

**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

**EXXONMOBIL'S SUPPLEMENTAL MEMORANDUM OF LAW IN SUPPORT OF
DEFENDANTS' MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM**

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
PRELIMINARY STATEMENT	1
I. LEGAL STANDARD.....	2
II. ARGUMENT	4
A. All of Plaintiff's Claims Against ExxonMobil Sound in Fraud and Must Be Plead with Particularity.....	4
B. Plaintiff's Allegations Against ExxonMobil Fail and Do Not Meet the Heightened Pleading Standard for Claims Sounding in Fraud.	5
1. Plaintiff Fails to Plead Any Alleged Misrepresentations Attributable to ExxonMobil with Particularity.	5
(a) Plaintiff Fails to Allege Who Was Deceived by Any Statement.....	6
(b) Plaintiff Fails to Allege Detrimental Reliance on Any Statement.....	6
2. Plaintiff Relies on Impermissible Group Pleading and Cannot Attribute Third-Party Statements to ExxonMobil.....	7
(a) Plaintiff Relies on Impermissible Group Pleading.	7
(b) Plaintiff Cannot Attribute the Statements of Third Parties to ExxonMobil.	9
CONCLUSION.....	10

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Ahumada v. Nish</i> , 756 F.3d 268 (4th Cir. 2014)	3
<i>Alvord-Polk, Inc. v. F. Schumacher & Co.</i> , 37 F.3d 996 (3d Cir. 1994).....	9
<i>Antigua Condo. Ass’n v. Melba Investors Atl., Inc.</i> , 307 Md. 700 (1986)	2
<i>In re Asbestos Sch. Litig.</i> , 46 F.3d 1284 (3d Cir. 1994) (Alito, J.)	10
<i>Cozzarelli v. Inspire Pharms. Inc.</i> , 549 F.3d 618 (4th Cir. 2008)	2
<i>Dominion Fin. Servs., LLC v. Pavlovsky</i> , Civ. No. JKB-22-0705, 2023 WL 3550011 (D. Md. May 18, 2023)	3
<i>Exxon Mobil Corp. v. Albright</i> , 433 Md. 303, 339, <i>on reconsideration in part</i> , 433 Md. 502 (2013).....	3, 7
<i>Finley Alexander Wealth Mgmt., LLC v. M&O Mktg., Inc.</i> , Civ. No. GJH-19-1312, 2020 WL 1322948 (D. Md. Mar. 20, 2020).....	8
<i>Haley v. Corcoran</i> , 659 F. Supp. 2d 714 (D. Md. 2009).....	5, 8
<i>Hall v. United Air Lines, Inc.</i> , 296 F. Supp. 2d 652 (E.D.N.C. 2003), <i>aff’d sub nom.</i> , 2004 WL 2823302 (4th Cir. Dec. 9, 2004).....	9
<i>Heritage Harbour, L.L.C. v. John J. Reynolds, Inc.</i> , 143 Md. App. 698 (2002)	3, 8
<i>Kemp v. Nationstar Mortg. Ass’n</i> , 248 Md. App. 1 (2020), <i>aff’d in part, rev’d in part sub nom.</i> , 476 Md. 149 (2021).....	2, 4, 8
<i>Layani v. Ouazana</i> , Civ. No. SAG-20-420, 2022 WL 11949038 (D. Md. Oct. 20, 2022)	2
<i>McCormick v. Medtronic, Inc.</i> , 219 Md. App. 485 (2014)	2, 3

