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 (HEARING REQUESTED)

DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S COMPLAINT FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED, AND REQUEST FOR HEARING[1]

Defendants, BP p.l.c. (#1), BP America Inc. (#2), BP Products North America Inc. (#3), Chevron Corporation (#7), Chevron U.S.A. Inc. (#8), CITGO Petroleum Corporation (#13), CNX Resources Corp. (#24), CONSOL Energy Inc. (#25), CONSOL Marine Terminals LLC (#26), ConocoPhillips (#14), ConocoPhillips Company (#15), Louisiana Land & Exploration Co. LLC (#16), Crown Central, LLC (#5), Crown Central New Holdings LLC (#6), Exxon Mobil Corporation (#9), ExxonMobil Oil Corporation (#10), Hess Corporation (#23), Marathon Petroleum Corporation (#21), Speedway LLC (#22), Marathon Oil Corporation (#20), Marathon Oil Company (#19), Phillips 66 (#17), Phillips 66 Company (#18), Shell plc (#11), and Shell USA, Inc. (#12), by their undersigned attorneys and pursuant to Maryland Rules 2-311 and 2-322(b)(2), move to dismiss the Complaint filed by Plaintiff, the Mayor and City Council of Baltimore, for failure to state a claim upon which relief can be granted. For the reasons set forth in the

[1] Several Defendants are contemporaneously filing motions to dismiss on the grounds that they are not subject to personal jurisdiction in Maryland. Defendants submit this motion subject to, and without waiver of, any jurisdictional objections.

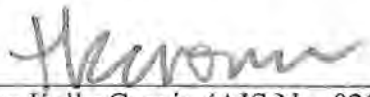
accompanying Memorandum of Law, this Court should grant this Motion and dismiss all claims against Defendants with prejudice.

REQUEST FOR HEARING

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

Dated: October 16, 2023

Respectfully submitted,



Tonya Kelly Cronin (AIS No. 0212180158)
Alison C. Schurick (AIS No. 1412180119)
BAKER, DONELSON, BEARMAN,
CALDWELL & BERKOWITZ P.C.
100 Light Street, 19th Floor
Baltimore, MD 21202
Telephone: (410) 862-1049
Facsimile: (410) 547-0699
Email: tykelly@bakerdonelson.com
Email: aschurick@bakerdonelson.com

Theodore J. Boutrous, Jr. (*pro hac vice*)
William E. Thomson (*pro hac vice*)
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071
Telephone: 213.229.7000
Facsimile: 213.229.7520
tboutrous@gibsondunn.com
wthomson@gibsondunn.com

Andrea E. Neuman (*pro hac vice*)
GIBSON, DUNN & CRUTCHER LLP
200 Park Avenue
New York, NY 10166
Telephone: 212.351.4000
Facsimile: 212.351.4035
aneuman@gibsondunn.com

Thomas G. Hungar (*pro hac vice*)
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.,
Washington, DC 20036
Telephone: 202.955.8500
Facsimile: 202.467.0539
thungar@gibsondunn.com

Joshua D. Dick (*pro hac vice*)
GIBSON, DUNN & CRUTCHER LLP
555 Mission Street
San Francisco, CA 94105-0921
Telephone: 415.393.8200
Facsimile: 415.393.8306
jdick@gibsondunn.com

Attorneys for Defendants Chevron Corporation (#7) and Chevron U.S.A. Inc. (#8)

Martha Thomsen (CPF No. 1212130213)
Megan Berge (*pro hac vice*)
Sterling Marchand (*pro hac vice*)
BAKER BOTTS L.L.P.
700 K Street, N.W.
Washington, D.C. 20001-5692
Telephone: (202) 639-7863
Facsimile: (202) 508-9329
Email: martha.thomsen@bakerbotts.com
Email: megan.berge@bakerbotts.com
Email: sterling.marchand@bakerbotts.com

J. Scott Janoe (*pro hac vice*)
BAKER BOTTS L.L.P.
910 Louisiana Street, Suite 3200
Houston, Texas 77002-4995
Telephone: (713) 229-1553
Facsimile: (713) 229 7953
Email: scott.janoe@bakerbotts.com

Attorneys for Defendant Hess Corporation (#23)

Jerome A. Murphy (CPF No. 9212160248)
Tracy A. Roman (admitted *pro hac vice*)
CROWELL & MORING LLP
1001 Pennsylvania Avenue, NW
Washington, DC 20004
Tel: (202) 624-2500
Fax: (202) 628-5116
jmurphy@crowell.com
troman@crowell.com

Honor R. Costello (admitted *pro hac vice*)
Mara R. Lieber (*pro hac vice* forthcoming)
CROWELL & MORING LLP
590 Madison Avenue, 20th Fl.
New York, NY 10022
Tel.: (212) 223-4000
Fax: (212) 223-4134
hcostello@crowell.com
mlieber@crowell.com

Daniella A. Einik (AIS No. 1012140232)
Noel J. Francisco (admitted *pro hac vice*)
David M. Morrell (admitted *pro hac vice*)
51 Louisiana Avenue, N.W.
Washington, DC 20001
Telephone: (202) 879-3939
Facsimile: (202) 626-1700
Email: njfrancisco@jonesday.com
Email: dmorrell@jonesday.com
Email: deinik@jonesday.com

David C. Kiernan (admitted *pro hac vice*)
555 California Street, 26th Floor
San Francisco, CA 94104
Telephone: (415) 626-3939
Facsimile: (415) 875-5700
Email: dkiernan@jonesday.com

