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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION
NO. 1984CV03333-BLS1

COMMONWEALTH OF MASSACHUSETTS

vs.

EXXON MOBIL CORPORATION

notice sent 06.23.21 TCF CC to pc DJT TVJ VA PJC SAK CGC MQB TJR GSK MAH AAG RJ JAS AAG SS LAG MD

MEMORANDUM OF DECISION AND ORDER ON DEFENDANT'S MOTION TO DISMISS AMENDED COMPLAINT

The Commonwealth of Massachusetts, by its Attorney General, brings this action against Exxon Mobil Corporation ("Exxon") for violations of G.L. c. 93A. The Commonwealth claims that Exxon has "systematically and intentionally … misled Massachusetts investors and consumers about climate change"; more specifically, that Exxon "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 …." Amended Complaint, ¶ 1.

The Commonwealth filed its original complaint, alleging four violations of c. 93A, in this court on October 24, 2019. On November 29, 2019, Exxon removed the case to the United States District Court for the District of Massachusetts. The Commonwealth moved to remand on December 26, 2019, and on March 17, 2020, the District Court remanded the case to this court. On June 5, 2020, the Commonwealth filed an Amended Complaint, alleging three violations of c. 93A. Specifically, the Commonwealth claims that Exxon has: (1) misrepresented and failed to disclose material facts regarding systemic climate change risks to Massachusetts investors (Count I); (2) deceived Massachusetts consumers by misrepresenting the purported environmental benefit of using its Synergy™ and Mobil 1™ products and failed to disclose the risks of climate change caused by its fossil fuel product (Count II); and (3) deceived

Massachusetts consumers by promoting false and misleading "greenwashing" campaigns (Count III).[1] The Commonwealth requests injunctive relief, $5,000 for each violation of c. 93A, and an award of costs and attorneys' fees.

The matter is now before me on Exxon's Motion to Dismiss for lack of personal jurisdiction and for failure to state a claim upon which relief can be granted, pursuant to Mass. R. Civ. P. 12(b)(2) and 12(b)(6), respectively. For the reasons that follow, Exxon's motion is **DENIED**.

BACKGROUND

The Comonwealth's Amended Complaint, which is 202 pages and contains 770 paragraphs, cites to and quotes from numerous Exxon documents. I provide only a general overview of the Commonwealth's allegations here. I discuss other pertinent facts and allegations in the respective sections of the Discussion.

Since at least the late 1970s, Exxon has known that its fossil fuel products cause climate change. Exxon also knew the dangerous effects of global warming, resulting from increasing use of fossil fuels, on the global ecosystem. In the past, Exxon has described the impacts of climate change and global warming as akin to other "existential threats to human survival, such as 'a nuclear holocaust or world famine'" and "globally catastrophic." Amended Complaint, ¶¶ 86, 90, 96. Exxon knew that, once measurable, climate change effects "might not be reversible," and that "[m]itigation of the 'greenhouse effect' would require major reductions in fossil fuel." *Id.* at ¶ 107. Exxon understood the risk climate change poses to its business.

Despite knowing this information, Exxon has deceived Massachusetts investors in its marketing of securities by misrepresenting and failing to disclose the risk posed by climate

[1] In its original complaint, the Commonwealth also claimed that Exxon's allegedly materially false and misleading statements to Massachusetts investors regarding its use of a proxy cost of carbon violated c. 93A.

change to Exxon's business. For example, Exxon knows the "physical risks" from climate change, such as sea level rise, extreme weather, drought, and excessive heat, would harm fossil fuel demand because of efforts to reduce greenhouse gas emissions and market shifts to cleaner energy. These climate risks threaten the value of Exxon's business prospects and the value of Exxon securities held by Massachusetts investors. Instead of disclosing this information, Exxon has told Massachusetts investors that Exxon faces few if any financial risks from climate change, and little risk that its fossil fuel assets will be 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." Amended Complaint, ¶ 19.

Exxon has also deceived Massachusetts consumers by misrepresenting and failing to disclose that normal use of its fossil fuel products, like gasoline and motor oil, causes climate change. For example, Exxon deceptively markets Synergy™ as a product that improves, rather than harms, the environment. Finally, Exxon deceptively advertises itself as a company that protects the environment even though it knows continued reliance on its fossil fuels will harm the environment.

DISCUSSION

I. Personal Jurisdiction[2]

Exxon first argues that this court lacks personal jurisdiction over it because Exxon is an out-of-state resident and the Commonwealth's claims challenge Exxon's statements and activities outside Massachusetts.

[2] When a defense of lack of personal jurisdiction is raised, the court should resolve that issue before dealing with other questions, such as a Rule 12(b)(6) motion, that goes to the case's merits. See *Attorney Gen.* v. *Industrial Nat'l Bank of Rhode Island*, 380 Mass. 533, 534 (1980).

"For a nonresident to be subject to the authority of a Massachusetts court, the exercise of jurisdiction must satisfy both the Massachusetts's long-arm statute, G.L. c. 223A, § 3, and the requirements of the due process clause of the Fourteenth Amendment to the United States Constitution." *Exxon Mobil Corp.* v. *Attorney Gen.*, 479 Mass. 312, 314 (2018), citing *SCVNGR, Inc.* v. *Punchh, Inc.*, 478 Mass. 324, 325 (2017). Exxon is a New Jersey corporation with a principal place of business in Texas. The Supreme Judicial Court ("SJC") has determined that Exxon is not subject to general jurisdiction in Massachusetts. See *Exxon Mobil Corp.* v. *Attorney Gen.*, 479 Mass. at 314 (concluding that total of Exxon's activities in Massachusetts does not approach volume required for assertion of general jurisdiction); see also *Goodyear Dunlop Tires Operations, S.A.* v. *Brown*, 564 U.S. 915, 919 (2011) (court may assert general jurisdiction over corporation when its affiliations with the State are so "continuous and systematic" as to render them essentially at home in the forum State). Thus, the question is whether Exxon's contacts with Massachusetts are sufficient to confer specific jurisdiction under Massachusetts's long-arm statute, G.L. c. 223A, § 3.

