IN THE CIRCUIT COURT
FOR BALTIMORE CITY

MAYOR AND CITY COUNCIL OF BALTIMORE, *Plaintiff*, vs. BP P.L.C., *et al.*, *Defendants*.	Case No. 24-C-18-004219 (HEARING REQUESTED)

CHEVRON DEFENDANTS' MOTION TO DISMISS COMPLAINT FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED, AND REQUEST FOR HEARING[1]

Defendants Chevron Corporation (#7) and Chevron U.S.A. Inc. (#8) (together, "Chevron"), by their undersigned attorneys and pursuant to Maryland Rules 2-311 and 2-322(b)(2), move to dismiss the Complaint filed by Plaintiff, the Mayor and City Council of Baltimore, for failure to state a claim upon which relief can be granted. For the reasons set forth in the accompanying Memorandum of Law, this Court should grant this Motion and dismiss the claims against Chevron with prejudice.

REQUEST FOR HEARING

Pursuant to Maryland Rule 2-311(f), Chevron respectfully requests a hearing on all issues raised in this Motion and the accompanying Memorandum of Law.

[1] Chevron is contemporaneously filing a motion to dismiss on the ground that it is not subject to personal jurisdiction in Maryland. Chevron submits this motion subject to, and without waiver of, any jurisdictional objections.

Dated: October 16, 2023

Respectfully submitted,

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Attorneys for Defendants Chevron Corporation (#7) and Chevron U.S.A. Inc. (#8)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of October 2023, a copy of the foregoing was served on all counsel of record via email (by agreement of the parties).

Alison Schurick

Alison Schurick (e-copy with authority)

IN THE CIRCUIT COURT
FOR BALTIMORE CITY

MAYOR AND CITY COUNCIL OF BALTIMORE, *Plaintiff,* vs. BP P.L.C., *et al.*, *Defendants.*	Case No. 24-C-18-004219 (HEARING REQUESTED)

MEMORANDUM OF LAW IN SUPPORT OF CHEVRON DEFENDANTS' MOTION TO DISMISS COMPLAINT FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED[1]

Defendants Chevron Corporation (#7) and Chevron U.S.A. Inc. (#8) (together, "Chevron"), by their undersigned attorneys and pursuant to Maryland Rule 2-322(b)(2), file this Memorandum of Law in Support of their Motion to Dismiss Complaint for Failure to State a Claim Upon Which Relief Can Be Granted. For the reasons set forth below and in Defendants' Joint Memorandum of Law in Support of their Motion to Dismiss Plaintiff's Complaint ("Joint Memorandum"), this Court should dismiss all claims against Chevron with prejudice.

[1] Chevron is contemporaneously filing a joint motion to dismiss challenging personal jurisdiction in Maryland. Chevron submits this motion to dismiss for failure to state a claim subject to, and without waiver of, any jurisdictional objections.

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TABLE OF AUTHORITIES

I. INTRODUCTION

This Court should dismiss all of Plaintiff Mayor and City Council of Baltimore's claims against Chevron for the reasons set forth in Defendants' Joint Memorandum. Chevron writes separately here to provide additional reasons to dismiss the claims against it. Specifically, Plaintiff secured remand on the theory that *all* of their claims "rest" on Defendants' purported "failures to warn, over-promotion and over-marketing of their dangerous products, and campaigns of deception and denial." Appellee's Response Br., *Mayor & City Council of Baltimore v. BP P.L.C.*, No. 19-1644, 2019 WL 4073508, at 27 n.4 (4th Cir. Aug. 27, 2019). As the Joint Memorandum explains, that characterization makes no difference with respect to preemption under federal law. But that explicit characterization of Plaintiff's claims makes it abundantly clear that all claims against Chevron should be dismissed: Despite 298 paragraphs spread over 130 pages, the Complaint does not identify a *single* statement Chevron supposedly made as part of the purported deception "campaign." Thus, taking Plaintiff's characterization of its Complaint at face value, the Court should dismiss all claims against Chevron.