Andy R. Stanton (*pro hac vice* pending)
Joseph N. Parsons (*pro hac vice* pending)
500 Grant Street, 45th Floor
Pittsburgh, PA 15219
Telephone: (412) 391-3939
Facsimile: (412) 394-7959
Email: astanton@jonesday.com
Email: jparsons@jonesday.com

Attorneys for Defendant CNX Resources Corporation (#24)

Attorneys for CONSOL Energy Inc. (#25) and CONSOL Marine Terminals LLC (#26)

Mark S. Saudek (AIS No. 9512140123)
GALLAGHER EVELIUS & JONES LLP
218 North Charles Street, Suite 400
Baltimore, Maryland 21201
Ph.: (410) 347-1365
Fax: (410 468-2786
msaudek@gejlaw.com

Robert Reznick (*pro hac vice* forthcoming)
ORRICK, HERRINGTON & SUTCLIFFE, LLP
1152 15th Street NW
Washington, DC 20005
Tel.: (202) 339-8600
Fax: (202) 339-8500
rreznick@orrick.com

James Stengel (*pro hac vice* forthcoming)
ORRICK, HERRINGTON & SUTCLIFFE, LLP
51 West 52nd Street

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,

New York, New York 10019-6142
Tel.: (212) 506-5000
Fax: (212) 506-5151
jstengel@orrick.com

Attorneys for Defendants Marathon Oil Corporation (#20) and Marathon Oil Company (#19)

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 (#9) and EXXONMOBIL OIL CORPORATION (#10)

William N. Sinclair (CPF No. 0808190003)
Ilona Shparaga (CPF No. 1712140176)
SILVERMAN THOMPSON
SLUTKIN & WHITE, LLC
400 E. Pratt St., Suite 900
Baltimore, MD 21202
Telephone: (410) 385-2225
Facsimile: (410) 547-2432
Email: bsinclair@silvermanthompson.com
Email: ishparaga@silvermanthompson.com

David C. Frederick (*pro hac vice*)
James M. Webster, III (CPF No. 9412150266)
Daniel S. Severson (*pro hac vice*)
Grace W. Knofczynski (*pro hac vice*)
KELLOGG, HANSEN, TODD, FIGEL & FREDERICK, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
Tel.: (202) 326-7900
Fax: (202) 326-7999
dfrederick@kellogghansen.com
jwebster@kelloghansen.com
dseverson@kellogghansen.com
gknofczynski@kellogghansen.com

Counsel for Defendants Shell plc (f/k/a Royal Dutch Shell plc) (#11) and Shell USA, Inc. (f/k/a Shell Oil Company) (#12)

Michelle N. Lipkowitz (AIS No. 0212180016)
MINTZ, LEVIN, COHN, FERRIS, GLOVSKY AND POPEO, P.C.
555 12th Street NW , Suite 1100
Washington, DC 20004
(202) 434-7449
Email: MNLipkowitz@mintz.com

Thomas K. Prevas (AIS No. 0812180042)
SAUL EWING ARNSTEIN & LEHR LLP
Baltimore, Maryland 21202-3133
Telephone: (410) 332-8683
Facsimile (410) 332-8123
Email: thomas.prevas@saul.com

Attorneys for Defendants CROWN CENTRAL LLC (#5) and CROWN CENTRAL NEW HOLDINGS LLC (#6)

Warren N. Weaver (CPF No. 8212010510)
WHITEFORD TAYLOR &
PRESTON LLP
7 Saint Paul Street., Suite 1400
Baltimore, MD 21202
Telephone: (410) 347-8757
Facsimile: (410) 223-4177
Email: wweaver@wtplaw.com

EIMER STAHL LLP
Nathan P. Eimer, (*pro hac vice* forthcoming)
Lisa S. Meyer, (*pro hac vice* forthcoming)
224 South Michigan Avenue, Suite 1100
Chicago, IL 60604
Tel: (312) 660-7600
neimer@eimerstahl.com
lmeyer@eimerstahl.com

Robert E. Dunn (*pro hac vice* forthcoming)
99 S. Almaden Blvd. Suite 600
San Jose, CA 95113
Tel: (408) 889-1690
rdunn@eimerstahl.com

Attorneys for Defendant CITGO Petroleum Corporation (#13)

John B. Isbister (AIS No. 7712010177)
Jaime W. Luse (AIS No. 0212190011)
TYDINGS & ROSENBERG LLP
One East Pratt Street, Suite 901
Baltimore, MD 21202
jisbister@tydings.com
jluse@tydings.com
Tel: 410-752-9700
Fax: 410-727-5460

SULLIVAN & CROMWELL LLP
Richard C. Pepperman II (*pro hac vice* pending)
125 Broad Street
New York, NY 10004

Perie Reiko Koyama (CPF No. 1612130346)
HUNTON ANDREWS KURTH LLP
2200 Pennsylvania Avenue, NW
Washington, DC 20037
Telephone: (202) 955-1500
Facsimile: (202) 778-2201
Email: PKoyama@HuntonAK.com

Shannon S. Broome (*pro hac vice*)
HUNTON ANDREWS KURTH LLP
50 California Street, Suite 1700
San Francisco, CA 94111
Telephone: (415) 975-3700
Facsimile: (415) 975-3701
Email: SBroome@HuntonAK.com

Shawn Patrick Regan (*pro hac vice*)
HUNTON ANDREWS KURTH LLP
200 Park Avenue, 52nd Floor
New York, NY 10166
Telephone: (212) 309-1000
Facsimile: (212) 309-1100
Email: SRegan@HuntonAK.com