<i>N. Am. Soccer League, LLC v. U.S. Soccer Fed’n, Inc.</i> , 883 F.3d 32 (2d Cir. 2018).....	9
<i>N.A.A.C.P. v. Claiborne Hardware Co.</i> , 458 U.S. 886 (1982).....	10
<i>OceanFirst Bank N.A. v. Brink’s, Inc.</i> , Civ. No. DLB-21-3275, 2022 WL 4465897 (D. Md. Sept. 26, 2022).....	8
<i>Oliver v. Wells Fargo Bank, N.A.</i> , Civ. No. SAG-22-2128, 2022 WL 17978271 (D. Md. Dec. 27, 2022)	2
<i>Parlette v. Parlette</i> , 88 Md. App. 628, 636 (1991)	3
<i>In re Processed Egg Prods. Antitrust Litig.</i> , 821 F. Supp. 2d 709 (E.D. Pa. 2011)	10
<i>Rojas v. Delta Airlines, Inc.</i> , 425 F. Supp. 3d 524 (D. Md. 2019).....	9
<i>Sandoval v. Denchfield Landscaping, Inc.</i> , Civ. No. AW-07-02134, 2008 WL 11509675 (D. Md. Apr. 22, 2008).....	6
<i>Southland Secs. Corp. v. INSpire Ins. Sols., Inc.</i> , 365 F.3d 353 (5 th Cir. 2004)	9
<i>Taylor v. Airco, Inc.</i> , 503 F. Supp. 2d 432 (D. Mass. 2007), <i>aff’d sub nom.</i> , 576 F.3d 16 (1 st Cir. 2009)	10
<i>Thomas v. Ocwen Loan Servicing</i> , Civ. No. ELH-17-218, 2017 WL 2645721 (D. Md. June 19, 2017).....	5
<i>Topshelf Mgmt., Inc. v. Campbell-Ewald Co.</i> , 117 F. Supp. 3d 722 (M.D.N.C. 2015)	6
<i>Walton v. Davy</i> , 86 Md. App. 275, 282 (1991).....	3
<i>Wells v. State</i> , 100 Md. App. 693 (1994)	3, 8
<i>Worden v. 3203 Farmington LLC</i> , No. 21-1373, 2023 WL 4945171 (Md. Ct. Spec. App. Aug. 3, 2023).....	3
Other Authorities	
Rule 2-305 of the Maryland Rules of Civil Procedure-Circuit Court.....	2

Rule 2-322(b)(2) of the Maryland Rules of Civil Procedure-Circuit Court	1
Rule 9(b) of the Federal Rules of Civil Procedure	2, 3, 6

Defendant Exxon Mobil Corporation (“ExxonMobil”) submits this supplemental memorandum of law in further support of Defendants’ motion to dismiss for failure to state a claim under Maryland Rule 2-322(b)(2).¹

PRELIMINARY STATEMENT

Plaintiff’s claims against ExxonMobil should be dismissed because they sound in fraud but are not pleaded with the particularity that Maryland law requires.

Maryland law imposes a heightened pleading standard for claims sounding in fraud. To satisfy this standard, a plaintiff must plead with particularity—for *each* alleged misrepresentation by *each* defendant—who made the misrepresentation, to whom it was made, when it was made, and its specific contents. Maryland also requires that a plaintiff allege with particularity its detrimental reliance on each purportedly misleading statement.

Plaintiff’s claims do not remotely satisfy this standard. Plaintiff has cobbled together a handful of allegedly fraudulent statements that they attribute to ExxonMobil, but all of them were made far outside Maryland’s borders and long ago. Among other fatal deficiencies, Plaintiff has not alleged that a single allegedly fraudulent statement by ExxonMobil was made in Maryland, directed at Maryland, or even seen by Plaintiff in Maryland. Indeed, none of the allegedly deceptive statements that Plaintiff identifies have *any* nexus to Maryland. It is therefore unsurprising that Plaintiff also has failed to allege any detrimental reliance on those statements.

To the extent Plaintiff seeks to impose liability on ExxonMobil for statements allegedly made by others, it cannot do so consistent with Maryland law. Plaintiff alleges that “Defendants” are responsible for certain purportedly fraudulent conduct, but makes no effort to differentiate

¹ ExxonMobil has joined in Defendants’ Joint Memorandum of Law in Support of Their Motion to Dismiss for Failure to State a Claim, and incorporates those arguments here. In filing this brief, ExxonMobil does not waive, and expressly preserves, any right, defense, affirmative defense, or objection, including, without limitation, lack of personal jurisdiction.

between Defendants. That plainly violates Maryland law requiring that pleadings identify *each* alleged misrepresentation by *each* defendant. Further, Plaintiff cannot impute statements by non-party “industry associations” to ExxonMobil because Plaintiff has not pleaded the requisite connection between those statements and ExxonMobil.

Because Plaintiff has failed to allege its claims against ExxonMobil with the particularity that Maryland law requires, its claims must be dismissed.

