Zurich Insurance Group announced in July 2019 that it was updating its policy against investment in or underwriting coal mining and coal-oriented electric generation to exclude companies with major investments in oil sands extraction and oil shale.

446. In its projections, ExxonMobil also wholly ignores the implications for world energy demand of systemic climate change risks and their potentially calamitous economic costs. For example, these projections assume substantial economic growth in developing world countries like India, which are already experiencing devastating climate change impacts, while utterly failing to account for the potential that future impacts will make such growth impossible and will decimate the economic output of such countries, as set forth in Section V.B.

447. In the 2018 Outlook for Energy, ExxonMobil projects that global CO<sub>2</sub> emissions will rise through 2040, to about 10 percent higher than 2016 levels. ExxonMobil's 2019 Outlook for Energy also projects that such emissions will rise over that same time period.

448. ExxonMobil's 2018 Outlook for Energy includes a sensitivity case to test the impact of a market transition to light-duty electric vehicles by 2040. In resigning this transition

to a sensitivity case, ExxonMobil indicates that this case is unlikely. In this case, “total liquids demand in 2040 could be similar to levels seen in 2013 as growth in chemicals and commercial transportation would mostly offset a decline in light-duty vehicle demand.” ExxonMobil’s 2019 Outlook for Energy reiterates the conclusions of this electric vehicle sensitivity case. Thus, through its Outlook for Energy, ExxonMobil misleadingly asserts to investors that rapid growth of cleaner alternatives to internal-combustion vehicle transportation—a major market for its fossil fuel products—would pose little risk to its overall business.

449. ExxonMobil’s 2018 Outlook for Energy also provides an assessment of certain modeled scenarios that would limit global temperature increases to 2 degrees C, in response to demands from investors, including Massachusetts investors, seeking greater disclosure of ExxonMobil’s climate-related risks. ExxonMobil’s 2019 Outlook for Energy includes a similar assessment.

450. First issued together with the Outlook for Energy in 2018 and re-issued in 2019, ExxonMobil’s Energy and Carbon Summary summarizes the assessment as it relates to energy supply and demand and emissions. ExxonMobil’s 2019 Outlook for Energy also references its Energy and Carbon Summary.

451. As described in ExxonMobil’s 2019 Energy and Carbon Summary, “[r]elative to our Outlook, a theoretical 2°C pathway would generally lower demand for oil, natural gas and coal, and increase use of nuclear and renewables.” However, that Summary says, “[e]ven under a 2°C pathway, significant investments will be required in oil and natural gas capacity. In this scenario, according to the [International Energy Agency], cumulative oil and natural gas investments could exceed \$13 trillion by 2040.” The Summary goes on to state that “[p]roduction from our proved reserves and investment in our resources continue to be needed to

meet global requirements and offset natural field decline,” and that “[o]ur businesses are well-positioned for the continuing evolution of the energy system.”

452. The Summary thus indicates to investors that, even in a 2 degree C scenario, its massive investments in fossil fuels are needed and not at risk.

453. The Summary specifically addresses the climate-related risks to the Company’s proved reserves and states that “[b]ased on currently anticipated production schedules, we estimate that by 2040 a substantial majority of our year-end 2017 proved reserves will have been produced. Since the 2°C scenarios average implies significant use of oil and natural gas through the middle of the century, *we believe these reserves face little risk from declining demand*” (emphasis added).

454. In the Summary, ExxonMobil quantitatively discloses exactly one set of resources that it expects would not be economically attractive in a 2 degree C pathway: “a portion of our non-proved resources” that are non-natural gas “unconventional liquids assets in the United States,” comprising “less than 5 percent of ExxonMobil’s total net book value of property, plant and equipment as of September 30, 2018.”

455. With respect to physical climate-related risks to its infrastructure around the world, the Summary states that ExxonMobil conducts “environmental assessments . . . in advance to ensure that protective measures and procedures are in place prior to building and start-up of [Company] facilities,” which are “designed, constructed and operated to withstand a variety of extreme weather and environmental conditions” using “historical experience with additional safety factors to cover a range of uncertainties.” According to the Summary, “ExxonMobil’s comprehensive approach and established systems enable us to manage a wide variety of possible outcomes, including risks associated with climate change.”

456. The Summary concludes with the statement that “[e]xisting policy frameworks (including the Paris [Nationally Determined Contributions]), financial flows, and the availability of cost-effective technologies indicate that society *is not currently on a 2°C pathway*. Should society choose to more aggressively pursue a 2°C pathway, we will be positioned to contribute through our engagement on policy, development of needed technologies, improved operations, and customer solutions” (emphasis added).

457. ExxonMobil CEO Darren Woods told investors at the Company’s 2019 annual shareholder meeting on May 29, 2019, much the same:

Our outlook projects a 25% increase in energy demand. Oil demand is expected to grow by 0.7% a year, driven by commercial transport and chemical feedstocks. Natural gas demand will grow by 1.3% a year to meet electricity and industrial demand. Now some of you may think that growth does not sound like much, but when you factor in depletion rates, new oil production needs to increase by 8% a year and natural gas by 6%. Even under hypothetical scenarios where technology breakthroughs and government policies put the world on a 2-degree path, large investments in new oil and gas supplies are still required due to the significant depletion rates. In fact, the International Energy Agency estimates our industry needs to invest \$21 trillion over the next 2 decades on new energy projects to offset depletion and continue to meet the energy needs of the world’s growing population and increasing middle-class.

458. Mr. Woods repeated those same themes at the Barclay’s 2019 Energy Conference in New York on September 4, 2019, highlighting increasing demand for fossil fuel energy around the world and the Company’s view that clean energy technologies will require major advances over many decades to contribute a significant share of the world’s energy mix.

459. In 2018 and 2019, ExxonMobil did not file any report with CDP and has never provided investors, through CDP or otherwise, any overall or comprehensive quantitative estimates of the potential financial impacts from climate-related risks on ExxonMobil’s business.

460. In its own climate-related disclosures, ExxonMobil has not fully implemented the recommendations of the Financial Stability Board’s Task Force on Climate-related Financial Disclosures, discussed in Paragraph 370 above, despite claiming that its 2019 Energy and Carbon Summary was “aligned with the core elements of the framework developed by” the Task Force.

461. On June 17, 2019, CDP organized investors with \$11 trillion under management, including Walden, to target ExxonMobil and other companies that have failed to report to CDP.

462. In contrast with ExxonMobil’s internal understanding of climate change risks dating to the 1970s and the numerous recent warnings of the world’s central bankers and financial regulators about the systemic risks of climate change, ExxonMobil’s climate risk disclosures falsely do not disclose any systemic risks from climate change.

**3. *ExxonMobil’s misleading omissions and misrepresentations about the systemic risks of climate change are material to its Massachusetts investors.***

463. ExxonMobil’s deceptive omissions and misrepresentations in its climate risk disclosures are material to its Massachusetts investors in violation of Chapter 93A.

464. By failing to appropriately disclose the systemic risks of climate change, and otherwise denying or downplaying those risks, ExxonMobil has deprived its Massachusetts investors of material information regarding a major category of financial risks to their ExxonMobil securities.

465. Such information about the systemic risks of climate change, which ExxonMobil has long known, would have influenced ExxonMobil’s Massachusetts investors to make different investment decisions, including the purchase, sale, retention, and pricing of ExxonMobil securities, in several respects.

466. First, ExxonMobil's failure to disclose the systemic risks of climate change and its statements denying or downplaying such risks in its own climate risk disclosures have undermined investor and market recognition of how these risks may affect and diminish the value of ExxonMobil's business and securities. ExxonMobil's systemic risk omissions and misrepresentations have therefore discouraged and deferred the allocation of investment dollars away from investments in ExxonMobil securities toward other investments that are not exposed to such risks.

467. Second, ExxonMobil's failure to disclose the systemic risks of climate change reduces the accuracy and reliability of the market pricing of carbon assets across the fossil fuel industry, putting Massachusetts investors with ExxonMobil holdings at risk of losses, and increasing the potential for sudden, chaotic, and costly repricing in the future.

468. Third, ExxonMobil's failure to disclose the systemic risks of climate change has delayed investor recognition of such risks and increased the exposure of the markets to such risks. As discussed above in Section V.B, these risks threaten ecological, societal, and economic stability around the world, and ExxonMobil's omissions and misrepresentations will make the likely reallocation of capital required to address climate change risks less orderly and more costly, if not devastating, to ExxonMobil's Massachusetts investors.

469. Conversely, ExxonMobil's disclosure of systemic risks from climate change would benefit the market as a whole by improving investor awareness of these risks in a manner that would promote market stability by permitting orderly shifts in capital allocation and limiting sudden and costly asset repricing and market disruptions, with concomitant benefits to ExxonMobil's Massachusetts investors.

470. Faced with full and accurate disclosures of these risks and ExxonMobil's contribution to those risks, Massachusetts investors in ExxonMobil securities would have pursued different investment or asset diversification strategies to limit their exposures.

471. Appropriate disclosure of the extent to which ExxonMobil's fossil fuel businesses have contributed and are contributing to the potential for systemic risks also would steer many of the Company's Massachusetts investors, including those who have placed a priority on ESG factors, away from investments in ExxonMobil securities and/or the oil and gas sector as a whole. In this regard, such disclosure would accelerate the trend of investor divestment of ExxonMobil securities in particular, as described in Paragraphs 372 through 377 above.

**F. ExxonMobil Is Deceiving Massachusetts Investors by Misrepresenting Its Use of a Proxy Cost of Carbon to Account for the Risks of Climate Change Regulation to Its Business and Assets.**

472. ExxonMobil has repeatedly represented to investors, including Massachusetts investors directly and indirectly, that ExxonMobil used escalating proxy costs across the Company, consistent with those disclosed in its Outlooks for Energy. ExxonMobil also represented that it applied these escalating proxy costs in planning its major businesses and projects, developing its reserves and resources assessments, conducting asset impairment evaluations, and making energy demand projections.

473. Contrary to its statements, in many instances, ExxonMobil was not actually using proxy costs in this manner. The statements were materially false and misleading because ExxonMobil's actual practices were at odds with what it told investors. In fact, ExxonMobil has: (i) applied a lower, undisclosed proxy cost based on internal guidance; (ii) applied even lower costs based on existing regulations and did not increase those costs for the coming decades, in lieu of applying an escalating proxy cost; or (iii) applied no proxy cost at all. ExxonMobil's

actual practices came to light only very recently, through disclosure of internal ExxonMobil documents in other litigation.

***1. ExxonMobil repeatedly represented to Massachusetts investors and others that it applied a proxy cost of carbon, increasing over time and reaching \$80 per ton in OECD countries by 2040.***

474. ExxonMobil publishes an annual Outlook for Energy, an analysis of long-term future global energy supply and demand.

475. ExxonMobil represents to the public and investors that it prepares the annual Outlook for Energy to guide its own business strategies, planning, and project investment decisions, which include investments in fossil fuel projects with time horizons lasting fifty years.

476. ExxonMobil's Outlook for Energy is prepared by its Corporate Strategic Planning Department and discussed extensively with ExxonMobil's Management Committee and Board prior to release.

477. For more than a decade, ExxonMobil has represented to investors and the public in the annual Outlook for Energy that, by applying a "hypothetical cost of CO<sub>2</sub>," that captures the cost of regulations and policies to reduce greenhouse gas emissions from fossil fuel combustion, ExxonMobil accounts for "the competitiveness of various fuels." In other words, applying a proxy cost of carbon allows ExxonMobil to predict, over time, the point at which certain carbon-intensive fuels, like coal, oil sands, and conventional oil could reach prices that would trigger a reduction in demand and a switch to less carbon-intensive, lower-priced fuels, like natural gas, or zero-carbon fuels like wind and solar power.

478. Over the years, ExxonMobil has made numerous statements to Massachusetts investors and others about its use of a proxy cost of carbon, and many of those investors have assigned significant importance to those statements, as discussed below.

479. ExxonMobil projected in its 2007 Outlook for Energy that “[a]t \$30 per ton of CO<sub>2</sub>, coal plants move to about 7 cents per [kilowatt-hour] and become significantly disadvantaged.”

480. ExxonMobil made similar representations in its 2009 and 2010 Outlooks for Energy.

481. ExxonMobil’s 2010 Outlook predicted that “by 2020, adoption of [emission reduction] policies will be equivalent to adding CO<sub>2</sub> costs of about \$30 per ton in the OECD. At this level, natural gas becomes a lower-cost source of electricity than coal, while nuclear and wind become increasingly competitive. This shift becomes even more pronounced if CO<sub>2</sub> costs rise to \$60 per ton, which is where we anticipate policies in the OECD will drive costs by 2030.” OECD means the Organisation for Economic Co-operation and Development, which includes thirty-six countries with developed economies including the United States, Canada, Mexico, European nations, Japan, South Korea, Chile, among others.

482. In its 2012 Outlook for Energy, ExxonMobil reported it “expects that by 2040, OECD countries will – directly or indirectly – have a cost of CO<sub>2</sub> of \$80 a ton.”

483. In its annual Outlooks for Energy, ExxonMobil repeatedly represented to Massachusetts investors and others that ExxonMobil accounted for the potential impact on its own business of regulatory and other efforts to address climate change by applying a proxy cost of carbon.

484. In its 2013 Outlook for Energy, ExxonMobil represented that “ExxonMobil assumes a cost of carbon as a proxy for a wide variety of potential policies that might be adopted by governments over time to help stem GHG emissions such as carbon emissions standards, renewable portfolio standards and others.” In many OECD countries, the 2013 Outlook projected

the proxy cost of carbon to reach \$60 per ton by 2030, and stated that, “in most OECD nations, ExxonMobil expects the implied cost of CO<sub>2</sub> emissions to reach about \$80 per ton in 2040.”

485. Industry press, financial analysts, and investment banks closely track ExxonMobil’s annual Outlook for Energy projections. For example, Wellington circulated at least the 2012 and 2017 Outlooks internally.

486. In a December 2013 presentation to the Center for Strategic and International Studies on ExxonMobil’s 2014 Outlook, ExxonMobil Vice President for Corporate and Strategic Planning, Bill Colton, represented that ExxonMobil “add[s] a notional \$60 per ton as a cost of carbon for this [2014 Outlook] analysis . . . . What this means is, the proxy for the costs of carbon, based on our expectation that governments around the world will continue to establish policies which effectively put a price on carbon.”

487. According to Mr. Colton, ExxonMobil undertakes the analysis set forth in its annual “Outlooks,” in order to “guide our business strategies and plans, because we are making billion-dollar investment decisions, and the horizon for these projects, a typical project of ours will last easily fifty years. So we have to keep a strong focus on what is happening in the future.”

488. Further discussing how ExxonMobil factors in its proxy cost of carbon for business planning, Mr. Colton observed that “people don’t think so much about cost of carbon, but think of today in the U.S. the [Environmental Protection Agency] has set standards for new coal-fired power stations that basically require carbon capture and sequestration. We know, because we’re quite familiar with those economics, that it costs about \$80 per ton to do that. So with that policy they have imposed an \$80 per ton cost of carbon for that sector. So that is just one example of how we use this as an imputed cost of carbon, based on things governments are actually doing.”

489. ExxonMobil's Vice President of Public and Government Affairs, Ken Cohen, speaking at the same December 2013 event stated, "certainly, we are anticipating the cumulative impact of various regulations are [sic] going to raise the cost of our operations and the cost of the use of various forms of fuel."

490. At a December 2013 meeting between ExxonMobil and Walden, Peter Trelenberg, ExxonMobil's Environmental Policy and Planning Manager, represented to Walden that ExxonMobil was applying a proxy cost of carbon of \$80 per ton by 2040 in OECD countries.

491. A December 6, 2013 story published by Bloomberg reported that ExxonMobil, "the biggest energy company by market value, is basing plans for future capital investment on the assumption that it will have to pay \$60 a metric ton for carbon emissions."

492. The Bloomberg story reported that ExxonMobil's spokesperson, Alan Jeffers, confirmed that "Exxon[Mobil] has been factoring future carbon costs into project planning since 2007."

493. In its 2014 Outlook for Energy, ExxonMobil represented that "[t]o help model the potential impacts of a broad mosaic of future [greenhouse gas emissions] policies, we use a simple cost of carbon as a proxy mechanism. For example, in most OECD nations, we assume an implied cost of CO<sub>2</sub> emissions that will reach about \$80 per tonne in 2040. OECD nations are likely to continue to lead the way in adopting these policies, with developing nations gradually following, led by China."

494. In March 2014, ExxonMobil represented to Arjuna that it applied a proxy cost of carbon "in assessing investment opportunities."

495. In late 2014, ExxonMobil met with Walden and represented that the proxy cost of carbon was one of the most significant factors in the Outlook model, and that it would reach \$80 per ton in 2040 in OECD countries, and \$40 per ton in Brazil and China in that same timeframe.

496. Thus, during the period beginning in 2007 to the present, ExxonMobil's Outlook for Energy has consistently presented ExxonMobil's modeled expectation that, as a result of anticipated governmental policies to curb climate change, the costs associated with reducing greenhouse gas emissions would increase over time.

497. ExxonMobil made similar representations in other ExxonMobil publications regarding its use of a proxy cost of carbon, including the two March 2014 reports, *Energy and Climate* and *Managing the Risks*, discussed above.

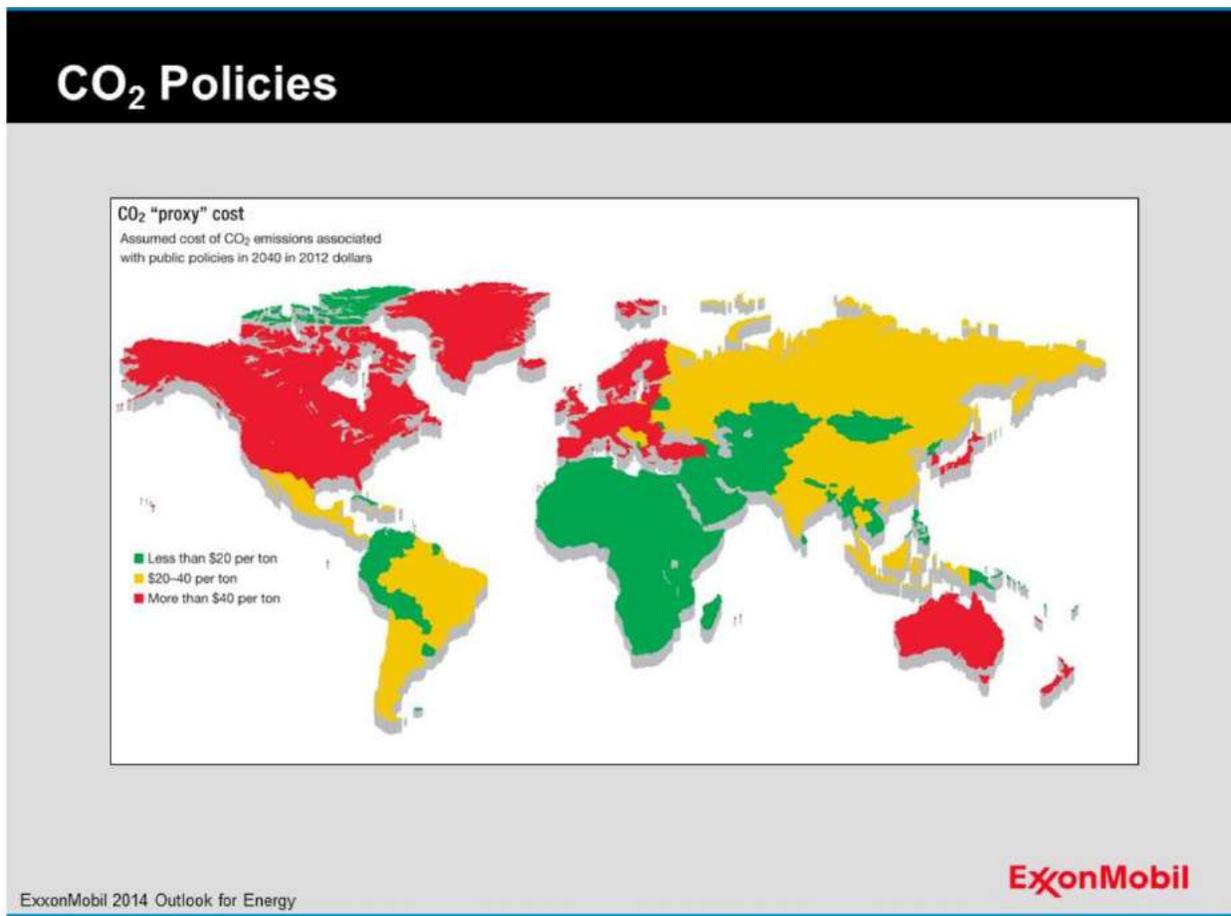
498. ExxonMobil specifically prepared *Energy and Climate* and *Managing the Risks* to address the concerns of investors, including Massachusetts investors, regarding the climate-related risks to ExxonMobil's business and assets and its strategic planning to address those risks.

499. ExxonMobil made a number of representations in *Energy and Climate* about the manner in which it uses the proxy cost of carbon in its business planning. For example, in a section titled "The Outlook for Energy: A View to 2040," ExxonMobil set forth the manner in which it uses a proxy cost of carbon when preparing its Outlook for Energy reports:

[F]or our Outlook, we use a cost of carbon as a proxy to model a wide variety of potential policies that might be adopted by governments to help stem GHG emissions. For example, in the OECD nations, we apply a proxy cost that is about \$80 per ton in 2040. In the developing world, we apply a range of proxy costs with the more wealthy countries, like China and Mexico, reaching about \$30/ton in 2040. . . . This GHG proxy cost is integral to ExxonMobil's planning, and we believe the policies it reflects will increase the pace of efficiency gains and the adoption by society of lower-carbon technologies through the Outlook period . . . .

ExxonMobil’s proxy cost seeks to reflect a reasonable approximation of costs associated with policies that society may impose over time on GHG emissions, policies that we believe would drive society towards increased efficiency and changes to the energy system and its fuel mix.

500. A map presented in that section of *Energy and Climate* visually depicts the proxy cost of carbon in 2040 as applied by ExxonMobil for three color-coded categories of countries: (i) red-colored, mostly OECD countries, “[m]ore than \$40 per ton,” (ii) yellow-colored, mostly non-OECD countries, including China, Indonesia, and Russia, “\$20-40 per ton,” and (iii) green-colored, remaining non-OECD countries, “[l]ess than \$20 per ton.” The map is reproduced below.



