

**IN THE CIRCUIT COURT FOR
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 PHILLIPS 66 AND PHILLIPS 66 COMPANY’S INDIVIDUAL
MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM UPON WHICH
RELIEF CAN BE GRANTED AND REQUEST FOR HEARING**

Pursuant to Maryland Rule 2-322(b)(2) and the August 15, 2023 Order at 1 (permitting re-briefing dispositive motions and submission of independent briefs), Defendants Phillips 66 and Phillips 66 Company (the “Phillips 66 Defendants”) respectfully move this Court to dismiss Plaintiff’s Complaint with prejudice for failure to state a claim upon which relief can be granted.

The Phillips 66 Defendants also join the Joint Motion to Dismiss Plaintiff’s Complaint for Failure to State a Claim filed this day, as well as ConocoPhillips’s individual submission seeking dismissal for failure to state a claim (to the extent deemed applicable). The Phillips 66 Defendants separately file this supplemental Motion and attached Memorandum of Law to address grounds for dismissal with prejudice that are specific to Plaintiff’s minimal and legally inadequate allegations made against the Phillips 66 Defendants. 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), the Phillips 66 Defendants respectfully request a hearing on all issues raised in this Motion and the accompanying Memorandum of Law.

Dated: October 16, 2023

Respectfully submitted,



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Case No. 24-C-18-004219

**DEFENDANTS PHILLIPS 66 AND PHILLIPS 66 COMPANY’S MEMORANDUM
OF LAW IN SUPPORT OF INDIVIDUAL MOTION TO DISMISS FOR FAILURE
TO STATE A CLAIM**

Pursuant to Maryland Rule 2-322(b)(2) and the August 15, 2023 Order at 1 (permitting re-briefing dispositive motions and submission of independent briefs), Defendants Phillips 66 and Phillips 66 Company (the “Phillips 66 Defendants”) file this Memorandum of Law in Support of their Individual Motion to Dismiss for Failure to State a Claim.¹ The Phillips 66 Defendants also join the Joint Motion to Dismiss Plaintiff’s Complaint for Failure to State a Claim filed this day, as well as ConocoPhillips’s individual submission seeking dismissal for failure to state a claim (to the extent deemed applicable), and incorporate by reference the arguments made in the supporting memoranda of law. The Phillips 66 Defendants separately file this Memorandum to address grounds for dismissal with prejudice that are specific to Plaintiff’s minimal and legally inadequate allegations made against the Phillips 66 Defendants.

¹ Defendants, including the Phillips 66 Defendants, have filed a joint motion to dismiss pursuant to Maryland Rule 2-322(a)(1) on the grounds that they are not subject to personal jurisdiction in Maryland. The Phillips 66 Defendants submit this memorandum subject to, and without waiver of, any jurisdictional objections and without waiving any right, defense, affirmative defense or claim.

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I. INTRODUCTION

Plaintiff Mayor and City Council of Baltimore (“Plaintiff”) filed a lengthy Complaint against Phillips 66 and its subsidiary Phillips 66 Company (the “Phillips 66 Defendants”), along with 24 other energy companies, seeking to hold all Defendants liable for the alleged effects of global climate change, which has resulted from worldwide greenhouse gas emissions, among other things. The 26-defendant Complaint goes on for 132 pages, alleging a 50-year “campaign of deception” against the residents of Maryland, but does not allege a single statement or act by the Phillips 66 Defendants supposedly made as part of that purported campaign. In fact, there does not appear to be an allegation of any specific deceptive act by any defendant during the approximately 12 years since the Phillips 66 Defendants were formed in 2011. As we will show below, Plaintiff has not made *any* specific allegations against the Phillips 66 Defendants, so dismissal for failure to state a claim is appropriate.

II. ALLEGATIONS ABOUT PHILLIPS 66 AND PHILLIPS 66 COMPANY

Plaintiff alleges no act or statement specific to the Phillips 66 Defendants. In Plaintiff’s 132-page Complaint, there are only two allegations aimed at the Phillips 66 Defendants. None identifies any false statement or concealment:

- **Complaint ¶ 26(f):** “Phillips 66 is a multinational energy and petrochemical company incorporated in Delaware and with its principal place of business in Houston, Texas. It encompasses downstream fossil fuel processing, refining, transport, and marketing segments that were formerly owned and/or controlled by ConocoPhillips.”
- **Complaint ¶ 26(g):** “Phillips 66 Company is a wholly owned subsidiary of Phillips 66 that acts on Phillips 66’s behalf and subject to Phillips 66’s control. Phillips 66 Company is incorporated in Delaware and has its principal office in Houston, Texas. Phillips 66 Company is qualified to do business in Maryland and has a registered agent for service of process in Maryland. Phillips 66 Company was

formerly known as, did business as, and/or is the successor in liability to Phillips Petroleum Company, Conoco, Inc., Tosco Corporation, and Tosco Refining Co.”²

There are two other allegations that mention Phillips 66 in a general, undifferentiated way, tacking on essentially “and Phillips 66 too” to general allegations about other Defendants. The Complaint does this even after acknowledging that Phillips 66 is a distinct “multinational energy and petrochemical company,” and that Phillips 66 Company is a “wholly owned subsidiary of Phillips 66,” *id.* ¶ 26(f)–(g):

- **Complaint ¶ 26(h):** “Defendants ConocoPhillips, ConocoPhillips Company, Louisiana Land & Exploration Co., Phillips 66, Phillips 66 Company, and their predecessors, successors, parents, subsidiaries, affiliates, and divisions are collectively referred to herein as ‘ConocoPhillips.’”
- **Complaint ¶ 26(i):** Making general allegations regarding “ConocoPhillips” alleged business presence in Maryland, including that it has marketed or markets gasoline through “Phillips 66-branded petroleum service stations.”

