

**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

**DEFENDANTS CONOCOPHILLIPS'S, CONOCOPHILLIPS COMPANY'S, AND
LOUISIANA LAND & EXPLORATION CO., LLC'S SUPPLEMENTAL MOTION TO
DISMISS FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE
GRANTED AND
REQUEST FOR HEARING**

Defendants ConocoPhillips, ConocoPhillips Company, and Louisiana Land & Exploration Co., LLC (collectively, "COP"), by their undersigned attorneys and pursuant to Maryland Rule 2-322(b)(2), respectfully move this Court to dismiss Plaintiff's Complaint with prejudice for failure to state a claim upon which relief can be granted.

COP has joined Defendants' October 16, 2023 Joint Motion to Dismiss for Failure to State a Claim Upon Which Relief Can Be Granted. This supplemental Motion and attached Memorandum of Law address additional reasons why Plaintiff's claims as to COP should be dismissed. The grounds and authorities in support of this Motion are set forth more fully in the accompanying Memorandum of Law. A proposed Order is attached.

REQUEST FOR HEARING

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

Dated: October 16, 2023

Respectfully submitted,

/s/ David B. Hamilton

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**MEMORANDUM OF LAW IN SUPPORT OF CONOCOPHILLIPS’S,
CONOCOPHILLIPS COMPANY’S, AND LOUISIANA LAND & EXPLORATION CO.,
LLC’S MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM UPON WHICH
RELIEF CAN BE GRANTED¹**

Defendants ConocoPhillips, ConocoPhillips Company, and Louisiana Land & Exploration Co., LLC (collectively, “COP”), 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 for Failure to State a Claim upon Which Relief Can Be Granted.

For the reasons set forth below, this Court should dismiss all claims against COP with prejudice.

¹ ConocoPhillips and ConocoPhillips Company are contemporaneously joining a Motion to Dismiss, filed jointly by numerous Defendants, on the grounds that they are not subject to personal jurisdiction in Maryland. ConocoPhillips, ConocoPhillips Company, and Louisiana Land & Exploration Co., LLC submit the present motion subject to, and without waiver of, any jurisdictional objections.

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INTRODUCTION

Plaintiff Mayor and City Council of Baltimore have brought this action against twenty-six defendants, “major corporate members of the fossil fuel industry,” seeking damages for “flooding and storms [which] will become more frequent and more severe” and rising sea levels “along Maryland’s coast, including in Baltimore.” Compl. ¶¶ 1, 8. Plaintiff attributes these environmental conditions to energy company Defendants, who are alleged to have “promoted and profited from a massive increase in the extraction and consumption of oil, coal, and natural gas, which has in turn caused an enormous, foreseeable, and avoidable increase in global greenhouse gas pollution” and “a wide range of dire climate-related effects.” *Id.* ¶ 1. The Court should dismiss this case for the reasons set forth in the Joint Merits Brief (and the Joint Personal Jurisdiction Brief). However, to the extent Plaintiff’s Complaint is about *misstatements and omissions* rather than *emissions*, the Court should dismiss the Complaint as to COP for failure to plead that supposed fraud with particularity. In nearly 300 paragraphs of the Complaint, allegations specific to COP’s purported actions or misrepresentations to bring about these climate consequences in Baltimore are decidedly absent. In fact, Plaintiff’s sole allegation of a misrepresentation by COP shows just the opposite—as noted in the Complaint, COP publicly acknowledged and discussed the connection between fossil fuel emissions and climate change as early as 2012, Compl. ¶ 185, well before Plaintiff filed its Complaint in 2018. In a Complaint premised on fraud, Plaintiff fails to plead fraud with particularity as to COP and fails to otherwise allege any viable claims against COP. For the reasons below and in Defendants’ Joint Motion to Dismiss for Failure to State a Claim, which COP joins, the Complaint must therefore be dismissed as to COP with prejudice.