"Specific jurisdiction exists when there is a demonstrable nexus between a plaintiff's claims and a defendant's forum-based activities, such as when the litigation itself is founded directly on those activities." *Massachusetts School of Law at Andover, Inc.* v. *American Bar Association*, 142 F.3d 26, 34 (1st Cir. 1998); see G.L. c. 223A, § 3 (granting jurisdiction over claims "arising from" certain enumerated grounds occurring within Massachusetts). It is confined to adjudication of "issues deriving from, or connected with, the very controversy that establishes jurisdiction." *Goodyear Dunlop Tires Operations, S.A.*, 564 U.S. at 919 (quotations and citation omitted). "Or put just a bit differently, 'there must be "an affiliation between the forum and the underlying controversy, principally, [an] activity or an occurrence that takes place

in the forum State and is therefore subject to the State's regulation."'" *Ford Motor Co.* v. *Montana Eighth Judicial District Court*, __U.S. ____, 141 S. Ct. 1017, 1025 (2021), quoting *Bristol-Myers Squibb Co.* v. *Superior Court of Cal., San Francisco Cty.*, 582 U.S. ___, 137 S.Ct. 1773, 1780 (2017). Thus, the question is whether a nexus exists between Exxon's in-state activities and the Commonwealth's legal claims. See *Exxon Mobil Corp.*, 479 Mass. at 315.

The Commonwealth's claims are based on G.L. c. 93A, "a statute of broad impact" that prohibits "unfair methods of competition" and "unfair or deceptive acts or practices in the conduct of any trade or commerce." *Slaney* v. *Westwood Auto, Inc.*, 366 Mass. 688, 693-694 (1975); G.L. c. 93A, § 2(a). The Commonwealth alleges that Exxon has misled Massachusetts consumers and investors about the impact of fossil fuels on both the Earth's climate and the company's value, in violation of c. 93A. See *Exxon Mobil Corp.*, 479 Mass. at 316. In its Amended Complaint, the Commonwealth claims that Exxon has made "significant factual misstatements" and failed "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." Amended Complaint, ¶ 2. See also *Exxon Mobil Corp.*, 479 Mass. at 316 (Commonwealth claims that "[d]espite [Exxon's] sophisticated internal knowledge" about impact of fossil fuels on both Earth's climate and value of the company, "'Exxon failed to disclose what it knew to either the consumers who purchased its fossil fuel products or investors who purchased its securities'").

A. <u>Burden of Proof and Standard of Review</u>

The Commonwealth "has the burden of establishing the facts upon which the question of personal jurisdiction over [Exxon] is to be determined." *Droukas* v. *Divers Training Academy,*

Inc., 375 Mass. 149, 151 (1978). The Commonwealth "must eventually establish jurisdiction by a preponderance of the evidence at an evidentiary hearing or at trial." *Cepeda* v. *Kass*, 62 Mass. App. Ct. 732, 738 (2004). When a defendant challenges the assertion of personal jurisdiction over it, the court, in its discretion, may either (1) consider the motion under the *prima facie* standard and defer a final determination on the issue until the time of trial, when the plaintiff must establish jurisdiction by a preponderance of the evidence, or (2) hold an evidentiary hearing under the preponderance of evidence standard. See *von Schönau-Riedweg* v. *Rothschild Bank AG*, 95 Mass. App. Ct. 471, 483 (2019); *Cepeda*, 62 Mass. App. Ct. at 739-740; see also Mass. R. Civ. P. 12(d) (motion pursuant to 12(b)(2) "shall be heard and determined before trial ... unless the court orders that the hearing and determination thereof be deferred until the trial").

Courts typically resolve such motions by applying the *prima facie* standard. *Cepeda*, 62 Mass. App. Ct. at 737 (most common approach allows court to determine rule 12(b)(2) motion solely on affidavits and other written evidence without conducting an evidentiary hearing). The plaintiff "must make a *prima facie* showing of evidence that, if credited, would be sufficient to support findings of all facts essential to personal jurisdiction." *Fern* v. *Immergut*, 55 Mass. App. Ct. 577, 579 (2002). In evaluating whether a *prima facie* showing has been made, the court acts as a data collector, not as a fact finder, and the plaintiff's burden is one of production, not persuasion. *Cepeda*, 62 Mass. App. Ct. at 737-738. The court takes "specific facts affirmatively alleged by the plaintiff as true (whether or not disputed) and construe[s] them in the light most congenial to the plaintiff's jurisdictional claim." *Massachusetts School of Law at Andover, Inc.*, 142 F.3d at 34; see *Cepeda*, 62 Mass. App. Ct. at 739 (that facts may be controverted by defendant does not overcome *prima facie* showing). The court then "add[s] to the mix facts put forward by defendants; to the extent they are uncontradicted." *Massachusetts School of Law at*

Andover, Inc., 142 F.3d at 34. Where a court denies a motion pursuant to Mass. R. Civ. P. 12(b)(2), without holding an evidentiary hearing, it "reserves the jurisdictional issue, unless waived by the defendant, for final determination at the trial, pursuant to a preponderance of the evidence standard." *Cepeda*, 62 Mass. App. Ct. at 737.

This court will apply the *prima facie* standard in ruling on Exxon's motion and thereby reserves the jurisdictional issue for final determination at trial based on a preponderance of the evidence. See *id.*

B. Long-Arm Statute

The Massachusetts long-arm statute, G.L. c. 223A, § 3, "sets out a list of specific instances in which a Massachusetts court may acquire personal jurisdiction over a nonresident defendant." *Tatro* v. *Manor Care, Inc.*, 416 Mass. 763, 767 (1994). The Commonwealth asserts specific jurisdiction under section (a), which extends "personal jurisdiction over a person, who acts directly or by an agent, as to a cause of action in law or equity arising from the person's ... transacting any business" in Massachusetts.[3]

The Commonwealth's allegations in this case may be categorized as (1) allegations that Exxon misled Massachusetts investors in connection with their decisions to buy, hold, and sell