The Complaint does not attempt to identify even a single statement made by the Phillips 66 Defendants 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 the Phillips 66 Defendants liable for the alleged conduct of other 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. But beyond that bald assertion, the Complaint includes no factual allegations supporting those legal conclusions.

III. LEGAL STANDARD

To survive a motion to dismiss for failure to state a claim, a complaint’s factual allegations, and permissible inferences drawn from them, must establish the elements of the cause of action.

² As discussed *infra* at page 6 and footnote 5, Phillips 66 and Phillips 66 Company did not come into existence until 2011.

Wireless One, Inc. v. Mayor & City Council of Baltimore, 465 Md. 588, 604 (2019); *Walton v. Network Sols.*, 221 Md. App. 656, 665–66 (2015) (citing Md. Rule 2-322(b)(2)) (affirming dismissal of claims where court could not draw any factual inferences from conclusory statements). Although the Court assumes the truth of well-pleaded factual allegations, it must ignore “bald assertions and conclusory statements.” *Walton*, 221 Md. App. at 666 (citing *RRC Ne., LLC v. BAA Maryland, Inc.*, 413 Md. 638, 644 (2010)); *Berman v. Karvounis*, 308 Md. 259, 264–65 (1987) (court must consider “allegations of fact and inferences deducible from them, [but] not merely conclusory charges”). Nor may a plaintiff simply “dump” all defendants “in the same pot.” *Heritage Harbour, L.L.C. v. John J. Reynolds, Inc.*, 143 Md. App. 698, 711 (2002). Rather, a complaint must allege “acts or omissions by [each defendant] that would serve as a basis for the imposition of liability.” *Id.*

Maryland courts have also recognized that claims brought under Section 13-201(9) the Maryland Consumer Protection Act, like Plaintiff brings here, “replicate[] common-law fraud,” so a plaintiff must allege such claims with the particularity required to plead a fraud claim. *McCormick v. Medtronic, Inc.*, 219 Md. App. 485, 529 (2014). To satisfy that standard, a plaintiff must specify: (i) the allegedly fraudulent statement, (ii) who made it, (iii) when it was made, (iv) how it was made, (v) why it is false, and (vi) the reasons for believing it was made with the intent to deceive. *Id.* at 528.

IV. ARGUMENT

A. Plaintiff’s Allegations Do Not State a Claim Against Phillips 66 or Phillips 66 Company.

Plaintiff itself characterized all of its claims as arising from “misrepresentation campaigns that promoted the unrestrained use of fossil fuels” to secure remand.³ Appellees’ Supp. Br. at 27,

³ Although Plaintiff has characterized this case as being about Defendants’ alleged “promotion and sale of

BP P.L.C. v. Mayor & City Council of Baltimore, No. 19-1644, ECF No. 212 (4th Cir. Sept. 9, 2021); *see also* Compl. ¶¶ 6, 10, 102, 145. However, Plaintiff does not actually allege that the Phillips 66 Defendants made any statements or omissions as a part of that purported campaign. For that reason, all of its claims against the Phillips 66 Defendants fail.

1. Plaintiff's Allegations About Phillips 66 and Phillips 66 Company Are Inadequate.

Plaintiff's allegations against the Phillips 66 Defendants do not satisfy Maryland's basic pleading requirements, let alone the heightened requirements to plead fraud with particularity. The Complaint contains no act or statement specific to Phillips 66 or Phillips 66 Company. Plaintiff's lumping together of Phillips 66 and Phillips 66 Company with separate ConocoPhillips entities (and even more broadly, with 24 other defendants), fails to cure the absence of factual allegations as to the Phillips 66 Defendants. *See Keyser v. Richards*, 130 A. 41, 43 (1925) (affirming dismissal of claims because the "tortious acts of the different defendants" were not "specifically stated or alleged"); *Wells v. State*, 100 Md. App. 693, 703 (1994) (rejecting conclusory guilt-by-association group pleading because "defendants are not fungible," and "[the court] must examine what each is charged with doing or failing to do").

Samuels v. Tschechtelin is on point and compels dismissal. 135 Md. App. 483 (2000). In *Samuels*, the then-Court of Special Appeals affirmed dismissal of a complaint that listed individual defendants by name in a preliminary paragraph, but otherwise "lumped [them] under the general title of 'Defendants' and summarily included [them] in each of appellant's seven counts." *Id.* at

fossil-fuel products without warning and abetted by a sophisticated disinformation campaign" and purported "concealment and misrepresentation of the products' known dangers," Appellee's Br. in Opp. at 15, *BP P.L.C. v. Mayor & City Council of Baltimore*, No. 22-361 (U.S. Dec. 19, 2022), as discussed in the Joint Motion to Dismiss Plaintiff's Complaint for Failure to State a Claim, Plaintiff's case necessarily depends on greenhouse gas *emissions* being the source of its alleged injury. For purposes of this motion, the Phillips 66 Defendants focus on Plaintiff's assertion that its case hinges on Defendants' allegedly fraudulent statements and omissions.