II. ALLEGATIONS ABOUT CHEVRON

In the "Parties" section, the Complaint lumps "Chevron Corporation" and "Chevron U.S.A. Inc." together with "their predecessors, successors, parents, subsidiaries, affiliates, and divisions" under the moniker "Chevron," Compl. ¶ 22, and alleges that "Chevron" is or has been a member of various non-party trade associations, *id.* ¶ 31. Even accepting for purposes of this motion Plaintiff's vague and boilerplate attempt to ignore corporate formalities, the remainder of the Complaint includes vanishingly few allegations specific to "Chevron":

- In 1969, Chevron and/or its predecessors "participated" in a "project to collect ocean data from oil platforms," *id.* ¶ 109;

- In 1972, Chevron and/or its predecessors "received a status report on all environmental research projects funded by [the American Petroleum Institute ('API')]," *id.* ¶ 111;

- In 1974, Chevron and/or its predecessors obtained or "worked toward obtaining" patents related to drilling, *id.*¶¶ 173–74;

- In 1979, "scientists and engineers" from Chevron's predecessors were part of "a Task Force to monitor and share cutting edge climate research," *id.* ¶ 115;

- In 1980, a "taskforce member and representative of Texaco (Chevron)" attended a meeting and "posited" that the "Task Force should develop ground rules for energy release of fuels and the cleanup of fuels as they relate to CO_2 creation," *id.* ¶ 120;

- In 1991, a Chevron "affiliate[], predecessor[] and/or subsidiar[y]"—Pittsburg and Midway Coal Mining—was a member of "the Information Council for the Environment," *id.* ¶ 150;

- In 2007, an unidentified representative from Chevron was a member of the "Global Climate Science Team," *id.* ¶ 165; and

- Between 2001 and 2014, Chevron launched and then "rolled back" unspecified "renewable and alternative energy projects," *id.* ¶ 184.

The Complaint does not attempt to identify even a single statement made by Chevron about its fossil fuel products at all, much less as part of a supposed "campaign to obscure the science of climate change." Compl. ¶ 179. To the contrary, the Complaint attempts to hold Chevron liable for the alleged conduct of "Defendants"—in many cases its direct competitors—on the theory that "each of the Defendants was the agent, servant, partner, aider and abettor, co-conspirator, and/or joint venturer of each of the remaining Defendants." *Id.* ¶ 32. Beyond that bald assertion, the Complaint includes no factual allegations supporting those legal conclusions.

III. LEGAL STANDARD

Dismissal is required if the well-pleaded "allegations and permissible inferences, [even] if true . . . do not state a cause of action for which relief may be granted." *Wireless One, Inc. v. Mayor & City Council of Baltimore*, 465 Md. 588, 604 (2019) (citations omitted). "The well-

pleaded facts setting forth the cause of action must be pleaded with sufficient specificity; bald assertions and conclusory statements by the pleader will not suffice." *Id.* (citations omitted). Nor may a plaintiff simply "dump" all defendants "into the same pot." *Heritage Harbour, L.L.C. v. John J. Reynolds, Inc.*, 143 Md. App. 698, 711 (2002). Rather, the complaint must allege "acts or omissions by [each defendant] that would serve as a basis for an imposition of liability." *Id.*

IV. ARGUMENT

To secure remand from federal court, Plaintiff insisted that all of its claims focus on Defendants' purported "misrepresentation campaigns that promoted the unrestrained use of fossil fuels." Appellee's Supp. Br., *Mayor & City Council of Baltimore*, 2021 WL 4108598, at 27 (4th Cir. Sept. 7, 2021); *see also, e.g.*, *id.* at 8 ("[Plaintiff's] actual theory is that [Defendants] are liable for climate change-related harms caused by their deliberate misrepresentation of the climatic dangers of fossil fuels and their misleading marketing of those products."); *id.* at 26 ("[Plaintiff] has brought claims for injuries caused by [Defendants'] use of *unlawful* affirmative misrepresentations to inflate the market for their products."). As Plaintiff characterizes it, Plaintiff's Complaint "rest[s]" on Defendants' purported "failures to warn, over-promotion and over-marketing of their dangerous products, and campaigns of deception and denial." Appellee's Response Brief, *Mayor & City Council of Baltimore*, 2019 WL 4073508, at 27 n.4.

Having chosen to base its claims on alleged deception and misrepresentation, Plaintiff must actually allege such statements or omissions by Chevron. But the Complaint does not attempt to do so: The 16-page section describing Defendants' purported "Campaign" to evade regulation does not identify a *single* statement allegedly made by Chevron. As a result, the Court should dismiss the claims as to Chevron.

