

MAYOR AND CITY COUNCIL OF
BALTIMORE,

Plaintiff,

v.

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

Defendants.

IN THE
CIRCUIT COURT FOR
BALTIMORE CITY

CASE NO. 24-C-18-004219

**DEFENDANTS MARATHON PETROLEUM CORPORATION
AND SPEEDWAY LLC'S REQUEST FOR HEARING**

Pursuant to Maryland Rule 2-311(f), Defendants Marathon Petroleum Corporation and Speedway LLC respectfully request a hearing on all issues raised in the motion to dismiss for failure to state a claim and the accompanying memorandum of law.

Respectfully submitted,

Dated: October 16, 2023

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**DEFENDANTS MARATHON PETROLEUM CORPORATION
AND SPEEDWAY LLC'S MEMORANDUM OF LAW IN SUPPORT OF
THE MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM**

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INTRODUCTION

Pursuant to Maryland Rule 2-322(b)(2) and the August 15, 2023 Order at 1 (permitting re-briefing dispositive motions and independent briefs), Defendants Marathon Petroleum Corporation (“MPC”) and Speedway LLC (“Speedway”), submit this memorandum in support of the motion to dismiss for failure to state a claim against MPC and Speedway. For the reasons below and in the Memorandum of Law in Support of Defendants’ Motion to Dismiss for Failure to State a Claim Upon Which Relief Can Be Granted, which MPC and Speedway join, Plaintiff’s claims against MPC and Speedway should be dismissed with prejudice.¹

Despite its length, Plaintiff’s 132-page Complaint fails to allege facts sufficient to sustain a claim against MPC or Speedway. Instead, the Complaint groups MPC and Speedway with 24 other Defendants to assert conclusory allegations at Defendants as a whole. But that is not enough to state a claim against MPC and Speedway. Moreover, insofar as Plaintiff’s claims sound in fraud and misrepresentation, Plaintiff must plead facts with particularity to support its claims. Plaintiff does not identify a single statement made by MPC or Speedway, let alone allege that such a statement is false or misleading. Finally, the claim also must be dismissed under the Maryland anti-SLAPP law, Md. Code, Cts. & Jud. Proc. (“CJP”), § 5-807 (2023).

THE COMPLAINT’S FACTUAL STATEMENTS AS TO MPC AND SPEEDWAY

Plaintiff alleges no act or statement specific to MPC or Speedway. Only four subparagraphs of Plaintiff’s 298-paragraph complaint make any allegation specific to either MPC or Speedway. Compl. ¶¶ 27(c–f). Those allegations merely identify MPC and Speedway as parties

¹ Defendants, including MPC and Speedway, 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. MPC and Speedway submit this memorandum subject to, and without waiver of, any jurisdictional objections and without waiving any right, defense, affirmative defense or claim.

to the action and set forth generic allegations about their corporate structure.² The rest of paragraph 27 lumps together MPC and Speedway with unaffiliated entities Marathon Oil Company and Marathon Oil Corporation under a Plaintiff-created moniker “Marathon”³ and asserts how this non-entity “Marathon” has transacted business in Maryland. *Id.* ¶ 27(g-h).

The remainder of the Complaint then asserts claims about “Defendants” as an undifferentiated group. *See, e.g., id.* ¶ 18 (“Defendants are responsible for a substantial portion of the total greenhouse gases emitted since 1965.”); ¶ 100 (“Defendants, through their extraction, promotion, marketing, and sale of their fossil fuel products, caused a substantial portion of both those emissions and the attendant historical, projected, and committed sea level rise and other consequences . . .”). By failing to allege facts specific to MPC or Speedway, the Complaint fails to state a claim against them, and this Court should dismiss those claims.

LEGAL STANDARD

To survive a motion to dismiss for failure to state a claim, a complaint’s factual allegations, and permissible inferences drawn therefrom, must establish the elements of the cause of action. *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 as court could not draw factual inferences from bald, conclusory statements). Although the Court assumes the truth of well-pleaded factual allegations, it must ignore “bald assertions and conclusory statements.” *Id.* at 666 (citing *RRC Ne., LLC v. BAA Maryland, Inc.*, 413 Md. 638,

² *See* Compl. ¶ 27. Paragraphs 27(d) and 27(e) assert that “Marathon Petroleum Corporation control[s] and ha[s] controlled . . . companywide decisions about the quantity and extent of . . . fossil fuel [production] and sales, including those of [its] subsidiaries.” But the Complaint alleges no *facts* that, if taken as true, would establish such control over any “subsidiaries.”

