IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE, *ex rel.* KATHLEEN JENNINGS, Attorney General of the State of Delaware,	)	
Plaintiff,	)	C.A. No. N20C-09-097 MMJ CCLD
v.	)	**TRIAL BY JURY OF 12 DEMANDED**
BP AMERICA INC., *et al.*,	)	
Defendants.	)	

PLAINTIFF'S ANSWERING BRIEF IN OPPOSITION TO DEFENDANT CNX RESOURCES CORPORATION'S MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM

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INTRODUCTION

The State of Delaware filed a 217-page Complaint with numerous detailed allegations about corporate misconduct by CNX Resources Corporation ("CNX"); CONSOL Energy Inc., an entity into which CNX split its coal mining and related downstream operations (together, "CONSOL");[1] and other defendants (with CONSOL, "Defendants"). CNX filed a motion to dismiss under Superior Court Civil Rule 12(b)(6) ("Motion"), which incorporates the arguments in Defendants' Joint Motion to Dismiss for Failure to State a Claim ("Joint Motion") and those in Citgo Petroleum Corporation and Murphy USA Inc.'s Motion to Dismiss for Failure to State a Claim ("Citgo-MUSA Motion").[2]

CNX argues primarily that the State fails to meet Rule 9(b)'s particularity standard because it makes allegations that apply to all Defendants and references CNX by name "only a few times in its Complaint." *See State ex rel. Jennings v. Purdue Pharma L.P*, 2019 WL 446382, at *8 (Del. Super. Feb. 4, 2019) ("*Purdue*"). But as the State explained in its Answering Brief in Opposition to Defendants' Joint Motion ("Joint Opposition"), Rule 9(b) does not even apply to most of the State's

[1] For purposes of the Complaint, "CONSOL" includes CNX, CONSOL Energy Inc., and their predecessors, successors, parents, subsidiaries, affiliates, and divisions. Compl. ¶ 34(g).

[2] The State likewise incorporates by reference all arguments it asserts in its answering briefs in opposition to the Joint Motion and in opposition to the Citgo-MUSA Motion as if fully set forth herein.

claims. Joint Opp'n at Part V.A–B. Regardless, this Court already considered and rightly rejected analogous Rule 9(b) arguments in *Purdue*, denying a motion to dismiss where, as here, the complaint grouped defendants together for purposes of some allegations because they engaged in the same wrongful conduct. *Purdue*, 2019 WL 446382, at *8. Because the Complaint puts CNX on sufficient notice of the claims against it, the Court should not dismiss under Rule 9(b).

Considering the extensive allegations regarding the Fossil Fuel Defendants' knowledge of the climate-related harms of their fossil fuel products, the Court can easily discard CNX's argument that it lacked sufficient knowledge about the harms of its products to sustain a failure to warn claim.

Finally, given the robust allegations of direct liability on the part of CNX, the Court need not reach its arguments that the allegations against the Global Climate Coalition ("GCC") are not imputable to CNX. If the Court does reach the issue, GCC's knowledge and conduct may be imputed to CNX because the Complaint plausibly alleges that GCC acted as CNX's agent in disseminating climate disinformation and misrepresenting the risks of fossil fuel products sold by it and other Defendants, and because CNX and others engaged in a civil conspiracy with GCC.

QUESTIONS INVOLVED

1. Does the Complaint sufficiently notify CNX of the claims against it?

2. Does the Complaint state a failure to warn claim against CNX?

3. Are the Complaint's allegations against GCC imputable to CNX?

ARGUMENT

CNX primarily takes issue with the State's use of collective allegations and the number of times that it is referenced by name in the Complaint. Mot. 7–9. But there is nothing improper in grouping CNX with other Defendants with respect to allegations of the same wrongful conduct. A significant portion of the conduct alleged in the Complaint was undertaken by Defendants as a whole, and the allegations in the Complaint appropriately reflect that joint conduct.