528–29. The *Samuels* court could “discern no legally sufficient cause of action” from these “[b]ald assertions and conclusory statements.” *Id.* at 528–29 (quoting *Bobo v. State*, 346 Md. 706, 708–09 (1997)); *see also Heritage Harbour*, 143 Md. App. at 710–11 (affirming dismissal of a complaint that “dump[ed]” all the defendants “into the same pot,” and failed to allege acts or omissions committed by each of the defendants).

Plaintiff’s Complaint entirely fails to give the Phillips 66 Defendants notice of the particular conduct with which they are charged. And it does not even attempt to allege the particular facts and circumstances constituting any fraudulent statement or omission, including the who, what, when, how, and why. Instead, the Complaint repeatedly alleges 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, 170. Moreover, Plaintiff makes no allegations about specific conduct by Phillips 66 or Phillips 66 Company, and instead groups these distinct entities with ConocoPhillips and ConocoPhillips Company, making allegations collectively against “ConocoPhillips.” *See* Compl. ¶ 26(h).⁴

⁴ As discussed in ConocoPhillips’ individual submission and memorandum of law, the allegations that lump the Phillips 66 Defendants with “ConocoPhillips” also do not satisfy Plaintiff’s pleading requirements, and Plaintiff fails to identify a single purported misstatement made by “ConocoPhillips.” Although the Phillips 66 Defendants maintain that Plaintiff’s Complaint has improperly grouped them with “ConocoPhillips,” the Phillips 66 Defendants join and incorporate ConocoPhillips’s arguments in its individual submission and memorandum of law, to whatever extent the Court considers those allegations to be directed at the Phillips 66 Defendants.

The Complaint cannot state a claim against the Phillips 66 Defendants by “dump[ing]” them “into the same pot” with all other Defendants. *Heritage Harbour, L.L.C.*, 143 Md. App. at 711. Each defendant is entitled to understand the particular conduct with which it is charged, and thus 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. Furthermore, the Phillips 66 Defendants did not come into existence until 2011, and thus did not exist for more than half of Plaintiff’s vaguely defined time period. Indeed, the vast majority of the generalized allegations in the Complaint predate the existence of the Phillips 66 Defendants.⁵

2. Plaintiff’s “Agency” Allegations Do Not Cure the Pleading Deficiencies as to Phillips 66 and Phillips 66 Company.

Plaintiff cannot state a claim against the Phillips 66 Defendants by pleading the conclusion that other defendants acted as agents for the Phillips 66 Defendants. 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). The Complaint’s bald assertions and conclusory statements fail to allege any facts suggesting that the Fossil Fuel Defendants were agents of one another, rather than competitors. *See* Compl. ¶ 32; *see also Best v. Newrez LLC*, 2020 WL 5513433, at *32 (D. Md. Sept. 11, 2020) (no basis for agency relationship where “vague

⁵ The Court should take judicial notice of Phillips 66’s Delaware certificates of incorporation, attached hereto as Exhibits A and B, which show that Phillips 66 was formed in November 2011. These are verifiable government documents issued by the Delaware Secretary of State, the accuracy of which cannot be reasonably questioned. *See* Md. R. Evid. 5-201; *see also Thomas v. Rowhouses, Inc.*, 206 Md. App. 72, 75 n.3 (2012) (taking judicial notice of a corporate charter and articles of incorporation as they are matters of public record); *Marks v. Criminal Injuries Comp. Bd.*, 196 Md. App. 37, 78 (2010) (taking judicial notice of court records). The Complaint also makes reference to these documents when it alleges that Phillips 66 and Phillips 66 Company are incorporated in Delaware. *See* Compl. ¶ 26(f) & (g).

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”)

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), while aiding and abetting liability requires facts alleging “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). Plaintiff’s single conclusory paragraph purporting to link Defendants does not even attempt to allege these elements. *See* Compl. ¶ 32. 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”).

* * *

For these reasons, in addition to the reasons laid out in the Joint Motion to Dismiss Plaintiff’s Complaint for Failure to State a Claim, this Court should dismiss Plaintiff’s claims against the Phillips 66 Defendants.

B. The Court Should Dismiss Plaintiff’s Complaint With Prejudice.

The Court should dismiss the Complaint against the Phillips 66 Defendants in its entirety, with prejudice, because granting leave to amend would be futile here. Plaintiff’s outside counsel has prepared and filed numerous complaints in recent years in multiple jurisdictions across the United States, most of which are substantively near duplicates of the Complaint in this case. The

sparse, unspecific, and vague allegations made by the plaintiffs in these related complaints across the country have consistently failed to include any specific allegations of misconduct by any of the Phillips 66 Defendants that could satisfy even notice pleading requirements. Granting Plaintiff leave to amend the Complaint in this case would therefore be futile, and dismissal with prejudice is appropriate. *See Cozzarelli v. Inspire Pharms. Inc.*, 549 F.3d 618, 630 (4th Cir. 2008) (affirming dismissal with prejudice where it was “clear that amendment would be futile in light of the fundamental deficiencies” in plaintiff’s pleadings); *Metro. Reg’l Info. Sys., Inc. v. Am. Home Realty Network, Inc.*, 948 F. Supp. 2d 538, 556 (D. Md. 2013) (“[L]eave to amend is properly denied and a claim dismissed with prejudice where further amendment would be futile, where the deficiencies in the complaint are fundamental, or where the party has failed to cure the deficiencies despite repeated opportunities.”); *see also City of New York v. BP P.L.C.*, 325 F. Supp. 3d 466, 476 (S.D.N.Y. 2018), *aff’d*, 993 F.3d 81 (2d Cir. 2021) (dismissing with prejudice).