Cassandra (Sandy) C. Collins (*pro hac vice* pending)
HUNTON ANDREWS KURTH LLP
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, VA
Tel: (804) 788-8692
Fax: (804) 788-8218
Email: SCollins@HuntonAK.com

Counsel for Defendants MARATHON PETROLEUM CORPORATION (#21) and SPEEDWAY LLC (#22)

David B. Hamilton (CPF No. 8406010156)
A. Neill Thupari (CPF No. 1412180223)
DLA PIPER LLP (US)
650 South Exeter Street
11th Floor

Telephone: (212) 558-4000
Facsimile: (212) 558-3588
peppermanr@sullcrom.com

Amanda Flug Davidoff (*pro hac vice* pending)
1700 New York Avenue, NW
Washington, D.C. 20006
Telephone: (202) 956-7570
Facsimile: (202) 956-7676
davidoffa@sullcrom.com

ARNOLD & PORTER KAYE SCHOLER LLP
Nancy Milburn (admitted *pro hac vice*)
Diana Reiter (admitted *pro hac vice*)
250 West 55th Street
New York, NY 10019-9710
Telephone: (212) 836-8000
Facsimile: (212) 836-8689
nancy.milburn@arnoldporter.com
diana.reiter@arnoldporter.com

John D. Lombardo (admitted *pro hac vice*)
777 South Figueroa Street, 44th Floor
Los Angeles, CA 90017-5844
Telephone: (213) 243-4000
Facsimile: (213) 243-4199
john.lombardo@arnoldporter.com

Jonathan W. Hughes (admitted *pro hac vice*)
Three Embarcadero Center, 10th Floor
San Francisco, CA 94111-4024
Telephone: (415) 471-3100
Facsimile: (415) 471-3400
jonathan.hughes@arnoldporter.com

Attorneys for BP p.l.c. (#1), BP America Inc. (#2), and BP Products North America Inc. (#3)

Matthew J. Peters (CPF No. 1212120369)
LATHAM & WATKINS LLP
555 Eleventh Street NW, Suite 1000
Washington, DC 20004-1304

Baltimore, MD 21202-4200
Telephone: (410) 580-4120
Facsimile: (410) 580-3001
Email: david.hamilton@us.dlapiper.com
Email: Neill.thupari@us.dlapiper.com

Rebecca Weinstein Bacon (*pro hac vice*)
BARTLIT BECK LLP
Courthouse Place
54 West Hubbard Street
Chicago, IL 60654
Telephone: (312) 494-4400
Facsimile: (312) 494-4440
Email: rweinstein.bacon@bartlitbeck.com

Jameson R. Jones (*pro hac vice*)
Daniel R. Brody (*pro hac vice*)
BARTLIT BECK LLP
1801 Wewatta Street, Suite 1200
Denver, CO 80202
Telephone: (303) 592-3123
Facsimile: (303) 592-3140
Email: jameson.jones@bartlit-beck.com
Email: dan.brody@bartlit-beck.com

Steven M. Bauer (*pro hac vice*)
Margaret A. Tough (*pro hac vice*)
Nicole C. Valco (*pro hac vice*)
Katherine A. Rouse (*pro hac vice*)
LATHAM & WATKINS LLP
505 Montgomery Street, Suite 2000
San Francisco, CA 94111-6538
Telephone: (415) 391-0600
Facsimile: (415) 395-8095
Email: steven.bauer@lw.com
Email: margaret.tough@lw.com
Email: nicole.valco@lw.com
Email: katherine.rouse@lw.com

Matthew J. Peters (CPF No. 1212120369)
LATHAM & WATKINS LLP
555 Eleventh Street NW, Suite 1000
Washington, DC 20004-1304
Telephone: (202) 637-2200
Facsimile: (202) 637-2201
Email: matthew.peters@lw.com

Telephone: (202) 637-2200
Facsimile: (202) 637-2201
Email: matthew.peters@lw.com

Steven M. Bauer (*pro hac vice*)
Margaret A. Tough (*pro hac vice*)
Nicole C. Valco (*pro hac vice forthcoming*)
Katherine A. Rouse (*pro hac vice*)
LATHAM & WATKINS LLP
505 Montgomery Street, Suite 2000
San Francisco, CA 94111-6538
Telephone: (415) 391-0600
Facsimile: (415) 395-8095
Email: steven.bauer@lw.com
Email: margaret.tough@lw.com
Email: nicole.valco@lw.com
Email: katherine.rouse@lw.com

Attorneys for Defendants Phillips 66 (#17) and Phillips 66 Company (#18)

Attorneys for Defendants ConocoPhillips (#14), ConocoPhillips Company (#15), and Louisiana Land & Exploration Co., LLC (#16)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of October, 2023, a copy of the foregoing was served on all counsel of record via email (by agreement of the parties).

Alison Schurick

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

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S COMPLAINT FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED[1]

Defendants, by their undersigned attorneys and pursuant to Maryland Rule 2-322(b)(2), file this Memorandum of Law in Support of their Motion to Dismiss for Failure to State a Claim upon Which Relief Can Be Granted. For the reasons set forth below, this Court should dismiss all claims against Defendants with prejudice.