[3] The Commonwealth also contends that Exxon is subject to personal jurisdiction under G.L. c. 223, § 3(c), which authorizes personal jurisdiction over a non-resident who causes "tortious injury" by an "act or omission in this Commonwealth," and § 3(d) which authorizes personal jurisdiction over a non-resident who causes "tortious injury in this commonwealth by an act or omission outside this commonwealth if he regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in this commonwealth." Because I conclude that § 3(a) grants personal jurisdiction over Exxon, I need not decide whether § 3(c) and (d) do as well. Nevertheless, there is some indication in the case law that § 3(d) may not be relied upon to establish specific jurisdiction. See *Fletcher Fixed Income Alpha Fund, Ltd.* v. *Grant Thornton LLP*, 89 Mass. App. Ct. 718, 725 (2016), citing *Connecticut Nat. Bank* v. *Hoover Treated Wood Prods., Inc.*, 37 Mass. App. Ct. 231, 233 n.6 (1994) (§ 3[d] "is predicated on general jurisdiction," *i.e.*, defendant having engaged in continuous and systematic activity in forum, unrelated to suit); *Fern*, 55 Mass. App. Ct. at 581 n.9 (referring to claim under § 3[d] as one for general jurisdiction); *Ericson* v. *Conagra Foods, Inc.*, 2020 U.S. Dist. LEXIS 219813 *9 (D. Mass. 2020), and cases cited ("Section 3(d) is the Massachusetts long-arm statute's general personal jurisdiction provision and is applicable only if the defendant is subject to general personal jurisdiction in Massachusetts.").

Exxon securities (Count I); and (2) allegations that Exxon misled Massachusetts consumers in connection with their decisions to purchase Exxon products (Count II and III). Although no Massachusetts state court has specifically adopted a claim-specific analysis under G.L. c. 223A, I will consider the investor claim and the consumer claims separately under c. 223A(a). See *Figawi, Inc.* v. *Horan*, 16 F. Supp. 2d 74, 79 (D. Mass. 1998) (referencing claim-specific nature of "specific" *in personam* jurisdiction under § 3(a)).[4]

"For jurisdiction to exist under § 3(a), the facts must satisfy two requirements — the defendant must have transacted business in Massachusetts, and the plaintiff's claim must have arisen from the transaction of business by the defendant." *Tatro*, 416 Mass. at 767. The court construes these dual requirements "broadly." *Id.* at 771. The transacting business requirement "embraces any purposeful acts performed in Massachusetts whether personal, private, or commercial." *Johnson* v. *Witkowski*, 30 Mass. App. Ct. 697, 713 (1991). The "arising from" requirement creates a "but for" test. See *Tatro*, 416 Mass. at 770-771. Exxon apparently does not dispute that it transacts business in Massachusetts; instead, it argues that the Commonwealth's claims do not "arise from" Exxon's transaction of business in Massachusetts.[5]

1. Count I

[4] The First Circuit "divides [the due process] minimum contacts analysis into three inquires: purposeful availment, relatedness, and reasonableness." *Astro-Med, Inc.* v. *Nihon Kohden America, Inc.*, 591 F.3d 1, 9 (1st Cir. 2009). In evaluating relatedness under the due process analysis, "questions of specific jurisdiction are always tied to the particular claims asserted." *Phillips Exeter Academy* v. *Howard Phillips Fund, Inc.*, 196 F.3d 284, 289 (1st Cir. 1999). "To satisfy the relatedness prong, [the plaintiff] must show a nexus between its claims and [the defendant's] forum-based activities." *A Corp.* v. *All Am. Plumbing, Inc.*, 812 F.3d 54, 59 (1st Cir. 2016).

[5] Exxon also makes this argument in connection with the second due process prong, that is, the requirement that the claim "arise out of or relate to the defendant's contacts with the forum." *Bulldog Investors Gen. P'ship* v. *Secretary of the Commonwealth*, 457 Mass. 210, 217 (2010) (citations and quotations omitted). The court, however, must consider the requirements of the long-arm statute first. See *SCVNGR, INC.*, 478 Mass. at 329-330 (2017) (requirements of G L. c. 223A, § 3 "may not be circumvented by restricting the jurisdictional inquiry to due process considerations").

The Commonwealth claims that Exxon deceived investors about the long-term health of Exxon by failing to disclose the full extent of risks associated with climate change and climate regulation. Exxon contends that the court lacks jurisdiction over the investor deception claim because it does not arise from Exxon's contacts with the forum. More specifically, Exxon argues that any statements the Commonwealth alleges Exxon made regarding the impact of climate risks on future demand for oil and natural gas and Exxon's processes for assessing those risks were not made in Massachusetts. I disagree.

The Commonwealth alleges that Exxon "offers its securities, including its common stock and debt instruments, directly to Massachusetts investors" and "investment managers," that "collectively[] hold millions of shares of [Exxon] common stock worth billions of dollars." Amended Complaint, ¶¶ 270, 273; see *id.* at ¶¶ 271, 274-279, 281-283, 289.[6] The Commonwealth further alleges:

> Notwithstanding the additional anticipated costs it expects to incur as a result of increased efforts to reduce greenhouse gas emissions, [Exxon] insists that its businesses will continue to meet growing demand for fossil fuel energy around the world and its reserves are not at risk of becoming stranded. Over the last decade, [Exxon] assured its Massachusetts ... investors[, including State Street Corporation, Wellington Management Group, Fidelity Investments, and Boston Trust Walden Company and their affiliates,] that it has accounted for such risks 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 [Exxon's] operations and fossil fuel products.
>
> ...
>
> This story of careful risk management was highly misleading, as [Exxon's] actual internal practices were, in fact, inconsistent with its representations to investors and did not actually influence [Exxon's] business decisions.

[6] As an example, the Commonwealth claims that: "As of December 31, 2019, State Street [Corporation and its affiliates] was the third-largest institutional investor in [Exxon] common stock, holding 202,281,808 shares with a total value of approximately $14.1 billion." Amended Complaint, ¶ 275.