1. As the Appellate Court of Maryland has explained, "defendants . . . are not fungible; we must examine what each is charged with doing or failing to do." *Wells v. State*, 100 Md. App. 693, 703 (1994). For that reason, a "conclusory" "characterization" of Defendants' alleged conduct is insufficient to state a claim against an individual defendant. *Id.*; *see also Samuels v. Tschechtelin*, 135 Md. App. 483, 528–29 (2000) (allegations that "lumped under the general title of 'Defendants' and summarily included in each of appellant's seven counts" insufficient). Instead, because each defendant is entitled to understand the particular conduct with which it is charged, Plaintiff must allege "what each [defendant] is charged with doing or failing to do"—even under the general fact-pleading rules. *Wells*, 100 Md. App. at 703.

Plaintiff's Complaint utterly fails to give Chevron notice of the particular conduct with which it is charged. Instead, the Complaint repeatedly asserts that "Defendants"—as an undifferentiated group—"embarked on a decades-long campaign"; that "Defendants' campaign . . . focused on concealing, discrediting, and/or misrepresenting information that tended to support restricting consumption of . . . Defendants' fossil fuel products"; that "Defendants took affirmative steps to conceal, from Plaintiff and the general public, the foreseeable impacts of the use of their fossil fuel products"; and that "Defendants embarked on a concerted public relations campaign to cast doubt on the science connecting global climate change to fossil fuel products." Compl. ¶¶ 145–47, *see also, e.g., id.* ¶¶ 1, 2, 4-8, 10, 104, 132, 139-42, 160, 162, 166, 167, 169-70. But the Complaint cannot state a claim against Chevron by "dump[ing]" it—along with all other Defendants—"into the same pot." *Heritage Harbour*, 143 Md. App. at 711.

2. Nor can Plaintiff evade this basic pleading requirement through its boilerplate and conclusory allegation that:

> At all times herein mentioned, each of the Defendants was the agent, servant, partner, aider and abettor, co-conspirator, and/or joint venturer of

> each of the remaining Defendants herein and was at all times operating and acting within the purpose and scope of said agency, service, employment, partnership, conspiracy, and joint venture and rendered substantial assistance and encouragement to the other Defendants, knowing that their conduct was wrongful and/or constituted a breach of duty.

Compl. ¶ 32. That "bald assertion[]" and purely "conclusory statement[]" is manifestly insufficient. *Wireless One, Inc.*, 465 Md. at 604 (citation omitted). Plaintiff does not, and cannot, allege *facts* supporting the conclusion that Chevron is liable for the purported conduct of dozens of Defendants—many of whom are its direct competitors—on any of those legal theories. *See Margolis v. Sandy Spring Bank*, 221 Md. App. 703, 713 (2015) ("A court . . . need not accept the truth of pure legal conclusions.").

For example, the Complaint does not allege any facts to support the theory that Defendants are all agents of one another. *See Best v. Newrez LLC*, 2020 WL 5513433, at *32 (D. Md. Sept. 11, 2020) (no basis for agency relationship where "vague claim that [one party] acted as the agent [of the other party]" was "conclusory and insufficient" and without "grounds, factual or legal, to support that proposition"). For an agency relationship to exist, the agent must: (1) be "subject to the principal's right of control;" (2) have "a duty to act primarily for the benefit of the principal;" and (3) hold "a power to alter the legal relations of the principal." *Proctor v. Holden*, 75 Md. App. 1, 20 (1988). But the Complaint does not allege facts establishing any of those elements with respect to Chevron and any other Defendant.

Likewise, the Complaint fails to allege facts to support its asserted civil conspiracy and aiding-and-abetting theories. A civil conspiracy requires allegations demonstrating "a confederation of two or more persons by agreement or understanding," *Lloyd v. Gen. Motors Corp.*, 397 Md. 108, 154 (2007) (citation omitted), while aiding and abetting liability requires alleging "facts that the aider and abettor knowingly and substantially assist[ed] the principal violation," *Sutton v. FedFirst Fin. Corp.*, 226 Md. App. 46, 91 (2015) (internal quotation marks

omitted; alteration in original). Plaintiff's single conclusory paragraph purporting to link Defendants does not even attempt to allege these elements. At most, Plaintiff alleges that some (but not all) Defendants were members of various trade associations. But "Defendants' membership in [a trade association] does not raise an inference of conspiracy on its own." *Rojas v. Delta Airlines, Inc.*, 425 F. Supp. 3d 524, 543 (D. Md. 2019); *accord Maple Flooring Mfrs. Ass'n v. United States*, 268 U.S. 563, 584 (1925) ("We do not conceive the members of trade associations become . . . conspirators merely because they gather and disseminate information").