I. LEGAL STANDARD

Maryland has “long required parties to plead fraud with particularity.” *McCormick v. Medtronic, Inc.*, 219 Md. App. 485, 527 (2014). “A plaintiff must allege facts which indicate fraud or from which fraud is necessarily implied.” *Antigua Condo. Ass’n v. Melba Investors Atl., Inc.*, 307 Md. 700, 735 (1986). Maryland’s particularity standard applies to causes of action for fraud, as well as to claims “sounding in fraud.” *Kemp v. Nationstar Mortg. Ass’n*, 248 Md. App. 1, 40 (2020), *aff’d in part, rev’d in part sub nom.*, 476 Md. 149 (2021); *see also Cozzarelli v. Inspire Pharms. Inc.*, 549 F.3d 618, 629 (4th Cir. 2008) (applying the particularity standard to allegations that “sound in fraud”); *Layani v. Ouazana*, Civ. No. SAG-20-420, 2022 WL 11949038, at *3 (D. Md. Oct. 20, 2022) (holding that claims sounding in fraud implicate Rule 9(b)’s heightened pleading standard); *Oliver v. Wells Fargo Bank, N.A.*, Civ. No. SAG-22-2128, 2022 WL 17978271, at *3 n.1 (D. Md. Dec. 27, 2022) (same).²

Maryland’s particularity requirement imposes a “heightened” pleading standard; it demands far more than Maryland Rule 2-305, which already requires that complaints contain a “clear statement of the facts necessary to constitute a cause of action.” *McCormick*, 219 Md. App.

² Maryland courts routinely look to the “analogous federal rule,” Rule 9(b) of the Federal Rules of Civil Procedure, to interpret the scope of the particularity requirement. *See McCormick*, 219 Md. App. at 527.

at 527 (quoting Maryland Rule 2-305). To satisfy this strict pleading requirement, a plaintiff must specify, among other things, “*who made what false statement, when, and in what manner (i.e., orally, in writing, etc.)*” *Id.* at 528 (emphasis added); *see Worden v. 3203 Farmington LLC*, No. 21-1373, 2023 WL 4945171, at *9 (Md. Ct. Spec. App. Aug. 3, 2023) (unreported) (“[A] plaintiff must generally identify who made the false statement, when and how the false statement was made, and why the statement is false.”); *Dominion Fin. Servs., LLC v. Pavlovsky*, Civ. No. JKB-22-0705, 2023 WL 3550011, at *11 (D. Md. May 18, 2023) (“A plaintiff satisfies the particularity requirement by alleging who made what false statement, when, and in what manner.”) (cleaned up); *see also Ahumada v. Nish*, 756 F.3d 268, 280 (4th Cir. 2014) (holding that Rule 9(b) requires a complaint to allege “the who, what, when, where and how of the alleged fraud”). Furthermore, where a plaintiff alleges multiple acts of fraud, multiple schemes, and/or multiple defendants, the complaint must detail with particularity *each* act of fraud, *each* scheme, and the role of *each* defendant therein. *See Heritage Harbour, L.L.C. v. John J. Reynolds, Inc.*, 143 Md. App. 698, 711 (2002) (affirming dismissal of complaint where plaintiff “never set forth any acts or omissions committed by [certain defendants]” and instead “dump[ed]” all defendants “into the same pot”) (internal quotation marks omitted); *see also Wells v. State*, 100 Md. App. 693, 703 (1994) (“[D]efendants are not fungible,” so the court “must examine what each is charged with doing or failing to do.”).

Where fraud or deceit forms the basis for recovery, a plaintiff “must allege clearly and distinctly all of the essential elements of actionable fraud.” *Walton v. Davy*, 86 Md. App. 275, 282 (1991). That includes detrimental reliance, which is “critical to a fraud claim.” *Parlette v. Parlette*, 88 Md. App. 628, 636 (1991); *Exxon Mobil Corp. v. Albright*, 433 Md. 303, 339, *on reconsideration in part*, 433 Md. 502 (2013) (“[A] false statement by a defendant does not alone provide a sufficient

basis to support a cause of action for fraud. Rather, the plaintiff must prove . . . that he or she relied on the allegedly false statement to his or her detriment.”).

II. ARGUMENT

A. All of Plaintiff’s Claims Against ExxonMobil Sound in Fraud and Must Be Pleaded with Particularity

All of Plaintiff’s claims must satisfy Maryland’s heightened pleading standard because all “sound[] in fraud.” *Kemp*, 248 Md. App. at 40. Plaintiff’s theory of liability rests almost entirely on allegations of fraud. In the very first paragraph of its complaint, Plaintiff alleges that Defendants engaged in “a coordinated, multi-front effort to *conceal and deny their own knowledge of . . . threats [of climate change], discredit* the growing body of publicly available scientific evidence, and *persistently create doubt* in the minds of customers, consumers, regulators, the media, journalists, teachers, and the public about the reality and consequences of the impacts of their fossil fuel pollution.” Compl. ¶ 1 (emphasis added). Plaintiff purports to cast Defendants as leaders of “denialist campaigns to confuse and obscure the role of their products in causing climate change,” *id.* ¶ 7, and as participants in a “dogged campaign against regulation of those products based on falsehoods, omissions, and deceptions,” *id.* ¶ 102. And Plaintiffs rely on averments of fraud in pleading the elements of every single cause of action in its complaint. *See* Compl. ¶ 221 (public nuisance); ¶ 233 (private nuisance); ¶ 242 (strict liability failure to warn); ¶ 254 (strict liability design defect); ¶ 264 (negligent design defect); ¶ 275 (negligent failure to warn); ¶¶ 288-89 (trespass); ¶¶ 292, 295-96 (Maryland Consumer Protection Act).