THE COMPLAINT

Plaintiff asserts that its case is premised on allegations of fraud.² Plaintiff alleges that Defendants “have known for nearly a half century that unrestricted production and use of their fossil fuel products create greenhouse gas pollution that ... changes our climate.” Compl. ¶ 1. Plaintiff contends that Defendants “nevertheless engaged in a coordinated, multi-front effort to conceal and deny their own knowledge of those threats[.]” *Id.*

Though the Complaint contains nearly 300 paragraphs of allegations, the only statement by COP that Plaintiff alleges as somehow misrepresenting the dangers of carbon-based products is found in a single page of a 164-page 2012 Sustainable Development Report. In that report, COP expressly acknowledged the contribution of fossil fuel combustion to climate change: “ConocoPhillips recognizes that human activity, including the burning of fossil fuels, is contributing to increased concentrations of greenhouse gases (GHG) in the atmosphere that can lead to adverse changes in global climate.” ConocoPhillips, *Sustainable Development* at 17 (2013), <https://tinyurl.com/b5r3tmsu> (cited at Compl. ¶ 185 n.213) [hereinafter “2012 Sustainable Development Report”].³ The Report specifically notes that “events related to a changing climate” include “drought, hurricanes and flooding.” *Id.* at 106.

² Plaintiff has characterized this case as being about Defendants’ alleged “promotion and sale of fossil-fuel products without warning and abetted by a sophisticated disinformation campaign” and purported “concealment and misrepresentation of the products’ known dangers.” Br. in Opp., *BP P.L.C. v. Mayor & City Council of Baltimore*, No. 22-361, at 15 (U.S. Dec. 19, 2022). But, as discussed in the Joint Merits Brief, Plaintiff’s case necessarily depends on greenhouse gas *emissions* being the source of its alleged injury. For purposes of this motion, COP focuses on Plaintiff’s assertion that its case hinges on Defendants’ allegedly fraudulent statements.

³ Documents incorporated by reference in a complaint, as Plaintiff’s Complaint incorporates the 2012 Sustainability Report by reference here, are part of the complaint and the court may rely upon them to resolve a motion to dismiss. *Skanska USA Bldg., Inc. v. Smith Mgmt. Constr., Inc.*, 184 Md. App. 659, 668 (2009) (affirming motion to dismiss where trial court considered documents incorporated by reference in the complaint); *Samuels v. Tschechtelin*, 135 Md. App. 483, 521 (2000) (same).

Other than this single paragraph, Compl. ¶ 185, Plaintiff’s allegations as to COP are limited to reciting COP’s corporate history, *id.* ¶ 26, and listing its affiliation with trade organizations, *id.* ¶ 31. Plaintiff then lumps COP in with other “Defendants” who were purportedly members of those trade organizations, without identifying how COP was involved in any particular action or statement those organizations are alleged to have taken or made. *See, e.g., id.* ¶ 111 (Defendants received a 1972 report from the American Petroleum Institute (“API”)); *id.* ¶ 115 (API members convened a task force in 1979).

Plaintiff seeks relief under eight causes of action: public and private nuisance (claims 1 and 2), Compl. ¶¶ 218–36; strict liability and negligent failure to warn (claims 3 and 4), *id.* ¶¶ 237–48, 270–81; strict liability and negligent design defect (claims 5 and 6), *id.* ¶¶ 249–69; trespass (claim 7), *id.* ¶¶ 282–90; and violations of the Maryland Consumer Protection Act (“MCPA”) (claim 8), *id.* ¶¶ 291–98.

LEGAL STANDARD

A plaintiff must allege facts in its complaint “sufficient to support each and every element of the asserted claim[s].” *Horridge v. St. Mary’s Cty Dept. of Soc. Servs.*, 320 Md. 170, 181 (2004). “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.” *RRC Ne., LLC v. BAA Maryland, Inc.*, 413 Md. 638, 644 (2010).