³ Plaintiff also uses the moniker “Marathon” in ¶ 31 (claiming “Marathon” was a member of certain trade organizations) and ¶ 111 (claiming “Marathon” received an API report in 1972, which notably does not mention global warming or climate change), but even those references do not allege any statement or act by “Marathon.”

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”).⁴

Moreover, allegations of fraud or misrepresentation must be pleaded with particularity. *McCormick v. Medtronic, Inc.*, 219 Md. App. 485, 527–28 (2014) (explaining that “Maryland courts have long required parties to plead fraud with particularity” and describing the “analogous federal rule”); *Giannaris v. Cheng*, 219 F. Supp. 2d 687, 694 (D. Md. 2002) (“Allegations of fraud or misrepresentation must be pleaded ‘with particularity.’”). To do so, a plaintiff must:

[I]dentify who made what false statement, when, and in what manner (*i.e.*, orally, in writing, etc.); [state] why the statement is false; and [state] 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 (affirming dismissal of fraud claims when vague allegations failed to meet the particularity standard); *see also Antigua Condo. Ass’n v. Melba Invs. Atl., Inc.*, 307 Md. 700, 735–36 (1986) (collecting cases and affirming dismissal of fraud claim).

Finally, “[w]hen a complaint alleges fraud against multiple defendants, [the heightened pleading standard for fraud] requires that the plaintiff identify *each defendant’s* participation in the alleged fraud.” *Haley v. Corcoran*, 659 F. Supp. 2d 714, 721 (D. Md. 2009) (emphasis added). It is not enough to allege that “some defendants are guilty because of their association with others.” *Id.*; *see also, e.g., 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

⁴ Insofar as the Complaint uses an enigmatic pleading stratagem of lumping together MPC and Speedway with unrelated entities Marathon Oil Company and Marathon Oil Corporation to make allegations against the Plaintiff-created ambiguous moniker “Marathon,” (*e.g.*, Compl. ¶¶ 27(g)–(h), 31, 111)—and attributes other actions ambiguously to “Defendants” (*e.g., id.* ¶¶ 141, 143, 146, 147)—those ambiguous statements must be “construed most strongly against the pleader in determining [their] sufficiency.” *Bobo v. State*, 346 Md. 706, 709 (1997). For example, the Complaint makes allegations about “Defendants’ researchers” concerning climate change, Compl. ¶ 140, but it does not allege any facts indicating that *MPC or Speedway* engaged or controlled these unnamed persons. The Court must construe these ambiguous allegations against Plaintiff.

and disseminate information”); *Silkworth v. Cedar Hill Cemetery*, 95 Md. App. 741 (1993) (affirming dismissal because the complaint was “devoid of factual allegations pointing to an actual agreement among [defendants]” and rejecting attempt to infer “an agreement from the similarity of [defendants’] business practices . . . and their common membership in a . . . trade association”); *Merck-Medco Managed Care, Inc. v. Rite Aid Corp.*, 22 F. Supp. 2d 447, 472 (D. Md. 1998) (noting “the mere fact of meeting and lobbying cannot support an inference of conspiracy.”).

ARGUMENT

I. The Complaint fails to allege facts sufficient to state a claim against MPC or Speedway.

Plaintiff’s allegations against MPC and Speedway do not surmount Maryland’s basic pleading requirements. The Complaint contains no act or statement specific to MPC or Speedway. Plaintiff’s group pleading tactic and conclusory statements do not cure the absence of *factual* allegations as to *MPC and Speedway*. 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” (emphasis added)); *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, 135 Md. App. 483 (2000) is on-point and compels dismissal. There, the then-Court of Special Appeals affirmed dismissal of a complaint that listed individual defendants by name in a preliminary paragraph, but thereafter “lumped [them] under the general title of ‘Defendants’ and summarily included [them] in each of appellant’s seven counts.” *Id.* at 528–29. The *Samuels* court could “discern no legally sufficient cause of action” from these “[b]ald assertions and conclusory statements.” *Id.* at 528 (quoting *Bobo v. State*, 346 Md. 706, 708–09 (1997)); see also *Heritage Harbour, LLC v. John J. Reynolds, Inc.*, 143 Md. App. 698, 710–11 (2002) (affirming dismissal of a complaint that “dump[ed]” all the defendants “into the

same pot,” and failed to set forth acts or omissions committed by each of the defendants). For the same reason, this Court should dismiss Plaintiff’s allegations against MPC and Speedway.