Although CNX contends that Rule 9(b)'s heightened pleading standard applies to all claims against it, Rule 9(b) applies only to the State's negligent failure to warn claim, as explained in the Joint Opposition. Joint Opp'n at Part V.A–B. Rule 9(b)'s purpose is to "provide defendants with enough notice to prepare a defense," along with "prevent[ing] plaintiffs from using complaints as fishing expeditions to unearth wrongs to which they had no prior knowledge" and protecting defendants "against baseless claims." *Purdue*, 2019 WL 446382, at *8.[3] Where the rule applies, "date, place and time allegations are not required to satisfy the particularity requirement." *Sammons v. Hartford Underwriters Ins. Co.*, 2010 WL

[3] CNX's Motion focuses primarily on notice concerns and does not argue that the case is a fishing expedition or wholly baseless as reasons for dismissing pursuant to Rule 9(b). This Opposition thus likewise focuses on CNX's notice.

1267222, at *5 (Del. Super. Apr. 1, 2010) (footnote omitted). Here, whether Rule 8(a) or Rule 9(b) applies, the Complaint sufficiently notifies CNX of the claims against it.

Additionally, the allegations against GCC are imputable to CNX because the Complaint plausibly alleges agent-principal and conspiracy theories of imputation.

I. The Complaint's Allegations Sufficiently Notify CNX of the Claims Against It

CNX principally laments the number of times it is referenced by name in the Complaint. *See* Mot. 3–4, 7–9. This Court rejected a similar argument in *Purdue*. 2019 WL 446382, at *8. Although "[a]t the pleading stage, *a defendant* in a group of similar defendants *may attempt to distinguish its behavior* from other defendants," it is not the plaintiff's burden to do so. *Id.* (emphasis added). "[T]hat there [a]re no allegations of specific misrepresentations" by certain defendants, or that a defendant is "only referenced . . . specifically a few times in [the] [c]omplaint," is not a basis to dismiss claims against that defendant under Rule 9(b). *Id.*; *see also Grant v. Turner*, 505 F. App'x 107, 112 (3d Cir. 2012) (vacating dismissal of fraud-based claims because "[a]lthough Plaintiffs d[id] not allege who, specifically, made misrepresentations to whom in all cases," the complaint sufficiently notified defendants of their charged misconduct); *Swartz v. KPMG LLP*, 476 F.3d 756, 764 (9th Cir. 2007) ("[T]here is no absolute requirement that where several defendants

are sued in connection with an alleged fraudulent scheme, the complaint must identify *false statements* made by each and every defendant.").

Instead, Delaware courts permit group pleading "so long as individual defendants are on notice of the claim against them." *River Valley Ingredients, LLC v. Am. Proteins, Inc.*, 2021 WL 598539, at *3 (Del. Super. Feb. 4, 2021). In fact, "nothing in Rule 9"—nor Rule 8, for that matter—"*per se* prohibits group pleading." *Id.* Because the cornerstone of Rule 9(b) is notice, a complaint that notifies defendants of the "precise misconduct with which they are charged" suffices even if it charges multiple defendants with the same conduct. *Grant*, 505 F. App'x at 111 (quotation omitted); *see also River Valley Ingredients*, 2021 WL 598539, at *3.

Here, the collective allegations referencing "Fossil Fuel Defendants" are permissible because the State alleges that each Fossil Fuel Defendant engaged in the same wrongful conduct and fraudulent scheme. This provides CNX with ample notice. *See* Joint Opp'n at Part V.C. The Complaint alleges that CNX and other Fossil Fuel Defendants had a duty to warn consumers about the climatic harms of their fossil fuel products, which they researched and understood in depth, but failed to give adequate warnings thereof. Instead, these Defendants waged a sophisticated campaign of deception and disinformation about their products' contribution to climate change, knowing that the intended use of their products would cause the harms they predicted. *See* Compl. ¶¶ 20–36, 46(b), 100–40, 160–97, 202–210, 226,

235–44, 246, 262. Fossil Fuel Defendants perpetuated this scheme through their own conduct and by relying on trade associations, GCC, and other actors. *See id.* ¶ 135. CNX is charged with the same misconduct as the other Fossil Fuel Defendants, because they engaged in the same conduct, and is on notice of what the State alleges.

Collective pleading is particularly appropriate where, as here, defendants are alleged to have deliberately concealed facts regarding their misconduct, leaving the plaintiff unable to further specify a defendant's actions "absent discovery." *Grant*, 505 F. App'x at 112. Group allegations are likewise appropriate where "information that would permit greater particularity is exclusively within the possession of a defendant, and defendants are alleged to have acted together to facilitate a general scheme." *Hawk Mountain LLC v. Mirra*, 2016 WL 4541032, at *2 (D. Del. Aug. 31, 2016). Both factors are alleged here.