V. CONCLUSION

The allegations against Phillips 66 and Phillips 66 Company present a clear failure to state a claim upon which relief can be granted. There are no allegations that either company did anything specific during the twelve years of their existence. For all the foregoing reasons, Phillips 66 and Phillips 66 Company respectfully request that the Court dismiss all claims against them with prejudice.

Dated: October 16, 2023

Respectfully submitted,



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Case No. 24-C-18-004219

**DECLARATION OF NICOLE C. VALCO IN SUPPORT OF DEFENDANTS
PHILLIPS 66 AND PHILLIPS 66 COMPANY'S MEMORANDUM OF LAW IN
SUPPORT OF INDIVIDUAL MOTION TO DISMISS FOR FAILURE TO STATE
A CLAIM AND REQUEST FOR HEARING**

I, Nicole C. Valco, declare as follows:

1. I am a partner at Latham & Watkins LLP and counsel of record for Defendants Phillips 66 and Phillips 66 Company ("Phillips 66 Defendants") in the above-captioned matter.

2. I am licensed to practice law in the State of California. On June 5, 2023, I was granted special admission to appear in the above-captioned matter as co-counsel and on July 13, 2023, I was granted special admission to appear in *City of Annapolis vs. BP PLC, et al.*, Case No. C-02-CV-21-000250 as co-counsel. I have previously been issued a unique identifying number by the Maryland Judicial Information Systems (JIS) for use with Maryland Electronic Courts (MDEC). My assigned attorney number from JIS is 2307070009.

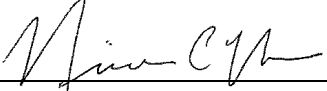
3. I submit this declaration in support of Phillips 66 Defendants' Memorandum of Law in Support of their Individual Motion to Dismiss for Failure to State a Claim and Request for Hearing. I have personal knowledge of the facts set forth below, and if called upon to do so, could and would competently testify thereto.

4. Attached hereto as **Exhibit A** is a true and correct copy of the Certificate of Incorporation for Phillips 66, as filed on November 10, 2011 with the State of Delaware's Division of Corporations, File No. 5063903.

5. Attached hereto as **Exhibit B** is a true and correct copy of the Certificate of Amendment of the Certificate of Incorporation for Phillips 66, as filed on April 30, 2012 with the State of Delaware's Division of Corporations, File No. 5063907.

I declare under penalty of perjury, under the laws of the State of Maryland, that the foregoing is true and correct.

Executed on October 16, 2023 in San Francisco, CA.



Nicole C. Valco (*pro hac vice*)

*Attorney for Defendants Phillips 66
and Phillips 66 Company*

EXHIBIT A

Delaware

PAGE 1

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF INCORPORATION OF "PHILLIPS 66", FILED IN THIS OFFICE ON THE TENTH DAY OF NOVEMBER, A.D. 2011, AT 9:31 O'CLOCK A.M.

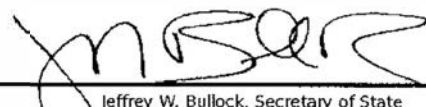
A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS.

5063903 8100

111184205

You may verify this certificate online
at corp.delaware.gov/authver.shtml




Jeffrey W. Bullock, Secretary of State
AUTHENTICATION: 9148357

DATE: 11-10-11

EXHIBIT A

CERTIFICATE OF INCORPORATION
OF
PHILLIPS 66

I, the undersigned, for the purpose of incorporating and organizing a corporation under the General Corporation Law of the State of Delaware, do hereby execute this Certificate of Incorporation and do hereby certify as follows:

ARTICLE I

The name of the corporation (which is hereinafter referred to as the "Corporation") is:

Phillips 66

ARTICLE II

The address of the Corporation's registered office in the State of Delaware is to be located at 2711 Centerville Road, Suite 400, in the City of Wilmington, County of New Castle, 19808 and its registered agent at such address is Corporation Service Company.

ARTICLE III

The purpose of the Corporation shall be to engage in any lawful act or activity for which corporations may be organized and incorporated under the General Corporation Law of the State of Delaware.

ARTICLE IV

Section 1. The Corporation shall be authorized to issue 100 shares of capital stock, par value \$0.01. All such shares are of one class and are shares of Common Stock.

Section 2. Except as otherwise provided by law, the Common Stock shall have the exclusive right to vote for the election of directors and for all other purposes. Each share of Common Stock shall have one vote, and the Common Stock shall vote together as a single class.

ARTICLE V

Unless and except to the extent that the By-Laws of the Corporation shall so require, the election of directors of the Corporation need not be by written ballot.