Nor do Plaintiff’s agency allegations (Compl. ¶¶ 19, 32) cure the pleading deficiency as to MPC and Speedway. 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). Plaintiff’s allegations do not satisfy these elements, which are “integral to any agency relationship.” *Id.* The Complaint does not set forth facts that, if taken as true, would show that MPC or Speedway were subject to control of other Defendants, had a duty to act primarily for the benefit of other Defendants, held the power to alter the legal relations among other Defendants, or vice versa. *Id.* In short, the Complaint fails to allege facts showing the Fossil Fuel Defendants were each others’ agents, rather than competitors. *See* Compl. ¶ 32.⁵

II. Plaintiff’s claims against MPC and Speedway must be dismissed because the complaint fails to state the circumstances of alleged fraud or misrepresentation with particularity.

Plaintiff’s claims here must be pleaded with particularity because they are premised on misrepresentation and deceit. *McCormick*, 219 Md. App. at 527–28. Maryland courts consider “claims for deceit . . . as equivalent to fraud.” *Kantsevov v. LumenR LLC*, 301 F. Supp. 3d 577, 601 (D. Md. 2018). “[C]laims that sound in fraud, whether rooted in common law or arising under a statute,” must meet a heightened pleading standard. *Id.* at 600; *see McCormick*, 219 Md. App.

⁵ The Complaint also alleges that industry or trade associations acted “on behalf of the Defendants,” Compl. ¶ 31, but fails to state facts that would create an agency relationship between MPC and Speedway and these associations. The Complaint alleges only that “Marathon,” which encompasses four disparate defendants, some of which are wholly independent, was a member of these associations at some undisclosed time. *See* Compl. ¶¶ 31(a), 31(c–d). Even if that were true as to MPC or Speedway, trade-association membership does not establish (1) control over the association, (2) a *duty* on the association to act primarily for the benefit of MPC or Speedway, or (3) that the association has or had the power to alter the legal relationships of MPC or Speedway. Each of those elements are “integral” to an agency finding. *Proctor*, 75 Md. App. at 20.

at 528 (describing Maryland's "requirement of particularity" as "analogous [to the] federal rule").⁶

Moreover, it cannot be disputed that Plaintiff's claim under Section 13-301(9) of the Maryland Consumer Protection Act ("MCPA") must be pleaded with particularity. Plaintiff grounds its claim in Defendants' allegedly "unfair or deceptive trade practice[s]." Compl. ¶ 292 (citing Md. Code, Comm. Law §§ 13-301(1), (9)). And "if a party alleges an "unfair or deceptive trade practice" under . . . [§ 13-301(9)], he or she must allege fraud with particularity." *McCormick*, 219 Md. App. at 529. To state a claim under these provisions, a plaintiff must allege: (1) an unfair and deceptive statement; (2) reliance upon the statement; and (3) an identifiable injury or loss. *See Lloyd v. Gen. Motors Corp.*, 397 Md. 108, 142 (2007).

Here, Plaintiff's assertions against MPC and Speedway fall short for at least three reasons. *First*, as explained above, Plaintiff relies on conclusory assertions against indiscriminate groups of many different Defendants without identifying MPC or Speedway's participation in the alleged fraudulent conduct. Maryland law requires more than "assert[ing] merely conclusory allegations of fraud against multiple defendants without identifying each individual defendant's participation in the alleged fraud." *Adams v. NVR Homes, Inc.*, 193 F.R.D. 243, 250, 253–54 (D. Md. 2000).

Second, particularity requires Plaintiff to "identify who made what false statement, when, and in what manner (*i.e.*, orally, in writing, etc.); why the statement is false," and for violations of § 13-301(9), "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."

⁶ *See, e.g.* Compl. ¶¶ 1, 6, 10, 31, 102, 146–47, 162–63, 167, 170, 190, 193, 221(c). For example, the Complaint asserts that "Defendants' production, promotion, marketing of fossil fuel products, simultaneous concealment of the known hazards of those products, and their championing of anti-science campaigns, actually and proximately caused Plaintiff's injuries." Compl. ¶ 10. It further alleges that "Defendants' tortious, false and misleading conduct" has caused "consumers of Defendants' fossil fuel products" to be "deliberately and unnecessarily deceived." *Id.* ¶ 170. These sorts of allegations undergird the entirety of the Complaint.

McCormick, 219 Md. App. at 528. Plaintiff does not allege a single *statement* by MPC or Speedway, let alone a false one and its time, place and manner. Thus, the Complaint fails to set forth allegations necessary to state a fraud-based claim.