The State alleges that Fossil Fuel Defendants relied on third parties like the American Petroleum Institute ("API") and GCC to conceal their participation in their campaigns of deception. *See*, *e.g.*, Compl. ¶¶ 37(b), 39–42, 134–35. Defendants "deliberately obscured" their efforts to conceal and misrepresent their fossil fuel products' known dangers, *id.* ¶ 134, including through nominally independent organizations like think tanks, citizen groups, and foundations advancing a skeptical view of climate change the Fossil Fuel Defendants knew to be misleading and false,

see id. ¶ 135. These groups disseminated climate disinformation "from a misleadingly objective source" on Fossil Fuel Defendants' behalf, *id.* ¶ 37(b), helping to deliberately conceal Fossil Fuel Defendants' misconduct, *see Grant*, 505 F. App'x at 112. The State's allegations to that effect against all Fossil Fuel Defendants are appropriate here.

The cases CNX cites are distinguishable. One was a toxic tort case, where claims are subject to a heightened pleading standard. The court cabined its discussion to "the context of the[] [toxic] tort claims" at issue there. *Hupan v. All. One Int'l, Inc.*, 2015 WL 7776659, at *12 (Del. Super. Nov. 30, 2015), *aff'd sub nom. Aranda v. Philip Morris USA Inc.*, 183 A.3d 1245 (Del. 2018). That case relied on the reasoning in *In re Benzene Litigation*, which expressly recognized the "unique difficulties presented in toxic tort litigation" that "may justify some departure from [typical] pleading standards." 2007 WL 625054, at *7 (Del. Super. Feb. 26, 2007). A toxic tort plaintiff's harm may manifest years after the initial exposure, increasing the difficulty in determining which products or manufacturers caused the injuries. *See id.* In that narrow context, "[p]laintiffs must plead with specificity which defendant caused the alleged harm, what products caused the harm, how the harm occurred, and when that harm occurred." *Hupan*, 2015 WL 7776659, at *12.

The Complaint here alleges that all of Fossil Fuel Defendants' fossil fuel products emit greenhouse gases that contribute to the State's injuries. *See* Compl.

¶¶ 4, 21–36. It specifies the injuries Defendants' deceptive conduct caused and the mechanism of causation. *See, e.g.*, *id.* ¶¶ 5–12, 47–61, 226–33. Unlike a toxic tort case, where the timing of exposure may differentiate one defendant's products from another's, the Complaint alleges that all greenhouse gas emissions resulting from Defendants' deceptive promotion have contributed to the State's injuries.

Another case CNX cites, *In re Swervepay Acquisition, LLC*, acknowledged that "Delaware law does not expressly forbid group pleading." 2022 WL 3701723, at *10 (Del. Ch. Aug. 26, 2022) (cleaned up). However, the plaintiffs "fail[ed] to explain why [it] should be permitted" there, providing no reason to impute a single challenged email to other defendants. *Id.* The State, by contrast, clearly explains here why group pleading is permissible in the context of Defendants' coordinated, sophisticated, and *decades-long* campaigns of deception.

Bank of America, N.A. v. Knight is also distinguishable, as the court dismissed claims that three defendant entities' directors and managers engaged in corporate looting, finding the allegation "that 'the defendants looted the corporation'—without any details about who did what— . . . inadequate." 725 F.3d 815, 818 (7th Cir. 2013). Here, the Complaint contains far more detailed allegations about Fossil Fuel Defendants' multidecadal campaigns of deception and disinformation, alleging they all participated and providing specific examples of misrepresentations by various Defendants. *See, e.g.*, Compl. ¶¶ 116–23, 172–73, 178–80, 182–86, 189–201.

The last case CNX cites did not involve allegations of a widespread campaign of deception by numerous defendants but rather a common-law fraud claim against a single defendant. *See Browne v. Robb*, 583 A.2d 949, 955 (Del. 1990). The complaint there "totally lack[ed] even a single particular or specific fact to support [the plaintiff's] fraud claim." *Id.* As explained in the Joint Opposition, that is far from the case here. *See* Joint Opp'n at Part V.C. As this Court has recognized, there is no fault in collective allegations without "allegations of specific misrepresentations" by individual defendants where multiple defendants have engaged in similar conduct. *Purdue*, 2019 WL 446382, at *8.