Plaintiff has *itself* repeatedly characterized its claims as premised on fraud. For example, during the federal court proceedings in this case, Plaintiff admitted (and highlighted) that the “central conduct at issue in Plaintiff’s claims” purportedly “conceal[ed] the hazards of fossil fuels” and failed to “provid[e] warnings to customers.” Appellee’s Br., No. 19-1644, ECF No. 86, at 19

(4th Cir. Aug. 27, 2019) (quoting district court’s remand decision); *see also* Appellee’s Supp. Br., No. 19-1644, ECF No. 212, at 8 (4th Cir. Sept. 7, 2021) (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” (emphasis added)); Respondent’s Br., No. 22-361, at 29 (U.S. Dec. 19, 2022) (“Baltimore’s claims hinge on petitioners’ *alleged misrepresentations* to consumers and the public” (emphasis added)).

Courts routinely recognize that claims like Plaintiff’s, which are premised on allegedly fraudulent conduct, are subject to the heightened pleading standard for fraud without regard to whether plaintiff asserts standalone fraud claims. *See, e.g., Thomas v. Ocwen Loan Servicing*, Civ. No. ELH-17-218, 2017 WL 2645721, at *4 (D. Md. June 19, 2017) (“In general, claims that sound in fraud, whether rooted in common law or arising under a statute, implicate the heightened pleading standard”); *see also Haley v. Corcoran*, 659 F. Supp. 2d 714, 721 (D. Md. 2009) (applying the heightened pleading standard for fraud to a claim brought under the Maryland Consumer Protection Act alleging that “false statements, deceptive actions, misrepresentations, omissions, and other acts . . . deceived and tended to deceive Plaintiffs”).

B. Plaintiff’s Allegations Against ExxonMobil Fail and Do Not Meet the Heightened Pleading Standard for Claims Sounding in Fraud.

Plaintiff’s allegations against ExxonMobil fail to meet Maryland’s stringent pleading requirements for fraud because the Complaint fails to identify *each* alleged misrepresentation by ExxonMobil, or who purportedly saw or relied on each statement to their detriment.

1. Plaintiff Fails to Plead Any Alleged Misrepresentations Attributable to ExxonMobil with Particularity.

The Complaint identifies only the following purportedly misleading statements allegedly attributable to ExxonMobil, its predecessors, or affiliates:

- a 1996 corporate publication, published by Exxon in Texas, Compl. ¶ 153;
- a 1997 speech by Exxon’s then-CEO in Beijing, China, *id.* ¶ 155;
- a series of advertorials published in the *New York Times* by Mobil, including one in 1997, *id.* ¶ 157;
- a 1998 article by the CEO of Imperial Oil, a Canadian affiliate of Exxon Mobil, published in the Imperial Oil Review, a publication for Imperial Oil’s shareholders and employees, *id.* ¶ 156; and
- a 2007 corporate citizenship report, published by ExxonMobil in Texas, *id.* ¶ 168.

These allegations fall far short of pleading with particularity that anyone was deceived or relied upon these statements, let alone that ExxonMobil was engaged in multi-decade “denialist campaigns.” *Id.* ¶ 7.

(a) Plaintiff Fails to Allege Who Was Deceived by Any Statement.

Plaintiff fails to allege with particularity who supposedly was deceived by *any* of the alleged statements. Plaintiff does not identify anyone who saw, heard about, or was exposed to any of these statements, let alone who was deceived by them. None of the statements are alleged to have been crafted for or directed at Baltimore. That alone requires dismissal of Plaintiff’s claims against ExxonMobil. *See Sandoval v. Denchfield Landscaping, Inc.*, Civ. No. AW-07-02134, 2008 WL 11509675, at *5 (D. Md. Apr. 22, 2008) (dismissing claim under Rule 9(b) that, among other things, “d[id] not . . . identify to whom [the allegedly fraudulent] statements might have been uttered”); *see also Topshelf Mgmt., Inc. v. Campbell-Ewald Co.*, 117 F. Supp. 3d 722, 726 (M.D.N.C. 2015) (dismissing claim under Rule 9(b) where plaintiff failed to “to identify any individual recipients of the fraudulent statements”).

