Vermont Superior Court
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Chittenden Unit

VERMONT SUPERIOR COURT
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CIVIL DIVISION
Case No. 21-CV-2778

STATE OF VERMONT, Plaintiff v. EXXON MOBIL CORPORATION, et al., Defendants	DECISION ON MOTIONS

RULING ON STATE'S MOTION TO COMPEL AND DEFENDANTS' MOTIONS TO STAY AND FOR ORAL ARGUMENT

Now pending before this Court are additional discovery motions in this case. First, the State seeks to compel the Exxon Defendants (collectively "Exxon") to re-produce discovery materials from a similar case filed by the Massachusetts Attorney General in Massachusetts state court. *See Massachusetts v. ExxonMobil Corp.*, No. 1984CV0333BLS1 (Mass. Super. Ct. Oct. 24, 2019) ("*Massachusetts*"). Second, Defendants ask the Court to stay these proceedings pending a decision by the U.S. Supreme Court in *Suncor Energy (U.S.A.) Inc. v. County Commissioners of Boulder County*, No. 25-170 (U.S. Feb. 23, 2026) ("*Boulder*"). Third, Defendants request oral argument on the motion to stay. For the reasons discussed below, the motion to compel is GRANTED, the motion to stay is DENIED, and the request for oral argument is DENIED.

I. Motion to Compel.

As a way to streamline discovery, the State proposed that Exxon re-produce its document production, deposition transcripts and exhibits, and written discovery responses from the arguably similar *Massachusetts* case. Like the present action, the Massachusetts Attorney General asserts that Exxon deceived consumers by misrepresenting the environmental benefits of using certain Exxon fuel products, failing to disclose the risks of climate change caused by its products, and promoting false and misleading greenwashing campaigns under state consumer protection laws. State's Mot. to Compel, Ex. 8, ¶¶ 747-70 (filed July 17, 2026) (Am. Compl. in *Massachusetts*). Unlike the present action, however, *Massachusetts* also alleges that Exxon misrepresented and failed to disclose material facts about systemic climate change risks to its investors. *Id.* ¶¶ 734-36. Specifically at issue here are Requests 54, 55, 56, and 58 of the State's First Set of Requests for Production of Documents:

Request No. 54: All DOCUMENTS produced between January 1, 2015 and the present to other State Attorneys General in connection with investigations or litigation CONCERNING CLIMATE CHANGE.

. . .

Request No. 55: All transcripts of and exhibits to depositions taken or produced in:

a. *Commonwealth of Massachusetts v. Exxon Mobil Corporation*, 1984-CV-03333-BLSI (Suffolk Super. Ct.);

. . .

Request No. 56: Written responses provided or served by YOU or any of YOUR affiliates in response to interrogatories or requests for production of documents or for requests for admission served in:

a. *Commonwealth of Massachusetts v. Exxon Mobil Corporation*, 1984-CV-03333-BLSI (Suffolk Super. Ct.);

. . .

Request No. 58: All DOCUMENTS produced by YOU in:

a. *Commonwealth of Massachusetts v. Exxon Mobil Corporation*, 1984-CV-03333-BLSI (Suffolk Super. Ct.);

Ex. 1, 2. While the above requests also seek documents from cases other than *Massachusetts*, the Court interprets the present motion as pertaining only to documents from that case.

"Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case." V.R.C.P. 26(b)(1). If a party fails to answer an interrogatory or respond to a request for production, "the discovering party may move for an order compelling an answer, . . . or an order compelling production . . . in accordance with the request." V.R.C.P. 37(a)(2). The party seeking discovery has the initial burden to demonstrate its relevance. Once relevance is established, the burden shifts to the party opposing discovery to show that the discovery does not fall within the broad scope of relevance under Rule 26, is of such marginal relevance that the potential harm from disclosure would outweigh the presumption of broad disclosure, or curtailing the discovery is otherwise justified on grounds of burden, expense, work product, privilege, or some other exception. *See generally Cameron v. Menard*, No. 5:18-CV-204-GWC-KJD, 2021 WL 2805603, at *3 (D. Vt. July 6, 2021); *Perrin v. Windham Southeast Supervisory Union*, No. 23-CV-1167, 2025 WL 1448137, at *2 (Vt. Super. Ct. May 05, 2025) (Barra, J.); 8 Charles A. Wright & Arthur R. Miller, *Fed. Prac. & Proc. Civ.* § 2008 & n.31.50 (3d ed. Apr. 2026 update) ("[C]ourts continue to say th[at] when the material sought is minimally relevant the burden is on the party opposing discovery to show that it is not relevant."). Trial courts have "broad discretion" over discovery rulings. *Stella ex rel. Est. of Stella v. Spaulding*, 2013 VT 8, ¶ 15, 193 Vt. 226; *Castle v. Sherburne Corp.*, 141 Vt. 157, 164, 446 A.2d 350, 353 (1982).[1]

[1] Counsel apparently conferred in good faith in accordance with Rule 26(h) and were unable to resolve their disputes. *See* Buckwalter Decl. ¶¶ 7-9, 13 (filed July 17, 2026).