Amended Complaint, ¶¶ 20, 358. The Commonwealth also references direct communications between Exxon and Massachusetts investors regarding the impact of climate change and climate change regulation on Exxon's business and Exxon's management of climate risk, including its proxy cost of carbon. *Id.* at ¶¶ 446-469. These included a 2015 meeting with Wellington Management at which Exxon's CEO "relayed … that Massachusetts Institute of Technology scientists with whom Exxon[] works ha[d] advised [Exxon] that 'the jury is still out,' on climate change"; a 2016 meeting with Fidelity Investments at which Exxon's CEO "expressed his skepticism about the viability of renewable energy and his confidence in Exxon[]'s business model in the context of proposals to increase the use of renewables"; and various other meetings in Boston in 2017 and 2018 between representatives of Exxon and of Massachusetts institutional investors. *Id.* at ¶¶ 452, 455, 459-467.

In notes from its March 17, 2017 meeting with Exxon, State Street writes that Exxon stated that, "the price of carbon is used as a modeling tool and [Exxon] has used this since 2007 and it considered the proxy cost of carbon before COP21 [the United Nations climate change conference] so the [Paris] climate agreement did not impact their strategy because they had already accounted for a global event like that." Exhibit 8 to Affidavit of I. Andrew Goldberg. Further, when asked about "stranded assets," Exxon replied that it "has 13 years of proven reserves but there are opportunities for future development and the resource development planning process is robust and there is a process in place to look at future returns that considers geopolitical risk, regulations, environmental impact assessments, etc." *Id.*

These are examples of statements that the Commonwealth alleges were deceptive because Exxon failed to disclose known risks to its business presented by climate change. Indeed, a few months later, in October 2017, a representative from Wellington Management

pointed this out. The Wellington representative stated in notes from an Exxon meeting, in which several investors participated:

> Despite the strong message from shareholders asking for [Exxon] to address climate risks in its long-term planning, the company continues to avoid the real issue. Instead, [Exxon] responded by focusing on the algae biofuel research results they announced in June. [Exxon] has put a lot of money into advertising this research, which I believe is an effort to improve its image on environmental issues rather than an effort to truly address risks posed by climate change to their business.

Id. at Exhibit 9.

Thus, the Commonwealth has shown that its claim regarding investor deception arises from Exxon's contacts with Massachusetts. The Commonwealth has sufficiently alleged that Massachusetts investors would not have purchased or retained Exxon's stocks but for its misrepresentations and omissions concerning the risk of climate change to its business.

2. Counts II and III

The SJC already has determined that Exxon's "franchise network of more than 300 retail service stations under the Exxon and Mobil brands that sell gasoline and other fossil fuel products to Massachusetts consumers," represents Exxon's "purposeful and successful solicitation of business from residents of the Commonwealth," such that it satisfies the "transacting any business" prong of § 3(a). *Exxon Mobil Corp.*, 479 Mass. at 317-318. If the Commonwealth's consumer deception claims arise from this franchise network of Exxon and Mobil-branded fuel stations, the court can assert personal jurisdiction over Exxon. Again, the SJC has concluded that "[t]hrough its control over franchisee advertising, Exxon communicates directly with Massachusetts consumers about its fossil fuel products ...." *Exxon Mobil Corp.*, 479 Mass. at 320.[7] Exxon argues that because the advertisements at these franchises "do not

[7] Exxon argues that the SJC's analysis does not control here because, according to the SJC, "the [Civil Investigative Demand] context requires that we broaden our analysis to consider the relationship between Exxon's Massachusetts

contain the purported misrepresentations that give rise to the consumer deception claim," Reply Memorandum at page 6, they cannot support personal jurisdiction over Exxon. I am not persuaded.

A person may violate G.L. c. 93A through false or misleading advertising. See *id.* "[A]dvertising need not be totally false in order to be deemed deceptive in the context of G.L. c. 93A.... The criticized advertising may consist of a half-truth, or even may be true as a literal matter, but still create an over-all misleading impression through failure to disclose material information." *Aspinall* v. *Philip Morris Cos.*, 442 Mass. 381, 394-395 (2004); *Underwood* v. *Risman*, 414 Mass. 96, 99-100 (1993) (duty exists under c. 93A to disclose material facts known to a party at time of transaction); 940 Code Mass. Regs. § 3.05(1) ("No claim or representation shall be made by any means concerning a product which directly, or by implication, or by failure to adequately disclose additional relevant information, has the capacity or tendency or effect of deceiving buyers or prospective buyers in any material respect.").

The Commonwealth claims that Exxon "deceives Massachusetts consumers by failing to disclose in advertisements and promotional materials directed at them ... the extreme safety risk associated with the use of [Exxon's] dangerous fossil fuel products, which are causing potentially 'catastrophic' climate change...." Amended Complaint, ¶¶ 578, 579. It further alleges that Exxon's "misleading representations and omissions to consumers are material because disclosure of information that [Exxon] knows regarding the dangerous climate effects of

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activities and the 'central areas of inquiry covered by the [Attorney General's] investigation, regardless of whether that investigation has yet to indicate [any] ... wrongdoing.'" *Exxon Mobil Corp.*, 479 Mass. at 315. Notwithstanding the SJC's use of the word "broad," the question before this court is whether the Commonwealth's claims arise from Exxon's transaction of business in Massachusetts. To the extent that the Commonwealth alleges that Exxon is deceiving its customers through its franchisees, the SJC's analysis controls.

using [Exxon's] fossil fuel products would influence the purchasing behavior of Massachusetts consumers." *Id.* at ¶ 36.

In response to Exxon's motion to dismiss for lack of personal jurisdiction, the Commonwealth submitted the affidavit of I. Andrew Goldberg, which contains photographs of signs posted at Exxon and Mobil-branded fuel stations in Massachusetts. These signs state that Exxon's Synergy™ "Supreme" gas "provides 2x cleaner engine for better gas mileage," but do not state that the gas causes climate change. It is Exxon's failure to disclose this allegedly material information to Massachusetts consumers that forms the basis of Count II of the Commonwealth's complaint. The Commonwealth claims that Exxon's failure to include allegedly material information in its in-state advertising created an over-all misleading impression in violation of c. 93A. See *Aspinall*, 442 Mass. at 394-395 (criticized advertising may create an over-all misleading impression through failure to disclose material information).[8]

Thus, the Commonwealth's claims regarding consumer deception arise from Exxon's advertisements through its Massachusetts franchisees. More specifically, the alleged injury to Massachusetts consumers, that is, their purchase in Massachusetts of "dangerous" fossil fuel products, would not have occurred "but for" Exxon's failure to disclose additional and allegedly relevant information about those products at its franchise stations.