“Maryland courts have long required parties to plead fraud with particularity.” *McCormick v. Medtronic, Inc.*, 219 Md. App. 485, 527 (2014). “Under the Consumer Protection Act, an ‘unfair and deceptive trade practice’ replicates common-law fraud insofar as it includes ‘[d]eception, fraud, false pretense, false premise, misrepresentation, or knowing concealment, suppression, or omission of any material fact with the intent that a consumer rely on the same in

connection with . . . [t]he promotion or sale of any consumer goods” *Id.* at 529 (first quoting *Lloyd v. Gen. Motors Corp.*, 397 Md. 108, 154 (2007); then quoting Md. Code § 13-301(9)). “Accordingly, if a party alleges an ‘unfair or deceptive trade practice’ under that specific subsection,” as Plaintiff does here, “he or she must allege fraud with particularity[.]” *Id.*

“The requirement of particularity ordinarily means that a plaintiff must identify who made what false statement, when, and in what manner (i.e., orally, in writing, etc.); why the statement is false; and why a finder of fact would have reason to conclude that the defendant acted with scienter (i.e., that the defendant either knew that the statement was false or acted with reckless disregard for its truth) and with the intention to persuade others to rely on the false statement.” *McCormick*, 219 Md. App. at 528. “It is the settled rule that [one] seeking any relief on the ground of fraud must distinctly state the particular facts and circumstances constituting the fraud and the facts so stated must be sufficient in themselves to show that the conduct complained of was fraudulent. General charges of fraud or that acts were fraudulently committed are of no avail[.]” *Thomas v. Nadel*, 427 Md. 441, 453 (2012).

ARGUMENT

I. Plaintiff Fails to State the Circumstances of Fraud with Particularity

Claims premised on fraud must be pled with particularity. *McCormick*, 219 Md. App. at 527. Yet noticeably absent from Plaintiff’s Complaint are specific allegations as to COP sufficient to satisfy Maryland’s particularity in pleading requirement. In the sprawling Complaint, one searches in vain for any alleged false statement by COP concerning carbon-based climate change. To the contrary, Plaintiff’s only COP-specific allegation relies on a document in which COP *acknowledged* a connection between fossil fuel emissions and climate change. Compl. ¶ 185 (citing 2012 Sustainable Development Report).

Rather than allege with particularity statements made by COP, Plaintiff cites COP's general, historical connection to trade associations. For example, the Complaint alleges that in 1972 the American Petroleum Institute ("API") circulated a report on environmental research amongst its members (including COP), and that in 1979, API members (including COP) "convened a Task Force to monitor and share cutting edge climate research." Compl. ¶¶ 111, 115. Yet nowhere does Plaintiff allege that COP itself took some action as a member of API. Instead, Plaintiff attempts to use COP's membership in API and other trade organizations—standing alone—to confer liability. But mere membership in a trade organization is insufficient to create tort liability on the part of members for the organization's actions both because of First Amendment associational rights and because "[a] member of a trade group or other similar organization does not necessarily endorse everything done by that organization or its members." *In re Asbestos Sch. Litig.*, 46 F.3d 1284, 1290 (3d Cir. 1994) (Alito, J.); *see also Santopietro v. Howell*, 73 F.4th 1016, 1025 (9th Cir. 2023) (holding that, because of First Amendment concerns, plaintiffs cannot allege the defendant is responsible for a group's conduct merely as a result of membership, citing *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886 (1982)). And, again, even assuming tort liability could, consistent with the First Amendment, be premised on a trade organization's lobbying activities, the Complaint lacks any allegations that identify the role, if any, COP played in those organizations' allegedly fraudulent activities.

The only statement Plaintiff attributes to COP is found in paragraph 185 of the Complaint, which alleges a supposed inconsistency between ConocoPhillips's 2012 Sustainable Development Report and the company's annual report on SEC Form 10-K that year. According to Plaintiff, the Sustainable Development Report "declared developing renewable energy a priority" of the company, while the Form 10-K "told a different story" by describing COP as

“solely focused” on fossil-fuel exploration, development, and production. Compl. ¶ 185. This supposed contradiction is entirely manufactured by Plaintiff. The relevant page of the Sustainable Development Report nowhere uses the word “priority” and instead simply states that the company is “evaluating and developing technologies for renewable energy.” 2012 Sustainable Development Report at 20 (cited at Compl. ¶ 185, n.213). This statement is wholly consistent with ConocoPhillips’s 2012 Form 10-K, which states that the company makes “investment[s] in new technologies or business,” including “sustainability technology.”⁴ In any event, the Complaint fails to plausibly explain how a single, allegedly inconsistent sentence in the 164-page 2012 Sustainable Development Report has any causal connection to Plaintiff’s alleged injuries. And the Complaint nowhere acknowledges that the same 2012 Sustainable Development Report expressly recognized the contribution to climate change of fossil fuel combustion: “ConocoPhillips recognizes that human activity, including the burning of fossil fuels, is contributing to increased concentrations of greenhouse gases (GHG) in the atmosphere that can lead to adverse changes in global climate.” 2012 Sustainable Development Report at 17 (cited at Compl. ¶ 185 n.213).