(b) Plaintiff Fails to Allege Detrimental Reliance on Any Statement.

Plaintiff fails to specifically allege who (i) was deceived by any of the alleged statements or (ii) detrimentally relied on any of those statements. Under Plaintiff’s theory of liability,

unspecified consumers, including Plaintiff itself, used fossil fuels at levels beyond what they would have absent Defendants’ alleged deceptive statements. *See, e.g.*, Compl. ¶ 147 (alleging that Defendants “promot[ed] their hazardous products through advertising campaigns and the initiation and funding of climate change denialist organizations, designed to influence consumers to continue using Defendants’ fossil fuel products irrespective of those products’ damage to communities and the environment”). But Plaintiff utterly fails to allege with specificity who supposedly relied, to their detriment, on the alleged misrepresentations.

The Complaint also conspicuously fails to identify a single alleged misrepresentation that was prepared for or directed at Maryland, or to plausibly allege that Plaintiff or any consumer actually saw or relied on any of the identified statements to their detriment. This deficiency requires dismissal of Plaintiff’s claims against ExxonMobil. *See Albright*, 433 Md. at 339 (holding that a “failure to demonstrate detrimental reliance” is “fatal” to a fraud claim).

2. Plaintiff Relies on Impermissible Group Pleading and Cannot Attribute Third-Party Statements to ExxonMobil.

The Complaint’s remaining allegations of fraudulent conduct fail because they are improperly attributed to “Defendants” collectively or to third-party organizations. Such generalized allegations cannot be attributed to ExxonMobil consistent with Maryland law.

(a) Plaintiff Relies on Impermissible Group Pleading.

The Complaint repeatedly refers to allegedly fraudulent conduct committed by “Defendants” collectively, without specifying—as Maryland law requires—which of the two dozen Defendants in particular is alleged to have engaged in the conduct, or differentiating between each Defendant’s alleged role. For example, the Complaint alleges that (i) “*Defendants* embarked on a decades-long campaign designed to maximize continued dependence on their products and undermine national and international efforts to rein in greenhouse gas emissions,”

Compl. ¶ 145 (emphasis added); and (ii) the “*Defendants* embarked on a concerted public relations campaign to cast doubt on the science connecting global climate change to fossil fuel products and greenhouse gas emissions,” *id.* ¶ 147 (emphasis added). But Plaintiff never alleges which Defendants purportedly engaged in this conduct or which statements each made. Plaintiff thus nowhere specifies the who, what, where, when, and why of the allegedly false or fraudulent representations. *Kemp*, 248 Md. App. at 40-43. These and similar allegations throughout the Complaint do not comport with Maryland law.

“When a complaint alleges fraud against multiple defendants, [the heightened pleading requirement] requires that the plaintiff identify *each defendant’s* participation in the alleged fraud.” *Haley*, 659 F. Supp. at 721 (emphasis added); *see also, Heritage Harbour*, 143 Md. App. at 711; *Wells*, 100 Md. App. at 703. Where, as here, Plaintiff’s allegations “lack[] the required particularity as to each individual Defendant’s involvement in the alleged fraud,” Maryland’s heightened pleading standard for fraud is not satisfied and dismissal is required. *Finley Alexander Wealth Mgmt., LLC v. M&O Mktg., Inc.*, Civ. No. GJH-19-1312, 2020 WL 1322948, at *10 (D. Md. Mar. 20, 2020). One of the primary purposes of pleading with particularity is “ensur[ing] the defendant has sufficient information to formulate a defense by putting it on notice of the conduct complained of.” *OceanFirst Bank N.A. v. Brink’s, Inc.*, Civ. No. DLB-21-3275, 2022 WL 4465897, at *6 (D. Md. Sept. 26, 2022) (citation omitted). For ExxonMobil to prepare an effective defense to Plaintiff’s expansive and amorphous claims of fraud and deception, it is entitled to—and must—know each supposedly deceptive act that Plaintiff alleges *it* has taken, and who is alleged to have been deceived by each act.

(b) Plaintiff Cannot Attribute the Statements of Third Parties to ExxonMobil.