C. Due Process

The court must also determine whether the exercise of personal jurisdiction over Exxon comports with the requirements of due process. The "touchstone" of this inquiry is "whether the defendant purposefully established 'minimum contacts' in the forum state." *Tatro*, 416 Mass. at

[8] Exxon also argues that the Commonwealth's "greenwashing" claim does not arise from its forum contacts. But part of Exxon's "greenwashing" claim involves the selling of Exxon's products at its Exxon and Mobil-branded fuel stations in Massachusetts, including Mobil 1™, which is "literally colored green by" Exxon. See Commonwealth's Opposition, page 6; Amended Complaint, ¶ 611.

772, quoting *Burger King Corp.* v. *Rudzewicz*, 471 U.S. 462, 474 (1985). "The governing principle [of due process] is the fairness of subjecting a defendant to suit in a distant forum." *Good Hope Indus., Inc.* v. *Ryder Scott Co.*, 378 Mass. 1, 7 (1979). A plaintiff seeking to assert personal jurisdiction over a defendant must establish that: (1) the defendant purposefully availed itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws; (2) the claim arises out of or relates to the defendant's contacts with the forum state; and (3) the assertion of jurisdiction over the defendant does not offend traditional notions of fair play and substantial justice. *Bulldog Investors Gen. P'ship* v. *Secretary of the Commonwealth*, 457 Mass. 210, 217 (2010) (citations and quotations omitted).

The court's exercise of personal jurisdiction over Exxon comports with the requirements of due process. First, the SJC already has held that Exxon has purposefully availed itself of the privilege of conducting business activities in Massachusetts. See *Exxon Mobil Corp.*, 479 Mass. at 321-323.

Further, as discussed above, the claims asserted by the Commonwealth arise out of Exxon's contacts with Massachusetts. See *Tatro*, 416 Mass. at 772, citing *Burger King Corp.*, 471 U.S. at 472 ("The plaintiff's claim must arise out of, or relate to, the defendant's forum contacts."); see also *Ford Motor Co.*, 141 S. Ct. at 1026, 1028 (quotations and citation omitted) (language "or relate to" "contemplates that some relationships will support jurisdiction without a causal showing"; because Ford "had systematically served a market in [States where plaintiffs brought suit] for the very vehicles that the plaintiffs allege malfunctioned and injured them in those States," there was "strong relationship among the defendant, the forum, and the litigation—the essential foundation of specific jurisdiction").

Finally, the exercise of personal jurisdiction over Exxon does not offend "traditional notions of fair play and substantial justice." See *Exxon Mobil Corp.*, 479 Mass. at 323, quoting *International Shoe Co.* v. *Washington*, 326 U.S. 310, 316 (1945). The Commonwealth has a strong interest in enforcing its consumer protection law, including against allegedly false and misleading statements, in Massachusetts. Meanwhile, Exxon delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in all states, including Massachusetts. See *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U.S. 286, 297-298 (1980) (forum State does not exceed its powers under Due Process Clause if it asserts personal jurisdiction over corporation that delivers its products into stream of commerce with expectation that they will be purchased by consumers in forum State). Exxon also interacts with investors in Massachusetts with the expectation that they will purchase and retain its securities. Although having to litigate this case in Massachusetts may result in some inconvenience to Exxon, any such inconvenience is outweighed by the Commonwealth's interest in enforcing its laws in a Massachusetts forum. See *Bulldog Investors Gen. P'ship*, 457 Mass. at 218 (Commonwealth's interest in adjudicating violations of Massachusetts securities laws in Massachusetts forum outweighed any inconvenience to out-of-state defendant resulting from having to litigate there).

Because the court's exercise of jurisdiction over Exxon satisfies both the Massachusetts long-arm statute, G.L. c. 223A, § 3, and the due process clause of the Fourteenth Amendment to the United States Constitution, Exxon's motion to dismiss for lack of personal jurisdiction is **denied**.

II. Failure to State a Claim

In deciding the motion to dismiss, the court accepts as true the factual allegations of the complaint and the reasonable inferences that can be drawn from those facts in the plaintiff's favor. *Foster* v. *Commissioner of Correction (No. 2)*, 484 Mass. 1059, 1059 (2020), citing *Iannacchino* v. *Ford Motor Co.*, 451 Mass. 623, 625 n.7 (2008). The court considers whether the allegations, if true, plausibly suggest an entitlement to any relief against the defendant. *Foster*, 484 Mass. at 1060, citing *Iannacchino*, 451 Mass. at 635-636.

Chapter 93A prohibits "unfair methods of competition"[9] and "unfair or deceptive acts or practices in the conduct of any trade or commerce." *Slaney*, 366 Mass. at 693-694; G.L. c. 93A, § 2(a). "A successful G.L. c. 93A action based on deceptive acts or practices does not require proof that a plaintiff relied on the representation ... or that the defendant intended to deceive the plaintiff ... or even knowledge on the part of the defendant that the representation was false." *Aspinall*, 442 Mass. at 394 (internal citations omitted). An act or practice is deceptive if it "has the capacity to mislead consumers, acting reasonably under the circumstances, to act differently from the way they otherwise would have acted (i.e., to entice a reasonable consumer to purchase the product)." *Id.* at 396; see *Leardi* v. *Brown*, 394 Mass. 151, 156 (1985) (act or practice is deceptive if it possesses "a tendency to deceive"). One can also violate c. 93A "by failing to disclose to a buyer a fact that might have influenced the buyer to refrain from the purchase." *Greenery Rehabilitation Group, Inc.* v. *Antaramian*, 36 Mass. App. Ct. 73, 78 (1994). In determining whether an act or practice is deceptive, the court considers the effect that the act or practice might reasonably be expected to have upon the general public. *Leardi*, 394 Mass. at 156.[10]

[9] The Commonwealth has not alleged any unfair methods of competition.