II. The Complaint States a Failure to Warn Claim Against CNX

CNX contends that the State's failure to warn claim fails because CNX lacked specialized knowledge of the dangers of its fossil fuel products. Mot. 13–14. Not so.

This argument merely rehashes CNX's objections to the collective allegations. The Complaint amply alleges that Fossil Fuel Defendants, including CNX and its predecessors, knew or should have known about the climate-related hazards posed by the intended use of their fossil fuel products. *See, e.g.*, Compl. ¶¶ 62–103. Despite this knowledge, CNX and other Fossil Fuel Defendants misrepresented and concealed the harms of their products from consumers and the public. *Id.* ¶¶ 104–41. That the Complaint does not contain an allegation specific to CNX's knowledge or its funding of climate science is not a ground for dismissal,

see Purdue, 2019 WL 446382, at *8, particularly given that even under Rule 9(b), "knowledge . . . may be averred generally," Super. Ct. Civ. R. 9(b).

And although CNX suggests the hazards of its products were open and obvious, *see* Mot. 13–14, despite arguing it lacked knowledge of those dangers, as detailed in the Joint Opposition, there is—at minimum—a factual dispute as to the open and obvious nature of Defendants' fossil fuel products, precluding dismissal on this basis. *See* Joint Opp'n at Part IV.C.2; *Williamson v. Wilmington Hous. Auth.*, 208 A.2d 304, 306 (Del. 1965). *Cf. Jones v. Clyde Spinelli, LLC*, 2016 WL 3752409, at *2–3 (Del. Super. July 8, 2016).

III. The Allegations Against Other Defendants Are Imputable to CNX

Finally, CNX contends that the allegations against GCC cannot be imputed to CNX. Mot. 10–12. The Court need not reach this issue, because it can deny CNX's Motion without imputing GCC's conduct or knowledge to CNX for the reasons described above. If the Court does reach the issue, GCC's conduct and knowledge are imputable to CNX under either an agent-principal or conspiracy theory.

An agent's conduct or knowledge can be imputed to a principal by establishing the existence of an agent-principal relationship between the two parties, and that the agent's actions were within the scope of its authority. *Grand Ventures, Inc. v. Whaley*, 622 A.2d 655, 665 (Del. Super. 1992) ("[L]iability for an agent's culpable conduct imputes to the principal if the act falls within the scope of the

agent's authority." (citing *Mechell v. Palmer*, 343 A.2d 620, 621 (Del. 1975)), *aff'd*, 632 A.2d 63 (Del. 1993); *In re Am. Int'l Grp., Inc.*, 965 A.2d 763, 806 (Del. Ch. 2006) ("[T]he knowledge of an agent is normally imputed to the agent's principal." (footnote omitted)). Such a relationship exists when: (1) the agent has the power to act on behalf of the principal with respect to third parties, (2) the agent does something at the behest of the principal and for the principal's benefit, and (3) the principal has the right to control the agent's conduct. *See Fasciana v. Elec. Data Sys. Corp.*, 829 A.2d 160, 169 n.30 (Del. Ch. 2003). Agency may be express or implied. *J.E. Rhoads & Sons, Inc. v. Ammeraal, Inc.*, 1988 WL 32012, at *4 (Del. Super. Mar. 30, 1988). Finally, an agent may have multiple coprincipals. *See NAMA Holdings, LLC v. Related WMC LLC*, 2014 WL 6436647, at *18 (Del. Ch. Nov. 17, 2014) (citing Restatement (Third) of Agency § 3.16 cmt. b (2006)).

Here, the Complaint alleges that GCC acted as CNX's agent, which would impute the allegations of GCC's conduct to CNX. The Complaint alleges that GCC acted "on behalf of Defendants" and under their control in "fund[ing] deceptive advertising campaigns and distribut[ing] misleading material to generate public uncertainty around the climate debate." Compl. ¶ 129; *see also id.* ¶ 130.[4] The

[4] CNX argues that the specific alleged misrepresentations by GCC are not actionable because they are protected by the First Amendment. Mot. 10–11. The State incorporates by reference the arguments in its Answering Brief in Opposition to the American Petroleum Institute's Motion to Dismiss for Failure to State a Claim,