501. In a section of *Energy and Climate* titled, “[e]valuating climate risk in our planning,” ExxonMobil also expressly represented that to “reduce risk” and “enhance profitability,” it “employs a robust process for evaluating investment opportunities and managing our portfolio of operating assets. ExxonMobil requires that all business units use a consistent corporate planning basis, including the proxy cost of carbon discussed above, in evaluating capital expenditures and developing business plans.”

502. ExxonMobil expressly prepared *Managing the Risks* for the purpose of “address[ing] important questions raised recently by several stakeholder organizations on the topics of global energy demand and supply, climate change policy, and carbon asset risk.” Consistent with its representations in the *Energy and Climate* report, ExxonMobil represented in *Managing the Risks* that it had long applied a proxy cost of carbon in its Outlooks, and takes those costs into account when making capital investment decisions:

We also address the potential for future climate related controls, including the potential for restriction on emissions, through the use of a proxy cost of carbon. This proxy cost of carbon is embedded in our current Outlook for Energy, and has been a feature of the report for several years. The proxy cost seeks to reflect all types of actions and policies that governments may take over the Outlook period relating to the exploration, development, production, transportation or use of carbon-based fuels. Our proxy cost, which in some areas may approach \$80/ton over the Outlook period, . . . is simply our effort to quantify what we believe government policies over the Outlook period could cost to our investment opportunities. Perhaps most importantly, we require that all our business segments include, where appropriate, GHG costs in their economics when seeking funding for capital investments. We require that investment proposals reflect the climate-related policy decisions we anticipate governments making during the Outlook period and therefore incorporate them as a factor in our specific investment decisions.

503. ExxonMobil assured investors in *Managing the Risks* that the Company properly accounted for climate risks in all of its business planning and investment decisions, including

decisions regarding costs associated with proposed significant new projects, by its application of a proxy cost of carbon:

We rigorously consider the risk of climate change in our planning bases and investments. . . . We also require that all significant proposed projects include a cost of carbon—which reflects our best assessment of costs associated with potential GHG regulations over the Outlook period—when being evaluated for investment.

504. ExxonMobil represented in *Managing the Risks* that, based on its annual Outlook for Energy analysis, which “explicitly account[s] for the prospect of policies regulating greenhouse gases” by applying a proxy cost of carbon, “we are confident that none of our hydrocarbon reserves are now or will become stranded.”

505. *Managing the Risks* includes the same colored coded map that appeared in *Energy and Climate* representing which range of proxy carbon cost ExxonMobil applies in different countries.

506. Together with ExxonMobil’s Form 10-Ks, ExxonMobil’s representations in *Energy and Climate* and *Managing the Risks* also indicated that the Company was applying a proxy cost of carbon in asset impairment evaluations, as, for example, the Company stated in its 2015 Form 10-K that cash flows used in ExxonMobil’s impairment testing “make use of [ExxonMobil’s] price, margin, volume, and cost assumptions developed in the annual planning and budgeting process, and are consistent with the criteria management uses to evaluate investment opportunities,” consistent with Generally Accepted Accounting Principles (“GAAP”).

507. Investors paid close attention to ExxonMobil’s representations regarding its use of a proxy cost of carbon to mitigate risk posed by regulations and policies to reduce greenhouse gases that could affect fuel price and demand for ExxonMobil’s carbon-intensive products.

508. A Credit Suisse daily newsletter dated March 24, 2014, reported that “Some companies use a so-called shadow carbon price to anticipate the future cost from climate policy when planning new projects. Of 30 U.S. companies that use a shadow carbon price, Exxon[Mobil]’s is among the most aggressive. Exxon[Mobil]’s shadow price of \$60 per ton of CO<sub>2</sub> pollution is more than seven times the current cost of carbon permits in the [European Union] cap-and-trade system and is 62 percent higher than the White House’s estimate of the social cost of carbon pollution. While investors might fault Exxon[Mobil] for not doing enough to prepare for the future, it’s hard to argue that it’s not taking the climate threat seriously, at least on paper.”

509. In a 2015 internal Bank of America/Merrill Lynch presentation, the bank cited ExxonMobil’s 2015 Outlook for Energy, *Managing the Risks*, and *Energy and Climate*, and noted that ExxonMobil applies a proxy cost of carbon in planning, which “approaches \$80/ton over the [O]utlook period,” and “[a]ll business unit[s] plan around the proxy cost of carbon.”

510. In a 2015 report prepared by WSP Parsons Brinckerhoff for Bank of America, the firm advised the bank that, to address current and potential climate change policy, ExxonMobil uses a proxy cost of carbon in its Outlook for Energy. Citing ExxonMobil’s 2014 response to the Carbon Disclosure Project, WSP Parsons Brinckerhoff relayed that ExxonMobil’s proxy cost of carbon reflects all government actions and policies that may be taken over the Outlook period relating to the exploration, development, production, transportation, or use of carbon-based fuels, and approaches \$80/ton over the Outlook period. Based on its analysis of ExxonMobil’s representations, WSP Parsons Brinckerhoff advised Bank of America that ExxonMobil “requires that all business segments include GHG costs in their analyses when seeking funding for capital investments, requiring that investment proposals reflect climate-related policy decisions.”

511. The WSP Parsons Brinckerhoff report specifically cited ExxonMobil's representation in *Managing the Risks* that none of its hydrocarbon reserves are now or will become stranded. The report noted ExxonMobil's express representation that its conclusion regarding stranding risk was based on its Outlook for Energy forecast, which incorporates consideration of the prospect of policies that regulate greenhouse gas emissions.

512. Following a 2015 meeting with ExxonMobil, BlackRock, Inc. noted that ExxonMobil includes a proxy cost of carbon in all of its investment decisions.

513. In a December 2015 article published on its website titled, "ExxonMobil and the Carbon Tax," ExxonMobil represented (emphasis added):

We have also made clear our [carbon tax] position each year since 2009 in our Corporate Citizenship Report and in media briefings launching our *Outlook for Energy: A View to 2040*. This year alone we have delivered more than 300 of these *Outlook* presentations to a wide variety of parties engaged in the public discussion about energy, the environment, and climate. These meetings have taken place all over the world and have included government officials (e.g. European Union, U.S. Department of Energy, members of congress), representatives from religious and faith-based institutions (e.g. Presbyterian Church USA, United Church of Christ, the Vatican), and officials from non-governmental and academic organizations (e.g. World Bank, Bipartisan Policy Center, and numerous universities). . . .

*One key point we make in many of these briefings is that ExxonMobil has included a proxy price on carbon in our business planning since 2007. This enables us to analyze the impact of a price on carbon on various investment opportunities. This proxy cost, which in some regions may approach \$80 per ton, seeks to reflect all types of actions and policies that governments may take.*

This December 2015 article remains available to Massachusetts investors on ExxonMobil's website.

514. ExxonMobil's largest shareholder, Vanguard Group, Inc. ("Vanguard"), highlighted *Managing the Risks*' discussion of ExxonMobil's use of a proxy cost of carbon "which in some areas may approach \$80/ton over the Outlook period."

515. In 2016, a Vanguard analyst prepared an assessment of ExxonMobil's key risks, including costs associated with climate change regulation and decline in ExxonMobil's stock value. The Vanguard analyst noted that ExxonMobil has used a proxy cost of carbon since 2007, which may approach \$80/ton over the Outlook period, and that ExxonMobil had represented that none of its hydrocarbon reserves are or will be at risk of stranding. Regarding any risk to the company posed by the cost of climate change regulatory compliance, the analyst assigned a "low" risk to ExxonMobil, since the "Outlook for Energy anticipates policies will add rising costs (est. \$80/ton by 2040)."

516. In an article appearing on its website from on or about 2016 through 2019 titled "Meeting Global Needs—Managing Climate Change Business Risk," ExxonMobil represented that:

We use a simple cost of carbon as a proxy mechanism to help model the potential impacts of a broad mosaic of future GHG policies. For example, in most OECD nations, we assume an implied cost of CO<sub>2</sub> emissions that will reach about \$80 per metric ton in 2040. Developing nations will have a wide range of policy costs with the wealthiest ones reaching about \$35 per metric ton.

517. In its 2015 Form 10-K filed with the SEC in February 2016, ExxonMobil told investors that, for purposes of its Outlook for Energy, ExxonMobil "continue[d] to assume that governments will enact policies that impose rising costs on energy-related CO<sub>2</sub> emissions, which we assume will reach an implied cost in OECD nations of about \$80 per tonne in 2040."

518. In February 29, 2016 correspondence to the SEC, ExxonMobil represented to the SEC that “[t]he Company is comfortable that its proxy cost of up to \$80 in some regions appropriately captures the cost of expected rising carbon restrictions through 2040.”

519. ExxonMobil’s March 2016 Corporate Citizenship Report also represented that ExxonMobil applied a proxy cost of carbon that approached \$80 per ton by 2040 in some regions, and which has been included in ExxonMobil’s Outlook for Energy “for several years.”

520. In the ExxonMobil 2016 Annual Executive Compensation Conference Call held on May 12, 2016, ExxonMobil’s then-Vice President of Investor Relations and Secretary Jeffrey Woodbury represented to shareholders that the Company’s Outlook for Energy has used a proxy cost of carbon since 2007.

521. A few weeks later, on May 25, 2016, ExxonMobil’s then-CEO Tillerson told shareholders at ExxonMobil’s annual meeting that “unlike many of our competitors, we have for many years included a price of carbon in our Outlook. *And that price of carbon gets put into all of our economic models when we make investment decisions as well.* It’s a proxy. We don’t know how else to model what future impacts might be. But whatever policies are, ultimately, they come back to either your revenues or your cost. *So we choose to put it in as a cost.* So we have accommodated that uncertainty in the future, and *everything gets tested against it*” (emphasis added).

522. The next day, on May 26, 2016, during a meeting with Wells Fargo, ExxonMobil represented that it applied a proxy cost of carbon of \$80 per ton by 2040 in OECD countries, and “\$20 [plus/minus] 10 by 2040” in non-OECD countries.

523. In a May 30, 2016 equity research report detailing the highlights of its investor meeting with ExxonMobil, Wells Fargo summarized the representations ExxonMobil had made

regarding its application of a proxy cost of carbon “on all of its future developments.” The report also summarized the following points, with respect to ExxonMobil’s representations regarding its use of a proxy cost of carbon: “This approach reduces the risks associated with future CO<sub>2</sub> emissions and incentivizes [ExxonMobil] to reduce overall emissions of all future projects. Also, all future project economics will not be negatively affected by future GHG rules, regulations and taxes. This approach also helps [ExxonMobil] avoid the risk of stranded investments.”

524. During a July 29, 2016 conference call regarding ExxonMobil’s second-quarter-2016 earnings, Mr. Woodbury told investment analysts that its Outlook for Energy had “for many years” included a proxy cost of carbon, which, over the Outlook period, grows to “as high as \$80 per ton.”

525. ExxonMobil represented to State Street at their March 2017 meeting in Boston, discussed above, that it applies a carbon price typically ranging from about \$5 to \$80 per ton, using higher carbon prices of \$20 to \$80 per ton in developed countries, and lower prices in less developed countries. It did not explain any deviation from the proxy cost disclosed in its Outlook for Energy.

526. In May 2017, ExxonMobil sent to Vanguard slides explaining how ExxonMobil applies its proxy cost of carbon and held a call with Vanguard. During that call, ExxonMobil represented that it faced no risk of stranded assets, and that the proxy cost of carbon ExxonMobil had already built into its Outlook reflected even more aggressive policy than the greenhouse gas emissions reduction targets set forth in the Paris Agreement.

527. At ExxonMobil’s annual shareholder meeting on May 31, 2017, Mr. Woods told shareholders that its Outlook for Energy—“one of our most important planning tools”—uses a

proxy cost of carbon to estimate potential climate risk impacts. Mr. Woods also represented that “the carbon reductions in our Outlook are consistent with the pledges in the Paris Agreement.”

528. ExxonMobil represented to State Street at their October 2017 meeting in Boston, discussed above, that ExxonMobil was addressing climate risk and relayed that the Company did not anticipate any significant climate-driven change in demand for its fossil fuel products, which would include any changes associated with climate regulation that would be anticipated through application of a proxy cost of carbon.

529. At ExxonMobil’s February 2018 meeting with State Street in Boston, ExxonMobil again relayed to State Street that, based on its annual energy demand projection, it did not expect any significant change in demand for its products in the coming years, which would include any changes associated with climate regulation that would be anticipated through application of a proxy cost of carbon.

530. Thus, ExxonMobil repeatedly reassured Massachusetts investors that the Company was managing climate change risks through the comprehensive use of the disclosed proxy costs of carbon set forth in its Outlook for Energy and other Company publications, which escalated over time and reached \$80 per ton in certain countries.

2. *In actual practice, ExxonMobil, with full management knowledge, applied secret, lower—and riskier—internal proxy costs of carbon, contrary to its representations to Massachusetts investors.*

a) **ExxonMobil’s internal guidance provided for proxy costs lower than its publicly represented proxy costs.**

531. For years, ExxonMobil in reality applied significantly lower proxy costs than those represented to investors, including Massachusetts investors. In particular, ExxonMobil used an undisclosed set of proxy costs that was set out in its internal Corporate Plan Dataguide and Appendices (“Corporate Plan”). The Corporate Plan is an internal ExxonMobil document,

issued annually and approved by ExxonMobil's senior management, which provides assumptions for the Company's business units to apply in making economic projections, including as part of the Company's annual planning and budgeting process.

532. The proxy cost figures in ExxonMobil's Corporate Plan were inconsistent with, and significantly lower than, the Company's publicly represented proxy costs until June 2014 for OECD countries, and until June 2016 for non-OECD countries. For these periods, ExxonMobil based investment decisions and business planning on significantly lower proxy costs than those the Company represented to investors that it used.

533. ExxonMobil's GHG Managers internally warned that using these lower figures made ExxonMobil more vulnerable to the risks of climate change regulation. Indeed, one of those managers admitted in an internal presentation that the Company's proxy cost representations were likely to be misleading.

*(1) OECD countries*

534. As discussed above, in its 2010 Outlook for Energy, ExxonMobil publicly represented that its proxy cost for projects in OECD countries was \$60 per ton of emissions in 2030, while the undisclosed Corporate Plan proxy cost actually utilized by ExxonMobil reached only \$40 per ton in 2030.

535. In 2012, 2013, and 2014, ExxonMobil publicly represented that its proxy cost was \$60 per ton in 2030, and that it would increase to \$80 per ton in 2040. However, until June 2014, ExxonMobil's undisclosed internal Corporate Plan proxy cost still reached only \$40 per ton in 2030 for OECD countries, and did not increase in later years.

536. ExxonMobil's decision to apply lower proxy costs pursuant to its internal Corporate Plan likely affected investment decisions for major projects, including certain of those identified below.

537. ExxonMobil's management, including Mr. Tillerson and other members of the Management Committee, knew of and approved the significant deviation between the publicly disclosed proxy cost and the lower proxy costs set forth in the undisclosed Corporate Plan.

538. In response to a question from the Carbon Disclosure Project asking ExxonMobil to identify "the highest level of direct responsibility for climate change within [the] organization," the Company explained that "the Chairman of the Board and Chief Executive Officer and members of the Management Committee are actively engaged in discussions relating to greenhouse gas emissions and the risks of climate change on an ongoing basis," and "the Chairman of the Board and Chief Executive Officer, the President and the other members of the Management Committee ultimately have responsibility for climate change matters."

539. In particular, Management Committee members reviewed and approved the Outlook for Energy and key elements of the Corporate Plan each year. Further, Mr. Tillerson reviewed and approved the *Energy and Climate* and *Managing the Risks* reports.

540. ExxonMobil's management approved of the deviation between its internal and public proxy cost values even though it knew that the lower internal values were less protective against climate change regulatory risk than the proxy cost described publicly and that doing so contradicted its public statements. Further, ExxonMobil knew that the higher proxy costs described to investors were a more realistic projection of future costs associated with greenhouse gas emissions than the lower costs it actually applied in its cost projections. ExxonMobil's then-GHG Manager wrote in an email to colleagues on April 30, 2010, that he "[r]ecognize[d]" that the "2030 cost of \$40 [per ton]" in the Corporate Plan was a "low" estimate of costs likely to be incurred, and that the Outlook for Energy's "assumption of \$60 [per ton] is likely more realistic."

541. ExxonMobil management discussed reconciling the internal Corporate Plan proxy costs with the publicly disclosed proxy costs years before that step was finally taken.

542. On April 22, 2011, ExxonMobil's then-GHG Manager sent an email to colleagues asking "whether to harmonize" the lower, internal proxy costs with the higher, publicly disclosed proxy costs. He stated that harmonizing the two sets of figures would "provide more clarity and alignment throughout [the] organization" and would be "rational."

543. However, another manager responded that CEO "Rex [Tillerson] has seemed happy with the difference previously."

544. ExxonMobil management did not adopt the proposal to increase the Company's internal proxy costs to conform to its public representations. Accordingly, the deviation between ExxonMobil's internal and external proxy cost figures continued for at least three more years.

545. In June 2014, ExxonMobil revised its Corporate Plan guidance to require the use of a proxy cost of carbon in OECD countries of \$80 per ton by 2040, for the first time in apparent alignment with the proxy cost described in its Outlook for Energy.

546. In an October 2014 email exchange, a development planning manager described this alignment as a "huge change," and another manager stated that he suspected the change was made "to address GHG risks in response to shareholder increasing queries and concern."

547. Despite the significance of this June 2014 proxy cost alignment, ExxonMobil never disclosed it to the Company's investors, nor did the Company disclose that its internal guidance had significantly deviated from the Company's publicly represented proxy costs for years.

548. This deviation had the effect of understating the potential material risks from climate change regulation with respect to all of ExxonMobil's project investments and

evaluations in OECD countries using the Corporate Plan. ExxonMobil thus made investments in projects during this time period that were riskier than investors were led to believe.

(2) *Non-OECD Countries*

549. Before 2016, ExxonMobil's Corporate Plan directed employees not to apply proxy costs to its projected greenhouse gas emissions in base economic models for projects in non-OECD countries. Instead, the Corporate Plan instructed employees to include proxy costs in non-OECD countries only in certain sensitivity analyses. In contrast with base economic models, which reflect the Company's actual forecasts, sensitivity analyses test a range of hypotheticals that are considered less likely to occur, and thus have less influence on the Company's decision-making. Moreover, ExxonMobil's pre-2016 Corporate Plans did not specify any proxy cost figures for use in such sensitivity analyses.

550. ExxonMobil revised its Corporate Plan to include proxy cost figures for non-OECD countries in June 2016. Internal communications described the 2016 revision as a "major change" in procedures at the Company. The revision required expedited efforts throughout the Company to calculate, *for the first time*, projected greenhouse gas emissions and the associated costs for specific assets in non-OECD countries, despite the fact that for years that it had directly and indirectly represented to investors, including Massachusetts investors, that it applied a proxy cost of carbon in non-OECD countries.

551. Only after meeting a "tight deadline on implementation of the new guidelines" for the July 2016 planning and budgeting submissions did employees begin to consider "how to incorporate" the new proxy costs for non-OECD countries "into [ExxonMobil's] modeling on a more permanent basis," including considering what impact the new guidance might have on the Company's investment decisions and reserves calculations.

552. Before mid-2016, ExxonMobil had not even projected future greenhouse gas emissions for certain non-OECD projects—let alone applied proxy costs to such emissions.

553. ExxonMobil deviated from its public representations by not applying proxy costs to its greenhouse gas emissions for major investments in non-OECD countries. For example, despite ExxonMobil’s public representations in 2013 and 2014 in the color-coded map it included in multiple reports that it applied a proxy cost in Guyana and Indonesia of \$20-\$40 per ton in 2040, ExxonMobil did not incorporate any proxy costs into its economic analysis for major projects in those countries until after June 2016.

554. By not using publicly represented proxy costs in non-OECD countries, ExxonMobil understated its projected costs when making investment decisions and conducting business planning in those countries and made investments in projects that were riskier to the Company than the Company led investors to believe.

- b) **For major businesses and projects, ExxonMobil applied proxy costs much lower than either its publicly represented proxy costs or the proxy costs in its internal guidance, or no proxy costs at all.**

555. After ExxonMobil increased the proxy costs in its Corporate Plan guidance to conform to its public representations in part in 2014 and again in 2016, the Company’s planners realized that the application of the higher publicly disclosed proxy costs would result in significantly higher “massive GHG costs, “very material” reductions in profitability, “large write-downs,” and shorter asset lives.

556. Rather than accept the consequences of incorporating the risks of climate change regulation as it had represented to investors by applying the publicly represented proxy cost, ExxonMobil management decided to apply an “alternate methodology” in certain cases. This “alternate methodology,” not disclosed to investors, consisted of applying a lower proxy cost

than publicly represented, or no proxy cost at all, to ExxonMobil's projected greenhouse gas emissions in important areas of its business, including Canadian oil sands and North American natural gas assets.

557. For certain Canadian oil sands projects, rather than applying a proxy cost, ExxonMobil assumed, contrary to its representations, that existing climate regulation would remain in place, unchanged, indefinitely into the future.

558. In these cases, including at Imperial Oil's Kearl project, ExxonMobil applied a much lower cost per ton to a small percentage of greenhouse gas emissions based on existing regulation, held flat indefinitely. ExxonMobil applied these flat, lower proxy costs to both investment decisions at Canadian oil sands projects and to reserves assessments, including at Imperial Oil's Kearl project, as discussed in more detail below. This conduct was directly contrary to ExxonMobil's public representations that it applied escalating proxy costs to its businesses.

559. In other cases, such as North American natural gas investments, ExxonMobil used no proxy cost at all based on assumptions that the cost of climate regulation would not be borne by the Company, directly contrary to its public representations about its use of proxy costs across its global portfolio of projects.

560. ExxonMobil's application of lower proxy costs than it publicly represented or no proxy costs at all, even after the Company revised its internal guidance, affects parts of the business with significant greenhouse gas emissions, where applying the publicly represented proxy cost would have had a particularly significant impact on the Company's investment decisions and business planning.

c) **ExxonMobil did not apply the publicly represented proxy costs to company reserves and resource base assessments.**

(1) *Before 2016, ExxonMobil generally did not apply a proxy cost to company reserves and resource base assessments.*

561. Before 2016, ExxonMobil generally did not apply proxy costs to its greenhouse gas emissions for purposes of estimating project costs in their company reserve and resource base assessments in many countries throughout the world. Indeed, until mid-2016, ExxonMobil planners did not develop a methodology for applying proxy costs to greenhouse gas emissions for purposes of those estimates.