[10] The First Circuit has recently reiterated that a deceptive act or practice consists of three elements: "(1) there must be a representation, practice, or omission likely to mislead consumers; (2) the consumers must be interpreting the message reasonably under the circumstances; and (3) the misleading effects must be material, that is likely to affect

A. Count I

In this count, the Commonwealth claims that Exxon violated c. 93A by misrepresenting and failing to disclose the financial risks to Exxon posed by climate change to Exxon's business in its marketing of its securities to Massachusetts investors. The Commonwealth alleges that Exxon's "supposed climate risk disclosures [to investors] assert that [Exxon] 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." Amended Complaint, ¶ 471. According to the Commonwealth, this is because Exxon claims that "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 levels those governments have agreed is necessary to avert the most harmful potential consequences of climate change." *Id.* Further, "[t]hese 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 [Exxon's] own business ... despite [Exxon's] longstanding scientific understanding of the potentially 'catastrophic' nature of these risks." Amended Complaint, ¶ 472.

For example, the Commonwealth alleges that Exxon has "repeatedly said that it was accounting for climate change risks through the use of a high and rising 'proxy cost' of carbon that would capture the future impact of greenhouse gas regulations" on Exxon's business, yet Exxon "did not use proxy costs as represented ...." Amended Complaint, ¶ 358, 364. Instead, Exxon's "use of a proxy cost of carbon was not, in fact, a serious corporate effort to characterize

consumers' conduct or decision with regard to a product." *Tomasella* v. *Nestle USA, Inc.*, 962 F. 3d 60, 72 (1st Cir. 2020) (quotations and citation omitted).

and manage climate change risks. Internally, [Exxon] did not apply proxy costs consistently or uniformly; its internal corporate guidance for planning, budgeting, and reserves calculations did not match its publicly-disclosed proxy costs. For some projects, [Exxon] did not apply a proxy cost at all." Amended Complaint, ¶ 384. All the while, however, Exxon "reassured investors that the coming regulatory costs of climate change posed no risk of asset stranding and indeed no meaningful risk at all to" Exxon. Amended Complaint, ¶ 384.

Exxon contends that this court should dismiss Count I because it fails plausibly to allege that reasonable investors would be misled by Exxon's statements about the risks of climate change. First, Exxon claims that its statements are not actionable as a matter of law because they are "forward looking" statements of opinion and "only statement of facts are actionable." *NPS, LLC* v. *Ambac Assur. Corp.*, 706 F. Supp. 2d 162, 171 (D. Mass. 2010); *von Schönau-Riedweg*, 95 Mass. App. Ct. at 497 (statement on which liability for misrepresentation may be based must be one of fact, not of expectation, estimate, opinion, or judgment). Statements of opinion and belief, however, may be actionable if the "opinion is inconsistent with facts known" at the time the statement is made. *Marram* v. *Kobrick Offshore Fund, Ltd.*, 442 Mass. 43, 57 n.24 (2004). Further, a "statement that, in form, is one of opinion, in some circumstances may reasonably be interpreted by the recipient to imply that the maker of the statement knows facts that justify the opinion." *Briggs* v. *Carol Cars, Inc.*, 407 Mass. 391, 396 (1990) (uninformed person purchased used vehicle from used vehicle dealer whose representations that vehicle was in good condition reasonably implied that it was safe and operable and that vehicle's oil requirements would be far less than they turned out to be); see also *McEneaney* v. *Chestnut Hill Realty Corp.*, 38 Mass. App. Ct. 573, 575 (1995) ("[A] statement that in form is one of opinion may constitute a

statement of fact if it may reasonably be understood by the recipient as implying that there are facts to justify the opinion or at least that there are no facts that are incompatible with it.").

The Commonwealth has specifically alleged that Exxon made statements to investors that climate change risks pose no meaningful threat to Exxon's business model, its assets, or the value of its securities despite Exxon's "longstanding scientific understanding of the potentially 'catastrophic' nature of these risks." Amended Complaint, ¶ 472. This is enough to survive a motion to dismiss. See *Marram*, 442 Mass. at 62 (whether statements by defendant "are unactionable 'mere puffery'" cannot be resolved on pleadings); *McEneaney*, 38 Mass. App. Ct. at 575 (distinction between statement of fact and statement of opinion is "often a difficult one to draw"); see also *In re Smith & Wesson Holding Corp.*, 604 F. Supp. 2d 332, 343 (D. Mass. 2009) (information offered by defendants to rebut plaintiffs' claims of falsity "may be pertinent to an assessment of a future motion for summary judgment, but it cannot support dismissal prior to discovery").

Second, Exxon contends that Count I is implausible because "Chapter 93A does not require a company to disclose 'information [that is] readily available to consumers,'" and "Exxon has issued numerous climate risk disclosures." This argument fails for at least two reasons. First, Exxon's reliance on *Tomasella* v. *Nestle USA, Inc.*, 962 F.3d 60, 81-82 (1st Cir. 2020) is misplaced. See *id.* (affirming dismissal of c. 93A claim based on "pure omission" theory; that defendants repeatedly made information about prevalence of worst forms of child labor in their supply chains publicly available through their websites and other media mitigated concern that their omission at point of sale was unethical under c. 93A, regardless of whether plaintiffs were aware of website disclosures). Second, the Commonwealth is not alleging a failure to disclose information readily available to the public; it is alleging that Exxon's public

disclosures regarding the risks to its business presented by climate change were deceptively misleading in light of information Exxon knew, but omitted.

Next, Exxon contends that the Commonwealth has not plausibly alleged that its failure affirmatively to warn investors of systemic climate risks was "knowing[] and willful" as required by c. 93A. See *Underwood*, 414 Mass. at 100 (duty exists under c. 93A to disclose material facts known to party "at the time of a transaction"; there is no liability for failing to disclose what that party does not know); *Mayer* v. *Cohen-Miles, Ins. Agency, Inc.*, 48 Mass. App. Ct. 435, 443 (2000) (c. 93A proscribes material, knowing, and willful nondisclosures that are "likely to mislead consumers acting reasonably under the circumstances"). To the contrary, the Commonwealth has specifically alleged that Exxon knew and purposely concealed such information. These allegations that Exxon deliberately misrepresented and omitted information about the risks of climate change on its company state a viable claim that Exxon engaged in deceptive conduct in violation of G.L. c. 93A.[11]

Exxon also contends that this court should dismiss Count I because it was not engaged in "trade or commerce" at the time it made the statements challenged therein. More specifically, Exxon claims that it did not sell securities directly to Massachusetts investors and, therefore, its purportedly deceptive statements were not made in connection with an offer to sell, or sale of, securities.