ARTICLE VI

In furtherance and not in limitation of the powers conferred by law, the Board of Directors of the Corporation (the "Board") is expressly authorized and empowered to make, alter and repeal the By-Laws of the Corporation by a majority vote at any regular or special meeting of the Board or by written consent, subject to the power of the stockholders of the Corporation to alter or repeal any By-Laws made by the Board.

ARTICLE VII

The Corporation reserves the right at any time from time to time to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, and any other provisions authorized by the laws of the State of Delaware at the time in force may be added or inserted, in the manner now or hereafter prescribed by law; and all rights, preferences and privileges of whatsoever nature conferred upon stockholders, directors or any other persons

whomsoever by and pursuant to this Certificate of Incorporation in its present form or as hereafter amended are granted subject to the right reserved in this Article.

ARTICLE VIII

Section 1. Elimination of Certain Liability of Directors. A director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except to the extent such exemption from liability or limitation thereof is not permitted under the General Corporation Law of the State of Delaware as the same exists or may hereafter be amended.

Any repeal or modification of the foregoing paragraph shall not adversely affect any right or protection of a director of the Corporation existing hereunder with respect to any act or omission occurring prior to such repeal or modification.

Section 2. Indemnification and Insurance.

(a) Right to Indemnification. Each person who was or is made a party or is threatened to be made a party to or is involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter a "proceeding"), by reason of the fact that he or she, or a person of whom he or she is the legal representative, is or was a director or officer of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, whether the basis of such proceeding is alleged action in an official capacity as a director, officer, employee or agent or in any other capacity while serving as a director, officer, employee or agent, shall be indemnified and held harmless by the Corporation to the fullest extent authorized by the General Corporation

Law of the State of Delaware, as the same exists or may hereafter be amended (but, in the case of any such amendment, to the fullest extent permitted by law, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than said law permitted the Corporation to provide prior to such amendment), against all expense, liability and loss (including attorneys' fees, judgments, fines, amounts paid or to be paid in settlement, and excise taxes or penalties arising under the Employee Retirement Income Security Act of 1974) reasonably incurred or suffered by such person in connection therewith and such indemnification shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of his or her heirs, executors and administrators; provided, however, that, except as provided in paragraph (b) hereof, the Corporation shall indemnify any such person seeking indemnification in connection with a proceeding (or part thereof) initiated by such person only if such proceeding (or part thereof) was authorized by the Board. The right to indemnification conferred in this Section shall be a contract right and shall include the right to be paid by the Corporation the expenses incurred in defending any such proceeding in advance of its final disposition; provided, however, that, if the General Corporation Law of the State of Delaware requires, the payment of such expenses incurred by a director or officer in his or her capacity as a director or officer (and not in any other capacity in which service was or is rendered by such person while a director or officer, including, without limitation, service to an employee benefit plan) in advance of the final disposition of a proceeding, shall be made only upon delivery to the Corporation of an undertaking, by or on behalf of such director or officer, to repay all amounts so advanced if it shall ultimately be determined that such director or officer is not entitled to be indemnified under this Section or otherwise. The Corporation may, by action

of the Board, provide indemnification to employees and agents of the Corporation with the same scope and effect as the foregoing indemnification of directors and officers.

(b) Right of Claimant to Bring Suit. If a claim under paragraph (a) of this Section is not paid in full by the Corporation within thirty days after a written claim has been received by the Corporation, the claimant may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim and, if successful in whole or in part, the claimant shall be entitled to be paid also the expense of prosecuting such claim. It shall be a defense to any such action (other than an action brought to enforce a claim for expenses incurred in defending any proceeding in advance of its final disposition where the required undertaking, if any is required, has been tendered to the Corporation) that the claimant has not met the standards of conduct which make it permissible under the General Corporation Law of the State of Delaware for the Corporation to indemnify the claimant for the amount claimed, but the burden of proving such defense shall be on the Corporation. Neither the failure of the Corporation (including its Board, independent legal counsel, or its stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he or she has met the applicable standard of conduct set forth in the General Corporation Law of the State of Delaware, nor an actual determination by the Corporation (including its Board, independent legal counsel, or its stockholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that the claimant has not met the applicable standard of conduct.

(c) Non-Exclusivity of Rights. The right to indemnification and the payment of expenses incurred in defending a proceeding in advance of its final disposition conferred in this Section shall not be exclusive of any other right which any person may have or hereafter

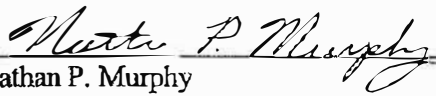
acquire under any statute, provision of the Certificate of Incorporation, By-law, agreement, vote of stockholders or disinterested directors or otherwise.

(d) Insurance. The Corporation may maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise against any such expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the General Corporation Law of the State of Delaware.

ARTICLE IX

The name and mailing address of the incorporator is Nathan P. Murphy, c/o 600 North Dairy Ashford, Houston, Texas 77079.

IN WITNESS WHEREOF, I, the undersigned, being the
incorporator hereinbefore named, do hereby further certify that the facts hereinabove stated are
truly set forth and, accordingly, I have hereunto set my hand this 10th day of November, 2011.

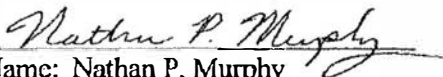

Nathan P. Murphy
Incorporator

OFFICER'S CERTIFICATE

In connection with the filing of the Certificate of Incorporation for Phillips 66 as a Delaware corporation (the "*Company*") as of date hereof, the undersigned, Nathan P. Murphy, hereby certifies that he is the Incorporator of the Company and that as such he is authorized to execute this certificate on behalf of the Company and that the statements set forth below are true, complete and correct as of the date hereof.