Third, a plaintiff claiming fraud, misrepresentation, concealment, or violations of the MPCA must allege justifiable or reasonable reliance on the statement, representation, or concealment. “In other words, the consumer must have suffered an identifiable loss, measured by the amount the consumer spent or lost *as a result of his or her reliance* on the sellers’ misrepresentation.” *Lloyd*, 397 Md. at 143 (emphasis added); *see also Green v. Wells Fargo Bank, N.A.*, 927 F. Supp. 2d 244, 253 (D. Md. 2013), *aff’d*, 582 F. App’x 246 (4th Cir. 2014) (to prevail on common-law fraud or MCPA claims, plaintiffs “must show that they reasonably relied to their detriment on some promise or misrepresentation”). Even assuming Plaintiff has standing to sue as a consumer under the MPCA, which MPC and Speedway dispute, Plaintiff’s Complaint fails to allege that it relied—reasonably or otherwise—on any specific statement, representation, or concealment by MPC or Speedway to its detriment. *See id.* at 257 (dismissing claims under MCPA and for common law fraud where plaintiffs failed to show they relied on defendant’s alleged misrepresentation to their detriment). Indeed, it is impossible for Plaintiff to make that allegation because the Complaint contains no statement by MPC or Speedway upon which Plaintiff could have relied. Accordingly, Plaintiff’s claims against MPC and Speedway must be dismissed.

III. Under the Maryland Anti-SLAPP statute, MPC and Speedway are immune from suit for claims based on an alleged “campaign ... designed to maximize continued dependence on defendants’ products and undermine national and international efforts to rein in greenhouse gas emissions.”

Insofar as Plaintiff has sued Defendants for an alleged “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, its claims must be dismissed under the Maryland anti-SLAPP law, the *Noerr-Pennington* doctrine, and the First Amendment.⁷

The anti-SLAPP law provides defendants with immunity from a suit (1) for communications to a government body or the public on a matter within government authority or on an issue of public concern, (2) materially related to the protected communications, (3) intended to inhibit or to have inhibited the making of those communications, and (4) brought in bad faith. *See MCB Woodberry*, 253 Md. App. at 297. The elements are all satisfied here.

There is no question that the Complaint’s claims are “materially related” to “communications to a government body or the public on a matter within the authority of government body.” By Plaintiff’s own words, it has sued Defendants for speech to the public and government bodies, namely an alleged “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. Indeed, Plaintiff asserts that “Defendants” (i) intended to “induce political inertia” against further regulation, *id.* ¶ 152, (ii) aimed “to change public opinion and avoid regulation” by emphasizing the heavy social costs imposed by regulation, *id.* ¶ 151, and (iii) argued that “[i]t’s bad public policy to impose very costly regulations and restrictions when their need has yet to be proven.” *Id.* ¶ 155.

And it is beyond dispute that climate change is “an issue of public concern.”⁸ “Politicians,

⁷ After Defendants removed this case to federal court, Plaintiff succeeded in having the suit remanded back to state court by arguing it has sued Defendants for their *speech*. *See Mayor and City Council of Baltimore v. BP P.L.C. et al.*, No. 18-cv-02357 (D. Md.), Dkt. No. 120 at 4 (arguing case is based on allegations that “Defendants engaged for decades in a coordinated, multi-front effort to ... create doubt in the minds of customers, consumers, regulators, and the media”). The federal district court credited Plaintiff’s framing of its Complaint and remanded the case to this court. *See id.* Dkt. No. 172 at 22. While Plaintiff’s characterization of its Complaint as “about speech” may have succeeded in avoiding federal court jurisdiction, Plaintiff’s pivot runs head-first into the Maryland anti-SLAPP statute, the *Noerr-Pennington* doctrine, and the First Amendment, and must be dismissed.

⁸ The element includes “any matter of political, social, or other concern to the community, of legitimate news interest, [or] of general interest and of value and concern to the public.” *MCB Woodberry*, 253 Md. App. at 304.

journalists, academics, and ordinary Americans discuss and debate various aspects of climate change daily—its causes, extent, urgency, consequences, and the appropriate policies for addressing it.” *Nat’l Rev., Inc. v. Mann*, 140 S. Ct. 344, 348 (2019) (Alito, J., dissenting from cert. denial). The subject “has staked a place at the very center of this Nation’s public discourse.” *Id.*

Likewise, it is patent that Plaintiff’s suit is intended to inhibit, or to have inhibited, the communications at issue. *See* Compl. Part VII, p. 130, Prayer for Relief (requesting “abatement of the nuisances complained of herein”). Surely, the City of Baltimore cannot claim to have brought this unprecedented suit having in mind that, if Plaintiff prevails, Defendants thereafter could continue to “promote[]” their products as before, “campaign[] against regulation” and otherwise make all of the same purported statements over which Baltimore has brought suit.