562. Because ExxonMobil did not incorporate its publicly represented proxy cost into its company reserves and resource base assessments for many countries before mid-2016, its representations relating to proxy costs and to company reserves and resource base assessments were materially false and misleading.

(2) *ExxonMobil applied a much lower proxy cost in calculating reserves and resources associated with oil sands projects in Alberta.*

563. ExxonMobil did not apply its publicly represented proxy costs in the cost projections associated with its company reserves assessments for its Alberta oil sands assets. Instead, ExxonMobil applied far lower existing legislated costs, held those costs flat into the future, and applied those costs to only a small percentage of emissions pursuant to existing legislation. Accordingly, the Company's public representations were materially false and misleading.

564. On November 10, 2014, an Imperial Oil planner reported to ExxonMobil management that application of the proxy cost in the "GHG Update" to the 2014 Corporate Plan to western Canada oil sands "opportunities," including Aspen and other projects, would result in

reductions of the projects' discounted cash flow rates "in the magnitude of 0.5-1.0%," a level the planner described as "very material."

565. On October 5, 2015, ExxonMobil management instructed an Imperial Oil planner tasked with evaluating company reserves to assume, based on existing legislation, that only 20 percent of greenhouse gas emissions would be taxed, and to "hold flat" that assumption indefinitely into the future. In response, the planner pointed out "[t]he basis provided is different from the pricing/guidance at CP15 [2015 Corporate Plan]; Meaning, on this basis, our GHG costs are misaligned," and that the costs "need to be accurate & aligned . . . for our economics to be accurate." He then asked a colleague: "Just between ourselves . . . Why is it necessary to deviate from CP15 [2015 Corporate Plan] GHG assumptions?"

566. Rather than correcting this deviation, ExxonMobil management decided, as described in an October 8, 2015 internal email, to "go 'full legislated' (legislated price of carbon, legislated intensity)." Thus, for purposes of evaluating company reserves, ExxonMobil assumed that no new costs associated with greenhouse gas emissions would be imposed in Alberta, and (with respect to "intensity") that only 20 percent of greenhouse gas emissions would be taxed, indefinitely into the future.

567. Additionally, a late 2015 internal presentation concerning the Kearl oil sands asset states that, for company reserves assessments, ExxonMobil was applying proxy costs that were reflective of current Alberta legislation, rather than the Corporate Plan. According to an internal Company analysis, this resulted in an application of projected greenhouse gas-related costs at Kearl of approximately \$0.25 USD per barrel rather than \$4 USD per barrel, a difference of nearly 94 percent.

568. ExxonMobil's employees observed significant economic impacts on company reserves and resource base volumes as a result of being instructed to use lower costs than the publicly represented proxy cost. For example, an Imperial Oil employee indicated in an internal July 2016 email that the Company used an "alternate methodology" after application of the Corporate Plan guidance resulted in "massive GHG costs in the out years." In addition, an internal meeting invitation from August 2016 concerning company reserves assessments in Alberta states: "Last year, after initial guidance to use the EM [Exxon] corporate forecast (despite warnings it would result in *large write-downs*) we had to redo our calculations using legislated GHG taxes" (emphasis added).

569. ExxonMobil's decision not to apply the publicly represented proxy costs to its company reserves assessments, and instead to apply existing legislated costs, also had a particularly significant impact on its multibillion-dollar Cold Lake oil sands project in Alberta.

570. On October 9, 2015, ExxonMobil Reserves Coordinator wrote that "Corporate planning . . . recommend[s] using [Alberta] legislated price and intensity" (i.e., the percentage of emissions that would be subject to tax) to calculate Cold Lake reserves, which "will reduce the [end of field life] impact significantly." In other words, by not applying the Corporate Plan and Outlook proxy cost, ExxonMobil projected that it would be profitable for the Company to continue producing at Cold Lake for a significantly longer period of time. As a result of these forecasts, ExxonMobil's corporate planning department decided that existing Alberta "legislated price and intensity" should be used for Cold Lake reserves calculations. By not applying the publicly represented proxy costs, ExxonMobil inflated company reserves and resource base figures.

571. Because ExxonMobil did not apply its publicly represented proxy costs to its company reserves and resource base assessments for its oil sands assets in Alberta, its representations to investors, including Massachusetts investors, were materially false and misleading.

**d) ExxonMobil's representations about its use of proxy costs were inconsistent with its internal practices for impairment evaluations.**

*(1) Prior to 2016, ExxonMobil misled investors by not incorporating proxy costs into cost projections for impairment evaluations.*

572. Contrary to its representations to investors, ExxonMobil did not incorporate a proxy cost of greenhouse gas emissions in making cost projections for purposes of its impairment evaluations for any of its assets prior to its year-end evaluation in 2016. In particular, ExxonMobil did not incorporate such costs in determining whether impairment triggers related to future cash flows existed, or whether the carrying value of its assets was recoverable.

573. ExxonMobil's failure to apply a proxy cost in impairment evaluations violated GAAP, which requires the application of economic assumptions in impairment testing that are consistent with a company's internal projections and public statements. The Company's practices were therefore also at odds with its public representations that it was complying with GAAP.

574. Because ExxonMobil did not apply a proxy cost to its projected greenhouse gas emissions in its impairment evaluations and used cost assumptions for its impairment evaluations that differed from and were less costly than those it used for other business purposes, ExxonMobil's representations to investors, including Massachusetts investors, concerning its use of a proxy cost and the value of its assets were materially false and misleading.

- (2) *In 2016, ExxonMobil misled investors by incorporating proxy costs into cost projections for impairment evaluations in a limited, internally inconsistent manner.*

575. In its 2016 year-end impairment evaluations, ExxonMobil incorporated a proxy cost of greenhouse gas emissions into some of its cost projections for the first time, but even then did so in a limited and internally inconsistent manner that rendered its impairment-related representations materially false and misleading.

576. For example, ExxonMobil assumed for purposes of its year-end impairment evaluation for 2016 that it would bear no costs resulting from the emissions caused by its natural gas production, and that such emissions would have no effect on the value of its assets. Thus, the Company's representations that it applied assumptions in its impairment evaluations that were consistent with its business processes and public communications, such as its statements concerning the "consistent" application of a proxy cost of greenhouse gas emissions, were materially false and misleading.

577. These undisclosed practices meant that ExxonMobil did not apply a proxy cost of greenhouse gas emissions in certain of its impairment evaluations in 2016. ExxonMobil's failure to apply a proxy cost in impairment evaluations for 2016 consistently with its representations violated GAAP and was also at odds with its public representations that it was complying with GAAP.

578. Thus, ExxonMobil's representations that it followed the impairment-related accounting standards and applied assumptions to its impairment evaluations that were consistent with those set out in the Company's public communications and applied for other business purposes were materially false and misleading.

e) **ExxonMobil misrepresented its use of proxy costs in its demand projections.**

579. ExxonMobil has made numerous representations that it applied its proxy cost broadly across relevant economic sectors, including the transportation sector. For example, in its 2014 publication *Managing the Risks*, ExxonMobil stated that its proxy cost “seeks to reflect all types of actions and policies that governments may take over the Outlook period relating to the exploration, development, production, transportation or use of carbon-based fuels.”

580. ExxonMobil made the same or similar statements about the broad scope of the Company’s application of a proxy cost in numerous publications, including its 2014, 2015 and 2016 responses to the Carbon Disclosure Project, and its 2015 Corporate Citizenship Report.

581. Likewise, in its 2013 Outlook for Energy, after describing its proxy cost, ExxonMobil explained that “rising CO<sub>2</sub> costs will have a variety of impacts on . . . energy use in *every sector* and region within any given country” (emphasis added). In that report, ExxonMobil projected that energy demand will increase over the coming decades, and that this includes “[g]rowth in transportation sector demand.”

582. In ExxonMobil’s 2017 Form 10-K, the Company stated that its Outlook for Energy “seeks to identify potential impacts of climate-related policies, which often target specific sectors, by using various assumptions and tools *including application of a proxy cost of carbon* to estimate potential impacts on consumer demands” (emphasis added).

583. In practice, ExxonMobil did not apply the publicly represented proxy cost to the transportation sector as represented in projecting demand for oil and gas.

584. By failing to apply its proxy cost in the transportation sector as represented, ExxonMobil overestimated demand for its products, because applying a cost of greenhouse gas emissions would have suppressed future demand for oil and gas.

585. The transportation sector is important to ExxonMobil's overall business. ExxonMobil projects that oil, which accounts for roughly half of the Company's reserves and resource base, will remain the world's "largest source of energy," and that the transportation sector will be a key source of growth in oil demand. For example, in its 2017 and 2018 Form 10-Ks, ExxonMobil stated that it expects global demand for liquid fuels to grow by about 20 percent by 2040, and that it expects about 60 percent of this growth to derive from the transportation sector. Indeed, the transportation sector accounts for more than half of worldwide demand for crude oil.

586. Despite the importance of the transportation sector to its overall business, ExxonMobil did not apply the publicly represented proxy cost to demand projections in that sector as represented, thereby inflating the extent of that demand over time and understating the risks of climate change regulation to that demand, and never disclosed its failure to do so to investors.

587. ExxonMobil's 2018 Form 10-K for the first time states that the Company "estimates potential impacts of [climate change] policies on consumer energy demand by using various assumptions and tools – including, depending on the sector, application of a proxy cost of carbon *or assessment of targeted policies* (e.g. automotive fuel economy standards)" (emphasis added).

588. ExxonMobil did not disclose in its 2018 Form 10-K or thereafter that its prior representations had been inaccurate and that the Company did not use the proxy cost of carbon to project transportation sector demand and in other sectors as represented.

589. By failing to apply its proxy cost to demand projections in important sectors, ExxonMobil's representations to investors, including Massachusetts investors, about the extent

to which the proxy cost it publicly described was incorporated into its business decisions were materially false and misleading.

**3. *ExxonMobil's proxy cost misrepresentations are material to Massachusetts investors.***

590. Climate change risks, including the transition risks that proxy costs are intended to help manage, are significant, especially to oil and gas companies, as described in Sections V.B, V.C., and V.D above. As set forth in those sections, ExxonMobil investors, including Massachusetts investors, are increasingly concerned about such risks to the Company and the Company's practices in managing those risks, including its application of a proxy cost of carbon in connection with its business decisions.

591. Conversely, ExxonMobil has engaged in a sustained effort over many years to market its securities to investors, including Massachusetts investors, with representations about the Company's application of a proxy cost of carbon across its businesses, including the timing, value, conservatism, and uses of that proxy cost, as set forth in Section V.F.1 above. Those representations have been false and misleading because they were at odds with the Company's internal practices in the manner described in Section V.F.2.

592. The disclosure of ExxonMobil's actual practices in light of its misrepresentations to Massachusetts investors about its use of proxy costs—and the fact that the Company would seek to deceive them in the face of such strong investor interest and scrutiny—would have influenced Massachusetts investors' decisions to purchase, sell, retain, or price ExxonMobil securities, and the Company's proxy cost misrepresentations are therefore materially false and misleading in violation of Chapter 93A.

**G. ExxonMobil's Omissions and Misrepresentations to Massachusetts Investors Understated the Risks of Climate Change to Its Business, Provided Untenable Fossil Fuel Projects with Greater Access to Capital, and Were Detrimental to the Public Interest in Avoiding the Worst Harms of Climate Change.**

593. ExxonMobil's omissions and misrepresentations about systemic climate risks and its use of a proxy cost of carbon were all the more egregious in light of its specific and highly scrutinized disclosures on climate risk from 2014 forward and the extensive investor interest and concern regarding the issue over the years. And ExxonMobil management, including Mr. Tillerson, knew of and approved of the omissions in its disclosures and its deviations from its publicly represented proxy costs.

594. By failing to disclose the systemic risks of climate change to its investors, ExxonMobil delayed and evaded market understanding of those risks and the associated capital reallocation decisions that would accompany accurate pricing of those risks. As a result, ExxonMobil and the fossil fuel industry maintained investor confidence and access to capital for billions of dollars of ongoing investments in new fossil fuel infrastructure, which are incompatible with global efforts to avert catastrophic warming of the climate.

595. Had ExxonMobil applied its proxy costs consistently with its public representations, it would have projected billions of dollars of additional climate-related costs. Because, contrary to its representations to investors, it did not incorporate such costs in its investment decision-making, business planning, and financial reporting, ExxonMobil's public disclosures significantly understated its financial vulnerability to climate change regulation, falsely reassuring its investors that it was appropriately accounting for climate risks and successfully and consistently "managing the risks" across the Company. The effect of understating climate-related costs was to inflate ExxonMobil's enterprise valuation, which is premised on the future cash flows from the Company's reserves and other fossil fuel resources.

596. Indeed, ExxonMobil's actual proxy cost practices had the intended effect of improving the apparent economics of ExxonMobil's most marginal projects, where faithful application of the publicly represented proxy costs would have increased their anticipated costs and affected the Company's investment decisions, reserve calculations, and impairment determinations. ExxonMobil's actual practices also understated the financial advantages of alternative cleaner projects.

597. Together, ExxonMobil's omissions and misrepresentations put its Massachusetts investors at increased risk of losses in the future, as greater recognition of the physical and transition risks of climate change to ExxonMobil, other fossil fuel companies, and the global economy increasingly diminishes the market valuation of ExxonMobil securities, potentially under sudden, chaotic, and disorderly circumstances.

598. ExxonMobil's unlawful conduct led to investments and funding commitments, including by Massachusetts investors, that impeded and deferred the essential transition to cleaner energy sources and systems and allocated capital to fossil fuel projects whose current and future greenhouse gas emissions make the worst potential harms from climate change to Massachusetts, the United States, and the world more likely to occur.

599. Overall, ExxonMobil's omissions and misrepresentations to investors about systemic climate risks and its use of a proxy cost of carbon had and continue to have the effect of promoting "predatory delay" in meaningful action to address climate change across the fossil fuel industry, the world's financial markets, and the global economy, that is, in the words of writer Alex Steffen, "the deliberate slowing of change to prolong a profitable but unsustainable status quo whose costs will be paid by others."

**VI. EXXONMOBIL IS DECEIVING MASSACHUSETTS CONSUMERS THROUGH MISLEADING ADVERTISEMENTS THAT CLAIM USING EXXONMOBIL FOSSIL FUEL PRODUCTS REDUCES GREENHOUSE GAS EMISSIONS, FAILURES TO DISCLOSE THE IMPACT OF ITS FOSSIL FUEL PRODUCTS ON CLIMATE CHANGE, AND GREENWASHING CAMPAIGNS.**

600. In the course of selling and marketing its fossil fuel products to Massachusetts consumers, ExxonMobil has engaged in intentional, concerted efforts to obfuscate the fact that the production and use of ExxonMobil's fossil fuel products emit large volumes of the dangerous greenhouse gas pollution that is causing disruptive climate change impacts. ExxonMobil's false and misleading misrepresentations are material because they directly influence a consumer's decision to purchase those products, have the capacity to affect consumer energy and transportation choices, and deter consumers from adopting cleaner, safer alternatives to ExxonMobil products.

601. In particular, ExxonMobil has misled and continues to mislead Massachusetts consumers by representing that their use of ExxonMobil's Synergy™ fuels and "green" Mobil 1™ motor oil products will reduce greenhouse gas emissions. ExxonMobil's advertising and promotional materials for those products are highly deceptive because ExxonMobil makes misleading representations about the products' environmental benefits and fails to disclose that the development, refining, and consumer use of ExxonMobil fossil fuel products emit large volumes of greenhouse gases, which are causing global average temperatures to rise and destabilizing the global climate system.

602. As part of the Company's overall marketing scheme to portray its products as safe and environmentally beneficial, ExxonMobil also has engaged in and is engaging in "greenwashing" campaigns directed at Massachusetts and other consumers that mischaracterize the Company and its activities.

603. “Greenwashing” constitutes advertising and promotional materials designed to convey a false impression that a company is more environmentally responsible than it really is, and so to induce consumers to purchase its products. Like “whitewashing,” “greenwashing” is a company’s effort to cover up facts that would reveal its harmful environmental impact.

604. ExxonMobil promotes its products by falsely depicting ExxonMobil as a leader in addressing climate change through technical innovation and various “sustainability” measures, without disclosing (i) ExxonMobil’s ramp up of fossil fuel production in the face of a growing climate emergency; (ii) the minimal investment ExxonMobil is actually making in clean energy compared to its investment in business-as-usual fossil fuel production; and (iii) ExxonMobil’s efforts to undermine measures that would improve consumer fuel economy.

**A. ExxonMobil Markets and Sells Its Fossil Fuel Products to Massachusetts Consumers.**

605. ExxonMobil gasoline, diesel fuel, and other fossil fuel-based products, such as motor oils, are sold throughout Massachusetts to Massachusetts consumers.

606. ExxonMobil ensures that its fossil fuel products reach Massachusetts consumers through (i) the way it controls the distribution of ExxonMobil-branded products to Massachusetts consumers, (ii) its sales and credit transactions related to fossil fuel product purchases by Massachusetts consumers, and (iii) its Massachusetts-directed advertising.

***1. ExxonMobil controls how ExxonMobil-branded products are distributed to Massachusetts consumers.***

607. ExxonMobil has sold its fossil fuel products in Massachusetts for many decades. Until 2010, ExxonMobil, directly or through subsidiaries, owned a large number of retail gas stations in Massachusetts and also sold ExxonMobil-branded fossil fuel products through independently owned retail gas stations.

608. Today, ExxonMobil-branded gasoline and other ExxonMobil fossil fuel-based products are sold at nearly 300 retail gas stations in Massachusetts under a variety of ownership and operation arrangements, all bearing the Exxon or Mobil banner.

609. A number of ExxonMobil subsidiaries are registered to do business in Massachusetts as foreign corporations, including its wholly-owned subsidiaries ExxonMobil Pipeline Company and ExxonMobil Oil Corporation, which maintain facilities in Massachusetts for transportation and distribution of fossil fuel products to Massachusetts customers.

610. With regard to the ExxonMobil fossil fuel products sold at gas pumps, ExxonMobil publicly represents to Massachusetts consumers that it delivers its fossil fuel products to its fuel storage terminals and that, at its terminals, it adds particular detergents and additives that it specifies to create its consumer-ready fossil fuel products, which are transported by truck to its ExxonMobil-branded retail service stations.

611. ExxonMobil directs Massachusetts consumers to this network of retail gas stations through its interactive website, which identifies the location of such stations by town and street address following the input of the consumer's location or zip code.

612. ExxonMobil directs and controls the creation, marketing, and sale of ExxonMobil-branded fossil fuel products sold at Massachusetts retail gas stations.

613. Specifically, Massachusetts retail gas stations that offer ExxonMobil-branded fossil fuel products sell those products pursuant to a Brand Fee Agreement ("BFA").

614. Under the BFA, ExxonMobil requires any wholesalers and retailers that sell the Company's branded products ("BFA Holders") in Massachusetts to create fossil fuel products sold at the pump by combining unbranded gasoline with ExxonMobil-approved additives sold by ExxonMobil-approved suppliers according to ExxonMobil's specifications.

615. Under the BFA, ExxonMobil closely controls the marketing and sales practices of Exxon- and Mobil-branded retail gas stations in Massachusetts by, among other things, requiring BFA Holders and branded retail gas stations to diligently promote the sale of Exxon- and Mobil-branded fuel products, through ExxonMobil-approved advertising and merchandising.

616. For example, Global Partners LP (“Global”) is a BFA Holder involved in over 100 Exxon- or Mobil-branded gas stations in Massachusetts. Global owns and operates some of those stations. Global also leases Exxon- and Mobil-branded gas stations to franchise dealers and sells Exxon- or Mobil-branded gasoline to its franchise dealers, which, in turn, sell that gasoline to Massachusetts consumers. Additionally, Global sells ExxonMobil-branded gasoline to retail gas stations in Massachusetts that are independently owned and operated by third parties and to gasoline distributors.

617. Pursuant to the BFA, Global, its franchisees, and third parties that purchase Exxon- or Mobil-branded gasoline from Global all must comply with ExxonMobil’s facility requirements, brand image requirements, advertising and sales promotion requirements, and minimum service standards. The same is true for other BFA Holders.

**2. *ExxonMobil engages in sales and credit transactions related to the sale of its fossil fuel products with Massachusetts consumers.***

618. ExxonMobil developed and supports a smartphone application (“app”), the Rewards+ app (formerly known as the Speedpass+ app), through which Massachusetts consumers set up personal accounts and use the app as a payment platform for buying gasoline, diesel fuel, and other products at Exxon- and Mobil-branded retail gas stations located in Massachusetts.

619. ExxonMobil directly engages in business transactions in Massachusetts when Massachusetts consumers use the payment platform on the Rewards+ app to purchase gasoline,

diesel fuel, or other products at Exxon- or Mobil-branded retail gas stations located in Massachusetts.

620. ExxonMobil offers Massachusetts consumers credit through its ExxonMobil Smart Card credit card.

621. Using the ExxonMobil Smart Card, Massachusetts consumers make purchases on the credit card as a way to obtain discounts on gasoline at Exxon- and Mobil-branded retail gas stations. ExxonMobil is advertising the ExxonMobil Smart Card by offering 12 cents off every gallon of its Synergy™-brand fuel for the first two months (or, if the application is through the Rewards+ app, 50 cents off every gallon for the first two months) and by claiming, “Get the ExxonMobil Smart Card and you may never pay full price for gas again.” The ExxonMobil Smart Card also affords customers additional perks.

622. Massachusetts consumers can manage their ExxonMobil Smart Card accounts and pay their ExxonMobil Smart Card credit card bills through the ExxonMobil website or Rewards+ app.

623. ExxonMobil also sells ExxonMobil Gift Cards through Exxon- or Mobil-branded retail service stations in Massachusetts and unaffiliated retailers in Massachusetts that can be used to purchase gasoline and other fossil fuel products at Exxon- and Mobil-branded Massachusetts retail gas stations.

624. In the Rewards+ app, ExxonMobil promotes its products to Massachusetts consumers by falsely portraying its environmental performance. Its statements include claims that the Company has “[c]onscientious practices” and “[r]igorous standards” and that ExxonMobil is “continually innovating to develop products that enable customers to reduce their energy use and CO2 emissions.”

