

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

APPEALS COURT
Docket No. 2026-P-0566

OFFICE OF THE INSPECTOR GENERAL,
Plaintiff-Appellee

v.

COMMITTEE FOR PUBLIC COUNSEL SERVICES,
Defendant-Appellant

**COMMITTEE FOR PUBLIC COUNSEL SERVICES’
RESPONSE TO MAY 11, 2026 ORDER TO SHOW CAUSE WHY THE TRIAL COURT’S
ORDER ON MOTION TO COMPEL
PURSUANT TO G.L. CHAPTER 12A, § 9 IS APPEALABLE**

The Defendant-Appellant, Committee for Public Counsel Services, (“CPCS”) respectfully submits that the trial court’s February 11, 2026, order allowing the Plaintiff-Appellee’s motion to compel production pursuant to G.L. c. 12A, § 9 (“Order”) is appealable. The Office of Inspector General’s (“OIG”) action authorized by G.L. c. 12A, § 9 contemplates only one form of relief: an order granting a motion to compel. That order therefore constitutes the final action of the trial court granting this relief and is a “final judgment” for purposes of G.L. c. 231, § 113. Alternatively, the order is a final, separately appealable order.

**THE TRIAL COURT’S ORDER ADJUDICATED THE FINAL MERITS OF THE
CAUSE OF ACTION PURSUANT TO G.L. CHAPTER 12A, § 9 AND IS
THEREFORE APPEALABLE.**

The sole relief in an action brought by the OIG pursuant to Section 9 is an order granting a motion to compel. General Laws c. 12A, § 9 states in relevant part:

Any justice of the superior court department in the trial court may, upon application by the inspector general, issue an order to compel the production of records, reports, audits, reviews, papers, books, documents, recommendations, correspondence and any other data and material as aforesaid in the same manner

and to the same extent as before said superior court department. Any failure to obey such order may be punished by said court as contempt.

There are no Massachusetts appellate decisions which have analyzed whether an order granting a motion to compel pursuant to G.L. c. 12A, § 9 is an appealable final judgment. But, because such an order adjudicates the rights of the parties, it constitutes the final judgment in the Section 9 action, it is thus appealable to the Appeals Court. General Law c. 231, § 113 provides that “[a] party aggrieved by a final judgment of the superior court ... may appeal therefrom to the appeals court[.]. Rule 54 of the Massachusetts Rules of Civil Procedure defines judgment as “the act of the trial court finally adjudicating the rights of the parties affected.” The 1973 Reporter’s Notes to Mass. R. Civ. P. 54 state that “[u]nder the Rules, “judgment” is merely the final adjudicating act of the trial court, and starts the timetable for appellate review.” *See* Mass. R. A. P. 3(c)(1)(A)(ii) (“notice of appeal shall designate[] ... in civil cases, the judgment, decree, adjudication, or separately appealable order from which the appeal is taken.”) The trial court’s decision granting the OIG’s motion to compel pursuant to G.L. c. 12A, § 9 is the “final adjudicating act of the trial court” and is thus appealable.

Even if this court concludes it is not a final judgment, the order is separately appealable as a final order. A somewhat analogous statutory scheme exists in G.L. c. 93A. The Attorney General has statutory authority pursuant to G.L. c. 93A, § 6(1) to issue civil investigative demands (“CID”) on companies alleged to be engaging in unfair or deceptive trade practices. This is not dissimilar to what G.L. c. 12A, § 9 authorizes the OIG to do. Section § 6(1) provides, in pertinent part:

The attorney general, whenever he believes a person has engaged in or is engaging in any method, act or practice declared to be unlawful by this chapter, may conduct an investigation to ascertain whether in fact such person has engaged in or is engaging in such method, act or practice. In conducting such investigation

he may ... (b) examine or cause to be examined any documentary material of whatever nature relevant to such alleged unlawful method, act or practice;