Plaintiff also seeks to hold Defendants, including ExxonMobil, responsible for statements made by various “fossil fuel industry associations” and other third parties, none of which Plaintiff has named as parties. *See, e.g.*, Compl. ¶¶ 150, 154. 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); *see Hall v. United Air Lines, Inc.*, 296 F. Supp. 2d 652, 672 (E.D.N.C. 2003) (holding that membership in “alliances, trade associations, and other cooperative ventures,” without more, “do[es] not create a plus factor or even an inference of conspiracy.”), *aff’d sub nom.*, 2004 WL 2823302 (4th Cir. Dec. 9, 2004). “Not every action by a trade association is . . . concerted action by the association’s members,” *N. Am. Soccer League, LLC v. U.S. Soccer Fed’n, Inc.*, 883 F.3d 32, 40 (2d Cir. 2018), and “concerted action does not exist every time a trade association member speaks or acts.” *Alvord-Polk, Inc. v. F. Schumacher & Co.*, 37 F.3d 996, 1007-08 (3d Cir. 1994). It is a plaintiff’s obligation to plead with particularity the connection between a defendant and the statement it seeks to impute to that defendant. *Southland Secs. Corp. v. INSpire Ins. Sols., Inc.*, 365 F.3d 353, 365 (5th Cir. 2004).

Plaintiff has fallen far short of fulfilling that obligation. For example, Plaintiff avers that ExxonMobil has been a “member” of various organizations, without specifying when ExxonMobil was purportedly a member, or what that membership entailed. *See, e.g.*, Compl. ¶ 31. The Complaint asserts that ExxonMobil employees participated in various organizations, *see, e.g., id.* ¶ 115, but fail to identify *who* from ExxonMobil participated, *when* that participation occurred, or *what* role any ExxonMobil employee played in those organizations or with respect to any allegedly deceptive statements by the organization. Plaintiff includes a few nonspecific allegations that ExxonMobil funded certain third parties, but those allegations fail to reach anywhere near the level

of particularity that Maryland law requires. For example, Plaintiff alleges that ExxonMobil funded “numerous organizations,” *id.* ¶ 167, but provides no specifics as to the purpose or use of any purported contributions.

That is plainly not enough to impute the alleged statements of these third parties to ExxonMobil. *See, e.g., In re Asbestos Sch. Litig.*, 46 F.3d 1284, 1290 (3d Cir. 1994) (Alito, J.) (rejecting arguments that donations to a third party and attendance at meetings held by the third party sufficed to establish a conspiracy); *In re Processed Egg Prods. Antitrust Litig.*, 821 F. Supp. 2d 709, 753 (E.D. Pa. 2011) (that the Egg Association, Egg Producers, and Egg Merchants have “overlapping members,” and that Egg Association members may have attended Egg Producers and Egg Merchants meetings, or vice versa, “are not sufficient alone to plausibly suggest that [the Egg Association] participated in the conspiracy”); *Taylor v. Airco, Inc.*, 503 F. Supp. 2d 432, 446 (D. Mass. 2007) (refusing to impute organization’s statements to members, even where members sent representatives and participated in drafting allegedly misleading statements, where “no evidence of record indicate[d] to what extent each Defendant controlled the contents” of the organization’s publication), *aff’d sub nom.*, 576 F.3d 16 (1st Cir. 2009); *see also N.A.A.C.P. v. Claiborne Hardware Co.*, 458 U.S. 886, 890, 902, 919-920 (1982) (holding that the First Amendment barred Mississippi’s imposition of tort liability on NAACP Field Secretary in connection with an NAACP boycott, because “[c]ivil liability may not be imposed merely because an individual belonged to a group, some members of which committed acts of violence[; f]or 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”).

CONCLUSION

For the foregoing reasons, and the reasons stated in the Defendants’ Joint Memorandum of Law, Plaintiff’s claims against ExxonMobil must be dismissed.

Dated: October 16, 2023


/s/ Linda S. Woolf

Linda S. Woolf (AIS #8512010670)

Richard M. Barnes (AIS #8112010015)

Derek M. Stikeleather (AIS #0412150333)

Sean L. Gugerty (AIS #1512150280)

GOODELL, DEVRIES, LEECH & DANN, LLP

One South Street, 20th Floor

Baltimore, Maryland 21202

Telephone: (410) 783-4000

Facsimile: (410) 783-4040

Email: lsw@gdldlaw.com

Email: rmb@gdldlaw.com

Email: dstikeleather@gdldlaw.com

Email: sgugerty@gdldlaw.com

Theodore V. Wells, Jr. (*pro hac vice*)

Daniel J. Toal (*pro hac vice*)

Yahonnes Cleary (*pro hac vice*)

Caitlin E. Grusauskas (*pro hac vice*)