[1] Several Defendants are contemporaneously filing motions to dismiss on the grounds that they are not subject to personal jurisdiction in Maryland. Defendants submit this motion subject to, and without waiver of, any jurisdictional objections.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

TABLE OF AUTHORITIES
(continued)

Page(s)

TABLE OF AUTHORITIES
(continued)

Page(s)

TABLE OF AUTHORITIES
(continued)

Page(s)

TABLE OF AUTHORITIES
(continued)

Page(s)

TABLE OF AUTHORITIES
(continued)

Page(s)

Statutes

TABLE OF AUTHORITIES
(continued)

TABLE OF AUTHORITIES
(continued)

Page(s)

I. INTRODUCTION

Plaintiff Mayor and City Council of Baltimore seeks to impose liability on more than two dozen energy companies under *state* law for the alleged effects of *global* climate change. While the state-law labels Plaintiff attaches to its claims may be familiar, the substance and reach of the claims are extraordinary. Plaintiff asks this Court to regulate the nationwide—and even worldwide—marketing and distribution of lawful products on which billions of people beyond the State's jurisdiction rely to heat their homes, power their hospitals and schools, produce and transport their food, and manufacture countless items essential to the safety, wellbeing, and advancement of modern society. Plaintiff's sweeping claims stretch state tort law well beyond its permissible scope. Allowing such claims to proceed would not only usurp the power of the legislative and executive branches (both federal and state) to set climate policy, but would also do so retrospectively and far beyond the geographic boundaries of Maryland. It is therefore unsurprising that "[n]o plaintiff has ever succeeded in bringing a nuisance claim based on global warming." *City of Oakland v. BP P.L.C.*, 325 F. Supp. 3d 1017, 1023 (N.D. Cal. 2018), *vacated on other grounds*, 960 F.3d 570 (9th Cir. 2020). The Court should likewise dismiss this Complaint.

First, although Plaintiff purports to plead state-law claims, state law cannot constitutionally apply here and thus is preempted. As the U.S. Supreme Court has long made clear, the federal Constitution's structure generally precludes States from using their own laws to resolve disputes caused by out-of-state and worldwide conduct. Thus, in "interstate and international disputes implicating the conflicting rights of States or our relations with foreign nations," "our federal system does not permit the controversy to be resolved under state law" "because the interstate or international nature of the controversy makes it inappropriate for state law to control." *Tex. Indus., Inc. v. Radcliff Materials, Inc.*, 451 U.S. 630, 641 (1981). Consistent with this principle, the U.S.

Supreme Court has consistently recognized that one State cannot apply its own law to claims that "deal with air and water in their ambient or interstate aspects"; in that context, "borrowing the law of a particular State would be inappropriate." *Am. Elec. Power Co. v. Connecticut*, 564 U.S. 410, 421–22 (2011) ("*AEP*"); *see also Illinois v. City of Milwaukee*, 406 U.S. 91, 105 n.6 (1972) ("*Milwaukee I*") ("basic interests of federalism . . . demand[]" this result). Such matters "involving 'uniquely federal interests'" are "so committed by the Constitution and laws of the United States to federal control that state law is pre-empted." *Boyle v. United Techs. Corp.*, 487 U.S. 500, 504 (1988) (citation omitted).

Every federal court to consider this question has held that state law cannot be used to obtain relief for the alleged consequences of global climate change. Most recently, the Second Circuit affirmed dismissal of a case raising substantially similar claims. *See City of New York v. Chevron Corp.*, 993 F.3d 81 (2d Cir. 2021). Describing "the question before us" as "whether a nuisance suit seeking to recover damages for the harms caused by global greenhouse gas emissions may proceed under [state] law," the court held: "Our answer is simple: no." *Id.* at 91. This is because "disputes involving interstate air . . . pollution," such as climate change litigation, "implicate two federal interests that are incompatible with the application of state law: (i) the 'overriding . . . need for a uniform rule of decision' on matters influencing national energy and environmental policy, and (ii) 'basic interests of federalism.'" *Id.* at 91–92. When a plaintiff seeks "to hold [energy companies] liable, under [state] law, for the *effects of emissions made around the globe*," "[s]uch a sprawling case is simply beyond the limits of state law." *Id.* at 92 (emphasis added).

The same is true here: The federal constitutional system does not permit a State—let alone a municipality—to apply its laws to claims seeking redress for injuries allegedly caused by interstate or worldwide emissions. But Plaintiff here seeks to impose liability based on the theory

that Defendants allowed—through alleged deception and failure to warn—emissions to enter the worldwide atmosphere at a level that Plaintiff believes to be too high and thus unlawful. The Constitution bars the application of state law here to avoid subjecting the same interstate and worldwide emissions to adjudication under conflicting state laws, and thus preempts the state-law causes of action Plaintiff asserts.

Second, Plaintiff's claims are preempted by the Clean Air Act. In an analogous matter, the U.S. Supreme Court held more than thirty years ago that the Clean Water Act "precludes a court from applying the law of an affected State against an out-of-state source" because doing so would "upset[] the balance of public and private interests so carefully addressed by the Act." *Int'l Paper Co. v. Ouellette*, 479 U.S. 481, 494 (1987). The preemptive scope of the Clean Air Act is materially identical to that of the Clean Water Act. The "Clean Air Act entrusts such complex balancing" of total permissible nationwide greenhouse gas emissions "to EPA." *AEP*, 564 U.S. at 427. The Clean Air Act thus precludes Plaintiff's attempt to use Maryland law to obtain damages for injuries allegedly caused by innumerable worldwide sources of greenhouse gas emissions.