General Laws c. 93A, § 6(7) provides that the recipient of the CID may move the Superior Court, for good cause shown, to set aside or modify the CID. General Laws c. 93A, § 7 provides that the Attorney General “may file in the superior court ... a petition for an order ... for ... enforcement.” Courts have held that an order denying a G.L. c. 93A, § 6(7) motion to set aside or modify a CID is an interlocutory order and not an appealable final order. *Harmon Law Offs., P.C. v. Att’y Gen.*, 83 Mass. App. Ct. 830, 831 (2013). However, by the plain language of Section 7, an order issued under that section is a final order: “Any disobedience of any **final** order entered under this section by any court shall be punished as a contempt thereof.” (Emphasis added). That final order is appealable. *Harmon Law Offs., P.C. v. Att’y Gen.*, 83 Mass. App. Ct. at 831.

Here, the order on the OIG’s motion to compel pursuant to G.L. c. 12A, § 9 is analogous to the “final order” found in G.L. c. 93A, § 7. Unlike the statutory framework set forth in G.L. c. 93A, §§ 6-7, there is only one “order” contemplated in a G.L. c. 12A, § 9 lawsuit: a final order compelling production. Section 9 does not provide a statutory mechanism for an agency to “set aside or modify” an OIG summons that a recipient of a CID possesses under G.L. c. 93A, § 6(7). Therefore, the order issued pursuant to G.L. c. 12A, § 9 is the equivalent to the “final order” pursuant to G.L. c. 93A, § 7 and is thus appealable.

Finally, both G.L. c. 12A, § 9 and G.L. c. 93A, § 7 provide that failure to comply with a court order compelling compliance may be punished as contempt. G.L. c. 12A, § 9 (“Any failure to obey such order may be punished by said court as contempt.”); G.L. c. 93A, § 7 (“Any disobedience of any final order entered under this section by any court shall be punished as a contempt thereof.”) Courts have resorted to the “crude but serviceable method” of requiring

parties to incur a sanction for contempt to appeal an interlocutory order. *Cronin v. Strayer*, 392 Mass. 525, 529 (1984). However, the concerns about avoiding piecemeal litigation are simply not present here. See generally *Linder v. Pollak*, 102 Mass. App. Ct. 386, 390 (2023) (restricting appeals of interlocutory orders avoids piecemeal litigation that “will delay the resolution of the trial court case, increase the over-all cost of the litigation, and burden our appellate courts”) (citations and internal quotations omitted). First, as set forth above, there is no more litigation to be had on the merits of the OIG’s application. The trial court’s decision disposed of the cause on its merits and left no further proceedings to be resolved. *Dominion Builders, LLC v. Hennep Properties, LLC*, 106 Mass. App. Ct. 323, 328 (2025). Second, as demonstrated by the lack of any appellate opinions on this issue, there is no risk of a flood of appellate litigation. It is therefore both unnecessary and unseemly to require CPCS, a state agency, to be held in contempt before being allowed to appeal the trial court’s order.

CONCLUSION

The Order issued pursuant to G.L. c. 12A, § 9 is appealable as either a final judgment adjudicating the merits of the OIG’s application or a final order. Accordingly, the Single Justice should allow this matter to proceed in the full Appeals Court. Moreover, as there are no appellate decision on the issue, and the issue of whether the G.L. c. 12A, § 9 order is appealable as a final judgment or final order is one of first impression and of significance to the Commonwealth, CPCS suggests that the matter is best addressed by the panel as part of the appeal, after full briefing and argument.

Respectfully submitted by,
COMMITTEE FOR PUBLIC COUNSEL
SERVICES,

/s/ Samuel A. Aylesworth
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Dated: May 18, 2026

CERTIFICATE OF SERVICE

I, Samuel A. Aylesworth, Associate General Counsel, hereby certify that I have this day, May 18, 2026, served the foregoing notice upon the plaintiff by emailing a copy through the Court's E-File System to:

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