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

REPLY MEMORANDUM IN SUPPORT OF CHEVRON DEFENDANTS' MOTION TO DISMISS COMPLAINT FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED

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I. ARGUMENT

Plaintiff insists that this case—and all of its claims—are premised on Defendants' supposed "sophisticated campaign of deception and disinformation" about fossil fuels and climate change. Pl.'s Opp. to Chevron Defs.' Mot. ("Opp.") at 1. But Plaintiff does not, because it cannot, point to any allegation in the Complaint alleging that *Chevron* made any statements as part of that purported campaign—or, indeed, any statements about its fossil fuel products or climate change at all. To be clear, the Complaint does not allege *a single purported misrepresentation made by Chevron about climate change*—and Plaintiff's Opposition does not contend otherwise. That is fatal to Plaintiff's claims.

Plaintiff ignores Maryland pleading standards and argues—literally—for tort-liability-by-association. Because those arguments do not and cannot support liability against Chevron, all claims against Chevron should be dismissed. Indeed, the Delaware Superior Court recently dismissed similar climate change-related claims because, in part, the plaintiff "failed to specifically identify alleged misrepresentations for each individual defendant." *Delaware v. BP Am. Inc.*, 2024 WL 98888, at *17 (Del. Sup. Ct. Jan. 9, 2024). The same is true here and the same result should follow.

1. The Complaint lumps Chevron together with dozens of other fossil fuel companies as undifferentiated "Defendants," and thus fails to allege what *Chevron* "is charged with doing or failing to do." *Wells v. State*, 100 Md. App. 693, 703 (1994). Plaintiff's Opposition follows the same approach. *See* Opp. at 2 ("Chevron and others 'embarked on a decades-long campaign'"); *id.* at 3 ("Chevron and other Defendants' misleading conduct"). But "defendants . . . are not fungible," *Wells*, 100 Md. at 703, and Maryland pleading standards do not allow Plaintiff to state

a claim against Chevron by "dump[ing]" it—along with all other Defendants—"into the same pot." *Heritage Harbour L.L.C. v. John J. Reynolds, Inc.*, 143 Md. App. 698, 711 (2002).

Despite Plaintiff's assertion that "[n]o Maryland case law proscribes collective allegations," Opp. at 4, it cannot distinguish *Heritage Harbour* or the other Maryland cases rejecting the Complaint's group pleading approach, *see id.* at 4 n.4 (describing but not distinguishing Chevron's cases). Plaintiff thus looks to "federal courts in Maryland," which—Plaintiff says—have allowed group pleading "as to certain allegations." *Id.* at 4. But federal cases are not authoritative on matters of Maryland law, and in any event they are readily distinguishable. For example, the complaint in *State v. Exxon Mobil Corp.* alleged "that defendants were in the chain of distribution that supplied MTBE gasoline," a "commingled, fungible" product supplied via a common pipeline. 406 F. Supp. 3d 420, 454, 476 (D. Md. 2019). Those cases provide no basis for allowing group pleading in a case premised on Defendants' alleged *misrepresentations* about their fossil fuel products, especially when Defendants sell different products and often are direct competitors.

2. As a fallback, Plaintiff contends that it has stated a claim against Chevron under a "concert-of-action" theory. Opp. at 6–8. But before there can be *joint* liability, "there must be individual liability." *Williams v. Stone*, 923 F. Supp. 689, 692 (E.D. Pa. 1996) (applying Maryland law); *see also* Restatement (Second) of Torts § 876 (concert-of-action theory requires that defendant "do[] a tortious act" or knowingly "give[] substantial assistance" to another's tort). And, in any event, Plaintiff's sole argument for applying that theory to Chevron is that Chevron or its predecessors were members of—and that Chevron representatives participated in—two trade associations *that are not even defendants in this case*. These allegations are insufficient to allege that Chevron "acted in concert with other Defendants." *See Consumer Prot. Div. v. Morgan*, 387

Md. 125, 184–85 (2005) ("concert of action" requires joint or separate tortious act or knowledge of and substantial assistance to another's tort).

More fundamentally, Plaintiff concedes "that a defendant's mere membership in a lawful trade organization does not" provide a basis for imposing tort liability. Opp. at 9. To the contrary, "[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." *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 920 (1982). And a defendant cannot be held "civilly liable for any wrongful conduct committed by [a trade association] or its members," unless the defendant's "actions taken in relation to the [trade association] were *specifically intended* to further such wrongful conduct." *In re Asbestos School Litig.*, 46 F.3d 1284, 1290 (3d Cir. 1994) (Alito, J.) (emphasis added). Plaintiff's trade-association allegations do not come close to meeting these high bars, nor does Plaintiff cite any case allowing liability based on similar allegations.[1] Essentially, all Plaintiff does is allege Chevron was a member of certain trade organizations, but as even Plaintiff realizes, this is insufficient to state a claim against Chevron.

3. Setting aside Plaintiff's improper attempts to impose liability on Chevron for the alleged conduct of "Defendants," Plaintiff's Opposition confirms that the Complaint's allegations regarding Chevron itself are manifestly inadequate. For example, Plaintiff asserts that Chevron's alleged 2010 advertising campaign "'promoting the company's move towards renewable energy'" was "misleading" because "Chevron proceeded to 'roll[] back its renewable and alternative energy

[1] Plaintiff concedes that its other theories for imputing liability to Chevron for the alleged conduct of other Defendants—*i.e.*, agency, conspiracy, and aiding/abetting—have more stringent requirements than its concert-of-action theory. *See* Opp. at 8. Moreover, Plaintiff's purported "mosaic of facts supporting" such theories (Opp. at 9) amounts to the formulaic recitation of elements, *see* Compl. ¶ 32, and the same deficient trade-association allegations.

projects' only a few years later." Opp. at 3 (alteration in original) (quoting Compl. ¶ 184). But Plaintiff does not even attempt to explain why promoting and then, years later, rolling back a corporate initiative would be misleading. And Plaintiff offers no answer to the problem that its Complaint nowhere suggests that a statement touting "renewable energy" could somehow have increased emissions from the combustion of fossil fuels—because that makes no sense.

That leaves only Chevron's purported "failure to disclose its fossil fuel products' climactic risks." Opp. at 3. But, as the Joint Memorandum and Reply explain, there is no basis in Maryland law for imposing a duty on Chevron to warn the world about the open and obvious risks of climate change. *See* Mem. in Supp. of Defs.' Mot. to Dismiss for Failure to State a Claim ("Defs.' Br.") 41–44; Reply in Supp. of Defs.' Mot. to Dismiss for Failure to State a Claim ("Defs.' Reply") 25–28. Nor does Plaintiff allege that *it* relied on any such omission by Chevron, as is required for its MCPA claim. *See* Defs.' Br. at 51; Defs.' Reply at 34–36.

* * *

Earlier this month, in a substantially similar lawsuit, the Delaware Superior Court dismissed all misrepresentation-based claims because that complaint "failed to specifically identify alleged misrepresentations for each individual defendant." *Delaware v. BP Am. Inc.*, 2024 WL 98888, at *17 (Del. Super. Ct. Jan. 9, 2024). The same is true here. This Court should follow the Delaware court's approach and dismiss all claims against Chevron.

II. CONCLUSION

For these reasons, in addition to those set forth in Defendants' Joint Memorandum and Reply, Chevron respectfully requests that the Court dismiss Plaintiff's Complaint against Chevron with prejudice.

Dated: January 26, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 26th day of January 2024, a copy of the foregoing was served on all counsel of record via email (by agreement of the parties).

Alison C. Schurick