625. ExxonMobil also publishes statements about its Synergy™ fuel technology products to Massachusetts consumers through the “Our fuel” section of its Rewards+ app.

626. About its app, ExxonMobil recently said that “[n]othing is more important to us than protecting our customers . . . . That’s why we make a point to protect our customers with the ExxonMobil . . . mobile payment app,” which permits direct transactions with ExxonMobil’s “payment cloud.” The Company added that “[o]ne of our guiding principles is that [customer] payment and private information never goes down to the store” because “[i]t never leaves our payment cloud.”

627. ExxonMobil directs and controls the marketing of its Synergy™ fuel technology products for sale to Massachusetts consumers through the Company’s communications with and training of BFA Holders in Massachusetts.

628. For example, on June 21, 2016, ExxonMobil conducted a training of its branded wholesalers for ExxonMobil’s launch of Synergy™ fuels in the United States, including Massachusetts. The agenda for the training included topics such as “Synergizing Consumers” and “Synergizing Your Sites,” in which the Company spoke of amplifying its Synergy™ launch by having a significant Synergy™ television presence in the 2016 Summer Olympics in Rio and discussed creating Synergy brand and product awareness at retail sites with an integrated marketing campaign targeting ExxonMobil loyalty program members.

629. ExxonMobil conducted “Brand Champion” training sessions in 2016 and 2017, directed at BFA Holders, designed to provide in-depth training on ExxonMobil’s marketing programs, with a training dedicated to “Implementing Synergy.” In the briefing and preparation document for the “Brand Champion” training, ExxonMobil recognizes that it is ExxonMobil’s

own marketing programs for its Synergy™ fuel technology products that are implemented at the ExxonMobil retail sites.

**3. ExxonMobil sells other fossil fuel products to Massachusetts consumers.**

630. Beyond the pumps at gas stations, ExxonMobil sells other fossil fuel products, including engine lubricants such as its Mobil 1™ motor oil products, to Massachusetts consumers through retailers in the Commonwealth like Target, Home Depot, Consumer Auto Parts, Costco, Pep Boys, Walmart, AutoZone, NAPA Auto Parts, O'Reilly Auto Parts, and Advance Auto Parts.

631. ExxonMobil directs Massachusetts consumers to retailers that carry Mobil 1™ motor oil products through its interactive website, which identifies nearby retailers by town and address following input of location or zip code.

632. As described below, ExxonMobil directly advertises these retail products to Massachusetts consumers. ExxonMobil also provides advertising and marketing support directly to non-gas station retailers that offer ExxonMobil-branded fossil fuel products in Massachusetts.

**4. ExxonMobil advertises its fossil fuel products in Massachusetts.**

633. In addition to providing advertising support to BFA Holders and retail stores that sell its branded products, ExxonMobil advertises its fossil fuel products in Massachusetts through all types of media, including radio, television, print media, conspicuous highway signage, its website, and distribution of promotional materials to Massachusetts consumers.

634. For example, ExxonMobil has run Massachusetts-specific advertisements for its fossil fuel products over Massachusetts radio stations and in the *Boston Globe* and the *Lowell Sun*.

635. ExxonMobil advertises itself, as of March 1, 2018, as the “Official Motor Fuel Partner of the Boston Celtics,” launching a multi-year marketing partnership with the team that

included “an official 180-degree photo experience event” on March 20, 2018 at Boston’s TD Garden, and promotional videos with Celtics personalities at ExxonMobil-branded gas stations in Massachusetts. This partnership is a further example of a specific ExxonMobil effort to target and sell its motor fuel and other products to Massachusetts consumers.

636. ExxonMobil is running a series of paid full-page ads in print editions and posts in the electronic edition of *The New York Times*, with the objective of reaching Massachusetts consumers. In these greenwashing ads, ExxonMobil falsely portrays itself as a clean energy leader, focused on efforts to develop energy from alternate, allegedly environmentally preferable sources like algae and plant waste.

637. ExxonMobil also markets its ExxonMobil Rewards, Loyalty, and Speedpass+ programs through influencer marketing campaigns that reach Massachusetts consumers. For example, ExxonMobil recently engaged its advertising agency, Weber Shandwick, one of the world’s leading communications and marketing services firms according to its website, to vet, recommend, and secure a YouTuber and three Instagram influence partners, to educate their subscribers about the benefits of the ExxonMobil Rewards program. The goal of the campaign was to acquire new users of ExxonMobil Rewards+.

638. ExxonMobil also engaged Weber Shandwick to develop a similar influencer campaign for its Speedpass+ program that targeted “social personality influencers,” including two to three top tier YouTube influencers. ExxonMobil’s advertising agency was to participate in ongoing calls with influencers on the “message train,” and the goal of this influence campaign was to educate influencer audiences about the benefits of Speedpass+.

639. ExxonMobil engages Weber Shandwick to develop social personality influencer marketing plans because influencers “have a powerful impact on consumers during the decision-

making process [and] have the ability to increase brand awareness, consideration and intent/recommendation.” ExxonMobil’s influencers are vetted by Weber Shandwick to avoid those with climate change or global warming opinions that could be contrary to ExxonMobil’s interests.

**B. ExxonMobil Misleads Consumers by Claiming Its Fossil Fuel Products Reduce Carbon Dioxide Emissions; Deceptively Fails to Disclose in Its Advertising Material Information About the Dangers to Consumers of Using Its Fossil Fuel Products; and Misleadingly Greenwashes Its Brand by Falsely Presenting Itself as an Environmentally Responsible Clean Energy Innovator, When in Fact, ExxonMobil’s Products Are a Leading Cause of Climate Change.**

640. ExxonMobil’s advertisements and promotional materials, including those directed through BFA Holders under its control, deceptively misrepresent to Massachusetts consumers that a climate benefit is derived from the use of its fossil fuel products.

641. ExxonMobil deceives Massachusetts consumers by failing to disclose in advertisements and promotional materials directed at them that the development, production, refining, and consumer use of its fossil fuel products—including gasoline and motor oil—emit large volumes of greenhouse gases, which are causing global average temperatures to rise, resulting in a substantial increase in deadly extreme weather events, coastal property damage, disruptions of fisheries, the spread of vector-borne diseases, large-scale ecosystem disruption, and other unprecedented threats to human populations.

642. ExxonMobil’s advertisements and promotional materials, therefore, fail to disclose the extreme safety risk associated with the use of ExxonMobil’s dangerous fossil fuel products, which are causing potentially “catastrophic” climate change, in the words of Exxon’s own scientists decades ago.

643. ExxonMobil’s misleading statements about its fossil fuel products and its failure to disclose that the use of its products is causing dangerous climate disruption are particularly

deceptive given the stark contrast between the Company's long internal knowledge of the role its fossil fuel products play in causing climate change and the extensive marketing statements in which the Company promotes the purported environmental benefits of those same products.

644. Specifically, ExxonMobil misleadingly represents that consumer use of its Synergy™ and "green" Mobil 1™ products reduces greenhouse gas emissions, at most a half-truth that renders its advertising and promotional materials for those products highly deceptive, since ExxonMobil also fails to disclose the fact that the production and consumer use of fossil fuel products like Synergy™ and "green" Mobil 1™ are a leading cause of climate change that endangers public health and consumer welfare.

645. ExxonMobil's misleading statements and omissions are deceptive because, even if it is technically true that Synergy™ and Mobil 1™ improve internal combustion engine performance and/or efficiency relative to prior or other products, ExxonMobil's claims that these products help reduce greenhouse gas emissions convey a false impression that using the products results in environmental benefits. To the contrary, the development, production, refining, and consumer use of ExxonMobil fossil fuel products (even products that may yield relatively more efficient engine performance) *increase* greenhouse gas emissions.

646. ExxonMobil's extensive greenwashing representations, in which ExxonMobil presents itself to Massachusetts consumers as an environmentally responsible corporate citizen concerned about climate change and leading innovative efforts to develop low carbon fuels, are part of ExxonMobil's overall marketing and branding strategy. ExxonMobil's greenwashing representations are misleading because, contrary to those messages, ExxonMobil remains laser-focused on increasing fossil fuel production and is actively engaged in delaying action to reduce emissions, including by waging a secretive campaign to fight the very fuel economy and

emission standards for passenger vehicles that help consumers save fuel and money and limit pollution from vehicles.

*1. ExxonMobil deceptively promotes its Synergy™ and “green” Mobil 1™ products as “solutions” for combatting climate change while failing to disclose its knowledge that production and use of those products causes climate change.*

**a) Promotion of Synergy™ fuels**

647. In July 2016, ExxonMobil rolled out its Synergy™ fuel and forecourt imaging across its U.S. branded network, including the over 300 ExxonMobil branded stations in Massachusetts.

648. All gasoline sold at ExxonMobil-branded stations in Massachusetts has received the ExxonMobil Synergy™ additive, and therefore constitutes ExxonMobil’s Synergy™ fuel.

649. Since 2013, ExxonMobil has spent over \$100 million on advertising and promotion of ExxonMobil gasoline, including Synergy™ fuel.

650. Promotional materials for Synergy™ appearing on ExxonMobil’s website, accessible in Massachusetts, feature a photograph of a mountain sunrise with trees in the foreground and text expressly representing that its Synergy™ products help reduce greenhouse gas emissions (bold in original; emphasis added):

Environmental performance.

Conscientious practices. Rigorous standards.

Continually improving environmental performance while pursuing reliable and affordable energy.

Ten years ago, we introduced Protect Tomorrow. Today. – a set of expectations that serves as the foundation for our environmental performance. Guided by a scientific understanding of the environmental impacts and related risks of our operations, these rigorous standards and good practices have become an integral part of our day-to-day operations in every country in which we do business including those with minimal regulations in place. . . .

The following are the three major areas in which we've concentrated our efforts to reduce environmental impacts. . . .

**Improve efficiency in consumer use of fuels**

*We're continually innovating to develop products that enable customers to reduce their energy use and CO2 emissions. For example, we have:*

Developed specially formulated synthetic lubricants for cars, trucks and industrial equipment that last longer and help end-users reduce their energy consumption

Created tire liners that retain air better than their predecessors, thereby improving vehicle fuel efficiency. . . .

*Engineered Fuel Technology Synergy™ fuels to help improve fuel economy and reduce CO2 emissions\*\*<sup>5</sup>*

651. A screenshot of relevant portions of the ExxonMobil webpage featuring this promotion is reproduced below.

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<sup>5</sup> The double-asterisk refers to the following statement at the bottom of the page: "Fuel economy improvement is based on Synergy-branded gasoline compared to gasoline meeting minimum U.S. government standards. Actual benefits will vary based on factors such as vehicle type, driving style and gasoline previously used."

Business lines Global brands Select location

Exxon Mobil Fuels Quality fuels Earn pay and save Motor oil Our stations About us & FAQs

Exxon Home About us Environmental performance

## Environmental performance

Conscientious practices. Rigorous standards.

Continually improving environmental performance while pursuing reliable and affordable energy

Ten years ago, we introduced *Protect Tomorrow. Today.* – a set of expectations that serves as the foundation for our environmental performance. Guided by a scientific understanding of the environmental impacts and related risks of our operations, these rigorous standards and good practices have become an integral part of our day-to-day operations in every country in which we do business including those with minimal regulations in place.

As well, we consider the long-term social and economic needs of the communities in which we work and continually engage stakeholders in the process.

The following are the three major areas in which we've concentrated our efforts to reduce environmental impacts.

**Improve the efficiency of our operations**

ExxonMobil invested more than \$1.5 billion over the last six years to improve efficiency and reduce greenhouse gas emissions from our operating facilities, such as refineries and chemical plants. In the past ten years we have reduced greenhouse gas emissions in our operations by more than 7 million metric tons, which is the equivalent of taking about 1.4 million cars off the road.

**Improve efficiency in consumer use of fuels**

We're continually innovating to develop products that enable customers to reduce their energy use and CO<sub>2</sub> emissions. For example, we have:

- Developed specially formulated synthetic lubricants for cars, trucks and industrial equipment that last longer and help end-users reduce their energy consumption
- Created tire liners that retain air better than their predecessors, thereby improving vehicle fuel efficiency
- Developed a technology to improve the separator films used in lithium-ion batteries, which are used in laptops, cell phones and, increasingly, hybrid vehicles
- Engineered Fuel Technology Synergy® fuels to help improve fuel economy and reduce CO<sub>2</sub> emissions\*\*

652. As part of its Energy lives here™ campaign, in its advertisements for its Synergy™ fuel, including in labelling on gasoline pumps at ExxonMobil-branded gas stations in Massachusetts, which the Company controls, ExxonMobil claims that the fuel will “take you further,” and contains more detergents than required by the Environmental Protection Agency, earning it the so-called “Top Tier” certification:

At Exxon and Mobil, we pay attention to every last detail. That includes carefully formulating the 7 meticulously balanced ingredients in Synergy™ gasoline – painstakingly designed and tirelessly tested to take you further.

Exxon and Mobil Synergy™ gasoline contains significantly higher quantities of detergents than required by the Environmental Protection Agency (EPA) and has passed key performance tests resulting in it being certified TOP TIER.

653. Top Tier certification is awarded by automobile manufacturers to fuels that they believe enhance engine performance, potentially resulting in decreased pollutant emissions and increased fuel economy.

654. ExxonMobil has made and continues to make repeated, similar representations in its advertising regarding the “cleanness” and fuel efficiency benefits of its Top Tier-certified Synergy™ fossil fuel product, which are misleading without mention of the key role fossil fuels play in causing climate change:

“When you fill up [at] an Exxon™ or Mobil™ station, you can be confident you’re getting TOP TIER gasoline, every time. Available in three octane levels, our Synergy™ gasoline has been engineered with 7 key ingredients and developed to clean up intake valves, which help improve gas mileage and performance.”

“Formulated for efficiency. We’re obsessed with efficiency and giving you better gas mileage. It’s why we meticulously engineer all three grades of Synergy™ gasoline.”

“Synergy™ fuel is meticulously engineered for better gas mileage.”

“Synergy Diesel Efficient™ fuel was created to let you drive cleaner, smarter and longer. Formulated with the latest breakthrough technology — and rigorously tested in the lab and on the road — it is the first diesel fuel widely available in the US with a proprietary formulation that helps: Increase fuel economy — so you can go more miles on every tank.”

“Learn more about our Synergy™ gasoline, engineered with 7 key ingredients to help you get better gas mileage.”

655. On a promotional webpage on ExxonMobil’s website titled, “Providing solutions for customers,” ExxonMobil represents that it is “developing products that help customers reduce their emissions and improve their energy efficiency. For example, we are . . .

[d]eveloping premium high efficiency fuels and lubricants.” The Company expressly states that “ExxonMobil produces fuels and lubricants that deliver improved vehicle efficiency, reduce emissions, and reduce used oils,” and references the Synergy™ gasoline product, along with its line of synthetic lubricants. The webpage nowhere mentions ExxonMobil’s leading role, as set forth above, in developing, producing, refining, and selling massive volumes of the fossil fuel products that are causing dangerous climate change.

656. Similarly, without disclosures about the impact on climate change, ExxonMobil hawks its Synergy Diesel Efficient™ fuel as the “latest breakthrough technology,” and the “first diesel fuel widely available in the US” that helps “increase fuel economy” and “[r]educe emissions and burn cleaner,” and “was created to let you drive cleaner, smarter and longer.”

657. ExxonMobil recently rolled out a new Synergy product, “Synergy Supreme+,” targeted to purchasers of so-called “premium” gasoline. The messaging for this product developed by Weber Shandwick represents that Synergy Supreme+ is “Our Best Fuel Ever,” and “2x Cleaner for Better Gas Mileage.” According to ExxonMobil, Synergy Supreme+ will enhance vehicle fuel economy in newer engines designed to meet tougher vehicle emissions standards.

658. A screenshot of the promotional webpage on ExxonMobil’s website for its Synergy products, with its claims that Synergy™ gasolines are “engineered for: [b]etter gas mileage” and “[l]ower emissions” and that Synergy Supreme+ is “2X Cleaner,” appears below.



Our Synergy™ gasolines are engineered for:



**Better gas mileage**

Helps improve your vehicle's fuel economy by reducing engine deposits.<sup>55</sup>



**Lower emissions**

Helps remove deposits, which can lead to fewer emissions.<sup>55</sup>



**Improved engine protection**

Helps protect intake valves and all types of injectors from deposits.<sup>55</sup>



**Better performance**

Helps prevent harmful deposits to rev up your engine's responsiveness.<sup>55</sup>

659. None of the foregoing advertisements advises consumers of what ExxonMobil has long known—that the production and use of its fossil fuel products, including now Synergy™ and Synergy Supreme+™, are a leading cause of climate change.

660. In addition, at the same time ExxonMobil has been actively promoting its Synergy™ gasoline and claiming it is “developing products that help customers reduce their emissions and improve their energy efficiency”—intentionally creating a misimpression that ExxonMobil is helping to protect consumers and the environment from climate change—ExxonMobil has been massively expanding fossil fuel production, and therefore, increasing emissions. For example, ExxonMobil is surging production in the Permian Basin, a shale oil field located in western Texas and southeastern New Mexico, to reach one million barrels per day of oil equivalent by 2024, an *eighty percent* increase.

661. Commenting on ExxonMobil’s “gamble” on growth, *The Economist* in a February 2019 article noted ExxonMobil’s corporate strategy is “at odds with efforts to hold back climate change.”

662. ExxonMobil's 2019 Energy and Carbon Summary, issued in February 2019, deceptively highlights ExxonMobil's purported leadership in addressing the risk of climate change, despite the fact that the report projects increasing demand for ExxonMobil's oil, particularly for use in the transportation sector, and \$21 trillion in total anticipated cumulative oil and gas investment globally through 2040. Even under a scenario in which governments restrict the use of fossil fuels to limit warming to 2 degrees C above pre-industrial levels, ExxonMobil concludes that there will still be huge demand for its fossil fuels, including potential total cumulative investment in oil and gas that could exceed \$13 trillion.

663. Nevertheless, in the 2019 Summary, ExxonMobil claims that "[o]ur actions to address the risks of climate change, which are prioritized under the four pillars below, position ExxonMobil to meet the demands of an evolving energy system." One of those "pillars" is "[p]roviding products to help our customers reduce their emissions," and specifically represents that the ExxonMobil Synergy™ fossil fuel product line reduces greenhouse gas emissions: "We leverage our competitive manufacturing assets to produce high-quality products such as Synergy-brand gasoline, Diesel Efficient-brand diesel fuel, marine fuels and aviation fuels. Our lubricants help minimize operational costs through improved energy efficiency and extended equipment life. Synergy fuels yield better gas mileage, reduce emissions and improve engine responsiveness."

664. The 2019 Summary also fails to mention that ExxonMobil's operations and consumer use of its products have been and continue to be one of the single largest sources of greenhouse gas emissions on the planet, or that from the late 1980s through 2015, ExxonMobil, among all U.S. companies and non-government-controlled global fossil fuel producers, was the single largest source of greenhouse gases.

**b) Promotion of “green” Mobil 1™**

665. In addition to Synergy™ fuels, ExxonMobil misleadingly promotes “green” Mobil 1™ motor oil in Massachusetts as an environmentally friendly product with low environmental impact.

666. ExxonMobil “green” Mobil 1™ is a synthetic oil used for engine lubrication. Synthetic oils are typically extracted from petroleum, including crude oil and its byproducts.

667. Since 2013, ExxonMobil has spent a total of \$135 million on advertising and promotion of its line of Mobil 1™ synthetic oils.

668. ExxonMobil also publishes online content under the banner “Energy Factor,” wherein ExxonMobil claims that it is “develop[ing] safe and reliable energy sources for the future.” The Energy Factor webpage includes posts such as “Green Motor Oil? ExxonMobil Scientists Deliver an Unexpected Solution,” in which ExxonMobil promotes its green-colored motor oil, posting a heading in bold typeface, “**Green Mobil 1**,” stating: “The test data succeeded in changing their perspective of viewing engine oil as a commodity, to considering it as an essential element of modern engine design, which can contribute to their carbon dioxide emission-reduction efforts.”

669. ExxonMobil produced a fifty-four second commercial promoting its “green” Mobil 1™ engine oil that can be viewed on YouTube.<sup>6</sup>

670. The video opens with shots of a silver can of Mobil 1™ oil in the spotlight, and spinning race car tires, while a voiceover tells viewers that, over forty years ago, Mobil created the world’s leading synthetic motor oil. At approximately seven seconds, the voiceover describes this discovery as “an innovation that has driven some of the greatest achievements on Earth, and

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<sup>6</sup> <https://www.youtube.com/watch?v=dga50ik0euU> (accessed October 24, 2019).

above it” while a color photograph of Earth as seen from space—and reflected in the visor of an astronaut’s spacesuit helmet—spins before the viewer. The image of the earth in the Mobil 1™ advertisement is virtually indistinguishable from and unmistakably meant to invoke the famous “Earthrise” photograph, which has been an iconic symbol of environmental causes since the late 1960s.

671. “With every new generation,” the voiceover intones, Mobil 1™’s engineers have long looked to “solve the challenges of the day with the technology of tomorrow,” as an aerial image of a mandala-like, stylized and tree-lined traffic circle appears, and then dissolves into a spinning green disc—the green lid of the “green” Mobil 1™ oil. The viewer is assured that “in a world that is now demanding more progress and change than ever before,” Mobil has produced a motor oil “so advanced it can help enhance engine performance and improve fuel economy,” while the video shows the green lid flipping open to reveal luminescent, sparkling green motor oil pouring from the neck of the bottle. The commercial closes with a picture of the “green” Mobil 1™ advanced synthetic motor oil in a gray plastic bottle, with a green lid and green-colored label. A still from the video featuring the green-colored Mobil 1™ oil appears below.



672. ExxonMobil also promotes the use of its “green” Mobil 1™ product through sponsorships, including the NASCAR “Race to Green,” where ExxonMobil endeavors to “spotlight[ ] environmental and sustainability awareness as an official NASCAR® Race to Green™ partner, sharing the benefits of new Mobil 1™ Annual Protection motor oil with the motorsports industry and consumers.” By reducing the number of required oil changes, ExxonMobil represents that widespread use of “green” Mobil 1™ could substantially reduce the amount of used oil generated, resulting in significant environmental benefit. Yet, as with its promotion of Synergy™, ExxonMobil fails in its promotion of “green” Mobil 1™ to disclose the fact that fossil fuels are a leading contributor to climate change and that current levels of fossil fuel use—even purportedly “cleaner” or more efficient products—represent a direct threat to sustainability of human communities and ecosystems.