Third, Plaintiff's claims raise vital questions of public policy that are nonjusticiable under the political question doctrine. Indeed, the sweeping policy justifications that Plaintiff asserts in support of its claims underscore that those claims are not suitable for judicial resolution. Plaintiff's claims lack the judicially discoverable and manageable standards required to ensure that the Court does not overstep its constitutional bounds and touch upon issues—including how to balance environmental considerations with interests of economic growth, energy independence, and national security—committed to the political branches. *See* Md. Code Ann., Envir. § 2-1201(9)–(11) (finding that important aspects of emissions should be "regulated on a national and international level" in part due to economic concerns).

Fourth, Plaintiff's Complaint improperly invites this Court to "expand traditional tort concepts beyond manageable bounds" to accommodate novel and unsupported theories of liability that would impose on Defendants a "duty to the world" that Maryland courts have rejected. *Gourdine v. Crews*, 405 Md. 722, 750 (2008). Plaintiff also fails to allege essential elements of its state-law claims.

Plaintiff's nuisance claims fail because Maryland appellate courts have never recognized such a claim based on the production, promotion, and sale of a lawful product, as opposed to the use of land. This Court should follow courts across the country in refusing to expand nuisance law into "a monster that would devour in one gulp the entire law of tort." *Tioga Pub. Sch. Dist. No. 15 v. U.S. Gypsum Co.*, 984 F.2d 915, 921 (8th Cir. 1993). Additionally, Plaintiff has not alleged (and cannot allege) facts showing that Defendants exercised sufficient control over the "instrumentality" of the alleged nuisance—the worldwide global greenhouse gas emissions that allegedly have contributed to climate change.

Plaintiff's failure to warn claims fail because Plaintiff's novel theory seeks to impose an unprecedented duty of care in direct contravention of controlling precedent that reserves such expansions of law for the legislature. In any event, there is no duty to warn where, as here, the alleged impact of fossil fuel use on the global climate has been "open and obvious" for decades.

Plaintiff's design defect claims fail because Plaintiff does not even attempt to allege that its injuries resulted from any flaw in how Defendants *designed* their fossil fuel products. To the contrary, it affirmatively concedes that emissions result from the normal and intended use of fossil fuels, and it cannot dispute that emissions are an inherent characteristic of combusting fossil fuels.

Plaintiff's trespass claim fails because, among other reasons, it has failed to adequately plead that Defendants intruded or caused an intrusion on Plaintiff's land—and the vast majority of damages Plaintiff seeks for the alleged intrusion are speculative.

Finally, Plaintiff's claim under the Maryland Consumer Protection Act ("MCPA") fails because Plaintiff does not allege that it relied on any of the purported misrepresentations, and because the alleged misrepresentations are not about Defendants' products, were not made in the course of a sale, and fall outside the applicable three-year statute of limitations.

* * *

As a federal district court judge remarked in dismissing similar claims, "the development of our modern world has literally been fueled by oil and coal," and "[a]ll of us have benefitted" from their development—including Plaintiff. *City of Oakland*, 325 F. Supp. 3d at 1023; *see also City of New York*, 993 F.3d at 86 ("[E]very single person who uses gas and electricity—whether in travelling by bus, cab, Uber, or jitney, or in receiving home deliveries via FedEx, Amazon, or UPS—contributes to global warming."). Fossil fuel production has supported the safety, security, and wellbeing of our Nation—to say nothing of the billions of consumers worldwide. Plaintiff asks this Court to ignore the vital role fossil fuels play in the world economy and, instead, to impose liability and damages on a select group of energy companies under *Maryland* law because of the *global* production, promotion, distribution, and end-use emissions of those lawful products. This, it cannot do. The Court should dismiss the Complaint with prejudice.

II. BACKGROUND

This lawsuit is part of a long series of ill-conceived climate change-related actions that "seek[] to impose liability and damages on a scale unlike any prior environmental pollution case." *Native Vill. of Kivalina v. ExxonMobil Corp.*, 663 F. Supp. 2d 863, 876 (N.D. Cal. 2009), *aff'd*,

696 F.3d 849 (9th Cir. 2012). *Every federal court to consider these actions on motions to dismiss has dismissed* them as nonjusticiable or non-viable.

The first such lawsuit unsuccessfully asserted state and federal nuisance claims against automobile companies for alleged contributions to climate change. *See California v. Gen. Motors Corp.*, 2007 WL 2726871 (N.D. Cal. Sept. 17, 2007) (dismissing for failing to state a claim and because claims were nonjusticiable). The next round of litigation asserted claims against direct emitters, such as power companies, but that effort, too, failed. *See AEP*, 564 U.S. at 429 (holding that claims seeking abatement of alleged public nuisance of climate change fail because the federal common law that necessarily governs was displaced by the Clean Air Act); *Kivalina*, 663 F. Supp. 2d at 863 (dismissing as nonjusticiable and for lack of standing federal common-law nuisance claims against energy and utility companies); *Kivalina*, 696 F.3d at 854 (affirming dismissal and noting that plaintiffs alleged defendants "misle[d] the public about the science of global warming").