1. This Certificate is made pursuant to and in accordance with Section 102(a) and Section 103 of the Delaware General Corporation Law (the "*DGCL*").
2. The total assets (as defined in Section 503(i) of the DGCL) of the Company are not less than \$10,000,000.
3. The name "Phillips 66" as the name of the Company shall be such as to distinguish it upon the records in the office of the Division of Corporations in the Department of State from the names that are reserved on such records and from the names on such records of each other corporation, partnership, limited partnership, limited liability company or statutory trust organized or registered as a domestic or foreign corporation, partnership, limited partnership, limited liability company or statutory trust under the laws of Delaware.
4. The name "Phillips 66" does not contain the word "trust".
5. The name "Phillips 66" does not contain the word "bank," or any variation thereof.

IN WITNESS WHEREOF, the undersigned has executed this certificate as of November 10, 2011.


Name: Nathan P. Murphy
Incorporator

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

Before me, the undersigned Notary Public in and for the State of Texas, County of Harris, the United States of America, on this day personally appeared Nathan P. Murphy, known by me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same as the act and deed of Phillips 66 in his capacity as Incorporator for the purpose therein expressed.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed my Notarial Seal this 10th day of November 2011.



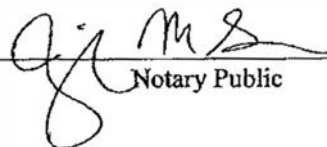

Notary Public

EXHIBIT B

Delaware

PAGE 1

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE RESTATED CERTIFICATE OF "PHILLIPS 66", FILED IN THIS OFFICE ON THE THIRTIETH DAY OF APRIL, A.D. 2012, AT 8:21 O'CLOCK A.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS.

5063903 8100

120486563




Jeffrey W. Bullock, Secretary of State
AUTHENTICATION: 9536796

DATE: 04-30-12

You may verify this certificate online
at corp.delaware.gov/authver.shtml

EXHIBIT B

**AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF PHILLIPS 66**

Phillips 66, a corporation organized and existing under the General Corporation Law of the State of Delaware, DOES HEREBY CERTIFY:

FIRST: The original Certificate of Incorporation of Phillips 66 was filed with the Secretary of State of the State of Delaware on November 10, 2011.

SECOND: The Amended and Restated Certificate of Incorporation of Phillips 66 in the form attached hereto as Exhibit A has been duly adopted in accordance with the provisions of Sections 242 and 245 of the General Corporation Law of the State of Delaware by the directors and stockholder of the Corporation.

THIRD: The Amended and Restated Certificate of Incorporation so adopted reads in full as set forth in Exhibit A attached hereto and hereby incorporated by reference.

IN WITNESS WHEREOF, Phillips 66 has caused this Certificate to be signed by the President of the Corporation this 30 day of April, 2012.

PHILLIPS 66

By: 
Greg C. Garland
President

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION

OF

PHILLIPS 66

FIRST: The name of the Corporation is Phillips 66 (hereinafter the "Corporation").

SECOND: The address of the registered office of the Corporation in the State of Delaware is 2711 Centerville Road, Suite 400, in the City of Wilmington, County of New Castle, 19808. The name of its registered agent at that address is Corporation Service Company.

THIRD: The purpose of the Corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of the State of Delaware as set forth in Title 8 of the Delaware Code (the "DGCL").

FOURTH: A. AUTHORIZED SHARES. The total number of shares of stock that the Corporation shall have authority to issue is 3,000,000,000 (three billion) of which (i) 2,500,000,000 (two billion, five hundred million) shares shall be shares of Common Stock, par value \$.01 per share (the "Common Stock"), and (ii) 500,000,000 (five hundred million) shares shall be shares of Preferred Stock, par value \$.01 per share (the "Preferred Stock"). The number of authorized shares of any of the Preferred Stock or the Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority in voting power of the stock of the Corporation entitled to vote thereon irrespective of the provisions of Section 242(b)(2) of the DGCL (or any successor provision thereto), and no vote of the holders of any of the Preferred Stock or the Common Stock voting separately as a class shall be required therefor.

B. PREFERRED STOCK. The Board of Directors is hereby expressly authorized, by resolution or resolutions, to provide, out of the unissued shares of Preferred Stock, for series of Preferred Stock and, with respect to each such series, to fix the number of shares constituting such series and the designation of such series, and the voting powers, preferences and relative, participating, optional or other special rights, if any, and any qualifications, limitations or restrictions thereof, of the shares of such series. The voting powers, preferences and relative, participating, optional and other special rights, if any, of each series of Preferred Stock, and any qualifications, limitations or restrictions thereof, if any, may differ from those of any and all other series at any time outstanding.

C. COMMON STOCK.

(1) Subject to the rights of the holders of Preferred Stock, and subject to any other provisions of this Certificate of Incorporation ("Certificate of Incorporation"), holders of Common Stock shall be entitled to receive such dividends and other distributions in cash, stock of any corporation or property of the Corporation as may be declared thereon by the Board of Directors from time to time out of assets or funds of the Corporation legally available therefor and shall share equally on a per share basis in all such dividends and other distributions.