673. In July 2018, ExxonMobil engaged Weber Shandwick to perform “content capture” of photography from an “Earth Day Drive Away” sweepstakes event promoting ExxonMobil “green” Mobil 1 products in Amesbury, Massachusetts. To be eligible to win an “eco-friendly” sport utility vehicle, participants had to purchase 5 quarts of “green” Mobil 1™ motor oil, or obtain a Mobil 1 oil change at a Walmart Auto Care Center, or recycle used oil at any participating location. Promotional photos of the event are available on the ExxonMobil website.

674. ExxonMobil’s public relations strategy misleadingly sought to affiliate in the minds of Massachusetts consumers the “green” Mobil 1™ product with Earth Day, with “greenness” and with “eco-friendliness,” when in fact exploration, production, refining, sales, and use of Exxon’s products are contributing to dangerous disruption of Earth’s climate, and the demise of ecosystems that support human life. Nowhere in the Earth Day Drive Away

promotional materials does ExxonMobil disclose the danger to the environment, public health, and communities posed by use of its fossil fuel products, including Mobil 1™.

**2. *ExxonMobil's Synergy™ and "green" Mobil 1™ advertising is deceptive because the Company misleadingly represents that using those products helps consumers reduce their greenhouse gas emissions and fails to disclose that the use of such fossil fuel products is the leading cause of climate change.***

675. ExxonMobil's Synergy™ and "green" Mobil 1™ advertising misleadingly promotes the products as environmentally beneficial and designed to "help" consumers reduce greenhouse gas emissions, while omitting any mention of the Company's knowledge that production and combustion of fossil fuel products is the leading cause of climate change, and that, in the words of an Exxon scientist thirty-five years ago, "[w]e can either adapt our civilization to a warmer planet or avoid the problem by sharply curtailing the use of fossil fuels."

676. ExxonMobil's advertising deceives Massachusetts consumers by failing to disclose the enormity of ExxonMobil's greenhouse gas emissions on a global scale—including emissions associated with development, refining, and normal consumer use of its products—and the fact that any potential emissions-reducing benefits of its Synergy™ and "green" Mobil 1™ products are miniscule by comparison with the emissions generated by ExxonMobil's business.

677. By hyping claimed climate and "green" benefits while concealing its full knowledge of the dangerous climate change effects of continued high rates of fossil fuel use, ExxonMobil's advertising creates an overall misleading picture that hides the dire climate impacts resulting from normal consumer use of the Company's products.

678. ExxonMobil's advertisements are deceptive because they promote the false idea that ExxonMobil's Synergy™ and "green" Mobil 1™ are "green" or climate protective, and because the advertisements do not disclose what ExxonMobil has long known: that the continued use of these products is contributing significantly to climate change, and that, to have any hope

of stabilizing warming at a safer level, humankind must substantially reduce the use of fossil fuels, such as ExxonMobil's products, that are causing climate change.

679. In this regard, ExxonMobil's marketing of its new Synergy™ and "green" Mobil 1™ products as "safe," "clean," emissions-reducing, and beneficial to the climate—when production and use of such products is the leading cause of climate change—is reminiscent of the tobacco industry's effort to promote "low-tar" and "light" cigarettes as an alternative to quitting smoking, after the public became aware of the life-threatening health harms associated with smoking.

680. ExxonMobil's Synergy™ and "green" Mobil 1™ product promotions are positioned to reassure consumers that use of those products is beneficial in addressing climate change, when indeed, any continued large scale use of such fossil fuels is extremely harmful, just as the tobacco companies' misleadingly promoted "low tar" and "light" cigarettes as a healthier, less harmful choice, when the tobacco companies knew any use of cigarettes was harmful.

681. As with the images used by ExxonMobil to affiliate its products with the Earth, Earth Day, and a clean and healthy environment, the tobacco industry used in its advertising for "low tar" and "light" cigarettes analogous images of athletes, wellness, and success to disassociate in consumers' minds the connection between smoking, cancer, illness, and death. An example of these images appears below.



682. Like the tobacco companies’ misleading use of scientific and engineering terms and images in advertising to enhance the credibility of their representations, ExxonMobil’s promotions for its Synergy™ and Mobil 1™ products also misleadingly invoke similar terminology to falsely convey to Massachusetts consumers that use of these products benefits the environment.

683. Advertising for Decade brand cigarettes, for example, referenced a “patented tobacco flavorant,” “modern laser technology,” “exclusive research design,” and the “total system” of cigarette manufacturing developed by Decade over a ten-year period to deliver a “low tar” cigarette. An image of Decade’s advertisement appears below.



**IT TOOK TEN YEARS TO DEVELOP A "TOTAL SYSTEM" THAT DELIVERS REAL TASTE IN A LOW 'TAR' CIGARETTE.**

A low 'tar' cigarette is a complex system of interacting parts. The tobacco. The filter. And even the paper. Decade is the first low 'tar' in which all the parts have been arranged in perfect balance with each other. This is the Decade "Total System." And this is why Decade is the first low 'tar' with a taste worth smoking.

**The Tobacco. "Flavor Packing," plus fifteen tobaccos boost taste.** We've developed a system called "Flavor Packing" that allows us to concentrate a special patented tobacco flavorant in each Decade cigarette. This is in addition to our special taste blend of fifteen fine tobaccos, including exotic Turkish, full bodied Burley, and Bright, a tobacco known for its smoothness.

**The Filter. Unique "Taste Channel" gives first puff impact.** The Decade filter is a combination of modern laser technology, plus our own exclusive research design. Simply, we've created a channel within the filter to give you that first puff impact you've come to expect from only the higher 'tar' cigarettes. Which means you get taste from first puff to last.

**The Paper. High porosity paper controls burn rate.** For Decade we use only high porosity-cigarette paper. Ordinary paper inhibits the burn rate, which can diminish the taste and create the need to pull harder when you drag. With Decade's high porosity paper however, you get an efficient burn rate that delivers optimum taste with a minimum of 'tar'.

**The result. A completely new kind of low 'tar' cigarette.** So try a pack of Decade for yourself. Regular or Menthol. And after one taste we think you'll agree that our last 10 years were well worth the effort.

Only 5 mg. 'tar'.

Regular and Menthol.

Warning: The Surgeon General Has Determined That Cigarette Smoking Is Dangerous to Your Health.

©1999 Philip Morris Inc. 001 5 mg. 'tar', 0.3 mg. nicotine av. per cigarette by FTC method.

684. ExxonMobil’s promotional materials for Synergy™ and “green” Mobil 1™ similarly reference “meticulous[] engineer[ing],” “breakthrough technology,” “rigorously tested in the lab,” “proprietary formulation,” “test data,” “engineers,” “innovat[ion],” and the claim that “Scientists Deliver [] Unexpected Solution[s].”

685. As with the tobacco companies’ use of scientific terms to promote “light” cigarettes, ExxonMobil’s claim that its purportedly high tech, innovative new fossil fuel products help consumers reduce emissions, even if true or partially true, render its promotional materials even more misleading, because they seek to convey—with the imprimatur of scientific credibility—an overall message that is false, and contradicted by ExxonMobil’s own decades old internal knowledge: that ExxonMobil’s products are environmentally beneficial and climate protective.

686. Indeed, ExxonMobil understands and strives to build, through its branding, an image of the Company as a trusted energy expert and leader in technology; in recent correspondence with Weber Shandwick, ExxonMobil's Pablo Conrad relayed that "Technology Leadership has been framing our thinking and communications over the past few decades." ExxonMobil has carefully crafted this brand image to ensure consumers believe ExxonMobil's deceptive messaging and buy what it is selling—regardless of the harm ExxonMobil knows its products will cause to those consumers, their children, and future generations.

**3. *ExxonMobil's "greenwashing" representations mislead Massachusetts consumers by portraying ExxonMobil as an environmentally responsible company and clean energy innovator.***

687. ExxonMobil's greenwashing misleads consumers by saturating its brand with deceptive "green" images that portray ExxonMobil as a good environmental steward when, in fact, these images are contradicted by the actual environmental and public health impact of ExxonMobil's business. These images direct attention away from the massive and dangerous climate and public health harms caused by the routine production and use of ExxonMobil fossil fuel products and focus consumer attention instead on ExxonMobil's purported environmental responsibility and leadership.

688. Following the wave of environmental disasters in the United States that gave rise to the modern environmental movement and the federal environmental statutory framework governing air and water pollution, hazardous pollution, and species protection, among others, the American public became much more aware of and concerned about the impacts of industrial pollution. The term "greenwashing" first was used in the 1980s to describe disinformation disseminated by a company to present an environmentally responsible public image that contradicted its actual environmental practices and record.

689. In the ensuing decades, investors and consumers have become increasingly interested in the environmental performance of companies that produce the goods and services they purchase. Seeking to induce consumers to purchase their products by presenting themselves in a positive environmental light, companies like ExxonMobil—a leader in one of the world’s most polluting industries—greenwash their corporate images, products, and reputations by distorting the truth or misrepresenting their environmental performance.

690. From at least the 1970s, ExxonMobil has designed, produced, and published various greenwashing marketing campaigns.

691. For example, in a litigated trademark dispute with Kellogg Company in 2001 concerning ExxonMobil’s use of a cartoon tiger, ExxonMobil relied on evidence of its motive for launching a greenwashing campaign following the 1989 Exxon Valdez oil spill. In response to the extremely negative public reaction to the spill, which included an organized boycott of Exxon products, Exxon reintroduced widespread use of its cartoon tiger, but portrayed the tiger differently than it had in the past. As ExxonMobil’s artist testified, “[t]oday’s Tiger is now cast in a more humanitarian role. He is polite to the elderly, plants trees for ecology and has an overall concern for the environment.”

692. With respect to climate change, ExxonMobil has designed, produced, and published various greenwashing campaigns that reached Massachusetts consumers and (i) conceal the fact that the production, distribution, and use of ExxonMobil’s fossil fuel products is a major source of the greenhouse gas emissions causing dangerous climate change; (ii) conceal ExxonMobil’s historical climate change denial and deceit by hypocritically touting itself as an exemplary environmental corporate steward; and (iii) mislead consumers about ExxonMobil’s

efforts to address climate change and the need for consumers to reduce their consumption of fossil fuels.

693. Those marketing campaigns include, for example, campaigns known as “Protect Tomorrow. Today.,” “Energy Solutions,” “Energy lives here,” “That’s Unexpected Energy,” and “The Future of Energy,” some of which ExxonMobil continues to run through various media, including print, radio, the Company’s websites, and social media. Many of these campaigns misleadingly highlight ExxonMobil’s investments in alternatives to fossil fuels, which are miniscule in comparison with its investments in fossil fuel development. ExxonMobil also greenwashes through the publication of its “Corporate Citizenship” and “Sustainability” reports.

- a) **ExxonMobil’s “Protect Tomorrow. Today.” campaign misleadingly casts ExxonMobil as a company that takes action to combat climate change to protect future generations when it has intentionally delayed action.**

694. Beginning in or around 2004 and continuing to date, ExxonMobil’s advertisements have included a public relations campaign called “Protect Tomorrow. Today.” (“ExxonMobil Protect Tomorrow Campaign”).

695. As part of the ExxonMobil Protect Tomorrow Campaign, ExxonMobil, among other things, produced and posted on the Internet through its own website and a variety of social media platforms a video called “Protect Tomorrow. Today.” (“Protect Tomorrow Video”), in which ExxonMobil makes misleading environmental claims and uses as a logo a misleading “green” image of water, mountains, and the sun:



696. ExxonMobil has used a black and white version of this logo in newspapers circulated to Massachusetts consumers since at least the late 1990s.

697. The Protect Tomorrow Video proceeds as follows:

Neil Duffin, then President, ExxonMobil Development Company: (0:00) Protect Tomorrow. Today. This defines our approach to the environment. Much the same way “Nobody Gets Hurt” defines our expectations for safety. The environment we work in includes clean air, water, and ecosystems, which people, plants, and animals depend upon.

Mark Pratt, then Safety, Health and Environment Manager, ExxonMobil Cepu Limited: (0:25) “Protect Tomorrow. Today.” means that we need to be very considerate of what we do today in order to protect the environment for future generations.

Mike Honderich, then Deputy JV Operations Director, Mobil Producing Nigeria Unlimited: (0:36) Our neighbors have high expectations that we operate responsibly and sustainably, and we don’t want to let ’em down.

Noa Gimelli, then Major Program Officer, Corporate Citizenship: (0:45) It means a lot to me that my company, the company that I work for, takes this seriously, that it embeds the very best practices into all of its operations when it comes to the environment.

Sam Roxburgh, then Project Execution Manager, ExxonMobil Development Company: (0:56) Protecting the environment is, is critically important.

Mike St. Croix, then Project Developer, ExxonMobil Environmental Services Company: (1:00) And I want the environment to be in a great condition for me in the future and for generations after us.

Romeo Perez, then Business Development Manager, XTO Energy Inc.: (1:07) So it makes me feel good every day to come to work for a company that has that at the forefront and the focus of what it is that we do.

Duffin: (1:14) “Protect Tomorrow. Today.” is much more than just a phrase. It is a core value to ExxonMobil employees and business partners, everywhere we do business.

[SERIES OF QUOTES IN FOREIGN LANGUAGES meaning “Protect Tomorrow. Today.”]

Voiceover: “Protect Tomorrow. Today.”

698. The ExxonMobil video and logo falsely depict the Company as a good corporate environmental citizen, while omitting any mention of the harms of climate change caused in large part by development, refining, and consumer use of fossil fuels, ExxonMobil’s chief product. The clean water supply and healthy mountain ecosystem depicted in ExxonMobil’s “Protect Tomorrow. Today” logo are precisely the types of ecological systems threatened by climate change caused by ExxonMobil’s products.

**b) ExxonMobil’s other greenwashing representations in advertisements mislead Massachusetts consumers by falsely representing that ExxonMobil is a leader in developing clean energy, such as algae biofuels, when ExxonMobil is increasing its production of fossil fuels, spends very little on clean energy research and development, and is opposing efforts to reduce emissions.**

699. ExxonMobil is running a series of paid full-page ads in print editions and posts in the electronic edition of *The New York Times*, produced with *The New York Times’* T Brand Studio, in which ExxonMobil misleadingly gushes about its efforts to develop energy production from alternate sources like algae and plant waste, efforts that pale in comparison to the investment ExxonMobil continues to make in fossil fuel production.

700. For example, ExxonMobil has ramped up production and reportedly is now the most active driller in the Permian Basin, the shale oil field located in western Texas and

southeastern New Mexico that yields low-cost oil in months, rather than the years required for larger offshore projects to begin producing crude.

701. As described in Section V.C above, ExxonMobil has invested billions of dollars into the development of massive Canadian oil sands projects, which are among the costliest and most polluting oil extraction projects in the world.

702. ExxonMobil has even attempted to greenwash the names of its oil sands projects in Canada, misleadingly naming several after animals living in the surrounding area, in the indigenous language of people native to that region. For example, one project is named “Maskwa,” after the Cree word for “bear.” ExxonMobil’s appropriation of these names attempts to falsely affiliate in the public’s mind an image of a wild animal and the culture of a people, whose traditions are associated with an ethic of care for the environment, with ExxonMobil’s environmentally destructive oil sands projects. In reality, the Canadian oil sands projects pollute water supplies on which local indigenous tribes rely and contribute to climate change that is threatening the existence of many species, likely including those after which ExxonMobil named its oil sands projects.

703. In its 2017 and 2018 Summary Annual Reports, ExxonMobil “highlights” multiple new and expanded fossil fuel extraction projects around the world, all of which produce substantial greenhouse gas emissions both directly through their extraction and indirectly through the use of the extracted resource.

704. Yet, ExxonMobil’s advertisements promoting its investment in algae and biofuels fail to mention the Company’s ongoing “business as usual” ramp up in global fossil fuel exploration, development, and production activities, including ExxonMobil’s ferocious expansion of efforts to develop “unconventional” fuels, including some of the most carbon-

intensive fuels. These ads constitute a highly effective greenwashing tactic, because they send the false and misleading message that ExxonMobil is working to *reduce* its greenhouse gas emissions, when in fact, the Company is increasing fossil fuel production, and its profitability turns on its sales of fossil fuels, which necessarily *increase* the greenhouse gas emissions that are driving dangerous climate change impacts.

705. For example, ExxonMobil states in a print advertisement that ran in the New England edition of *The New York Times* distributed to Massachusetts consumers on December 18, 2018, with the tagline, “*That’s Unexpected Energy from ExxonMobil*”: “Making energy this way [from biofuels] could reduce greenhouse gases compared to traditional fossil fuels—pretty good for stuff that would otherwise go to waste” and “Cellulose . . . could be a major source of biofuel.”

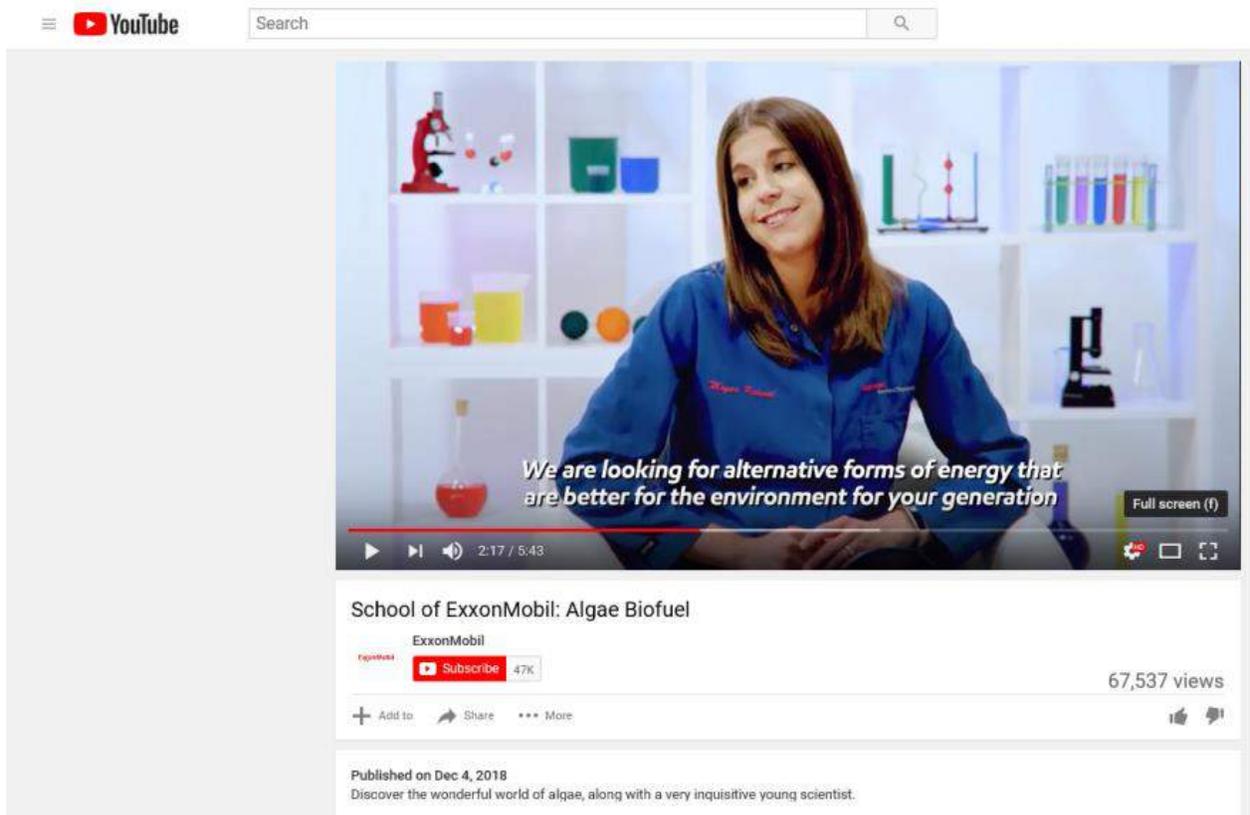
706. In a post to the electronic edition of *The New York Times*, titled, “The Future of Energy? It May Come From Where You Least Expect: How scientists are tapping algae and plant waste to fuel a sustainable energy future,” ExxonMobil claims that the Company is “working to decrease our overall carbon footprint,” markets itself as an innovator in the development of alternative fuels, such as fuel from algae and from farm waste, and falsely represents itself as an environmentally responsible company, concluding the post with the statement: “**A Greener Energy Future. Literally.** That’s Unexpected Energy.” (Emphasis in original.)

