

IN THE CIRCUIT COURT FOR  
BALTIMORE CITY

MAYOR AND CITY COUNCIL  
OF BALTIMORE,

Plaintiff,

vs.

BP P.L.C., et al.,

Defendants.

Civil Action No. 24-C-18-004219

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MEMORANDUM OF LAW IN SUPPORT OF  
BP P.L.C., BP AMERICA INC., AND BP PRODUCTS NORTH AMERICA INC.'S  
INDIVIDUAL MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM

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Pursuant to Maryland Rule 2-322(b)(2), Defendants BP p.l.c., BP America Inc., and BP Products North America Inc. (collectively, “BP”) submit this Memorandum of Law in Support of their Individual Motion to Dismiss for Failure to State a Claim Upon Which Relief Can Be Granted.<sup>1</sup>

BP joins Defendants’ Joint Motion to Dismiss for Failure to State a Claim Upon Which Relief Can Be Granted (the “Joint Motion”), which seeks dismissal of all claims in the Complaint against all Defendants in this action. As set forth in the Joint Motion, Plaintiff’s claims are fatally flawed, and this action should be dismissed in its entirety. This Memorandum of Law addresses additional reasons why Plaintiff’s claims against BP should be dismissed.

## INTRODUCTION

Plaintiff accuses Defendants of engaging in a campaign to “conceal[] the dangers” inherent in the use of fossil-fuel products, “undermine public support for greenhouse gas regulation,” and “promote the ever-increasing use of their [fossil-fuel] products at ever greater volumes.” Compl. ¶ 6. In seeking remand of this action from federal court, Plaintiff acknowledged that its Complaint is premised on a single “actual theory” of liability: “that [Defendants] are liable for climate change-related harms caused by their *deliberate misrepresentations* of the climatic dangers of fossil fuels and their *misleading marketing* of those products.” Supp. Br. of Appellee, *Mayor & City Council of Baltimore v. BP P.L.C., et al.*, No. 19-1644, ECF No. 212, at 8 (4th Cir. Sept. 7, 2021) (emphases added). Plaintiff stressed that it “does not allege that it was injured by the lawful sale of a lawful product; rather, it has brought claims for injuries caused by [Defendants’] use of *unlawful* affirmative misrepresentations to inflate the market for their products.” *Id.* at 25-26.

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<sup>1</sup> Defendants BP p.l.c. and BP America Inc. are contemporaneously moving to dismiss on the grounds that they are not subject to personal jurisdiction in Maryland. Those Defendants submit this motion subject to, and without waiver of, their jurisdictional defenses.

This theory of liability is fatal to Plaintiff's claims against BP. The Complaint does not identify a single misrepresentation or material omission made by BP regarding its fossil-fuel products, much less a misrepresentation about the link between those products and climate change. In fact, the only public statement attributed to BP in the Complaint details BP's public acknowledgements—over 25 years ago—of the existence and risks of climate change. Compl. ¶ 181. Without any allegation that BP made a misleading statement or material omission, Plaintiff's claims against BP cannot survive. Nor can Plaintiff salvage its claims against BP with conclusory allegations aimed at "Defendants" as an undifferentiated bloc or blanket assertions of agency. Such allegations plainly do not satisfy Maryland's pleading requirements. The Court therefore should dismiss Plaintiff's claims against BP in their entirety and with prejudice.

#### **SPECIFIC ALLEGATIONS REGARDING BP**

Plaintiff's Complaint spans 298 paragraphs and 132 pages. Yet only eight of those paragraphs even mention BP. And the vast majority of the references to BP are in the "Parties" section of the Complaint, where Plaintiff alleges mundane facts about BP's corporate structure and operations. Compl. ¶ 20. The Complaint also contains various unremarkable allegations about BP's membership in non-party trade associations. *Id.* ¶ 31(a), (b), (c), (d), (g). Aside from these allegations, the Complaint hardly mentions BP. When it does, the allegations do not identify a single misrepresentation or material omission made by BP about BP's fossil-fuel products or their effects on climate change. The entirety of the Complaint's allegations directed at BP are as follows:

- A BP predecessor "participated in" a 1969 "project to collect ocean data from oil platforms to develop and calibrate environmental forecasting theories related to predicting wave, wind, storm, sea level, and current changes and trends." *Id.* ¶ 109.
- BP and certain of its predecessors received a 1972 "status report" from the American Petroleum Institute ("API") that "summarized [a] 1968 [Stanford

Research Institute] report describing the impact of fossil fuel products, including Defendants', on the environment, including global warming and attendant consequences." *Id.* ¶ 111.