PAUL, WEISS, RIFKIND,

WHARTON & GARRISON LLP

1285 Avenue of the Americas

New York, NY 10019-6064

Telephone: (212) 373-3089

Facsimile: (212) 492-0089

Email: twells@paulweiss.com

Email: dtoal@paulweiss.com

Email: ycleary@paulweiss.com

Email: cgrusauskas@paulweiss.com

*Counsel for Defendants EXXON MOBIL
CORPORATION and EXXONMOBIL
OIL CORPORATION*

CERTIFICATE OF SERVICE

I CERTIFY that, on this 16th day of October 2023, a copy of the foregoing supplemental memorandum was sent via electronic mail, to:

Sara Gross (sara.gross@baltimorecity.gov)
Baltimore City Law Dept.
100 N. Holliday Street, Suite 109
Baltimore, MD 21202

Vic Sher (vic@sheredling.com)
Matt Edling (matt@sheredling.com)
Katie Jones (katie@sheredling.com)
Marty Quiñones (marty@sheredling.com)
Quentin Karpilow
SHER EDLING LLP
100 Montgomery Street, Suite 1410
San Francisco, CA 94104

Counsel for Mayor and
City Council of Baltimore

Ty Kelly (tykelly@bakerdonelson.com)
Alison C. Schurick
(ashurick@bakerdonelson.com)
BAKER, DONELSON, BEARMAN,
CALDWELL & BERKOWITZ
100 Light Street, 19th Floor
Baltimore, MD 21202

Theodore J. Boutrous, Jr.
(tboutrous@gibsondunn.com)
Peter E. Seley (pseley@gibsondunn.com)
Joshua D. Dick (jdick@gibsondunn.com)
Andrea E. Neuman
(aneuman@gibsondunn.com)
GIBSON, DUNN & CRUTCHER
1050 Connecticut Avenue, N.W.
Washington, DC 90071

Counsel for Chevron Corp. and Chevron
U.S.A. Inc.

John B. Isbister (jisbister@tydings.com)
Jaime W. Luse (jluse@tydings.com)
TYDINGS & ROSENBERG
One East Pratt Street, Suite 901
Baltimore, MD 21202

Nancy G. Milburn
(nancy.milburn@arnoldporter.com)
Diana E. Reiter
diana.reiter@arnoldporter.com)
John D. Lombardo
(john.lombardo@arnoldporter.com)
ARNOLD & PORTER KAYE SCHOLER
250 West 55th Street
New York, NY 10019

Counsel for BP p.l.c., BP America Inc. and
BP Products North America Inc.

Warren N. Weaver
(wweaver@whitefordlaw.com)
WHITEFORD TAYLOR & PRESTON
7 Saint Paul Street
Baltimore, MD 21202

Nathan P. Eimer (neimer@eimerstahl.com)
Lisa S. Meyer (lmeyer@eimerstahl.com)
Robert E. Dunn (rdunn@eimerstahl.com)
EIMER STAHL
224 S. Michigan Avenue, Suite 1100
Chicago, IL 60604

Counsel for CITGO Petroleum Corporation

Daniella Einik (deinik@jonesday.com)
Noel J. Francisco
(njfrancisco@jonesday.com)
Joseph Parsons (jparsons@jonesday.com)
Andy Stanton (astanton@jonesday.com)
David M. Morrell (dmorrell@jonesday.com)
David C. Kiernan (dkiernan@jonesday.com)
J. Benjamin Aguiñaga
(jbaguinaga@jonesday.com)
JONES DAY
2727 N. Harwood Street, Suite 500
Dallas, TX 75201

Counsel for CNX Resources Corp.

David B. Hamilton
(david.hamilton@us.dlapiper.com)
A. Neill Thupari
(neill.thupari@us.dlapiper.com)
William F. Kiniry, III
(William.kiniryIII@us.dlapiper.com)
DLA PIPER LLP (US)
650 S. Exeter Street, 11th Floor
Baltimore, MD 21202

Steven Bauer (steven.bauer@lw.com)
Margaret Tough (margaret.tough@lw.com)
Nicole C. Valco (nicole.valco@lw.com)
Katherine A. Rouse
(katherine.rouse@lw.com)
LATHAM & WATKINS
505 Montgomery Street, Suite 2000
San Francisco, CA 94111

Matthew Peters (matthew.peters@lw.com)
LATHAM & WATKINS
555 Eleventh Street, N.W., Suite 1000
Washington, DC 20004

Jameson Jones (jameson.jones@bartlit-
beck.com)
Dan Brody (dan.brody@bartlit-beck.com)
BARTLIT BECK
1801 Wewatta Street, Suite 1200
Denver, CO 80202