The State's motion to compel is "a request for so-called cloned or piggyback discovery," *Costa v. Wright Med. Tech., Inc.*, No. 17-CV-12524-ADB, 2019 WL 108884, at *1 (D. Mass. Jan. 4, 2019), which is "when a party seeks the same documents that the opposing party produced in discovery in another action." *Scricca v. Boppy Co., LLC*, No. 3:22-CV-01497 (RNC), 2024 WL 1211061, at *5 (D. Conn. Mar. 21, 2024) (quotation omitted). "So-called cloned discovery is often attractive to litigants because it can reduce the burden and expense of obtaining relevant information and help the parties narrow the issues in dispute more rapidly than they otherwise could." *Costa*, 2019 WL 108884, at *1. While "[s]ome courts take a dim view of 'cloned' discovery requests and have denied motions to compel responses to them[, o]ther courts have . . . allowed them under certain circumstances." *Scricca*, 2024 WL 1211061, at *5 (citations omitted).

A precise standard for allowing cloned discovery is difficult to discern from the caselaw. Some courts "disfavor" such discovery and seemingly reject it altogether, holding that "a party seeking documents produced in another matter ordinarily must do their own work and request the information they seek directly and must make proper requests describing the information in which they are interested." *In re Outpatient Med. Ctr. Emp. Antitrust Litig.*, No. 21 C 305, 2023 WL 4181198, at *7 (N.D. Ill. June 26, 2023) (quotations omitted); *see also id*. at *6 (collecting cases). "In contrast, other courts have allowed cloned discovery where the previous litigation or investigation and the present case had significant factual and legal overlap, with both suits asserting claims under the same statute." *Id*. at *7 (quotation omitted) (collecting cases). Ultimately, "the appropriateness of cloned discovery depends upon the circumstances of each case." *Id*. (quotation omitted).[2]

In opposing the motion to compel, Exxon contends that the motion seeks irrelevant documents because the claims are not identical, that the motion is premature because it has already agreed to produce all documents from *Massachusetts* that are also relevant and responsive to the Vermont discovery, and that there is a significant burden to reproducing all materials from *Massachusetts*. The State contends that the two cases need not be "identical" for the Court to order cloned discovery. Additionally, it argues that the facts and claims in each case are substantially similar, that Exxon has produced only a small percentage of the over 4 million documents produced in *Massachusetts* and has outright refused to produce certain documents,

[2] Exxon relies on what appears to be the only reported Vermont decision to address the cloned discovery doctrine: *Hk Cent. Block Ltd. P'ship v. Lubrizol Corp.*, No. 2:23-CV-160, 2025 WL 1953339 (D. Vt. Jan. 29, 2025). However, that case, which involved "cracked sprinkler pipes at a residential development," is not particularly instructive here. *Id*. at *1. Given the sizeable breadth of the "universe of potential contaminants" that could have led to the failure, the federal district court determined that discovery in the case "must be limited to the contaminants that [plaintiff] reasonably suspects were involved." *Id*. at *3. Regarding plaintiff's request for "all discovery produced in a separate lawsuit," the court noted that such "cloned" discovery is typically compelled where the two cases are "essentially identical," as opposed to "merely because there are some similarities between [the] cases," and concluded, without further discussion, that plaintiff had not established how the two cases at issue were "essentially identical." *Id*. (quotation omitted).

and that any burden on Exxon in producing cloned discovery will be minimal because the State, rather than Exxon, will have to sort through the documents.

This Court need not decide whether the so-called "cloned discovery" doctrine is applicable in Vermont. Instead, it concludes that the *Massachusetts* documents are relevant to the State's claims and proportional to the needs of the case and, therefore, discoverable under the general discovery provisions of Rule 26. *See* V.R.C.P. 26(b)(1). In reaching this conclusion, the Court finds the District of Columbia Superior Court's decision in *Dist. of Columbia v. Exxon Mobil Corp.*, No. 2020 CA 002892 B, 2026 WL 1506095, at *3 (D.C. Super. Ct. May 22, 2026) particularly on point and persuasive. There, the D.C. Superior Court ordered "cloned" discovery from the same litigation at issue here and squarely rejected the arguments that Exxon raises here.