Finally, that Plaintiff brings this suit in “bad faith” is plain from (i) the fact that it has alleged *no* statements by MPC or Speedway and (ii) while it complains about the effects of national and international greenhouse gas emissions, Baltimore itself has facilitated, promoted, and benefitted greatly from the promotion, sale, and transport of fossil fuels, and it continues to do so. For example, the Port of Baltimore is the nation’s second-largest coal export center, handling (as recently as 2021) nearly one-fourth of all U.S. coal exports and where coal is the top commodity export by tonnage.⁹ That coal increases the worldwide emissions about which Baltimore complains. Likewise, Baltimore’s port is a major destination for tankers carrying petroleum from other countries. *Id.* And notably Baltimore has continued to facilitate, promote, and economically benefit from the transport, marketing and sale of fossil fuels in these and other ways even after issuing a Climate Action Plan in 2012, recognizing “[t]he threat of climate change” and need to “reduce greenhouse gas emissions”¹⁰ These facts satisfy the bad-faith element under the anti-

⁹ *See* U.S. Energy Information Admin. Report (2023), <https://www.eia.gov/state/print.php?sid=MD>.

¹⁰ Baltimore Climate Action Plan (2012), <https://www.baltimoresustainability.org/plans/climate-action-plan/>.

SLAPP statute.


As such, to withstand dismissal, Plaintiff must show, “by clear and convincing evidence,” —and with specific, “non-conclusory” factual allegations—that MPC and Speedway made “a statement ... with knowledge that it was false or with reckless disregard of whether it was false,” *i.e.*, with Constitutional malice. *MCB Woodberry*, 253 Md. App. at 312 (quoting *Batson v. Shiflett*, 325 Md. 684, 728 (1992)). But the Complaint does not allege a single “statement” by MPC or Speedway in connection with the speech “campaign,” much less a knowingly false statement. Accordingly, the Complaint must be dismissed under the anti-SLAPP law.

For the same reasons, Plaintiff’s Complaint also should be dismissed under the *Noerr-Pennington* doctrine, which provides that “[a] publicity campaign directed at the general public and seeking government action” is protected by the First Amendment—even if the speech is allegedly misleading. *Manistee Town Ctr. v. City of Glendale*, 227 F.3d 1090, 1091–92 (9th Cir. 2000). The Complaint is plainly targeted at a publicity campaign aimed at influencing public opinion and regulators. *See e.g.*, Compl. ¶¶ 6, 143, 151, 160, 161, 166, 221(e).¹¹

CONCLUSION

For the above reasons, the Court should dismiss Plaintiff’s claims against MPC and Speedway with prejudice.

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Dated: October 16, 2023

¹¹ Insofar as defendants Chevron Corporation and Chevron U.S.A., Inc. also filed a separate memorandum for dismissal under the anti-SLAPP law, *Noerr-Pennington* and the First Amendment, in the interests of judicial economy, MPC and Speedway adopt those arguments by reference without repeating them.

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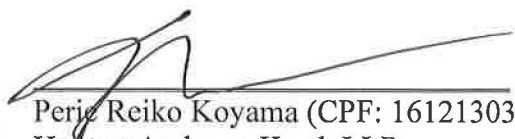
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MAYOR AND CITY COUNCIL OF
BALTIMORE,

Plaintiff,

v.

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

Defendants.

IN THE
CIRCUIT COURT FOR
BALTIMORE CITY

CASE NO. 24-C-18-004219

[PROPOSED] ORDER

Upon consideration of Defendants Marathon Petroleum Corporation and Speedway LLC's Motion to Dismiss for Failure to State a Claim, Plaintiff's opposition thereto, and Defendants' reply, it is this ____ day of _____, 20____, hereby

ORDERED that Defendants' Motion to Dismiss for Failure to State a Claim is **GRANTED**; it is further

ORDERED that all claims against Defendants Marathon Petroleum Corporation and Speedway LLC are **DISMISSED WITH PREJUDICE**; and it is further;

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

Judge Videtta A. Brown
Circuit Court for Baltimore City