707. In December 2018, ExxonMobil released a marketing video titled the “School of ExxonMobil: Algae Biofuel,” currently available on YouTube.<sup>7</sup> The video features a female ExxonMobil researcher, surrounded by pastel-colored liquids in beakers and test tubes and

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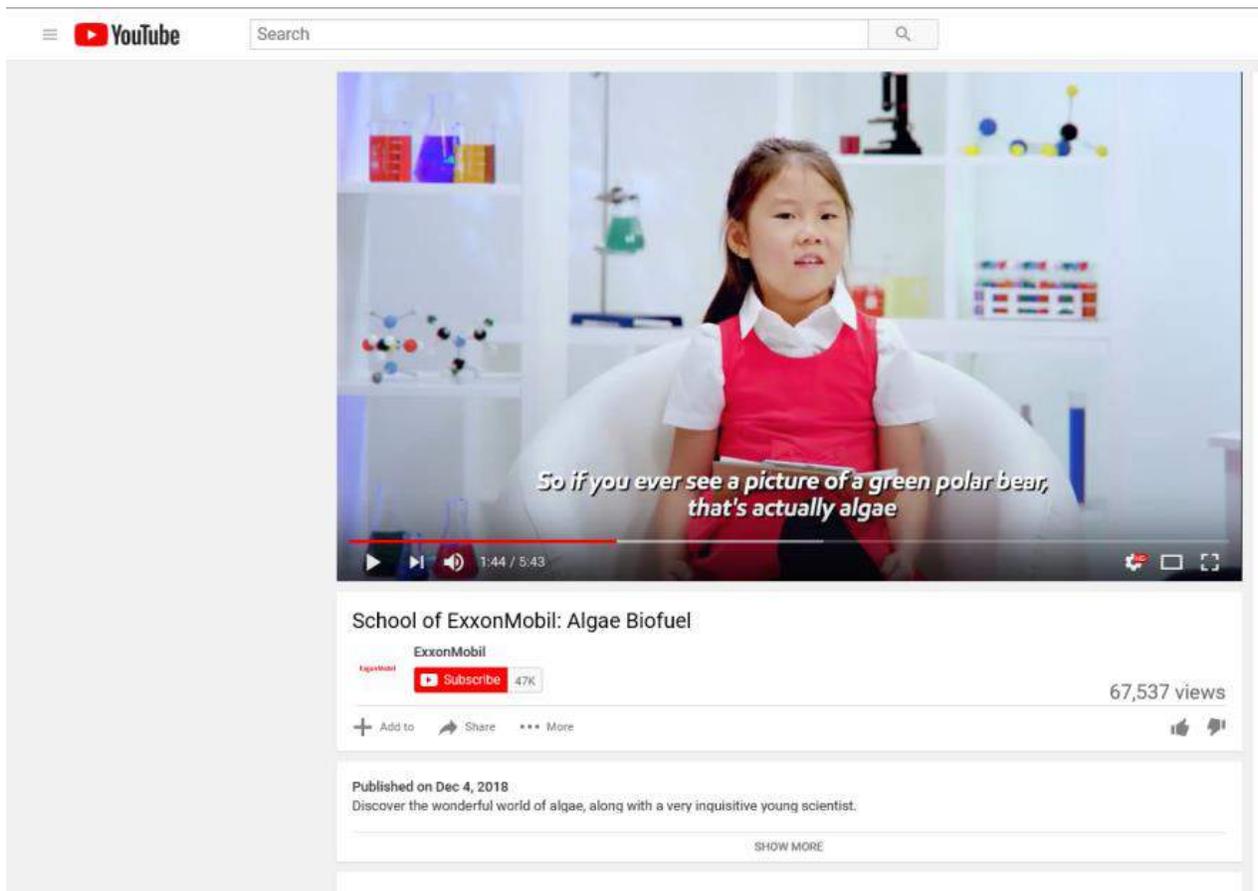
<sup>7</sup> <https://www.youtube.com/watch?v=9IuAkMJqb7Y> (accessed October 24, 2019).

scientific instruments, explaining to a little girl how ExxonMobil is “looking for alternative forms of energy that are better for the environment for your generation.” The video, apparently targeted to parents who may be concerned about the impacts of climate change on their children’s futures, misleadingly represents ExxonMobil as a clean energy leader, when in fact, ExxonMobil is investing very little in so-called clean energy, and its central business—extracting, producing, refining, and marketing fossil fuels—threatens the futures of children around the world, as ExxonMobil has long known. Below is a still from the video.



708. At one point in the video, the ExxonMobil researcher explains to the little girl that algae live all over the world, including “in the north pole, they can even live in a polar bear’s fur.” The researcher continues, “[s]o if you ever see a picture of a green polar bear, that’s actually algae.” Here, the video, screenshot below, misleadingly invokes the imagery of polar bears, playfully festooned with ExxonMobil’s fuel of the future. But in reality, the climate

disruption caused by ExxonMobil's chief product is threatening polar bears' survival as a species. Polar bears were listed as threatened under the U.S. Endangered Species Act in 2008, due to ongoing loss of their sea ice habitat as a result of climate change, and scientists have recently confirmed that polar bears are actually starving due to climate change.



709. Current evidence suggests it would be prohibitively expensive to produce algae on a large scale, since cultivation requires massive amounts of land (to construct ponds) and fertilizer. Even the genetically modified strains it appears ExxonMobil is pursuing present serious technological hurdles to commercialization and high risk of environmental contamination should modified organisms escape. As of 2009, ExxonMobil had made a \$600 million investment in algae biofuels—a small fraction of the billions the Company invests annually in fossil fuels. In 2016, ExxonMobil earned \$198 billion in revenue; in 2017, ExxonMobil invested

one billion dollars in alternative energy research, including algae—about one-half of one percent of its 2016 annual revenue.

710. A 2019 report by InfluenceMap documents that ExxonMobil’s goal of producing 10,000 barrels of biofuel per day by 2025 would equate to only 0.2 percent of its current refinery capacity—what the report referred to as “a rounding error.”

711. Indeed, during an October 2017 meeting between ExxonMobil and Wellington, which was attended by ExxonMobil’s then-Vice President of Investor Relations and Secretary, Jeffrey Woodbury, Mr. Woodbury responded to questions regarding climate-driven risks to ExxonMobil by focusing on the Company’s algae biofuel research. A senior Wellington manager concluded that Mr. Woodbury’s response demonstrated an ongoing effort by the Company to avoid the issue of the climate risk it faces, and that the Company’s investment in advertising its algae research is a greenwashing effort to improve its image, and not one undertaken to truly address the risks posed by climate change to ExxonMobil’s business.

712. ExxonMobil’s misleading algae biofuels advertisements never allude to the fact that other proven, cost-effective alternatives to fossil fuels, including wind and solar power, are already in widespread use in the United States and providing competitively priced power.

713. In its advertising, ExxonMobil claims that it is “working to decrease our overall carbon footprint,” while, in fact, the Company continues its unabated, business-as-usual rapid exploration, development, and production of fossil fuel reserves, including its most carbon-intensive reserves, such as those from Canadian oil sands. The Company also deceptively asserts in its advertising that biofuel is “engine ready” when, in fact, its readiness is, at best, many years away. Greenwashing claims such as these mislead consumers about the actual climate impacts of

ExxonMobil's products, and help to create a marketing environment in which consumers also may be more easily misled by ExxonMobil's deceptive product advertising.

714. According to the 2019 InfluenceMap report, since the 2015 Paris Agreement, among the five largest publicly traded oil companies, ExxonMobil has led the pack with \$56 million in annual expenditures on climate-focused branding activities misleadingly geared to draw attention to its purported commitment to develop low carbon fuels, deceptively position itself as a technical expert on climate and climate change solutions, and acknowledge concern about climate change, while ignoring key strategies necessary to mitigate risk—such as rapidly transitioning away from fossil fuel use.

715. ExxonMobil's climate change greenwashing—reaching a fever pitch following the historic Paris Agreement—misleads Massachusetts consumers by falsely and deceptively representing ExxonMobil as supportive of ambitious action on climate change, when in fact, ExxonMobil has for decades staunchly resisted and opposed action to address climate change, thereby willfully delaying action to reduce the threat of harm to its consumers.

716. ExxonMobil's history of denial continues. Just last year, and contrary to its representations that it is committed to helping customers improve fuel economy and reduce emissions, ExxonMobil engaged in a secretive campaign to roll back fuel economy and emission standards for passenger vehicles that limit pollution and help consumers save fuel and money. As discussed in Section VI.B.1 above, ExxonMobil promotes its Synergy™ and “green” Mobil 1™ products with messaging that those products can help consumers reduce greenhouse gas emissions and use less fuel by improving fuel economy. And ExxonMobil is promoting its new Synergy Supreme+ as its “Best Fuel Ever,” because, ExxonMobil claims, it is twice as “clean,” for better gas mileage.

717. Likewise, in a section of ExxonMobil's 2014 *Energy and Climate* report titled, "What ExxonMobil is doing about climate change," ExxonMobil has represented that it was helping to improve consumer vehicle fuel economy and reduce greenhouse gas emissions from motor vehicles.

718. Yet, it appears that during 2018, as reported in *The New York Times*, ExxonMobil did just the opposite, secretly participating in a Facebook campaign to roll back federal fuel economy and vehicle emissions standards that would accomplish the very goals ExxonMobil represented that it was working to achieve—improving fuel economy, saving consumers money, and reducing greenhouse gas emissions. The Facebook campaign was coordinated by a fossil fuel and petrochemical manufacturers' trade group known as American Fuel and Petrochemical Manufacturers ("AFPM"). ExxonMobil is a member of AFPM, and AFPM's board includes representatives from ExxonMobil.

719. Facebook advertisements promoted by the campaign, including one rallying support for a "car freedom agenda," and one for "safer, cheaper cars that WE get to choose," failed to disclose that the advertisements were sponsored by AFPM, ExxonMobil, and other oil industry interests. Instead, they appeared to be sponsored by an organization identified only as Energy4US, which describes itself as a "coalition of consumers, businesses and workers" promoting affordable energy. The Energy4Us.org domain name appears to have been registered by AFPM in 2015.

720. The proposed rollback of the fuel economy and vehicle emissions standards sought by the campaign would increase greenhouse gas emissions in the United States by more than the amount many midsize countries emit in a single year.

721. ExxonMobil's representations to consumers that it is seeking to improve consumer fuel economy and reduce emissions, when in fact it has been engaging in a secretive campaign to roll back fuel economy and emissions standards that would achieve that goal, are deceptive.

722. According to the 2019 InfluenceMap report, ExxonMobil has spent about \$41 million annually since the Paris Agreement to oppose efforts to reduce greenhouse gas emissions.

c) **ExxonMobil misleads Massachusetts consumers by greenwashing its reputation as an environmentally responsible corporate citizen through various public reports.**

723. In 2002, ExxonMobil began to publish reports in which the Company aimed to present itself as socially responsible, and a "good corporate citizen."

724. ExxonMobil currently authors and publishes "Corporate Citizenship" and "Sustainability" reports, which it makes available on its website to its stakeholders, a group that ExxonMobil identifies as including its "customers." Touting its external engagement efforts, ExxonMobil recognizes that "[m]any people, organizations and communities are impacted directly by . . . our business" and tells readers that it "builds relationships with a diverse group of stakeholders through timely and transparent communication." ExxonMobil recognizes that transparency is one of the most material issues for sustainability performance and thus sustainability reporting.

725. ExxonMobil's "Corporate Citizenship" and "Sustainability" reports repeatedly obfuscate and greenwash ExxonMobil's contribution to climate change by making false and misleading statements about its efforts to address the problem and omitting its knowledge of the fact that its products cause climate change, which poses an extreme danger to all of

ExxonMobil's "stakeholders." For example, in ExxonMobil's 2013 Corporate Citizenship Report, the Company stated:

ExxonMobil is committed to addressing the key challenge of sustainable development – balancing economic growth, social development and environmental protection so future generations are not compromised by actions taken today. By designing our approach to corporate citizenship . . . we contribute to society's broader sustainability objectives and manage the impact of our operations on local economies, societies and the environment.

726. ExxonMobil did not disclose, however, that it has understood, for at least forty years, the extreme risk posed to those future generations by climate change that is caused by combustion of fossil fuels, ExxonMobil's chief product. Nor did ExxonMobil disclose that it had taken steps during that period to prevent that understanding from becoming public knowledge.

727. It did not disclose those facts even though it also recognized in that same report that its fuel and motor oil customers are concerned about their environmental impacts and are looking for products that, among other things, "reduce [greenhouse gas] emissions."

728. In that same 2013 report, ExxonMobil represented it "view[s] effective risk management and a commitment to safety as business imperatives" and that "[t]he safety and health of our employees, contractors and communities are at the core of our commitment to integrity." ExxonMobil heralded its efforts to ensure worker safety ("Nobody Gets Hurt") and process safety (including the prevention of "the uncontrolled release of hydrocarbons") and its savvy approach to risk management, including risks associated with health and the environment.

729. Similarly, in its 2016 Corporate Citizenship Report, which features a number of color photographs of frogs, fish, and flowers, in a section addressing the Company's environmental performance, ExxonMobil claims that "ExxonMobil considers risks at every stage of development, and we continuously work to mitigate those risks and improve our environmental performance." The 2016 Corporate Citizenship Report describes the Company's

Operations Integrity Management System as a “management framework that helps put our Corporate Environment Policy into action and establishes common worldwide expectations for addressing risks inherent in our business, including environmental risks” and the Company’s “approach” as “grounded in a scientific understanding of the environmental impacts of our operations and a commitment to develop, maintain and operate projects and decommission assets using appropriate standards.”

730. The 2016 Corporate Citizenship Report does not reference Exxon’s early, climate change scientific research program, or the Company’s sophisticated internal scientific understanding of the potentially “catastrophic” impacts of climate change.

731. Rather, these reports are falsely and misleadingly silent on the fact that ExxonMobil’s core business causes climate change, which in turn causes grave risks to human life and ecosystems and increasingly uninsurable risks to property, jeopardizing the safety of Massachusetts consumers, and the stability of communities across the United States and the world.

732. The rosy picture painted by ExxonMobil is contradicted by the extremely urgent warnings issued in 2018 by the U.S. government and the United Nations, as set forth above in Section IV.C. The IPCC’s October 2018 report made clear the deception in ExxonMobil’s refrain that “nothing is more important” to ExxonMobil than safety, including of its customers, and the Company’s goal of “Nobody Gets Hurt”; the United Nations observed that governments would need to make “rapid, far-reaching and unprecedented changes in all aspects of society” to avoid disaster from climate change, predicted that the Earth will reach the crucial threshold of 1.5 degrees C (2.7 degrees F) above pre-industrial levels by as early as 2030, and underscored

that the world faces risks of extreme drought, wildfires, floods, and food shortages for hundreds of millions of people as a result of climate change.

733. In its 2016 Corporate Citizenship Report, ExxonMobil stated that “[w]e conduct our business in a manner that is responsive to the environmental and economic needs of the communities in which we operate.” The 2017 ExxonMobil Corporate Sustainability Report represents that ExxonMobil is “committed to providing affordable energy to empower human progress and improve standards of living while advancing effective solutions to address climate change.”

734. ExxonMobil’s representations are overall false and misleading because ExxonMobil fails to disclose anticipated global economic and other losses associated with climate change, as discussed in Sections IV.C and V.B above. As recounted in Section IV.B above, Exxon’s own expert advised it decades ago that a 2.5 degree C (4.5 degrees F) rise in global average temperatures by 2038, would have “major economic consequences,” and would “bring[ ] world economic growth to a halt,” and that a projected increase of 5 degrees C by 2067, (9 degrees F), if emissions continued unabated, would have “globally catastrophic effects.”

735. In the 2017 ExxonMobil Corporate Sustainability Report, ExxonMobil also misrepresents its history with regard to the Company’s climate change research:

Our scientists have been involved in climate change research and related policy analysis for more than 35 years, resulting in hundreds of publicly available documents on climate-related topics, including more than 50 peer-reviewed publications.

736. ExxonMobil’s 2014 *Energy and Climate* publication and its 2019 Energy and Carbon Summary make similar statements regarding the Company’s climate change research.

737. These statements deceptively bury ExxonMobil’s history of climate deception, described above, and omit any mention of Exxon’s internal knowledge—developed decades

ago—of the role its fossil fuel products play in causing climate change, and the existential risks posed to human communities and the environment by unabated greenhouse gas emissions caused by the use of fossil fuels.

738. For example, ExxonMobil’s misleading statement proclaiming itself to be a climate science leader fails to disclose that, while ExxonMobil was undertaking that scientific research, it was cynically participating in and spending millions of dollars on campaigns to attack the very climate science ExxonMobil was helping to develop. The Company’s goal was to cause the public and stakeholders to *doubt* the science of climate change, including, for example, by its lead role in the Global Climate Science Communications Team, which, despite Exxon’s longstanding scientific knowledge to the contrary, claimed that it was “not known for sure whether (a) climate change actually is occurring, or (b) if it is, whether humans really have any influence on it.”

739. ExxonMobil’s statements regarding its climate science leadership also fail to disclose that, for Exxon and its Global Climate Science Communications Team collaborators, “[v]ictory,” would “be achieved when average citizens ‘understand’ (recognize) uncertainties in climate science,” and “recognition of uncertainty becomes part of the ‘conventional wisdom’”—in other words, when the public and decisionmakers start to doubt the scientific basis for warnings about the dire threat of climate change.

740. Further, the peer-reviewed and other climate change research publications referenced and linked in ExxonMobil’s 2017 Corporate Sustainability Report are not, as ExxonMobil claims, “publicly available.” Indeed, most of the papers are blocked from public access by paywalls, available only after payment of a fee. It is likely that these papers, many of

them published decades ago, were similarly available at that time only through costly journal subscriptions.

741. The publications are also extremely technical in nature and would not be comprehensible to a lay reader. As a result, even for those publications that may be “publicly available,” the content would not be accessible to the general public.

742. The peer-reviewed and other climate change research publications referenced in ExxonMobil’s 2017 Corporate Sustainability Report do not disclose ExxonMobil’s internal knowledge of the harms caused by climate change and the role of ExxonMobil’s fossil fuel products in causing that harm. Indeed, the papers are silent on what ExxonMobil knew at the time to be the “catastrophic” risks of climate change to human populations and the environment.

743. Instead, the publications focus, in the main, on very narrow technical topics related to emissions mitigation, such as carbon sequestration and geoengineering—notably, strategies that would, if feasible, permit ExxonMobil to continue business-as-usual fossil fuel exploration, production, and sales. The publications tend to focus on the need to reduce carbon dioxide emissions to the atmosphere, rarely mentioning the need to shift away from use of ExxonMobil’s fossil fuel products, despite Exxon’s internal knowledge that such a shift would be necessary to avoid dangerous warming.

**C. Information Regarding the Role of ExxonMobil’s Fossil Fuel Products in Causing Climate Change Is Material to Consumers’ Purchasing Decisions, and ExxonMobil’s Deceptive Statements and Omissions to Consumers Have Distorted the Market for Energy Products and Technologies, Including Its Own.**

744. Consumer use of fossil fuel products, most commonly by driving gasoline-powered internal combustion engine vehicles, is one of the greatest contributors to climate change.

745. According to the Environmental Protection Agency, as of 2016, the transportation sector generated the largest share (about 28.5 percent) of U.S. greenhouse gas emissions, primarily from burning fossil fuels for cars, trucks, ships, trains, and planes. In that same year, in Massachusetts, greenhouse gas emissions from the transportation sector were an even larger share of the total: about 43 percent.

746. Many Massachusetts consumers, however, are unaware of the magnitude of the threat to human communities and the environment posed by unabated use of fossil fuels and the relationship between their purchasing behavior and climate change.

747. By misleading consumers about the purported climate benefits of using ExxonMobil's Synergy™ and "green" Mobil 1™ products and by failing to disclose to consumers the climate risks associated with their purchase and use of those products, ExxonMobil is intentionally depriving consumers of information about the consequences of their purchasing decisions—information ExxonMobil knows would influence both public perception of its products and consumer purchasing behavior.

748. In addition to misleading consumers and depriving them of vital information regarding the danger associated with the production and use of its Synergy™ and "green" Mobil 1™ products, ExxonMobil seeks to mislead consumers, and induce purchases, with greenwashing designed to represent ExxonMobil as an environmentally responsible company developing innovative green technologies and products, when in reality, ExxonMobil's business model centers on developing, producing, and selling more of the very fossil fuels responsible for increasingly dangerous climate change.

749. ExxonMobil's conduct is akin to that of the tobacco companies that had internal knowledge of the high health risks associated with smoking, yet intentionally withheld that

information from consumers, all while sowing doubt about the link between smoking and lung cancer and other smoking-related health harms, and holding themselves out as good corporate citizens making science-driven decisions.

750. As in the case of cigarettes, history demonstrates that when consumers are made aware of the harmful effects or qualities of the products they purchase, they often choose not to purchase them or to reduce their purchases. This phenomenon holds especially true when products have been shown to harm public health and/or the environment.

751. For another example, consumers responded swiftly to findings that the use of products like hairsprays and deodorants with chlorofluorocarbon (“CFC”) containing aerosols were depleting the earth’s protective ozone layer by purchasing substitutes for CFC-containing products.

752. In addition to reducing and avoiding purchases, informed consumers will also contribute towards solving environmental problems by rewarding companies that they perceive to be developing “green” or more environmentally friendly products. Studies show that: almost a third of Americans said that they had, over the prior year, rewarded companies taking steps to reduce global warming by buying products made by those companies; consumers with better access to information about the greenhouse gas emissions associated with their purchasing decisions desired to reduce their carbon footprints and felt greater accountability for how their product use impacted carbon emissions; and people change their views when better informed about issues like climate change.

753. The oil industry formally recognizes climate change as material to both oil companies and consumers. The International Petroleum Industry Environmental Conservation Association (“IPIECA”), of which ExxonMobil is a member, defines “material issues” as those

that, “in the view of both the company’s management and its external stakeholders, affect the company’s performance or strategy and/or inform stakeholder assessments or decisions about the company.” According to IPIECA, “[c]ertain risks and their associated impacts such as those associated with climate change and safety are likely to remain material and be treated prominently every year in the sustainability report . . . .”

754. ExxonMobil has publicly acknowledged that climate change is a material issue to its business and its stakeholders. For example, in its 2016 Corporate Citizenship Report, ExxonMobil represented that a “key step” in developing the report was ensuring that “the content reflects ExxonMobil’s most material issues,” and that, “[a]ccording to the IPIECA, material issues for sustainability reporting are those that, in the view of both the company’s management and its external stakeholders, have the potential to affect sustainability performance significantly.” The material issues identified by ExxonMobil in its 2016 Corporate Citizenship Report included “[m]anaging climate change risks [by]...[m]itigating emissions.”

755. ExxonMobil’s misleading representations concerning the purported greenhouse gas emissions reductions benefits associated with consumer use of its Synergy™ and “green” Mobil 1™ products are material, because they have the capacity, tendency, or effect of deceiving Massachusetts consumers, thereby influencing their purchasing decisions.

756. Information—which ExxonMobil knows and has failed to disclose—regarding the dangerous climate effects of producing and using ExxonMobil’s fossil fuel products is material because it has the capacity, tendency, or effect of deceiving Massachusetts consumers, and thereby influencing their purchasing decisions.

757. If ExxonMobil fully disclosed the risks to consumers and their families associated with the routine use of its fossil fuel products, and the fact that, for decades, ExxonMobil hid

those risks and tried to cast doubt on the climate science it had helped to develop—such disclosure would reasonably be expected to cause a consumer to act differently than she may otherwise have acted. For example, a consumer might purchase fewer ExxonMobil fossil fuel products, or none. Consumers might opt to avoid or combine car travel trips; carpool; change driving habits; switch to more fuel-efficient vehicles, hybrid vehicles, or electric vehicles; use a car-sharing service; seek transportation alternatives all or some of the time, if available (e.g., public transportation, biking, or walking); or any combination of those choices. Some might opt to forgo driving, eliminating altogether their use of ExxonMobil products.