Complaint also alleges that Defendants (which includes CNX) acted through "front groups," including GCC, to carry out their "widespread campaign of denial and disinformation about the existence of climate change and their products' contribution to it." *Id.* ¶ 110. The Complaint further alleges that Fossil Fuel Defendants, including CONSOL, "employed and financed" such "front groups to serve their climate change disinformation and denial mission," *id.* ¶ 39, and that these organizations acted on behalf of and under the control of CNX and other Fossil Fuel Defendants in implementing public relations campaigns, funding shoddy scientific research, denying the reality of climate change, and misrepresenting the link between fossil fuels and climate change. *See id.* ¶¶ 39, 46(b), 110, 129–30. Additionally, the Complaint alleges that these "Defendants actively supervised, facilitated, consented to, and/or directly participated in the misleading messaging of these front groups" and profited from their activities. *Id.* ¶ 39. And the Complaint details a wide range of examples of conduct GCC undertook on behalf of Fossil Fuel Defendants. *See, e.g.*, *id.* ¶¶ 42, 129–30. In other words, GCC had the power to act on behalf of Fossil Fuel Defendants by marketing their fossil fuel products and

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which explains in detail why such statements are not protected by the First Amendment. And CNX's conclusory argument suggesting that these statements were not misleading is not entitled to any weight. In any event, even if these statements were not misleading or were protected by the First Amendment, the Complaint alleges that GCC engaged in widespread climate disinformation and deception, not merely through these exemplary statements. *See, e.g.*, Compl. ¶ 110.

promoting disinformation. GCC did so at the behest of Fossil Fuel Defendants and for their benefit. And Fossil Fuel Defendants had the right to—and did—supervise and control GCC's conduct. GCC's deceptive conduct—which was within the scope of the agency relationship and intended to advance Fossil Fuel Defendants' "climate change disinformation and denial mission," *id.* ¶ 39, is therefore imputable to CONSOL, and thus CNX. *Cf. Acosta Orellana v. CropLife Int'l*, 711 F. Supp. 2d 81, 111 (D.D.C. 2010) (recognizing that if trade associations "were in fact acting at the behest of their members, they would be the *agents* of their members," but rejecting argument that associations were liable for members' conduct because plaintiffs alleged that agents, rather than principals, were liable).

At minimum, whether an agent-principal relationship existed between CNX and GCC is a question of fact that is premature for resolution at the pleading stage. *See Lang v. Morant*, 867 A.2d 182, 186 (Del. 2005) (because the existence of an agency-principal relationship "depends on the presence of factual elements," it is "a question usually reserved to the factfinder"); *Knerr v. Gilpin, Van Trump & Montgomery, Inc.*, 1988 WL 40009, at *2 (Del. Super. Apr. 8, 1988) ("[W]hether an agency or other type of relationship exists is an intensely factual [inquiry]."); *J.E. Rhoads & Sons, Inc.*, 1988 WL 32012, at *20–21 (denying motion to dismiss because there was "a question of fact as to whether [one defendant] was the agent of [moving defendant]").

Conduct can also be imputed from one party to another where the parties participated in a tortious activity in concert, *Kuczynski v. McLaughlin*, 835 A.2d 150, 156–57 (Del. Super. 2003), or pursuant to a common scheme, Restatement (Second) of Torts § 876(a) (1979). "[C]o-conspirators are jointly and severally liable for the acts of their confederates committed in furtherance of the conspiracy." *Laventhol, Krekstein, Horwath & Horwath v. Tuckman*, 372 A.2d 168, 170 (Del. 1976) (citation omitted); *see also Empire Fin. Servs., Inc. v. Bank of N.Y. (Del.)*, 900 A.2d 92, 97 n.16 (Del. 2006) (construing § 876(a) of the Restatement (Second) of Torts as applying to civil conspiracy under Delaware law). A civil conspiracy requires (1) a confederation of two or more persons, (2) an unlawful act done in furtherance of the conspiracy, and (3) actual damage. *Nicolet, Inc. v. Nutt*, 525 A.2d 146, 149–50 (Del. 1987). There need not be an express agreement between co-conspirators to show a person's knowing participation in a conspiracy, as "tacit ratification is sufficient." *Id.* at 148 (quotation omitted). Membership in a trade association and knowledge of the association's wrongful conduct, when "coupled with a consistent later act," suffice to give rise to an inference of knowing participation in a conspiracy. *In re Asbestos Litig.*, 509 A.2d 1116, 1121 (Del. Super. 1986), *aff'd sub nom. Nicolet*, 525 A.2d at 147.