The Complaint does contain an array of allegations concerning “Defendants” generally. *See, e.g.*, Compl. ¶¶ 139–142, 145–147, 169–171. But simply grouping COP in with actions taken by undifferentiated “Defendants” is insufficient to satisfy Plaintiff’s burden to allege fraud with particularity. *McCormick*, 219 Md. App. at 528 (“[A] plaintiff must identify who made what false statement, when, and in what manner (i.e., orally, in writing, etc.); why the statement is false; and why a finder of fact would have reason to conclude that the defendant acted with

⁴ U.S. Securities and Exchange Commission, ConocoPhillips 2012 Form 10-K Annual Report at 49 (cited in Compl. ¶ 185, n.214).

scienter ... and with the intention to persuade others to rely on the false statement.”). Under Maryland’s pleading requirement for fraud-based claims, Plaintiff must allege who made a false statement, when, and how. *Id.* These requisites are entirely missing from the Complaint’s mere 19 paragraphs of allegations regarding COP. Plaintiff’s claims against COP should therefore be dismissed.

II. Plaintiff Has Not Complied with Maryland’s General Pleading Requirements

Even aside from the particularity requirement, Plaintiff has failed to meet Maryland’s basic pleading requirements under Rule 2-305, which requires a “clear statement of the facts necessary to constitute a cause of action.” Md. Rule 2-305. By making allegations about “Defendants” generally without specifying whether COP was one of the Defendants involved in the alleged conduct, Plaintiff fails to make a “clear statement of the facts” as to COP.

“The paramount purpose of [the Rule 2-305] requirement is to give defendants notice of the claims against them.” *Tierco Md., Inc. v. Williams*, 381 Md. 378, 403 n.20 (2004). The complaint “must set forth a cause of action with sufficient specificity—bald assertions and conclusory statements by the pleader will not suffice.” *Davis v. Frostburg Facility Operations, LLC*, 457 Md. 275, 284-85 (2018). In considering whether a cause of action states a claim, “any ambiguity or uncertainty in the allegations bearing on whether the complaint states a cause of action must be construed against the pleader.” *Shenker v. Laureate Educ., Inc.*, 411 Md. 317, 335 (2009).

Within the 19 paragraphs specific to COP, Plaintiff makes no allegations sufficient to state a cause of action against COP under any of its claims or theories. And generic allegations about “Defendants” are likewise insufficient because “[c]ourts in Maryland have found that the grouping of defendants in a complaint renders the complaint defective for its failure to put the

parties on notice exactly of the allegations against them.” *Donahue v. Cong. Country Club, Inc.*, No. 404303-V, 2016 Md. Cir. Ct. LEXIS 1, *10-11 (Cir. Ct. Mont. Cty. Jan. 29, 2016).

“[Plaintiffs] never set forth any acts or omissions committed by [COP] that would serve as a basis for an imposition of liability; rather, they ‘dump . . . all [defendants] into the same pot.’”

Heritage Harbour LLC v. John J. Reynolds, Inc., 143 Md. App. 698, 711 (2002). This impermissible “dumping” renders Plaintiff’s Complaint insufficient under Rule 2-305, and therefore it should be dismissed as to COP.

III. Plaintiff’s MCPA Claim Is Barred by the Statute of Limitations

As discussed in Defendants’ joint Motion to Dismiss, Plaintiff’s MCPA claim is barred by the three-year statute of limitations. *See Cain v. Midland Funding, LLC*, 475 Md. 4, 39 (2021). “The statute of limitations begins to run when the potential plaintiff is on ‘inquiry notice’ of such facts and circumstances that would ‘prompt a reasonable person to inquire further.’” *Doe v. Archdiocese of Washington*, 114 Md. App. 169, 188 (1997) (quoting *Pennwalt Corp. v. Nasios*, 314 Md. 433, 447 (1988))).