Tracy A. Roman (troman@crowell.com)
Jerome A. Murphy (jmurphy@crowell.com)
Honor Costello (hcostello@crowell.com)
CROWELL & MORING
1001 Pennsylvania Avenue, N.W.
Washington, DC 20004

Counsel for CONSOL Energy Inc. and
CONSOL Marine Terminals LLC

Michelle N. Lipkowitz
(mnlipkowitz@mintz.com)
MINTZ LEVIN
555 12th Street, N.W., Suite 1100
Washington, DC 20004

Thomas K. Prevas
(Thomas.prevas@saul.com)
SAUL EWING
1001 Fleet Street, 9th Floor
Baltimore, MD 21202

Counsel for Crown Central LLC and Crown
Central New Holdings LLC

Rebecca Weinstein Bacon
(rweinstein.bacon@bartlitbeck.com)
BARTLIT BECK
54 W. Hubbard Street
Chicago, IL 60654

Counsel for ConocoPhillips, ConocoPhillips
Co. and Louisiana Land & Exploration Co.
LLC

Martha Thomsen
(martha.thomsen@bakerbotts.com)
Megan Berge (megan.berge@bakerbotts.com)
Sterling Marchand
(sterling.marchand@bakerbotts.com)
BAKER BOTTS
700 K Street, N.W.
Washington, DC 20001

Scott Janoe (scott.janoe@bakerbotts.com)
BAKER BOTTS
910 Louisiana Street, Suite 3200
Houston, TX 77002

Counsel for Hess Corp.

Perie Reiko Koyama
(pkoyama@huntonAK.com)
HUNTON ANDREWS KURTH LLP
2200 Pennsylvania Avenue, N.W., Ste. 900
Washington, DC 20037

Shannon S. Broome
(sbroome@huntonAK.com)
Ann Marie Mortimer
(amortimer@huntonAK.com)
HUNTON ANDREWS KURTH LLP
50 California Street, Suite 1700
San Francisco, CA 94111

Sandy C. Collins (scollins@huntonAK.com)
HUNTON ANDREWS KURTH LLP
Riverfront Plaza East Tower
951 E. Byrd Street
Richmond, VA 23219

Shawn Patrick Regan
(sregan@huntonAK.com)
HUNTON ANDREWS KURTH LLP
200 Park Avenue, 52nd Floor
New York, NY 10166

Counsel for Marathon Petroleum Corp. and
Speedway LLC

Mark S. Saudek (msaudek@gejlaw.com)
Joseph C. Dugan (jdugan@gejlaw.com)
GALLAGHER EVELIUS & JONES
218 N. Charles Street, Suite 400
Baltimore, MD 21201

Robert Reznick (rreznick@orrick.com)
James L. Stengel (jstengel@orrick.com)
ORRICK, HERRINGTON & SUTCLIFFE
1152 15th Street, N.W.
Washington, DC 10019

Marc R. Shapiro (mrshapiro@orrick.com)
ORRICK, HERRINGTON & SUTCLIFFE
51 West 52nd Street
New York, NY 10019

Counsel for Marathon Oil Corp. and
Marathon Oil Co.

William N. Sinclair
(bsinclair@silvermanthompson.com)
Ilona Shparaga
(ishparaga@silvermanthompson.com)
SILVERMAN THOMPSON SLUTKIN & WHITE
400 E. Pratt Street, 9th Floor
Baltimore, MD 21202

David C. Frederick
(dfrederick@kellogghansen.com)
James M. Webster, III
(jwebster@kellogghansen.com)
Grace W. Knofczynski
(gknofczynski@kellogghansen.com)
Daniel S. Severson
(dseverson@kellogghansen.com)
KELLOGG, HANSEN, TODD,
FIGEL & FREDERICK
1615 M Street, N.W., Suite 400
Washington, DC 20036

Counsel for Shell plc and Shell USA, Inc.

Matthew Peters (matthew.peters@lw.com)
LATHAM & WATKINS
555 Eleventh Street, N.W., Suite 1000
Washington, DC 20004

Steven Bauer (steven.bauer@lw.com)
Margaret Tough (margaret.tough@lw.com)
Katherine A. Rouse
(katherine.rouse@lw.com)
Nicole C. Valco (nicole.valco@lw.com)
LATHAM & WATKINS
505 Montgomery Street, Suite 2000
San Francisco, CA 94111

Counsel for Phillips 66 and Phillips 66 Co.


Linda S. Woolf (AIS # 8512010670)