First, the D.C. court rejected Exxon's argument that "productions in *Massachusetts* are not sufficiently relevant because *Massachusetts* includes an allegation for investor deception, and an analogous claim is absent [in the D.C. case]," finding Exxon had "fail[ed] to demonstrate how those productions are not relevant" to the State's claims. *Id*. This Court agrees. The investor deception claims in *Massachusetts* are largely grounded in the same alleged deception underlying the consumer protection claims in the present action. For example, documents that demonstrate Exxon's internal knowledge about business risks posed by climate change are also directly relevant to whether it misled consumers. And as in the D.C. case, some of the discovery that Exxon has produced so far includes investor communications. "[T]he question of relevancy is to be more loosely construed at the discovery stage than at the trial . . . . [R]elevancy under Rule 26 is extremely broad." 8 Wright & Miller, *Fed. Prac. & Proc. Civ.* § 2008.

Second, as the D.C. court concluded, the *Massachusetts* production is relevant even though *Massachusetts* involves different consumers and was brought under a different jurisdiction's law. As the State correctly asserts, this is a "distinction without a difference." Pl.'s Mot. to Compel at 14. The claims here arise from the same general alleged disinformation campaign, advertising, and greenwashing efforts alleged in *Massachusetts*, and there is no indication that the advertisements issued in Massachusetts are materially different than the ones seen in Vermont. Thus, it is reasonable to conclude that such ads fall within the broad definition of "relevance" under Rule 26(b)(1).

Nor does it matter that *Massachusetts* arose out of a "civil investigative demand" and encompassed documents dating back to 1976. *Dist. of Columbia*, 2026 WL 1506095, at *4. "'[A] document created more than four years ago is, of course, still probative of Exxon's present knowledge on the issue of climate change, and whether Exxon disclosed that knowledge to the public.'" *Id*. (quoting *Exxon v. Massachusetts*, 479 Mass. 312, 326 (2018)). Moreover, there are some allegations in the present case that date back to the 1950s. Compl. ¶¶ 42, 44-45.

Exxon represents that it has already agreed to produce some documents from *Massachusetts*, is still in the process of responding to the State's requests for those documents, and that accordingly there is nothing to compel until it completes its production. As of the filing of the State's Reply memorandum on August 14, however, Exxon had produced about 127,000 documents, which is only "a small fraction of the more than 4 million documents produced in *Massachusetts*." *Dist. of Columbia*, 2026 WL 1506095, at *4. And most, if not all, of those

documents were also produced in *Massachusetts*. *See id*.; State's Reply at 13. Moreover, the record indicates that Exxon may be arbitrarily limiting the number of custodians from whom it retrieves documents, refusing to disclose its search terms to the State, and categorically refusing to produce any deposition transcripts/exhibits from *Massachusetts*. Against this backdrop, "production of the *Massachusetts* documents in this case will promote the discovery rules' central purpose: to secure the just, speedy, and inexpensive determination of an action." *Dist. of Columbia*, 2026 WL 1506095, at *4 (quotation omitted).

Lastly, Exxon makes the same argument here that it made in *District of Columbia* as to burden: that the State "ignores the downstream effects of flooding this action with voluminous irrelevant documents." *Dist. of Columbia*, 2026 WL 1506095, at *4. This argument is unavailing. The burden will be on the State, not Exxon, to review the documents for relevancy. To the extent Exxon contends that the process of wholesale reproduction of the *Massachusetts* documents will be more complex and burdensome than its current approach of conducting multiple searches and/or combing through those documents individually, that contention seems overblown and is likewise unpersuasive.

To the extent the parties request oral argument on the motion to compel, that request is denied.