- BP was a member of a task force formed in 1979 by API and its members to "monitor and share cutting edge climate research among the oil industry." *Id.* ¶ 115.
- In 1997, BP's then-CEO gave a speech describing the "effective consensus among the world's leading scientists and serious and well informed people outside the scientific community that there is a discernible human influence on the climate, and a link between the concentration of carbon dioxide and the increase in temperature." *Id.* ¶ 181.
- A BP predecessor's subsidiary was granted a "patent for enhanced oil recovery technology" that "could have been further developed as a carbon capture and sequestration technique." *Id.* ¶ 183(a).
- In 2007, BP "engaged in a rebranding campaign to convey an air of environmental stewardship and renewable energy to its consumers" that included adopting the slogan "Beyond Petroleum" and "a conspicuously green corporate logo." *Id.* ¶ 187. Yet, Plaintiff notes, BP continued to invest in fossil fuels. *Id.*

These are the totality of the Complaint's allegations about BP. Not only do they fail to allege a single misrepresentation or material omission by BP, but they also concede that BP's then-CEO warned the public of the risks of climate change over 25 years ago in 1997. *Id.* ¶ 181.

### ARGUMENT

On a motion to dismiss for failure to state a claim, the Court must "assume the truth of, and view in a light most favorable to the nonmoving party, all well-pleaded facts and allegations contained in the complaint, as well as all inferences that may reasonably be drawn from them." *Wireless One, Inc. v. Mayor & City Council of Baltimore*, 465 Md. 588, 604 (2019) (citation omitted). But this standard does not afford Plaintiff carte blanche to rely on vague assertions and general group pleading directed at "Defendants" as an undifferentiated group. Instead, "[t]he 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.* Nor will the Court

consider “[m]ere conclusory charges that are not factual allegations.” *MCB Woodberry Dev., LLC v. Council of Owners of Millrace Condo., Inc.*, 253 Md. App. 279, 296 (2021) (citation omitted). If Plaintiff’s well-pleaded “allegations and permissible inferences . . . do not state a cause of action for which relief may be granted,” the motion to dismiss should be granted. *Wireless One*, 465 Md. at 604.

Plaintiff’s claims against BP fail to satisfy Maryland’s pleading requirements, and they do not come close to satisfying Maryland’s heightened pleading standard for fraud, which clearly should apply here because Plaintiff accuses Defendants of deliberate deception. *See McCormick v. Medtronic, Inc.*, 219 Md. App. 485, 493 (2014) (requiring that fraud be “allege[d] . . . with particularity”). Plaintiff’s claims against BP therefore should be dismissed.

1. The Complaint does not identify a single misrepresentation or material omission made by BP. That should be the end of the story. Plaintiff’s failure to plead any false or misleading statement by BP is fatal to its theory of liability in this action: that Defendants should be held liable “for climate change-related harms caused by their *deliberate misrepresentations* of the climatic dangers of fossil fuels and their *misleading marketing* of those products.” Supp. Br. of Appellee, *Mayor & City Council of Baltimore*, No. 19-1644, ECF No. 212, at 8; *see also id.* at 27 (“The relevant activity here is [Defendants’] misrepresentation campaigns that promoted the unrestrained use of fossil fuels . . . .”); Response Br. of Appellee, *Mayor & City Council of Baltimore*, No. 19-1644, ECF No. 86, at 27 n.4 (The Complaint “rest[s]” on Defendants’ purported “failures to warn, over-promotion and over-marketing of their dangerous products, and campaigns of deception and denial.”).

Plaintiff has not alleged any facts that support holding BP liable under Maryland law for efforts to “conceal and deny” the climate change-related threats of fossil-fuel products, “discredit

... scientific evidence,” or “create doubt . . . about the reality and consequences of the impacts of their fossil fuel pollution.” Compl. ¶ 1. To the contrary, the Complaint pleads facts that affirmatively refute Plaintiff’s claims against BP. Plaintiff acknowledges that BP’s then-CEO John Browne gave a speech in 1997—over 25 years ago—that expressly warned the public of the risks of climate change. As the Complaint concedes, BP’s then-CEO stated:

[T]here is now an effective consensus among the world’s leading scientists and serious and well informed people outside the scientific community that there is a discernible human influence on the climate, and a link between the concentration of carbon dioxide and the increase in temperature.