Undeterred, Plaintiff reaches even further back in the supply chain by suing companies that provide the raw material used by direct emitters—that is, the fuel that billions of people depend on every day. Over the past six years, States and municipalities across the country, largely represented by the same private counsel, have brought more than two dozen similar cases against energy companies seeking damages for the alleged impacts of climate change. Only a few of these cases have proceeded to the merits, but, in those that have, *federal courts uniformly have dismissed them for failure to state a claim. See 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; *City of Oakland*, 325 F. Supp. 3d at 1017, *vacated on other grounds*, 960 F.3d 570. *But see City & Cty. of Honolulu v. Sunoco LP*, No. 1CCV-20-000380, Dkt. 618 (Haw. Cir. Ct. Mar. 29, 2022), *appeal pending*, SCAP-22-0000429 (Haw.). As here,

plaintiffs in those cases alleged that the defendants "have known for decades that their fossil fuel products pose a severe risk to the planet's climate," but "downplayed the risks and continued to sell massive quantities of fossil fuels, which has caused and will continue to cause significant changes to the City's climate and landscape." *City of New York*, 993 F.3d at 86–87; *see also, e.g.*, Compl. ¶¶ 1, 6, 102, 145. And, like Plaintiff here, those plaintiffs suggested that the defendants are "primarily responsible for global warming and should bear the brunt of these costs," even though "every single person who uses gas and electricity . . . contributes to global warming." *City of New York*, 993 F.3d at 86; *see also, e.g.*, Compl. ¶¶ 7, 91–102.

The Complaint here asserts eight causes of action: (1)–(2) public and private nuisance, Compl. ¶¶ 218–36; (3)–(4) strict liability and negligent failure to warn, *id.* ¶¶ 237–48, 270–81; (5)–(6) strict liability and negligent design defect, *id.* ¶¶ 249–69; (7) trespass, *id.* ¶¶ 282–90; and (8) violations of the MCPA, *id.* ¶¶ 291–98. Plaintiff seeks compensatory damages, equitable relief, including "abatement," penalties under the MCPA, punitive damages, disgorgement, and costs. *See id.*, Prayer for Relief.

Plaintiff has characterized this case as being about Defendants' alleged "promotion and sale of fossil-fuel products without warning and abetted by a sophisticated disinformation campaign" and purported "concealment and misrepresentation of the products' known dangers." Br. in Opp., *BP P.L.C. v. Mayor & City Council of Baltimore*, No. 22-361, 2022 WL 17852486, at 15 (U.S. Dec. 19, 2022). But fundamentally, Plaintiff alleges that its *injuries* are "caused by anthropogenic greenhouse gas *emissions*." Compl. ¶¶ 36–39 (emphasis added). Emissions are, in Plaintiff's words, "[*t*]*he mechanism*" of its alleged injuries. *Id.* ¶ 39 (emphasis added). According to Plaintiff, "greenhouse gas pollution, primarily in the form of CO_2, is far and away the dominant cause of global warming," *id.* ¶ 3, and its purported injuries are "*all due* to anthropogenic global

warming," *id.* ¶ 8 (emphasis added).

Emissions, which Plaintiff alleges are the mechanism of its injuries, are the result of billions of daily choices—over more than a century and around the world, by governments, companies, and individuals—about what types of fuels to use and how to use them. Plaintiff candidly admits that *worldwide* conduct, not conduct that occurred in Maryland alone, caused its alleged injuries. Compl. ¶¶ 43–45, 178–80. As Plaintiff acknowledges, "it is not possible to determine the source of any particular individual molecule of CO_2 in the atmosphere attributable to anthropogenic sources because such greenhouse gas molecules do not bear markers that permit tracing them to their source, and because greenhouse gasses quickly diffuse and comingle in the atmosphere." *Id.* ¶ 246. Plaintiff's claims, therefore, seek to impose liability and damages for alleged conduct outside Maryland and, indeed, around the world.

III. ARGUMENT

The Court should dismiss Plaintiff's Complaint because the well-pleaded "allegations and permissible inferences, [even] if true . . . do not state a cause of action for which relief may be granted." *Wireless One, Inc. v. Mayor & City Council of Baltimore*, 465 Md. 588, 604 (2019) (citations omitted). "The well-pleaded facts setting forth the cause of action must be pleaded with sufficient specificity; bald assertions and conclusory statements by the pleader will not suffice." *Id.* (citations omitted). Nor may the Court consider "[m]ere conclusory charges that are not factual allegations." *MCB Woodberry Developer, LLC v. Council of Owners of Millrace Condominium, Inc.*, 253 Md. App. 279, 296 (2021) (citations omitted).

A. Plaintiff's Claims Are Preempted Because State Law Cannot Constitutionally Be Applied.

Because Plaintiff seeks damages for alleged harms caused by *interstate and international* emissions and *global* warming, its claims cannot be governed by state law. Under our federal

constitutional system, States cannot use their laws to resolve claims seeking redress for injuries allegedly caused by out-of-state and worldwide emissions. As the United States explained as *amicus* in this case, claims based on climate change-related injuries are "inherently federal in nature," and greenhouse gas "emissions just can't be subjected to potentially conflicting regulations by every state and city affected by global warming." Oral Arg. Tr., *BP p.l.c. v. Mayor & City Council of Baltimore*, 141 S. Ct. 1532, 2021 WL 197342 (2021).

Federal law necessarily governs and preempts state-law claims seeking damages for interstate emissions. The U.S. Supreme Court has long held that—under the U.S. Constitution's federal structure—"a few areas, involving uniquely federal interests, are so committed by the Constitution . . . to federal control that state law is pre-empted." *Boyle*, 487 U.S. at 504 (citation omitted). These exclusively federal areas include "interstate and international disputes implicating the conflicting rights of States or our relations with foreign nations," and other areas "in which a federal rule of decision is necessary to protect uniquely federal interests"; in such cases, "our federal system does not permit the controversy to be resolved under state law." *Tex. Indus.*, 451 U.S. at 640–41. "[T]he Constitution implicitly forbids that exercise of power because the interstate nature of the controversy makes it inappropriate for state law to control." *Franchise Tax Bd. of California v. Hyatt*, 139 S. Ct. 1485, 1498 (2019).