II. Motion to Stay.

Second, Defendants ask the Court to stay these proceedings pending a decision by the U.S. Supreme Court in *Suncor Energy (U.S.A.) Inc. v. County Commissioners of Boulder County*, No. 25-170 (U.S. Feb. 23, 2026) ("*Boulder*"). "A stay in this context is a 'suspension of proceedings' until a specified event occurs in another case" and "is in the nature of a continuance." *In re Woodstock Cmty. Trust & Hous. Vt. PRD*, 2012 VT 87, ¶ 36, 192 Vt. 474. Such motions "involve[] trial court discretion" because "every court has the power 'to control the disposition of the causes on its docket.'" *Id*. (quoting *Landis v. North American Co.*, 299 U.S. 248, 254 (1936)). To prevail on a motion to stay, the moving party must demonstrate: (1) likelihood of success on the merits; (2) "irreparable injury if the stay is not granted; (3) that the issuance of a stay will not substantially harm other parties; and (4) that the best interests of the public will be served by the issuance of the stay." *In re Ins. Servs. Office, Inc.*, 148 Vt. 634, 635, 537 A.2d 134, 134 (1987) (mem.) (citation omitted); *see also In re Tariff Filing of New England Tel. & Tel. Co.*, 145 Vt. 309, 311, 488 A.2d 746, 748 (1984). Additionally, "the party seeking a stay 'must make out a clear case of hardship or inequity in being required to go forward' if there is a possibility that a stay will damage someone else." *Woodstock Cmty. Trust & Hous. Vt.*, 2012 VT 87, ¶ 36 (quoting *Landis*, 299 U.S. at 254-55).

Despite Defendants' contrary assertions, the issues in *Boulder* are not the same as, nor dispositive of, the present case. Thus, Defendants have not demonstrated a likelihood that the *Boulder* decision will affect the merits of this case. Further, even if there is a chance that the eventual decision in *Boulder* could affect this case, Defendants have not established any of the other factors, particularly that they would incur "irreparable injury" if the stay is not granted. Accordingly, the Court concludes there is no good reason to grant a stay that might last for a year or more. The motion to stay is DENIED.

III. Motion for Oral Argument.

Third, Defendants move for oral argument on their motion to stay. As suggested above, oral argument on the motion would not be helpful and is unnecessary. Accordingly, the motion for oral argument is DENIED.

IV. Future Discovery Motions.

Lastly, the Court observes that the parties continue to file numerous, lengthy discovery motions. While the parties appear to have complied with Rule 26(h), the frequency of these motions and the volume of the briefing have consumed a significant amount of judicial time and resources, and that trend threatens to continue. Accordingly, the Court in its discretion[3] imposes additional restrictions on all parties as to discovery motions:

1. If the parties cannot resolve their discovery disputes after initially conferring together as required by Rule 26(h), they shall meet and confer in at least one subsequent session no sooner than two days after the initial meeting, in a renewed attempt to resolve their disputes. The Court will permit the filing of a discovery motion only after the parties have conducted that second session.

2. The briefing on discovery filings shall be no more than 15 pages for each motion, no more than 15 pages for each opposition, and no more than 10 pages for each reply, excluding tables of contents and authorities, signature pages, and exhibits.[4] Filings shall be double-spaced and typed in 12-point font. The Court will request additional briefing if necessary.

Additionally, the Court reminds the parties of their obligations under Rule 26(h): "Counsel have the obligation to make good faith efforts among themselves to resolve or reduce all differences relating to discovery procedures and to avoid filing unnecessary motions." V.R.C.P. 26(h). The Court strongly encourages the parties to double their good faith efforts to resolve or minimize all discovery disputes to avoid the necessity of additional motions. If discovery disputes continue to arise with the same frequency, the Court may consider imposing additional restrictions.

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[3] "Trial courts have 'broad discretion to manage their dockets.'" *Calderon v. Brown's Certified Welding*, No. 24-AP-136, 2025 WL 824764, at *4 (Vt. Mar. 14, 2025) (unpub. mem.) (quoting *Pcolar v. Casella Waste Sys., Inc.*, 2012 VT 58, ¶ 20, 192 Vt. 343); *see also Stella ex rel. Est. of Stella*, 2013 VT 8, ("Trial court discretion over discovery is necessary given the differences presented by the particular facts of each case. . . . The trial court must have the ability to manage gamesmanship on both sides by exercising its discretion in response to the particular situation presented to it.").

[4] The Court expects the parties will act in good faith and will not unnecessarily or improperly file multiple, separate motions in order to avoid the Court's page-limit restrictions.

Order

For the foregoing reasons, the State's motion to compel (Mot. #71) is GRANTED. Consistent with the Court's decision, Exxon shall produce the *Massachusetts* materials requested by the State within 60 days.

Defendants' motion to stay (Mot. #72) is DENIED. Defendants' motion for oral argument (Mot. #74) is DENIED.

Additionally, the Court reminds the parties of their obligations under Rule 26(h) and imposes certain additional obligations before future discovery motions can be filed as outlined in § IV of this decision.

Electronically signed on November 3, 2026 at 4:29 PM pursuant to V.R.E.F. 9(d).

Megan J. Shafritz
Superior Court Judge