758. Similarly, even those consumers who may elect to continue to purchase the same amounts and types of fossil fuel products might, if they were aware of ExxonMobil's egregious deception, prefer to purchase those products from oil companies other than ExxonMobil; consumers' post-Valdez boycott of Exxon, and other consumer boycotts, demonstrate that consumers frequently opt to "vote" with their dollars when corporate malfeasance comes to light.

759. ExxonMobil's failure to disclose to consumers its knowledge regarding the role of its fossil fuel products in causing dangerous climate change therefore constitutes a material omission.

760. ExxonMobil's misleading greenwashing presents a false image of ExxonMobil as a clean energy innovator, a trusted energy expert developing the solutions to climate change, and a corporate leader dedicated to taking meaningful action to address climate change. ExxonMobil's false and misleading greenwashing representations are material, because they have the capacity, tendency, or effect of deceiving Massachusetts consumers, and thereby influencing their purchasing decisions.

761. ExxonMobil's failure to disclose to Massachusetts consumers its longstanding knowledge that the production and use of ExxonMobil's fossil fuel products are a leading source of the dangerous carbon pollution that is causing deadly climate disruption has distorted the energy markets and markets for vehicles and low carbon transportation fuels.

762. When one party to a transaction has more information than the other party, a market failure, or distortion occurs. The problem of asymmetrical information, as it is referred to by economists, is that transactions are made on the basis of incomplete information. By failing and refusing to provide to Massachusetts consumers material information regarding ExxonMobil's knowledge of the role of fossil fuels in causing climate change, and by misleadingly marketing its Synergy<sup>TM</sup> gasoline and "green" Mobil 1<sup>TM</sup> motor oil products as reducing transportation sector emissions, ExxonMobil has distorted the markets for energy, vehicles, and transportation fuels.

763. Increased consumer awareness of the role of pesticides in harming human health, worker health, and the environment has spurred a burgeoning market for food grown organically and without the use of pesticides—with access to information about how their food was grown, consumers demanded healthier choices, and the market responded.

764. ExxonMobil's deceptive and misleading product marketing and promotion and its greenwashing and climate denial campaigns reduced market transparency, ensuring that consumers entering into transactions to purchase ExxonMobil products or products that use ExxonMobil products would not have access to the same information ExxonMobil had, and, as a result, consumer demand for technologies like electric vehicles and clean energy was dampened, and delayed.

765. ExxonMobil's market-distorting deception delayed the advancement of the technologies needed to decarbonize the transportation and electric power sectors, despite the fact that these technologies could have been market-ready decades ago. Indeed, following the 1970s oil crisis, Exxon developed some of the earliest electric hybrid vehicle technology. In 1978, Exxon began promoting a diesel-electric hybrid powerpack that was "ready now" for broad adoption and was specifically designed to be used with standard-sized automobiles. Exxon marketed the new technology as capable of meeting new federal fuel economy standards that would go into effect in 1985.

766. ExxonMobil's deceptive misrepresentations to consumers are thus unconscionable for the independent reason that they contribute to greater climatic warming from new fossil fuel investments and undermine the pace of deployment of clean energy sources.

767. ExxonMobil's deceptive representations and omissions in its communications with consumers, as with its omissions and misrepresentations to investors, had the effect of delaying meaningful action to address climate change by perpetuating reliance on fossil fuels around the world and the consequent greenhouse gas emissions as the projects it is financing now continue to operate in the future. In this regard, ExxonMobil's false and deceptive statements and omissions to Massachusetts investors and consumers are yet another means of avoiding the Company's reckoning with the clarion call of the science the Company has long understood: that the world must swiftly shift away from fossil fuel energy or else face catastrophic impacts to humankind and the environment.

## VII. CAUSES OF ACTION

### ACTS OR PRACTICES IN VIOLATION OF THE MASSACHUSETTS CONSUMER PROTECTION ACT

768. The Commonwealth repeats and realleges the preceding paragraphs of this Complaint.

769. Chapter 93A makes unlawful “deceptive acts or practices in the conduct of any trade or commerce.” G.L. c. 93A, § 2(a).

770. Chapter 93A empowers the Attorney General to seek to enjoin deceptive acts or practices, obtain restitution for consumers, impose civil penalties, and recover reasonable investigation and litigation costs, including reasonable attorneys’ fees. G.L. c. 93A, § 4.

771. Chapter 93A also authorizes the Attorney General to “make rules and regulations interpreting the provisions of subsection 2(a) of this chapter.” G.L. c. 93A, § 2(c).

772. The Attorney General has duly promulgated regulations that establish enforceable standards for whether conduct, terminology, or representations involve acts or practices in violation of G.L. c. 93A, § 2(a).

773. The Attorney General’s regulations, at 940 C.M.R. § 3.02(2), prohibit any “statement or illustration . . . in any advertisement which creates a false impression of the grade, quality, make, value, currency of model, size, color, usability, or origin of the product offered, or which may otherwise misrepresent the product in such a manner that later, on disclosure of the true facts, there is a likelihood that the buyer may be switched from the advertised product to another.”

774. The Attorney General’s regulations, at 940 C.M.R. § 3.05(1), prohibit misrepresentations that “directly, or by implication, or by failure to adequately disclose additional relevant information, ha[ve] the capacity or tendency or effect of deceiving buyers or

prospective buyers in any material respect,” including as to “[the] manner or time of performance, safety, strength, condition, or life expectancy of such product . . . or the utility of such product or any part thereof, or the benefit to be derived from the use thereof.”

775. The Attorney General’s regulations, at 940 C.M.R. § 3.16, provide that an act or practice is a violation of G.L. c. 93A, § 2, if:

(1) It is oppressive or otherwise unconscionable in any respect; or

(2) Any person or other legal entity subject to this act fails to disclose to a buyer or prospective buyer any fact, the disclosure of which may have influenced the buyer or prospective buyer not to enter into the transaction[.]

776. For retail advertising, the Attorney General’s regulations, 940 C.M.R. § 6.03(1)–(2), assign “responsibility for truthful and nondeceptive advertising” to “sellers,” who “shall not use advertisements which are untrue, misleading, deceptive [or] fraudulent . . . .”

777. In this regard, the Attorney General’s regulations provide that “[a]n advertisement as a whole may be unfair or deceptive although each representation separately construed is literally true,” 940 C.M.R. § 6.03(3), and “[a]n unfair or deceptive representation may result not only from direct representations and the reasonable inferences they create, but from the seller’s omitting or obscuring a material fact,” 940 C.M.R. § 6.03(4).

778. The Attorney General’s regulations, 940 C.M.R. § 6.04, provide that “[i]t is an unfair or deceptive act” for a seller to “make any material representation of fact in an advertisement if the seller knows or should know that the material representation is false or misleading or has the tendency or capacity to be misleading,” and to “fail to clearly and conspicuously disclose in any advertisement any material representation, the omission of which would have the tendency or capacity to mislead reasonable buyers or prospective buyers.”

779. As the Supreme Judicial Court has stated, advertising need not be totally false in order to be found deceptive under Chapter 93A; advertising is unlawful if it consists of a half-truth and may even be true as a literal matter but still create an overall misleading impression through failure to disclose material information.<sup>8</sup>

780. Pursuant to G.L. c. 93A, § 4, the prohibitions in Chapter 93A apply to deceptive acts and practices concerning the marketing and sale of securities.

#### FIRST CAUSE OF ACTION

##### *ExxonMobil Has Misrepresented and Failed to Disclose Material Facts Regarding Systemic Climate Change Risks*

781. The Commonwealth repeats and realleges the preceding paragraphs of this Complaint.

782. ExxonMobil is, and at all relevant times was, a “person” engaged in “trade or commerce” in Massachusetts as defined and used in Chapter 93A, G.L. c. 93A, §§ 1(a)-(b) and 2, including in its sale and/or marketing of ExxonMobil securities to Massachusetts investors.

783. In its climate risk disclosures, including *Managing the Risks, Energy and Climate*, its Outlook for Energy, and its Energy and Carbon Summary, ExxonMobil misrepresented, omitted, obscured, and failed to disclose to Massachusetts investors material facts regarding the risks posed by climate change to humanity, ecological systems, society, the global economy, the world’s financial systems and markets, the fossil fuel sector, and ExxonMobil’s business, as well as the role of ExxonMobil’s products in exacerbating those risks, and ExxonMobil’s plans, if any, to respond to those risks (together, “systemic risk misrepresentations and omissions”).

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<sup>8</sup> *Exxon Mobil Corp. v. Attorney General*, 479 Mass. 312, 320 (2018).

784. In its ongoing communications with Massachusetts investors, ExxonMobil's systemic risk misrepresentations and omissions are continuing.

785. The systemic risk misrepresentations and omissions are misleading to Massachusetts investors and are material to Massachusetts investors' decisions regarding the purchase, sale, retention, and pricing of ExxonMobil securities.

786. Through the systemic risk misrepresentations and omissions, ExxonMobil has misrepresented, omitted, or obscured, and is misrepresenting, omitting, or obscuring, material facts about climate change risks, the disclosure of which would influence the decisions of Massachusetts investors or prospective investors to purchase, sell, retain, or price ExxonMobil securities, in a manner that is misleading and/or has the tendency or capacity to be misleading in violation of Chapter 93A and the Attorney General's regulations.

787. ExxonMobil's systemic risk misrepresentations and omissions misleadingly overstate the value of ExxonMobil's securities to Massachusetts investors in violation of Chapter 93A and the Attorney General's regulations.

788. ExxonMobil knows and knew that its systemic risk misrepresentations and omissions were and are deceptive, and those misrepresentations and omissions are and were willful.

789. By its deceptive systemic risk misrepresentations and omissions, ExxonMobil has violated and is violating Chapter 93A and the Attorney General's regulations, including 940 C.M.R. §§ 3.16(1) and 3.16(2).

790. The deceptive nature of ExxonMobil's systemic risk misrepresentations and omissions is compounded by the Company's long history of intentionally sowing doubt and confusion in the minds of investors about the link between fossil fuel use and climate change.

791. Since at least 2012, ExxonMobil's conduct and practices with respect to Massachusetts investors, as alleged in this Complaint, have been and are unlawful under Chapter 93A, G.L. c. 93A, § 2, and these proceedings are in the public interest.

792. G.L. c. 93A, § 4, provides that the Court may issue injunctions to restrain acts and practices that are unlawful under Chapter 93A and, on the facts alleged in this Complaint, orders to impose civil penalties of up to \$5,000 for each violation, and for the payment of the reasonable costs of investigation and litigation of each such violation, including reasonable attorneys' fees. For the purposes of calculating penalties, each materially false, deceptive, or misleading statement to a Massachusetts investor and each sale of securities to a Massachusetts investor constitutes a separate violation.

793. The Commonwealth seeks such injunctive relief as may be determined to be appropriate in order to cease ExxonMobil's unlawful conduct, and imposition of civil penalties, together with the reasonable costs of the Commonwealth's investigation and litigation, including reasonable attorney's fees.

#### SECOND CAUSE OF ACTION

##### *ExxonMobil Made Materially False and Misleading Statements to Massachusetts Investors Regarding Its Use of a Proxy Cost of Carbon*

794. The Commonwealth repeats and realleges the preceding paragraphs of this Complaint.

795. ExxonMobil has made material misrepresentations to Massachusetts investors about the use of proxy costs in its investment decisions, business planning, reserves calculations, impairment evaluations, and demand projections (together, "proxy cost misrepresentations").

796. Because its internal practices deviated from its proxy cost misrepresentations, including in certain respects in violation of GAAP, ExxonMobil's proxy cost misrepresentations

were false or misleading, and/or had the tendency or capacity to be misleading, in violation of Chapter 93A and the Attorney General's regulations.

797. The proxy cost misrepresentations were misleading to Massachusetts investors and were material to Massachusetts investors' decisions regarding the purchase, sale, retention, and pricing of ExxonMobil securities.

798. In the course of the proxy cost misrepresentations, ExxonMobil has failed to disclose material facts regarding its actual use of proxy costs of carbon, the disclosure of which would have influenced the decisions of Massachusetts investors or prospective investors to purchase, sell, retain, or price ExxonMobil securities, in violation of Chapter 93A and the Attorney General's regulations.

799. Through the proxy cost misrepresentations, ExxonMobil has omitted or obscured material facts about how it was internalizing, valuing, or accounting for the risks of climate change-related costs to its businesses and assets, including the potential costs of climate regulation for its operations and product sales, in a manner that was false or misleading and/or had the tendency or capacity to be misleading in violation of Chapter 93A and the Attorney General's regulations.

800. ExxonMobil's proxy cost misrepresentations have had the effect of overstating the valuation of a material portion of ExxonMobil's upstream assets, including without limitation its Canadian oil sands and North American natural gas holdings, to Massachusetts investors, which in turn misleadingly have overstated the value of ExxonMobil's securities to Massachusetts investors in violation of Chapter 93A and the Attorney General's regulations.

801. ExxonMobil knew that its proxy cost misrepresentations were deceptive, and those misrepresentations were willful.

802. By its deceptive proxy cost misrepresentations, ExxonMobil violated G.L. c. 93A and the Attorney General's regulations, including 940 C.M.R. §§ 3.16(1) and 3.16(2).

803. The deceptive nature of ExxonMobil's proxy cost misrepresentations is compounded by the Company's long history of intentionally sowing doubt and confusion in the minds of investors about the link between fossil fuel use and climate change.

804. Since at least 2012, ExxonMobil's conduct and practices with respect to Massachusetts investors, as alleged in this Complaint, have been and are unlawful under Chapter 93A, G.L. c. 93A, § 2, and these proceedings are in the public interest.

805. G.L. c. 93A, § 4, provides that the Court may issue injunctions to restrain acts and practices that are unlawful under Chapter 93A and, on the facts alleged in this Complaint, orders to impose civil penalties of up to \$5,000 for each violation, and for the payment of the reasonable costs of investigation and litigation of each such violation, including reasonable attorneys' fees. For the purposes of calculating penalties, each materially false, deceptive, or misleading statement to a Massachusetts investor and each sale of securities to a Massachusetts investor constitutes a separate violation.

806. The Commonwealth seeks such injunctive relief as may be determined to be appropriate in order to cease ExxonMobil's unlawful conduct, and imposition of civil penalties, together with the reasonable costs of the Commonwealth's investigation and litigation, including reasonable attorney's fees.

THIRD CAUSE OF ACTION

*ExxonMobil Has Deceived Massachusetts Consumers by Misrepresenting the Purported Environmental Benefit of Using Its Synergy™ and “Green” Mobil 1™ Products and Failing to Disclose the Risks of Climate Change Caused by Its Fossil Fuel Products.*

807. The Commonwealth repeats and realleges the preceding paragraphs of this Complaint.

808. ExxonMobil is, and at all relevant times was, a “person” engaged in “trade or commerce” in Massachusetts as defined and used in Chapter 93A, G.L. c. 93A, §§ 1(a)-(b), 2, including the manufacturing, marketing, sale, distribution, and advertising of ExxonMobil fossil fuel products and services to Massachusetts consumers.

809. ExxonMobil markets and “advertises” and is a “seller” of its fossil fuel “products” and services through numerous channels in Massachusetts, within the meaning of those terms under the Attorney General’s regulations, 940 C.M.R. §§ 3.01 and 6.01, and Chapter 93A.

810. ExxonMobil has had longstanding internal knowledge that consumers’ purchase and use of ExxonMobil fossil fuel products cause dangerous climate change, which threatens the health, well-being, and property of Massachusetts consumers, and the ecological systems necessary for human survival in Massachusetts and around the world.

811. ExxonMobil also has had longstanding internal knowledge that substantially curtailing the use of fossil fuels is necessary to stabilize the increase in global average temperature and reduce the risk of catastrophic climate change.

812. ExxonMobil makes deceptive representations in its advertising and promotional materials that the consumer use of its Synergy™ and “green” Mobil 1™ products reduces greenhouse gas emissions. Those representations create a misleading impression and are deceptive, and/or have the tendency or capacity to mislead and deceive, since ExxonMobil has

failed and continues to fail to disclose that consumer use of fossil fuels such as its Synergy™ and “green” Mobil 1™ fossil fuel products is a leading cause of climate change that endangers public health and consumer welfare and property.

813. In its marketing and sales of Synergy™ and “green” Mobil 1™ to Massachusetts consumers, ExxonMobil has failed, and continues to fail, to disclose in its advertisements and promotional materials that the development, refining, and consumer use of those products emit large volumes of greenhouse gases, which are causing global average temperatures to rise, destabilizing the global climate system, and endangering human communities. These omissions relate directly to the use of ExxonMobil’s products and the effects of such use on climate change.

814. ExxonMobil’s misrepresentations and omissions regarding its products were and are material because they create an impression that is overall false and deceptive, and/or have the capacity, tendency, or effect of deceiving Massachusetts consumers, and thereby influencing their purchasing decisions, including decisions not to purchase.

815. The deceptive nature of ExxonMobil’s misrepresentations and omissions regarding its products is compounded by the Company’s long history of intentionally sowing doubt and confusion in the minds of consumers about the link between fossil fuel use and climate change.

816. ExxonMobil knows, knew, or should have known that the misrepresentations and omissions in its advertising and promotional materials directed to Massachusetts consumers were and are deceptive and/or had or have the tendency or capacity to deceive.

817. By its deceptive marketing schemes, ExxonMobil has violated Chapter 93A and the Attorney General's regulations, including 940 C.M.R. §§ 3.02(2), 3.05(1), 3.16(1), 3.16(2), 6.03(2), and 6.04(2).

818. Since at least 2012, ExxonMobil's conduct and practices with respect to Massachusetts consumers, as alleged in this Complaint, have been and are unlawful under Chapter 93A, G.L. c. 93A, § 2, and these proceedings are in the public interest.

819. G.L. c. 93A, § 4, provides that the Court may issue injunctions to restrain acts and practices that are unlawful under Chapter 93A and, where the Court finds that the defendant knew or should have known its conduct to be in violation of Chapter 93A, orders to impose civil penalties of up to \$5,000 for each violation, and for the payment of the reasonable costs of investigation and litigation of each such violation, including reasonable attorneys' fees. For the purposes of calculating penalties, each materially false, deceptive, or misleading statement to a Massachusetts consumer in connection with the sales of ExxonMobil's fossil fuel products in Massachusetts constitutes a separate violation.

820. The Commonwealth seeks such injunctive relief as may be determined to be appropriate in order to cease ExxonMobil's unlawful conduct, and imposition of civil penalties, together with the reasonable costs of the Commonwealth's investigation and litigation, including reasonable attorney's fees.

#### FOURTH CAUSE OF ACTION

##### *ExxonMobil Has Deceived Massachusetts Consumers by Promoting False and Misleading Greenwashing Campaigns*

821. The Commonwealth repeats and realleges the preceding paragraphs of this Complaint.

822. ExxonMobil's deceptive "greenwashing" campaigns are part of the Company's overall marketing strategy and target Massachusetts consumers with false and misleading messages about ExxonMobil's leadership in solving the problem of climate change, support of action to reduce greenhouse gas emissions, and focus on developing clean energy to "protect tomorrow today," and to protect future generations.

823. ExxonMobil's greenwashing misrepresentations and omissions created and continue to create an overall misleading impression by obscuring the extreme effects of climate change caused by the production and normal use of fossil fuel products, including ExxonMobil's Synergy™ and "green" Mobil 1™ products, and therefore fail to disclose material information to Massachusetts consumers.

824. ExxonMobil's greenwashing misrepresentations and omissions were and are material because they create an impression that is overall false and deceptive, and/or have the capacity, tendency, or effect of deceiving Massachusetts consumers, and thereby influencing their purchasing decisions, including decisions not to purchase.

825. The deceptive nature of ExxonMobil's greenwashing misrepresentations and omissions is compounded by the Company's long history of intentionally sowing doubt and confusion in the minds of consumers about the link between fossil fuel use and climate change.

826. ExxonMobil knows, knew, or should have known that the greenwashing misrepresentations and omissions in its advertising and promotional materials directed to Massachusetts consumers were and are deceptive and/or had or have the tendency or capacity to deceive.

827. By its deceptive marketing schemes, ExxonMobil has violated Chapter 93A and the Attorney General's regulations, including 940 C.M.R. §§ 3.02(2), 3.05(1), 3.16(1), 3.16(2), 6.03(2), and 6.04(2).

828. Since at least 2012, ExxonMobil's conduct and practices with respect to Massachusetts consumers, as alleged in this Complaint, have been and are unlawful under Chapter 93A, G.L. c. 93A, § 2, and these proceedings are in the public interest.

829. G.L. c. 93A, § 4, provides that the Court may issue injunctions to restrain acts and practices that are unlawful under Chapter 93A and, where the Court finds that the defendant knew or should have known its conduct to be in violation of Chapter 93A, orders to impose civil penalties of up to \$5,000 for each violation, and for the payment of the reasonable costs of investigation and litigation of each such violation, including reasonable attorneys' fees. For the purposes of calculating penalties, each materially false, deceptive, or misleading statement to a Massachusetts consumer in connection with the sales of ExxonMobil's fossil fuel products in Massachusetts constitutes a separate violation.

830. The Commonwealth seeks such injunctive relief as may be determined to be appropriate in order to cease ExxonMobil's unlawful conduct, and imposition of civil penalties, together with the reasonable costs of the Commonwealth's investigation and litigation, including reasonable attorney's fees.

#### **VIII. REQUEST FOR RELIEF**

The Commonwealth requests that the Court:

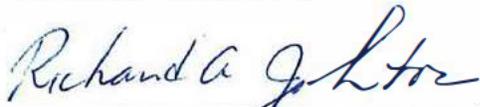
A. Determine that ExxonMobil has violated, and is continuing to violate, the Massachusetts Consumer Protection Act by committing deceptive practices against Massachusetts investors and consumers;

- B. Grant comprehensive injunctive relief;
- C. Award the Commonwealth penalties against ExxonMobil in the amount of \$5,000 for each separate violation of the Massachusetts Consumer Protection Act;
- D. Award the Commonwealth the costs of investigation and attorneys' fees; and
- E. Grant such additional relief as the Court deems just and proper.