Applying this principle, the U.S. Supreme Court has long explained that a State cannot apply its law to claims dealing with "air and water in their ambient or interstate aspects," and in this area "borrowing the law of a particular State would be inappropriate." *AEP*, 564 U.S. at 421–22. The "basic interests of federalism . . . demand[]" that "the varying common law of the individual States" cannot govern such disputes. *Milwaukee I*, 406 U.S. at 105 n.6, 108 n.9; *see also Ouellette*, 479 U.S. at 488 ("interstate . . . pollution is a matter of federal, not state, law");

City of Milwaukee v. Illinois, 451 U.S. 304, 313 n.7 (1981) ("*Milwaukee II*") ("state law cannot be used" to resolve such disputes).

Accordingly, "the basic scheme of the Constitution" requires that federal law govern disputes involving "air and water in their ambient or interstate aspects" because they are not "matters of substantive law appropriately cognizable by the states." *AEP*, 564 U.S. at 421. And Supreme Court precedent makes clear that "state law cannot be used" to resolve claims seeking redress for injuries allegedly caused by out-of-state pollution. *Milwaukee II*, 451 U.S. at 313 n.7.

For this reason, *every federal court* to consider this question has held that state law cannot be used to obtain relief for the alleged consequences of global climate change. For example, the Second Circuit, in considering largely identical claims, squarely held that "a nuisance suit seeking to recover damages for the harms caused by global greenhouse gas emissions may [not] proceed under [state] law." *City of New York*, 993 F.3d at 91. The Second Circuit's decision is directly on point and demonstrates why Plaintiff's claims must be dismissed. There, the plaintiff alleged that certain energy companies (including some Defendants here) were liable under state law for injuries caused by global climate change because of their "production, promotion, and sale of fossil fuels." *Id.* at 88. But the court held that such "sprawling" claims, which sought "damages for the cumulative impact of conduct occurring simultaneously across just about every jurisdiction on the planet," were "simply beyond the limits of state law." *Id.* at 92.

In reaching this conclusion, the Second Circuit emphasized that under our constitutional structure, federal law must govern because the dispute "implicate[d] two federal interests that are incompatible with the application of state law," namely, the "overriding need for a uniform rule of decision" on matters influencing national energy and environmental policy and the "basic interests of federalism." *City of New York*, 993 F.3d at 91–92. As the court explained, applying state law

would "risk upsetting the careful balance that has been struck between the prevention of global warming, a project that necessarily requires national standards and global participation, on the one hand, and energy production, economic growth, foreign policy, and national security, on the other." *Id.* at 93. In reaching this conclusion, the Second Circuit emphasized that, "[f]or over a century, a mostly unbroken string of [U.S. Supreme Court] cases has applied federal law to disputes involving interstate air or water pollution." *Id.* at 91. And, consistent with this controlling precedent, the Second Circuit likewise recognized that federal law "preempts state law." *Id.* at 95. Other federal courts to consider the question have reached the same conclusion. *See City of New York*, 325 F. Supp. 3d at 471–72 (claims of this sort "are ultimately based on the 'transboundary' emission of greenhouse gases," so "our federal system does not permit the controversy to be resolved under state law"); *City of Oakland*, 325 F. Supp. 3d at 1022 (reaching the same conclusion). *But see City & Cty. of Honolulu*, No. 1CCV-20-000380, Dkt. 618.

In *AEP*, eight States and various other plaintiffs sued five utility companies, alleging that "the defendants' carbon-dioxide emissions" had substantially contributed to global warming, thereby "creat[ing] a 'substantial and unreasonable interference with public rights,' in violation of the federal common law of interstate nuisance, or, in the alternative, of state tort law." 564 U.S. at 418. But Justice Ginsburg, writing for the majority, explained that such claims are fit for "federal law governance" and that "borrowing the law of a particular State would be inappropriate." *Id.* at 421–22. The issues involve "questions of national or international policy," requiring "informed assessment of competing interests," and Congress and the "expert agency here, EPA," are "better equipped to do the job than individual district judges issuing *ad hoc*, case-by-case injunctions." *Id.* at 427–28; *see also id.* at 428 (noting that "judges lack the scientific,

economic, and technological resources" that EPA possesses). Individual federal and state courts may not lawfully adjudicate such policy questions.

This unbroken line of federal precedent should be followed here. As Maryland courts have recognized, "whenever federal common law governs a particular issue, it must be applied, irrespective of whether the case is in a State or federal court." *Burgoyne v. Brooks*, 76 Md. App. 222, 225 (1988). The alternative—a patchwork of fifty different state-law answers to this necessarily global issue—would be unworkable, and state law is thus preempted under our federal constitutional system. *See North Carolina ex. rel. Cooper v. TVA*, 615 F.3d 291, 298 (4th Cir. 2010) ("If courts across the nation were to use the vagaries" of state "public nuisance doctrine to overturn the carefully enacted rules governing air-borne emissions, it would be increasingly difficult for anyone to determine what standards govern.").

Congress, of course, may displace federal common-law remedies—as it did for claims based on domestic emissions through the Clean Air Act—but such displacement does not allow state law to govern matters that it was never competent to address in the first place. As the Seventh Circuit explained, a State "cannot apply its own state law to out-of-state discharges" even after statutory displacement of federal common law. *Illinois v. City of Milwaukee*, 731 F.2d 403, 409–11 (7th Cir. 1984). The Second Circuit, too, has recognized that "state law does not suddenly become presumptively competent to address issues that demand a unified federal standard simply because Congress saw fit to displace a federal court-made standard with a legislative one"; it concluded, such an argument is "too strange to seriously contemplate." *City of New York*, 993 F.3d at 98–99.