3. Setting aside Plaintiff's conclusory and deficient attempt to impose liability on Chevron for the purported conduct of "Defendants," the Complaint does not even try to allege wrongful statements or omissions by Chevron. The bulk of the Complaint's Chevron-specific allegations assert only that Chevron (or its predecessors, successors, parents, subsidiaries, affiliates, or divisions), knew about or participated in research related to climate change and fossil fuel products. *See* Compl. ¶¶ 109, 111, 115, 173–74. But the Complaint does not allege that Chevron said *anything* about fossil fuels or climate change. To the contrary, it alleges only that a "representative of Texaco (Chevron)," who attended a non-public meeting, "posited" that API's "Task Force should develop ground rules for energy release of fuels and the cleanup of fuels as they relate to CO_2 creation," *id.* ¶ 120.

Indeed, the only *public* statements from Chevron that the Complaint identifies have nothing to do with Chevron's fossil fuel products. Specifically, the Complaint alleges that "Chevron touted 'profitable renewable energy' as part of its business plan for several years and launched a 2010 advertising campaign promoting the company's move towards renewable energy." Compl. ¶ 184. The Complaint does not allege that such statements were false or misleading; rather, it merely contends that Chevron subsequently "rolled back its renewable and alternative energy projects."

Id. Nor does the Complaint suggest any basis for concluding that touting "renewable" energy somehow increased emissions from the combustion of fossil fuel products—the claimed "mechanism" of Plaintiff's injuries. *Id.* ¶ 39.

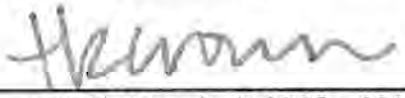
Finally, the Complaint alleges that an unidentified "representative" from Chevron was a member of the "Global Climate Science Team," Compl. ¶ 165, and that one of Chevron's affiliates, predecessors, or subsidiaries (Pittsburg and Midway Coal Mining) was a member of "the Information Council for the Environment," *id.* ¶ 150. But courts refuse to impose liability on a defendant based on allegations that the defendant (much less its representatives or affiliated companies) belonged to an industry association, contributed to the association financially, and/or attended association meetings. *See, e.g., NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 920 (1982) ("For liability to be imposed by reason of association alone, it is necessary to establish that the group itself possessed unlawful goals and that the individual held a specific intent to further those illegal aims."); *In re Asbestos School Litig.*, 46 F.3d 1284, 1290 (3d Cir. 1994) (Alito, J.) (holding that Pfizer could not be held "civilly liable for any wrongful conduct committed by [a trade association] or its members," notwithstanding Pfizer's membership and financial contributions to the associations, "unless it c[ould] be shown that Pfizer's actions taken in relation to the [trade association] were specifically intended to further such wrongful conduct").

V. CONCLUSION

For these reasons, in addition to those set forth in Defendants' Joint Memorandum, Chevron respectfully requests that the Court dismiss Plaintiff's Complaint against Chevron in its entirety with prejudice.

Dated: October 16, 2023

Respectfully submitted,



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Attorneys for Defendants Chevron Corporation (#7) and Chevron U.S.A. Inc. (#8)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 16th day of October, 2023, a copy of the foregoing was served on all counsel of record via email (by agreement of the parties).

Alison Schurick (ccd with authority)

IN THE CIRCUIT COURT
FOR BALTIMORE CITY

MAYOR AND CITY COUNCIL OF BALTIMORE, *Plaintiff,* vs. BP P.L.C., *et al.*, *Defendants.*	Case No. 24-C-18-004219

[PROPOSED] ORDER

Upon consideration of Defendants Chevron Corporation (#7) and Chevron U.S.A. Inc.'s (#8) (together, "Chevron") Motion to Dismiss Plaintiff's Complaint for Failure to State a Claim Upon Which Relief Can Be Granted, Plaintiff's opposition thereto, and Chevron's reply, it is this _____ day of _____, 20____, hereby

ORDERED that Chevron's Motion to Dismiss Plaintiff's Complaint for Failure to State a Claim Upon Which Relief Can Be Granted is **GRANTED**; it is further

ORDERED that all claims against Chevron Corporation (#7) and Chevron U.S.A. Inc. (#8) are **DISMISSED WITH PREJUDICE**; and it is further

ORDERED that the Clerk of the Court shall deliver copies of this Order to all parties of record.

_____
Judge Videtta A. Brown
Circuit Court for Baltimore City