Chapter 93A defines "trade and commerce" to include "the advertising, the offering for sale, ... the sale, ... or distribution of ... any security." G.L. c. 93A, § 1. It shall include "any

[11] Exxon also argues that its statements about its use of a proxy cost of carbon would not materially mislead reasonable investors. The Commonwealth's allegations about proxy costs once supported a separate claim for violation of c. 93A, but are now included in Count I. The court will therefore not specifically address Exxon's arguments that its disclosures about proxy costs were neither false nor misleading or that no reasonable investor would have considered the information material except to note that, like most of Exxon's arguments, they are not ones that are appropriately decided at the motion to dismiss stage.

trade or commerce directly or *indirectly* affecting the people of this commonwealth." *Id.* (emphasis added). "By enacting this broad standard for coverage under c. 93A, the Legislature provided protection not only for specific individuals involved in a transaction, but also for the public as a whole." *Manning* v. *Zuckerman*, 388 Mass. 8, 14 (1983). Chapter 93A seeks to deter unfair or deceptive acts or practices between particular individuals, and "to reduce the general danger to the public arising from the potential for such unscrupulous behavior in the marketplace." *Id.*; see also *Ciardi* v. *F. Hoffmann La Roche, Ltd.*, 436 Mass. 53, 66-67 (2002) (c. 93A's language evinces clear statement of legislative policy to protect Massachusetts consumers through authorization of indirect purchaser actions).[12] At this stage, the Commonwealth's allegations are sufficient to state a claim that Exxon was engaged in trade or commerce when it made the allegedly deceptive statements to Massachusetts investors.

B. Count II

In Count II, the Commonwealth alleges that Exxon has misled Massachusetts consumers by advertising that consumer use of certain Exxon products, such as Synergy™ gas and Mobil 1™ motor oil, will reduce greenhouse gas emissions. Amended Complaint, ¶ 538. Further, these advertisements are deceptive because Exxon does not disclose that the "development, refining, and consumer use of [Exxon] fossil fuel products emit large volumes of greenhouse gases, which are causing global average temperatures to rise and destabilizing the global climate system." Amended Complaint, ¶ 538. Further, these allegedly false and misleading misrepresentations are material because they directly influence a consumer's decision to purchase Exxon's products. Amended Complaint, ¶ 537.

[12] I do not find persuasive the single sentence in a twenty-six-year-old, factually distinguishable District Court case on which Exxon relies in support of its argument. See *Salkind* v. *Wang*, 1995 U.S. Dist. LEXIS 4327 *31 (D. Mass. 1995) (company's public dissemination of statements reflecting confidence in company's future – "simply do not constitute 'trade or commerce' as defined under 93A when stock is purchased by investors through open markets").

Exxon argues that the court should dismiss this claim because (1) the Commonwealth does not allege that any statements made by Exxon about Synergy™ and Mobil 1™ were false; (2) Exxon's representations about Synergy™ and Mobil 1™ were not misleading half-truths because a reasonable consumer would not have been misled by them; and (3) Exxon cannot be liable for failing affirmatively to disclose the risks of climate change because a "pure omission" is not a basis for liability under c. 93A. I disagree.

First, "advertising need not be totally false in order to be deemed deceptive in the context of G.L. c. 93A." *Aspinall*, 442 Mass. at 394.[13] Advertising may consist of a half-truth, "or even may be true as a literal matter, but still create an over-all misleading impression through failure to disclose material information." *Id.* at 395; *Greenery Rehabilitation Group, Inc.*, 36 Mass. App. Ct. at 78 ("One can violate § 2 of G.L. c. 93A ... by failing to disclose to a buyer a fact that might have influenced the buyer to refrain from the purchase."). Thus, contrary to Exxon's argument, the Commonwealth does not have to allege that Exxon's representations about the benefits of Synergy™ and Mobil 1™ were false to "plausibly allege" that the representations were misleading.[14]

Next, Exxon argues that no reasonable consumer would be misled by Exxon's advertisements because its statements necessarily imply that their products produce some CO2

[13] See also 940 Code Mass. Regs. § 3.05(1) ("No claim or representation shall be made by any means concerning a product which directly, or by implication, or by failure to adequately disclose additional relevant information, has the capacity or tendency or effect of deceiving buyers or prospective buyers in any material respect."); 940 Code Mass. Regs. § 3.16(2) (providing that an act or practice is a violation of § 2, if "[a]ny 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"); 940 Code Mass. Regs. § 6.01 (material representation is claim "which has the tendency or capacity to influence the decision of reasonable buyers or reasonable prospective buyers whether to purchase the product"); 940 Code Mass. Regs. § 6.04(1) (misleading representation is material representation which seller knows or should know "is false or misleading or has the tendency or capacity to be misleading"). These regulations are authorized by G.L. c. 93A, § 2(c), have the force of law, and "set standards the violations of which . . . constitute violations of c. 93A." *Purity Supreme, Inc.* v. *Attorney Gen.*, 380 Mass. 762, 769-773 (1980).

[14] The case cited by Exxon, *Ortiz* v. *Examworks, Inc.*, 470 Mass. 784, 794 (2015), did not involve advertisements.

emissions and because a reasonable consumer would be aware of the connection between fossil fuels and climate change. "[A]n advertisement is deceptive when it has the capacity to mislead consumers, acting reasonably under the circumstances, to act differently from the way they otherwise would have acted (i.e., to entice a reasonable consumer to purchase the product)." *Aspinall*, 442 Mass. at 396. Whether statements made by Exxon would have misled a reasonable consumer or how Exxon's statements would be understood by a reasonable consumer are questions ill-suited for resolution on a motion to dismiss. For example, the court cannot conclude at this stage that no reasonable consumer would be misled by Exxon's promotion of its Synergy™ fuel on its website:

> **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: ...
>
> Engineered Fuel Technology Synergy fuels to help improve fuel economy and reduce CO2 emissions.