The prediction of the IPCC is that over the next century temperatures might rise by a further 1 to 3.5 degrees centigrade [1.8°-6.3° F], and that sea levels might rise by between 15 and 95 centimetres [5.9 and 37.4 inches]. Some of that impact is probably unavoidable, because it results from current emissions. . . .

[I]t would be unwise and potentially dangerous to ignore the mounting concern.

The time to consider the policy dimensions of climate change is not when the link between greenhouse gases and climate change is conclusively proven . . . but when the possibility cannot be discounted and is taken seriously by the society of which we are part . . . .

*Id.* ¶ 181 (alterations in Complaint). These allegations defeat Plaintiff’s conclusory assertion that BP as one of the many Defendants here participated in “campaigns to confuse and obscure the role of their products in causing climate change and the associated dire effects on the world.” *Id.* ¶ 7.

The remainder of the Complaint’s allegations concerning BP simply (i) discuss routine facts related to BP’s corporate structure and operations, *id.* ¶ 20; (ii) note BP’s (or its predecessors’) participation in trade associations, *id.* ¶ 31(a), (b), (c), (d), (g); (iii) assert that BP (or its predecessors) knew about or participated in research related to climate change and fossil-fuel products, *id.* ¶¶ 109, 111, 115, 183(a); and (iv) describe BP’s 2007 “Beyond Petroleum” advertising campaign, *id.* ¶ 187. To state the obvious, none of these allegations pleads any misrepresentations or material omissions by BP regarding its fossil-fuel products. Indeed, the only



allegation that relates at all to advertising is Plaintiff's discussion in a single paragraph of the Complaint of BP's long-ago "Beyond Petroleum" advertising campaign from 2007, but Plaintiff makes no effort to plead facts that possibly could hold BP liable for global climate change based on that campaign. Plaintiff certainly does not allege that BP's 2007 advertising campaign "conceal[ed] and den[ied]" the climate change-related threats of fossil-fuel products, "discredit[ed] . . . scientific evidence," "create[d] doubt . . . about the reality and consequences of the impacts of their fossil fuel pollution," *id.* ¶ 1, or promoted the increased use of fossil-fuel products.

Because the Complaint is devoid of allegations of any misrepresentations or material omissions by BP, Plaintiff's claims against BP should be dismissed.

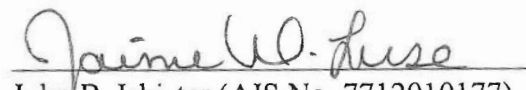
2. Plaintiff cannot remedy its failure to plead any misrepresentations or material omissions by BP by relying on conclusory allegations aimed either at Defendants as an undifferentiated group or at trade associations of which certain Defendants were members. For example, Plaintiff asserts that "Defendants took affirmative steps to conceal, from Plaintiff and the general public, the foreseeable impacts of the use of their fossil fuel products on the Earth's climate," *id.* ¶ 147, and that "[e]ach Defendant's fossil fuel promotion and marketing efforts were assisted by the trade associations," *id.* ¶ 31. Such vague, conclusory assertions directed at "Defendants" as a monolithic bloc and at "trade associations" fail to plead "any acts or omissions committed by [BP] that would serve as a basis for an imposition of liability" and instead impermissibly attempt to "dump . . . all [Defendants] into the same pot." *Heritage Harbour, L.L.C. v. John J. Reynolds, Inc.*, 143 Md. App. 698, 711 (2002). Such allegations are plainly "too general, too conclusory, too vague, and lacking in specifics" to state a claim against BP. *Parks v. AlphaPharma, Inc.*, 421 Md. 59, 85 (2011) (citation omitted); *see also Wells v. State*, 100 Md. App. 693, 703 (1994) ("[D]efendants are not fungible; we must examine what each is charged with doing or failing to do.").

3. In a final attempt to salvage its claims, Plaintiff contends 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 herein and was at all times operating and acting within the purpose and scope of said agency, service, employment, partnership, conspiracy, and joint venture.” Compl. ¶ 32. This wholly conclusory, boilerplate allegation is nothing more than meaningless legalese. As an initial matter, it defies logic to suggest that BP can be held liable for the conduct of all of the Defendants in this case, many of which were BP’s direct competitors. But even setting that aside, Plaintiff’s “agency” allegation is precisely the type of “bald assertion[.]” and “conclusory statement[.]” that “will not suffice” to sustain a cause of action. *Wireless One*, 465 Md. at 604.

### CONCLUSION

For the foregoing reasons, the Court should dismiss Plaintiff’s claims against BP in their entirety and with prejudice.

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