As Plaintiff acknowledges in its Complaint, climate change and its connection to fossil fuel combustion was widely reported in state, national, and international reports and news articles as early as 1965. *See, e.g.*, Compl. ¶¶ 2, 103, 104, 128, 143. And Plaintiff’s own allegations demonstrate that COP made public statements about the link between climate change and fossil fuel combustion as early as 2012, *see* Compl. ¶ 185 n.213 (citing 2012 Sustainable Development Report). It is clear that Plaintiff was on notice as to any possible COP-related claims long before it filed this case in 2018 and therefore the statute of limitations has run.

IV. Plaintiff's Failure to Warn Claim Must Be Dismissed Because Plaintiff Cannot Establish a Duty to Warn

Plaintiff also claims that Defendants are liable for negligent and strict liability failure to warn because they allegedly had superior knowledge about the risks of climate change but hid their knowledge from the public. *See* Compl. ¶¶ 237-247, 270-280. That alleged knowledge purportedly gave rise to a duty to warn. *Id.* Yet Plaintiff alleges only that “Defendants” had access to “information passed to them from their internal research divisions and affiliates,” *id.* ¶¶ 239, 272, without alleging that *COP* actually had an internal research division or affiliates with access to this non-public information. Nor does Plaintiff provide any support for its assertion that “the international scientific community” was somehow providing unique information to Defendants that was unavailable to the public. *Id.* Instead, as noted above, Plaintiff’s own allegations demonstrate that the public was just as aware of the risks of climate change as *COP*. *Figgie Int’l, Inc., Snorkel-Econ. Div. v. Tognocchi*, 96 Md. App. 228, 240, (1993) (“[I]n Maryland there is no duty to warn someone of an obvious danger or of a danger of which he is already aware.”). Where special knowledge of the alleged danger of a product is an essential element of a failure to warn action, Plaintiff’s Complaint clearly fails to support either its strict liability or negligent failure to warn claims. *See Gourdine v. Crews*, 405 Md. 722, 741 (2008).

CONCLUSION

In summary, it is obvious that Plaintiff has engaged in shotgun pleading against Defendants, hoping to catch *COP* in the fray. But inferences and conclusory allegations that *COP* was involved in alleged misconduct through mere association with trade organizations are insufficient under Maryland’s rules. “The balance of the claims in [plaintiff’s] complaint are so

general, vague, and non-specific” as to COP “that they fall short of stating a claim[.]” *Richards v. Johns Hopkins Univ. Applied Physics Lab., LLC*, No. 2159, 2020 WL 639424, at *4 (Md. Ct. Spec. App. Feb. 11, 2020). For these reasons, COP respectfully requests that the Court dismiss Plaintiff’s Complaint as to COP with prejudice.

Dated: October 16, 2023

Respectfully submitted,

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**[PROPOSED] ORDER GRANTING DEFENDANTS CONOCOPHILLIPS’S,
CONOCOPHILLIPS COMPANY’S, AND LOUISIANA LAND & EXPLORATION CO.,
LLC’S SUPPLEMENTAL MOTION TO DISMISS FOR FAILURE TO STATE A
CLAIM UPON WHICH RELIEF CAN BE GRANTED**

Upon review and consideration of Defendants ConocoPhillips, ConocoPhillips Company, and Louisiana Land & Exploration Co., LLC (collectively, “COP’s”) Supplemental Motion to Dismiss for Failure to State a Claim Upon Which Relief Can Be Granted and Request for Hearing, Plaintiff’s Opposition thereto, and any further Reply(ies), it is on this __ day of _____, _____, by the Circuit Court for Baltimore City, Maryland, hereby

ORDERED, that COP’s Supplemental Motion to Dismiss for Failure to State a Claim Upon Which Relief Can Be Granted is GRANTED; and it is further

ORDERED, that Plaintiff’s July 20, 2018 Complaint is DISMISSED WITH PREJUDICE as to COP.

Judge Videtta A. Brown

cc: All counsel

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.

/s/ David B. Hamilton

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