(2) (a) At every meeting of the stockholders of the Corporation every holder of Common Stock shall be entitled to one vote in person or by proxy for each share of Common Stock standing in his or her name on the transfer books of the Corporation in connection with the election of directors and all other matters submitted to a vote of stockholders; provided, however, that, except as otherwise required by law, holders of Common Stock, as such, shall not be entitled to vote on any amendment to this Certificate of Incorporation (including any Certificate of Designation relating to any series of Preferred Stock) that relates solely to the terms of one or more outstanding series of Preferred Stock if the holders of such affected series are entitled, either separately or together with the holders of one or more other such series, to vote thereon pursuant to this Certificate of Incorporation (including any Certificate of Designation relating to any series of Preferred Stock) or pursuant to the DGCL.

(b) The affirmative vote of shares representing not less than 80% of the votes entitled to be cast by the Voting Stock shall be required to alter, amend or adopt any provision inconsistent with or repeal paragraph (C)(4)(b) of this Article FOURTH, Article FIFTH, Article SEVENTH or Article EIGHTH or any provision of this paragraph (C)(2)(b), and the affirmative vote of shares representing not less than 80% of the votes entitled to be cast by the Voting Stock, acting on the unanimous recommendation of the entire Board of Directors, shall be required to alter, amend or adopt any provision inconsistent with or repeal Article FIRST. "Voting Stock" shall mean the then outstanding shares of capital stock entitled to vote generally on the election of directors and shall exclude any class or series of capital stock only entitled to vote in the event of dividend arrearages thereon, whether or not at the time of determination there are any such dividend arrearages.

(c) Every reference in this Certificate of Incorporation to a majority or other proportion of shares, or a majority or other proportion of the votes of shares, of Voting Stock shall refer to such majority or other proportion of the votes to which such shares of Voting Stock are entitled.

(d) At any meeting of stockholders, the presence in person or by proxy of the holders of shares of capital stock entitled to cast a majority of all the votes which could be cast at such meeting by the holders of all of the outstanding shares of capital stock of the Corporation entitled to vote at such meeting shall constitute a quorum.

(3) In the event of any dissolution, liquidation or winding up of the affairs of the Corporation, whether voluntary or involuntary, after payment in full of the amounts required to be paid to the holders of Preferred Stock, the remaining assets and funds of the Corporation shall be distributed pro rata to the holders of Common Stock. For purposes of this paragraph (C)(3), the voluntary sale, conveyance, lease, exchange or transfer (for cash, shares of stock, securities or other consideration) of all or substantially all of the assets of the Corporation or a consolidation or merger of the Corporation with one or more other corporations or other entities (whether or not the Corporation is the corporation surviving such consolidation or merger) shall not be deemed to be a liquidation, dissolution or winding up, voluntary or involuntary.

(4) (a) All rights to vote and all voting power (including, without limitation thereto, the right to elect directors) shall be vested exclusively in the holders of Common Stock, except as otherwise expressly provided in this Certificate of Incorporation, in a Certificate of Designation with respect to any Preferred Stock or as otherwise expressly required by applicable law.

(b) No stockholder shall be entitled to exercise any right of cumulative voting.

FIFTH: A. The business and affairs of the Corporation shall be managed by or under the direction of a Board of Directors. The total number of directors constituting the entire Board shall be not less than six nor more than twenty as determined from time to time by resolution adopted by affirmative vote of a majority of the entire Board of Directors. The directors, other than those who may be elected by the holders of any series of Preferred Stock under specified circumstances, shall be divided, with respect to the time for which they severally hold office, into three classes, as nearly equal in number as is reasonably possible, each with a term of office to expire at the third succeeding annual meeting of stockholders after their election, with each director to hold office until his or her successor shall have been duly elected and qualified. Unless otherwise required by law, any vacancy on the Board of Directors or newly created directorship may be filled only by a majority of the directors then in office, though less than a quorum, or by a sole remaining director, and the directors so chosen shall hold office for a term expiring at the annual meeting of stockholders at which the term of office of the class to which they have been appointed expires and until their successors are duly elected and qualified, or until their earlier death, resignation, removal or departure from the Board of Directors for other cause.

Notwithstanding the foregoing, whenever the holders of outstanding shares of one or more series of Preferred Stock are entitled to elect a director or directors of the Corporation separately as a series or together with one or more other series pursuant to a resolution of the Board of Directors providing for the establishment of such series, such director or directors shall not be subject to the foregoing provisions of this Article FIFTH, and the election, term of office, removal and filling of vacancies in respect of such director or directors shall be governed by the resolution of the Board of Directors so providing for the establishment of such series and by applicable law.

B. Subject to applicable law, any director or the entire Board of Directors may only be removed with cause, such removal to be by the affirmative vote of the shares representing at least a majority of the votes entitled to be cast by the Voting Stock.

Notwithstanding the foregoing, whenever holders of outstanding shares of one or more series of Preferred Stock are entitled to elect directors of the Corporation pursuant to the provisions applicable in the case of arrearages in the payment of dividends or other defaults contained in the resolution or resolutions of the Board of Directors providing for the establishment of any such series, any such director of the Corporation so elected may be removed in accordance with the provisions of such resolution or resolutions.