Respectfully submitted,

COMMONWEALTH OF MASSACHUSETTS

MAURA HEALEY  
ATTORNEY GENERAL



Richard A. Johnston, BBO No. 253420  
*Chief Legal Counsel*

[richard.johnston@mass.gov](mailto:richard.johnston@mass.gov)

Melissa A. Hoffer, BBO No. 641667  
*Assistant Attorney General and Chief, Energy and Environment Bureau*  
[melissa.hoffer@mass.gov](mailto:melissa.hoffer@mass.gov)

Christophe G. Courchesne, BBO No. 660507  
*Assistant Attorney General and Chief, Environmental Protection Division*  
[christophe.courchesne@mass.gov](mailto:christophe.courchesne@mass.gov)

Glenn Kaplan, BBO No. 567308  
*Assistant Attorney General and Chief, Insurance and Financial Services Division*  
[glenn.kaplan@mass.gov](mailto:glenn.kaplan@mass.gov)

Shennan Kavanagh, BBO No. 655174  
*Assistant Attorney General and Deputy Chief, Consumer Protection Division*  
[shennan.kavanagh@mass.gov](mailto:shennan.kavanagh@mass.gov)

I. Andrew Goldberg, BBO No. 560843  
*Assistant Attorney General, Environmental Protection Division*  
[andy.goldberg@mass.gov](mailto:andy.goldberg@mass.gov)

Timothy Reppucci, BBO No. 678629  
*Assistant Attorney General, Energy and Telecommunications Division*  
[timothy.reppucci@mass.gov](mailto:timothy.reppucci@mass.gov)

OFFICE OF THE ATTORNEY GENERAL  
One Ashburton Place, 18th Floor  
Boston, Massachusetts 02108  
(617) 727 2200

Dated: October 24, 2019

**Motion for Appointment of  
Special Process Server,  
*Commonwealth v. Exxon Mobil Corp.*,  
No. 19-03333-BLS1 (Suffolk Super. Ct.)**

**NOTIFY**

at 10/28

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT  
CIVIL ACTION NO.:

19-3333

COMMONWEALTH OF MASSACHUSETTS,

Plaintiff,

v.

EXXON MOBIL CORPORATION,

Defendant.

10-25-19  
Allowed  
(Davis)  
Attest:  
[Signature]  
Ass't Clk

2019 OCT 24 PM 3:52

SUFFOLK SUPERIOR COURT  
CIVIL CLERK'S OFFICE

Notice sent  
(JRB)  
10/28/19  
MA 60/M.A.H.  
R.J.  
I.A.G.  
T.J.R.  
O-AG/S.A.K.  
C.G.C.  
G.S.K.

**EX PARTE MOTION FOR APPOINTMENT OF SPECIAL PROCESS SERVER**

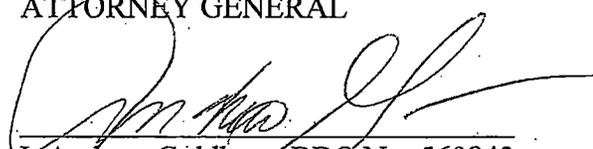
The plaintiff the Commonwealth of Massachusetts respectfully requests that the Court appoint Kevin McCarthy, director of the Investigations Division of the Office of the Attorney General, or his designee, as special process server throughout the pendency of this action.

Dated: October 24, 2019

COMMONWEALTH OF MASSACHUSETTS

MAURA HEALEY  
ATTORNEY GENERAL

By:



I. Andrew Goldberg, BBO No. 560843  
Assistant Attorney General  
Environmental Protection Division  
One Ashburton Place, 18<sup>th</sup> Flr.  
Boston, Massachusetts 02108  
(617) 963-2429  
andy.goldberg@mass.gov

**Notice of Acceptance into  
Business Litigation Session,  
*Commonwealth v. Exxon Mobil Corp.*,  
No. 19-03333-BLS1 (Suffolk Super. Ct.)**

Commonwealth of Massachusetts  
County of Suffolk  
The Superior Court

Notify ✓ 10/28  
Notify

CIVIL DOCKET#: SUCV2019-00333-BLS1

Case: Commonwealth v. Exxon Mobil Corp.

**NOTICE OF ACCEPTANCE INTO BUSINESS LITIGATION SESSION**

other sent  
0.28.19  
TJR  
CGC  
IAG  
SAK  
GSK  
MAH  
RT  
AAG  
ms

This matter has been accepted into the Suffolk Business Litigation Session. It has been assigned to **BLS1**.

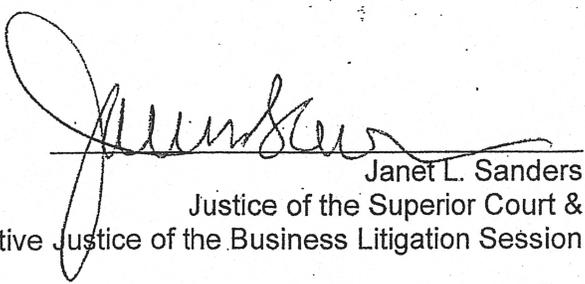
Hereafter, as shown above, all parties must include the initials "**BLS1**" at the end of the docket number on all filings.

Counsel for the plaintiff(s) is hereby advised that within seven (7) days of the filing of an appearance, answer, motion or other response to the complaint by or on behalf of the defendant(s) which has been served with process within the time limitation of Mass. R. Civ. P. 4(j), or such other time as may be modified by the Court, he or she shall send notice thereof to the appropriate BLS Session Clerk at Suffolk Superior Court, Three Pemberton Square, Boston, MA 02108.

Upon receipt of such notice, the Court will issue a Notice of Initial Rule 16 Conference for purposes of meeting with all counsel. Before the Rule 16 Conference, counsel shall discuss with their clients and with opposing counsel whether the parties will participate in the BLS Project on Discovery (counsel are directed to <http://www.mass.gov/courts/court-info/trial-court/sc/sc-bls-gen.html> for description of the Project). Counsel may indicate their respective client's participation by completing, filing and serving the attached form. If by the date of the initial Rule 16 Conference, not all parties have given notice of their participation, counsel shall be prepared to discuss at that conference whether their clients will participate in the Project.

The Court requests that plaintiff's counsel serve on opposing parties a copy of this notice and the attached form.

Dated: 10/25/19

  
Janet L. Sanders  
Justice of the Superior Court &  
Administrative Justice of the Business Litigation Session

Commonwealth of Massachusetts  
County of Suffolk  
The Superior Court

*Nob6y*

CIVIL DOCKET#: \_\_\_\_\_

Case: \_\_\_\_\_

As you may know, the Business Litigation Session began implementing a Discovery Project in January, 2010. This project is available on a voluntary basis for all new cases accepted into the BLS and for cases which have not previously had an initial case management conference. Counsel should be prepared to discuss the project with the Court at the initial case management conference. For a detailed copy of the BLS Discovery Project, counsel are directed to the Trial Court home page at: <http://www.mass.gov/courts/court-info/trial-court/sc/sc-bls-gen.html>

If a party is willing to participate in the project, that party's counsel should so indicate below and return this form to the appropriate session clerk.

**Yes**, \_\_\_\_\_ is willing to participate in the Discovery Project.  
(Party's Name)

Case Name \_\_\_\_\_

Docket Number CIVIL DOCKET#: \_\_\_\_\_

Counsel For \_\_\_\_\_

Date \_\_\_\_\_

Firm Name and Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Please complete this form and return it to:

Helen Foley, Asst. Clerk  
BLS1, Room 1309  
3 Pemberton Square  
Boston, MA 02108

**OR**

Richard V. Muscato, Jr., Asst. Clerk  
BLS2, Room 1017  
3 Pemberton Square  
Boston, MA 02108

**Notice of Appearance of James A. Sweeney,  
*Commonwealth v. Exxon Mobil Corp.,*  
No. 19-03333-BLS1 (Suffolk Super. Ct.)**

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT  
CIVIL ACTION NO.: 19-3333

_____	)
COMMONWEALTH OF MASSACHUSETTS,	)
	)
Plaintiff,	)
	)
v.	)
	)
EXXON MOBIL CORPORATION,	)
	)
Defendant.	)
_____	)

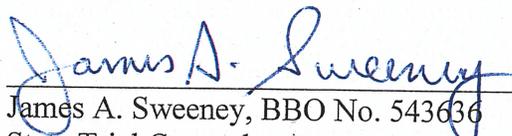
**NOTICE OF APPEARANCE**

Please enter the appearance of James A. Sweeney on behalf of the plaintiff

Commonwealth of Massachusetts in the captioned matter.

COMMONWEALTH OF MASSACHUSETTS

MAURA HEALEY  
ATTORNEY GENERAL



James A. Sweeney, BBO No. 543636  
State Trial Counsel  
Office of the Attorney General  
One Ashburton Place, 18<sup>th</sup> Floor  
Boston, MA 02108  
(617) 963-2304  
[jim.sweeney@mass.gov](mailto:jim.sweeney@mass.gov)

Dated: October 25, 2019

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the above document was served upon the attorney of record for each other party by mail (~~by hand~~)

on 10/31/19



**Notice of Appearance of Matthew Q. Berge,  
*Commonwealth v. Exxon Mobil Corp.,*  
No. 19-03333-BLS1 (Suffolk Super. Ct.)**

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT  
CIVIL ACTION NO.: 19-3333

_____		)
COMMONWEALTH OF MASSACHUSETTS,		)
		)
	Plaintiff,	)
		)
	v.	)
		)
EXXON MOBIL CORPORATION,		)
		)
	Defendant.	)
_____		)

**NOTICE OF APPEARANCE**

Please enter the appearance of Matthew Q. Berge on behalf of the plaintiff

Commonwealth of Massachusetts in the captioned matter.

COMMONWEALTH OF MASSACHUSETTS

MAURA HEALEY  
ATTORNEY GENERAL



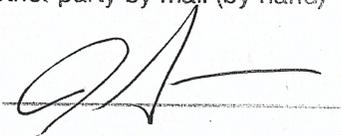
Matthew Q. Berge (BBO#560319)  
Assistant Attorney General  
Senior Trial Counsel  
Public Protection and Advocacy Bureau  
100 Cambridge Street, 11<sup>th</sup> Fl. (Office)  
One Ashburton Place, 18<sup>th</sup> Fl. (Deliveries)  
Boston, MA 02108  
(617) 963-2310  
[Matthew.Berge@mass.gov](mailto:Matthew.Berge@mass.gov)

DATED: October 25, 2019

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorney of record for each other party by mail (by hand)

on 10/31/19



**Joint Motion to Extend  
Responsive Pleading Deadlines,  
*Commonwealth v. Exxon Mobil Corp.*,  
No. 19-03333-BLS1 (Suffolk Super. Ct.)**

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT  
CIVIL ACTION NO.: 19-03333-BLS1

COMMONWEALTH OF MASSACHUSETTS,

Plaintiff,

v.

EXXON MOBIL CORPORATION,

Defendant.

SUPERIOR COURT-CIVIL  
MICHAEL JOSEPH DONOVAN  
CLERK/MAGISTRATE

NOV - 8 2019

RECEIVED

**JOINT MOTION TO EXTEND RESPONSIVE PLEADING DEADLINES**

Pursuant to Mass. R. Civ. P. 6(b), Plaintiff Commonwealth of Massachusetts (“Commonwealth”) and Defendant Exxon Mobil Corporation (“ExxonMobil”) jointly move for extension of time for ExxonMobil to answer or move to dismiss the Commonwealth’s Complaint to and including January 13, 2020 and, in the event ExxonMobil serves a motion to dismiss, for the Commonwealth to respond to ExxonMobil’s motion by March 9, 2020. As grounds for this joint motion, the parties state:

1. On October 24, 2019, the Commonwealth filed the Complaint in this case against ExxonMobil. The Complaint spans 211 pages and contains 830 paragraphs. It asserts four causes of action alleging ExxonMobil violated G.L. c. 93A, § 2 and various regulations promulgated by the Commonwealth’s Attorney General.

2. On October 28, 2019, the Court allowed the Commonwealth’s Ex Parte Motion for Appointment of a Special Process Server, and ExxonMobil was served on October 30, 2019.

3. Pursuant to Mass. R. Civ. P. 12(a), ExxonMobil's answer or motion to dismiss is currently due on November 19, 2019. If ExxonMobil were to serve a motion to dismiss on that date, the Commonwealth's response would be due on November 29, 2019.

4. Given the length and complexity of the Complaint, the parties have agreed to extend ExxonMobil's deadline to file an answer or serve a motion to dismiss the Complaint to and including January 13, 2020. In the event ExxonMobil serves a motion to dismiss, the parties have agreed that the Commonwealth's deadline to respond to the motion to dismiss is March 9, 2020.

5. The parties further agree that ExxonMobil, by filing this joint motion and thereby appearing in this matter under Rules 11(b)(1) and (b)(3), does not waive its right to raise the defenses set forth in Rule 12(h)(1), including lack of personal jurisdiction, except ExxonMobil hereby admits service of the summons and complaint and waives its right to raise defenses of insufficiency of process or of service of process.

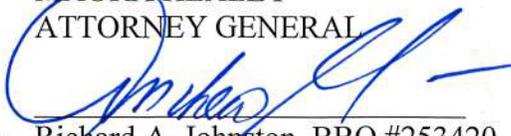
6. The parties believe there is good cause under Rule 6(b) supporting the requested extended deadlines, and respectfully request the Court to grant the joint motion.

[This space intentionally left blank]

Respectfully submitted,

COMMONWEALTH OF MASSACHUSETTS EXXON MOBIL CORPORATION

MAURA HEALEY  
ATTORNEY GENERAL



Richard A. Johnston, BBO #253420

*Chief Legal Counsel*

richard.johnston@mass.gov

Melissa A. Hoffer, BBO #641667

*Assistant Attorney General and Chief, Energy  
and Environment Bureau*

melissa.hoffer@mass.gov

Christophe G. Courchesne, BBO #660507

*Assistant Attorney General and Chief,  
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christophe.courchesne@mass.gov

Glenn Kaplan, BBO #567308

*Assistant Attorney General and Chief,  
Insurance and Financial Services Division*

glenn.kaplan@mass.gov

Shennan Kavanagh, BBO #655174

*Assistant Attorney General and Deputy Chief,  
Consumer Protection Division*

shennan.kavanagh@mass.gov

I. Andrew Goldberg, BBO #560843

*Assistant Attorney General, Environmental  
Protection Division*

andy.goldberg@mass.gov

Timothy Reppucci, BBO #678629

*Assistant Attorney General, Energy and  
Telecommunications Division*

timothy.reppucci@mass.gov

OFFICE OF THE ATTORNEY GENERAL

One Ashburton Place, 18<sup>th</sup> Floor

Boston, MA 02108

Tel: (617) 727-2200



Thomas C. Frongillo, BBO #180690

Christina N. Lindberg, BBO #690443

PIERCE BAINBRIDGE BECK PRICE & HECHT, LLP

One Liberty Square, 13th Floor

Boston, MA 02109

Tel: (617) 401-7289

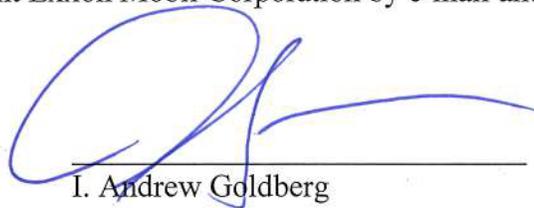
tfrongillo@piercebainbridge.com

clindberg@piercebainbridge.com

DATE: November 8, 2019

**CERTIFICATE OF SERVICE**

I, I. Andrew Goldberg, hereby certify that a true and correct copy of the above document was served upon counsel for the defendant Exxon Mobil Corporation by e-mail and U.S. Mail on this 8<sup>th</sup> day of November 2019.



I. Andrew Goldberg

**Order Granting Joint Motion to Extend  
Responsive Pleading Deadlines,  
*Commonwealth v. Exxon Mobil Corp.*,  
No. 19-03333-BLS1 (Suffolk Super. Ct.)**

11.13

11/13V

NOTIFY

6

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT  
CIVIL ACTION NO.: 19-03333-BLS1

COMMONWEALTH OF MASSACHUSETTS,

Plaintiff,

v.

EXXON MOBIL CORPORATION,

Defendant.

) Notified 11.14.19 (NJ)  
) MAGO/T.S.R., J.A.S., C.G.C., M.Q.B., G.S.K.,  
) M.A.H., R.J., S.A.K., I.A.G.  
) - PBBP/H/T.C.F., C.L.  
)  
)  
)  
)  
)  
)

**JOINT MOTION TO EXTEND RESPONSIVE PLEADING DEADLINES**

Pursuant to Mass. R. Civ. P. 6(b), Plaintiff Commonwealth of Massachusetts

("Commonwealth") and Defendant Exxon Mobil Corporation ("ExxonMobil") jointly move for

extension of time for ExxonMobil to answer or move to dismiss the Commonwealth's Complaint

to and including January 13, 2020 and, in the event ExxonMobil serves a motion to dismiss, for

the Commonwealth to respond to ExxonMobil's motion by March 9, 2020. As grounds for this

joint motion, the parties state:

1. On October 24, 2019, the Commonwealth filed the Complaint in this case against ExxonMobil. The Complaint spans 211 pages and contains 830 paragraphs. It asserts four causes of action alleging ExxonMobil violated G.L. c. 93A, § 2 and various regulations promulgated by the Commonwealth's Attorney General.

2. On October 28, 2019, the Court allowed the Commonwealth's Ex Parte Motion for Appointment of a Special Process Server, and ExxonMobil was served on October 30, 2019.

*Allowed. Defendant shall have until Jan. 13, 2020, to answer or otherwise respond to the Commonwealth's complaint. The Commonwealth shall have until March 9, 2020, to serve its response to the anticipated motion to dismiss. Defendant shall file its Rule 9A package with respect to any motion to dismiss on or before March 27, 2020.*

11/13/19

2019 NOV - 8 9:30  
MICHAEL J. O'NEILL  
CLERK / MANAGER  
SUFFOLK SUPERIOR COURT  
CIVIL CLERK'S OFFICE  
JULIAN

# EXHIBIT 14

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT  
CIVIL ACTION NO.: 19-03333-BLS1

---

COMMONWEALTH OF MASSACHUSETTS, )

Plaintiff, )

v. )

EXXON MOBIL CORPORATION, )

Defendant. )

---

**NOTICE OF FILING NOTICE OF REMOVAL**

Pursuant to 28 U.S.C. § 1446(d), Defendant Exxon Mobil Corporation (“ExxonMobil”) hereby gives notice to the Superior Court of Suffolk County, Massachusetts, and to the Commonwealth of Massachusetts, that ExxonMobil has filed a Notice of Removal, thereby removing the above-captioned action to the United States District Court for the District of Massachusetts. Copies of the Notice of Removal and the corresponding Notice of Electronic Filing are attached as Exhibit A.

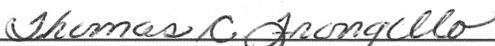
*[This space is intentionally left blank]*

DATE: November 29, 2019

Respectfully submitted,

EXXON MOBIL CORPORATION,

By its attorneys,

  
Thomas C. Frongillo (BBO No. 180690)  
Christina N. Lindberg (BBO No. 690443)  
PIERCE BAINBRIDGE BECK PRICE & HECHT LLP  
One Liberty Square, 13th Floor  
Boston, MA 02109  
Tel: (617) 313-7401  
tfrongillo@piercebainbridge.com  
clindberg@piercebainbridge.com

**CERTIFICATE OF SERVICE**

I, Thomas C. Frongillo, hereby certify that a true and correct copy of the above document was served upon the Attorney General's Office by e-mail and by hand on this 29th day of November 2019.

  
Thomas C. Frongillo

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

COMMONWEALTH OF MASSACHUSETTS

(b) County of Residence of First Listed Plaintiff Suffolk (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Richard Johnston, Melissa Hoffer, Christophe Courchesne, Glenn Kaplan, Shennon Kavanagh, I. Andrew Goldberg, Timothy Reppucci; 1 Ashburton Place, 18th Fl., Boston, MA 02108, 617-727-2200

DEFENDANTS

EXXON MOBIL CORPORATION

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known) Thomas Frongillo, Christina Lindberg, Pierce Bainbridge, 1 Liberty Sq. 13th Fl., Boston, MA 02109, 617-313-7401; Theodore Wells\*, Daniel Toal\*, Paul Weiss; Patrick Conlon\*, ExxonMobil (\*PHV forthcoming)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location (Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation).

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, PRISONER PETITIONS, TORTS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes sub-sections like PERSONAL INJURY, REAL PROPERTY, CIVIL RIGHTS, PRISONER PETITIONS, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): Consumer protection action related to production, sale, and use of fossil fuels

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE Hon. Mark L. Wolf DOCKET NUMBER 16-cv-11950

DATE 11/29/2019 SIGNATURE OF ATTORNEY OF RECORD /s/ Thomas C. Frongillo

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) Commonwealth of Massachusetts v. Exxon Mobil Corporation

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

- I. 160, 400, 410, 441, 535, 830\*, 835\*, 850, 891, 893, R.23, REGARDLESS OF NATURE OF SUIT.
II. 110, 130, 190, 196, 370, 375, 376, 440, 442, 443, 445, 446, 448, 470, 751, 820\*, 840\*, 895, 896, 899.
III. 120, 140, 150, 151, 152, 153, 195, 210, 220, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 367, 368, 371, 380, 385, 422, 423, 430, 450, 460, 462, 463, 465, 480, 490, 510, 530, 540, 550, 555, 560, 625, 690, 710, 720, 740, 790, 791, 861-865, 870, 871, 890, 950.

\*Also complete AO 120 or AO 121. for patent, trademark or copyright cases.

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

Conservation Law Foundation, Inc. v. Exxon Mobil Corporation, et al., No. 16-cv-11950-MLW

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES [ ] NO [x]

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES [ ] NO [x]

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES [ ] NO [ ]

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES [ ] NO [x]

7. Do all of the parties in this action, excluding governmental agencies of the United States and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).

YES [ ] NO [x]

A. If yes, in which division do all of the non-governmental parties reside?

Eastern Division [ ] Central Division [ ] Western Division [ ]

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division [ ] Central Division [ ] Western Division [ ]

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES [ ] NO [x]

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Thomas Frongillo (BBO #180690); Theodore Wells\*, Daniel Toal\*, Paul Weiss; Patrick Conlon\*, ExxonMobil (\*PHV forthcoming)

ADDRESS Pierce Bainbridge Beck Price & Hecht LLP, One Liberty Square, 13th Floor, Boston, MA 02109

TELEPHONE NO. (617) 313-7401