Here, the Complaint sufficiently alleges that Fossil Fuel Defendants, including CONSOL, engaged in a civil conspiracy with GCC to impute GCC's conduct to CONSOL, and therefore CNX. The Complaint alleges that:

> All Fossil Fuel Defendants, by and through . . . organizations like . . . GCC, conspired to conceal and misrepresent the known dangers of fossil fuels, to knowingly withhold information regarding the effects of using fossil fuel products, to discredit climate change science and create the appearance such science is uncertain, and to engage in massive campaigns to promote heavy use of their fossil fuel products, which they knew would result in injuries to the State. Through their own actions and through their membership and participation in [such] organizations . . . , each Defendant was and is a member of that conspiracy.

Id. ¶ 46(b). Moreover, "Defendants committed substantial acts to further the conspiracy in Delaware by making misrepresentations and omissions to Delaware consumers and failing to warn them about the disastrous effects of fossil fuel use." *Id.*; *see also id.* ¶ 34(h) (describing CONSOL's conduct in furtherance of the deception and denial campaigns). And that conspiracy foreseeably resulted in damage in Delaware, including through the effects of sea level rise, flooding, erosion, loss of wetlands and beaches, and ocean acidification, about which CNX knew or should have known. *Id.* ¶ 46(b).

CNX contends that its mere membership in GCC is insufficient, Mot. 11–12, but Delaware courts recognize that membership in a trade association,[5] coupled with other conduct, can demonstrate a conspiracy. *See, e.g.*, *In re Asbestos Litig.*, 509 A.2d at 1120–22 (holding a jury could reasonably determine that company "both knew of the alleged harmful acts of [the association] and knowingly participated in the [association's] conspiracy" through letters from its executives downplaying dangers of asbestos). And other courts have recognized that a conspiracy "to knowingly promote and sell a potentially hazardous project" may exist and suffice to support a nuisance claim. *See, e.g.*, *City of Milwaukee v. NL Indus., Inc.*, 691 N.W.2d 888, 890, 895 (Wis. Ct. App. 2004).

To the extent some of the State's allegations about the relationship between Fossil Fuel Defendants and GCC group defendants together, that is understandable and permissible. "Delaware courts have recognized that the nature of conspiracies often makes it impossible to provide details at the pleading stage and that the pleader

[5] CNX states in passing that it is not a member of the National Mining Association ("NMA") and "has no executive on the NMA board." Mot. 5. But the Complaint alleges that CONSOL (which includes CNX) is or has been an NMA member "at times relevant to this litigation," and that CONSOL's president and CEO is the vice chairman of NMA's board. Compl. ¶ 40(a)–(b). On a Rule 12(b)(6) motion, the Court must accept these well-pleaded factual allegations as true. *See Savor, Inc. v. FMR Corp.*, 812 A.2d 894, 896 (Del. 2002). If the Court is inclined to credit CNX's uncited assertion about its NMA membership, the State requests leave to take discovery to support its allegation that the CONSOL entities were members of NMA at relevant times.

should be allowed to resort to the discovery process and not be subjected to a dismissal." *Szczerba v. Am. Cigarette Outlet, Inc.*, 2016 WL 1424561, at *2 (Del. Super. Apr. 1, 2016) (cleaned up). Here, because GCC was far from transparent, the State cannot be charged with knowledge of each defendant's precise role before engaging in discovery. Whether a conspiracy existed is a factual question best reserved for the jury after the record is developed. *Gannett Co. v. Irwin*, 1985 WL 189242, at *3 (Del. Super. Aug. 9, 1985).

Thus, the Complaint's allegations against GCC can be imputed to CNX through either an agent-principal or conspiracy theory. And even if the Court determines that GCC's actions and knowledge are not imputable to CNX, the actions of CNX's other alleged co-conspirators, including Exxon, BP, Shell, and Chevron, are imputable to CNX for the reasons described above. The Complaint contains ample allegations of specific misrepresentations by these Defendants, among others, *see, e.g.*, Compl. ¶¶ 172–95, further refuting CNX's arguments that the Complaint lacks allegations of specific misrepresentations attributable to CNX.

CONCLUSION

For the foregoing reasons, and those in the Joint Opposition, the Court should deny CNX's Motion.

Respectfully submitted,

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