C. There shall be no limitation on the qualification of any person to be a director or on the ability of any director to vote on any matter brought before the Board or any Board committee, except (i) as required by applicable law, (ii) as set forth in this Certificate of Incorporation or (iii) any By-Law adopted by the Board of Directors with respect to the eligibility for election as a director or the qualification for continuing service as a director upon reaching a specified age or, in the case of employee directors, with respect to the qualification for continuing service of directors upon ceasing employment from the Corporation.

D. Except as (i) required by applicable law or (ii) set forth in this Certificate of Incorporation, at all meetings of the Board of Directors, a majority of the entire Board of Directors shall constitute a quorum for the transaction of business and the act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the Board of Directors.

E. The following provisions are inserted for further definition, limitation and regulation of the powers of the Corporation and of its directors and stockholders:

(1) The By-Laws of the Corporation may be adopted, altered, amended or repealed (i) by the affirmative vote of the shares representing a majority of the votes entitled to be cast by the Voting Stock; PROVIDED, HOWEVER, that any proposed alteration, amendment or repeal of, or the adoption of any By-Law inconsistent with, Section 3, 7, 10, 11, 12 or 13 of Article II of the By-Laws or Section 1, 2 or 11 of Article III of the By-Laws or Section 4, 5 or 12 of Article IV of the By-Laws (in each case, as in effect on the date hereof), or the alteration, amendment or the repeal of, or the adoption of any provision inconsistent with this sentence, by the stockholders shall require the affirmative vote of shares representing not less than 80% of the votes entitled to be cast by the Voting Stock; and PROVIDED, FURTHER, HOWEVER, that in the case of any such stockholder action at a special meeting of stockholders, notice of the proposed alteration, amendment, repeal or adoption of the new By-Law or By-Laws must be contained in the notice of such special meeting, or (ii) by action of the Board of Directors of the Corporation; provided, however, that the case of any such action at a meeting of the Board of Directors, notice of the proposed alteration, amendment, repeal or adoption of the new By-Law or By-Laws must be given not less than two days prior to the meeting. The Provisions of this paragraph (E)(1) of this Article FIFTH are subject to Section 12 of Article IV of the By-Laws.

(2) In addition to the powers and authority hereinbefore or by statute expressly conferred upon them, the directors are hereby empowered to exercise all such powers and do all such acts and things as may be exercised or done by the Corporation, subject, nevertheless, to the provisions of the DGCL, this Certificate of Incorporation, and any By-Laws adopted by the stockholders; PROVIDED, HOWEVER, that no By-Laws hereafter adopted by the stockholders shall invalidate any prior act of the directors which would have been valid if such By-Laws had not been adopted.

SIXTH: Meetings of stockholders may be held within or without the State of Delaware, as the By-Laws may provide. The books of the Corporation may be kept (subject to any provision contained in the DGCL) outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the By-Laws of the Corporation.

SEVENTH: Any action required or permitted to be taken by the stockholders of the Corporation may be effected only at a duly called annual or special meeting of such holders and may not be effected by a consent in writing by such holders in lieu of such a meeting. Except as otherwise required by law, special meetings of stockholders of the Corporation for any purpose or purposes may be called only by the Board of Directors pursuant

to a resolution stating the purpose or purposes thereof or by the Chairman of the Board of Directors of the Corporation and any power of stockholders to call a special meeting is specifically denied. No business other than that stated in the notice of such meeting shall be transacted at any special meeting.

EIGHTH: To the fullest extent that the DGCL or any other law of the State of Delaware as it exists or as it may hereafter be amended permits the limitation or elimination of the liability of directors, no director of the Corporation shall be liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director. No amendment to or repeal of this Article EIGHTH shall apply to or have any effect on the liability or alleged liability of any director of the Corporation for or with respect to any acts or omissions of such director occurring prior to such amendment or repeal.

NINTH: The Court of Chancery of the State of Delaware shall be the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of the Corporation, (ii) any action asserting a claim of breach of a fiduciary duty owed by any director or officer of the Corporation to the Corporation or the Corporation's stockholders, creditors or other constituents, (iii) any action asserting a claim against the Corporation or any director or officer of the Corporation arising pursuant to any provision of the Delaware General Corporation Law or the Corporation's Certificate of Incorporation or By-Laws (as either may be amended from time to time), or (iv) any action asserting a claim against the Corporation or any director or officer of the Corporation governed by the internal affairs doctrine; provided, that, if and only if the Court of Chancery of the State of Delaware dismisses any such action for lack of subject matter jurisdiction, such action may be brought in another court sitting in the State of Delaware.

**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 GRANTING DEFENDANTS PHILLIPS 66 AND PHILLIPS 66
COMPANY’S INDIVIDUAL MOTION TO DISMISS FOR FAILURE TO STATE A
CLAIM**

Upon review and consideration of Defendants Phillips 66 and Phillips 66 Company’s Individual Motion to Dismiss for Failure to State a Claim 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 Phillips 66 and Phillips 66 Company’s Individual Motion to Dismiss for Failure to State a Claim is GRANTED; and it is further

ORDERED, that Plaintiff’s July 20, 2018 Complaint is DISMISSED WITH PREJUDICE as to Phillips 66 and Phillips 66 Company.

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 filed and served on all counsel of record via email and first class mail.



Matthew J. Peters

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