Amended Complaint, ¶¶ 587, 588.

Finally, this claim does not involve a "pure omission" as Exxon contends. A pure omission occurs when a seller "merely stay[s] silent about a subject in circumstances that do not give any particular meaning to [the] silence." *Tomasella*, 962 F.3d at 73 (quotations and citation omitted). Declaring pure omissions to be deceptive would inevitably "expand[] that concept virtually beyond limits," considering the vast universe of "erroneous preconceptions" that individual consumers may have about any given product as well as "[t]he number of facts that may be material to [them]." *Id.* at 75 (quotations and citation omitted). Instead, the Commonwealth's claim is based on Exxon advertising that consumer use of its products will reduce greenhouse gas emissions when "consumer use of fossil fuel products (even products that may yield relatively more efficient engine performance) *increase* greenhouse gas emissions." Amended Complaint, ¶ 582 (emphasis in original). According to the Commonwealth, Exxon is not "merely staying silent" about the subject, but is actually (mis)representing that its products "reduce greenhouse gas emissions." This is not a prior consumer misconception, see *Tomasella*, 962 F.3d at 73; it is a misconception allegedly created by Exxon.

In addition, the Commonwealth does not claim that Exxon had an affirmative duty to warn consumers about climate risks associated with use of its products; it claims that Exxon had a duty to fully disclose those risks once it created the impression that using its products resulted in environmental benefits. See Amended Complaint, ¶ 582. Compare *Tomasella*, 962 F.3d at 67 (First Circuit affirmed dismissal of plaintiff's c. 93A claims and concluded that by not disclosing on packaging of their chocolate products that there are known child labor abuses in their cocoa supply chains, defendants "stay[ed] silent on the subject in a way that [did] not constitute a half-truth or create any misleading impressions about the upstream labor conditions in the cocoa supply chain").

The Commonwealth's allegations about Exxon's deceptive advertising state a viable claim that Exxon engaged in unfair and deceptive practices in violation of G.L. c. 93A.

C. Count III

Finally, the Commonwealth charges Exxon with "greenwashing," which it defines as "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." Amended Complaint, ¶ 540. Exxon's "deceptive 'greenwashing' campaigns ... target Massachusetts consumers with false and misleading messages about [Exxon'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." Amended Complaint, ¶ 762. Exxon "promotes its products by falsely depicting [itself] as a leader in addressing climate change ... without disclosing (i) [Exxon's] ramp up of fossil fuel production in the face of a growing climate emergency; (ii) the minimal investment [Exxon] is actually making in clean energy compared to its investment in business-as-usual fossil fuel production; and (iii) [Exxon's] efforts to undermine measures that would improve consumer fuel economy." *Id.* at ¶ 541. These misrepresentations and omissions mislead consumers by "obscuring the extreme effects of climate change caused by the production and normal use of [Exxon's] fossil fuel products." *Id.* at ¶ 763. Further, Exxon "saturat[es] its brand with deceptive 'green' images that portray ExxonMobil as a good environmental steward...." *Id.* at ¶ 633. For example, the Commonwealth alleges that Exxon describes its "Protect Tomorrow. Today." campaign, as "defin[ing] our approach to the environment.... The environment we work in includes clean air, water, and ecosystems, which people, plants, and animals depend upon." Amended Complaint, ¶ 643.

Exxon contends that the court should dismiss this claim because the statements the Commonwealth alleges are deceptive do not violate c. 93A because they are "truthful at best and mere puffery at worst." *von Schönau-Riedweg*, 95 Mass. App. Ct. at 497; see also *Hansmann* v. *Nationstar Mortg., LLC*, 2014 Mass. App. Unpub. LEXIS 797 *3 (2014), citing *Kwaak* v. *Pfizer, Inc.*, 71 Mass. App. Ct. 293, 300-301 (2008) ("permissible puffery" statements are distinct from actionable conduct under c. 93A). The determination, however, of whether statements are actionable misrepresentations or inactionable puffery is not appropriate at a motion to dismiss stage. See *Marram*, 442 Mass. at 62; *NPS, LLC*, 706 F. Supp. 2d at 172 ("Courts vary in their conclusions of just where the line between [civilly actionable] misrepresentation and [inactionable] puffery lies, and often the determination is highly fact-specific.").

Further, as discussed earlier, the Commonwealth does not have to allege that any statement was false nor is it appropriate to resolve at the motion to dismiss stage what a reasonable consumer would think about Exxon's representations. Finally, Exxon argues that it did not make the challenged "greenwashing" statements in connection with the sale or offer to sell any "services" or "property." G.L. c. 93A, § 1. The Commonwealth alleges, however, that Exxon's "greenwashing" campaign is designed to "induce consumers to purchase its products." Amended Complaint, ¶ 540. The Commonwealth has thus sufficiently alleged that Exxon engaged in deceptive practices with respect to the "greenwashing" claim.

III. First Amendment

Exxon contends that the complaint must be dismissed because the Commonwealth seeks to use c. 93A to compel speech in violation of the First Amendment. Commercial speech is protected by the First Amendment if it concerns lawful activity and is not misleading. *Central Hudson Gas & Elec. Corp.* v. *Pub. Serv. Comm'n of New York*, 447 U.S. 557, 566 (1980); see

also *Illinois ex rel. Madigan* v. *Telemarketing Associates, Inc.*, 538 US 600, 612 (2003) (First Amendment does not protect fraud). Here, the Commonwealth alleges that Exxon made misleading statements to consumers and investors in violation of G.L. c. 93A. This court is not in a position, at least at this stage, to determine whether any particular statement is protected by the First Amendment.

ORDER

For the reasons stated and other reasons articulated in the Commonwealth's Opposition, it is hereby **ORDERED** that the Defendant's Motion to Dismiss is **DENIED**.

/s/ Karen F. Green
Karen F. Green
Associate Justice of the Superior Court

Dated: June 22, 2021