Federalism and comity concerns embodied in the Constitution also preclude the application of state law to claims like those asserted here. Climate change is by its very nature global, caused

by the cumulative effect of actions far beyond the reach of any one State's borders. Applying state law to claims seeking redress for injuries allegedly caused by global climate change resulting from emissions around the world would necessarily require applying that law beyond the State's jurisdictional bounds. Thus, allowing state law to govern such areas would permit one State to "impose its own legislation on . . . the others," violating the "cardinal" principle that "[e]ach state stands on the same level with all the rest." *Kansas v. Colorado*, 206 U.S. 46, 97 (1907).

Federal law necessarily governs and preempts state-law claims seeking damages for international emissions. State law also cannot apply here because Plaintiff's claims are premised on international emissions. Only federal law can govern claims based on foreign emissions, and "foreign policy concerns foreclose" any state-law remedy. *City of New York*, 993 F.3d at 101. A State may not dictate our "relationships with other members of the international community." *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 425 (1964). Yet, that is exactly what Plaintiff's state law claims would do. If Plaintiff succeeds, Defendants may be subject to ongoing future liability for producing and selling fossil fuel products abroad unless they do so in the manner that Maryland law is deemed to require (regardless of whether Maryland law conflicts with the laws of Delaware, New Jersey, Hawaii, or any of the other 50 States, to say nothing of foreign jurisdictions). That is the paradigmatic example of a State improperly using "damages" to "regulat[e]" an industry's extraterritorial operations, *Kurns v. R.R. Friction Prods. Corp.*, 565 U.S. 625, 637 (2012), by forcing Defendants to "change [their] methods of doing business . . . to avoid the threat of ongoing liability," *Ouellette*, 479 U.S. at 495. "Any actions" Defendants "take to mitigate their liability" in Maryland "must undoubtedly take effect across every state (and country)." *City of New York*, 993 F.3d at 92.

Plaintiff does not seek to hold Defendants liable only for the "effects of emissions released" in Maryland, or even in the United States. *City of New York*, 993 F.3d at 92. Rather, Plaintiff "intends to hold [Defendants] liable . . . for the effects of emissions made *around the globe* over the past *several hundred years*." *Id.* (emphases added); *see, e.g.*, Compl. ¶ 1 ("Defendants have promoted and profited from" an "enormous, foreseeable, and avoidable increase in *global* greenhouse gas pollution" (emphasis added)). "In other words, [Plaintiff] requests damages for the cumulative impact of conduct occurring simultaneously across just about every jurisdiction on the planet." *City of New York*, 993 F.3d at 92. And "[s]ince '[g]reenhouse gases once emitted become well mixed in the atmosphere,' . . . 'emissions in [Maryland] may contribute no more to flooding in [Maryland] than emissions in China.'" *Id.* at 92. Plaintiff thus would be imposing liability and standards of care, based on Maryland tort law, on activities in other countries, and thus regulating conduct globally.

Because the Clean Air Act "does not regulate foreign emissions," federal common law is "still require[d]" to apply to extraterritorial aspects of claims challenging undifferentiated global emissions. *City of New York*, 993 F.3d at 95 n.7; *see also id.* at 101. Federal common law thus continues to apply in this area, even after the enactment of the Clean Air Act, thereby preempting Plaintiff's state law claims. *See Milwaukee II*, 451 U.S. at 313 n.7 ("[I]f federal common law exists, it is because state law cannot be used.").

This conclusion flows from the constitutional principle that States lack the power to regulate international activities or foreign policy and affairs, and that such matters "must be treated exclusively as an aspect of federal law." *Sabbatino*, 376 U.S. at 425. State "regulations must give way if they impair the effective exercise of the Nation's foreign policy," *Zschernig v. Miller*, 389

U.S. 429, 440 (1968), which calls for a unified federal law rather than a set of "divergent and perhaps parochial state interpretations," *Sabbatino*, 376 U.S. at 425.

Regardless of Plaintiff's framing of its claims, this suit plainly seeks damages for alleged harms resulting from interstate and international emissions. There is no doubt that Plaintiff's claims are predicated on interstate—and international—emissions. Plaintiff seeks damages for claimed injuries in Maryland allegedly caused *not* by actions in Maryland alone, but by the cumulative impact of actions taken in every State in the Nation and every country in the world. The Complaint repeatedly concedes this point, alleging that Defendants caused an increase in "*global* greenhouse gas pollution," Compl. ¶ 1, that "greenhouse gas pollution . . . is far and away the dominant cause of *global* warming," *id.* ¶ 3, and that Plaintiff has "to mitigate[] and adapt to the effects of *global* warming," *id.* ¶ 8 (emphases added). Plaintiff candidly acknowledges that "[*t*]*he mechanism*" of "global warming"—and thus of its alleged injuries—is "emissions." *Id.* ¶ 39 (emphasis added). In short, Plaintiff identifies no harms "other than those caused by emissions." *City of New York*, 993 F.3d at 97 n.8.

Plaintiff thus seeks to recover damages for harms caused by "*global* CO_2 emissions associated" with Defendants' products. Compl. ¶ 182 (emphasis added). The crux of Plaintiff's claims is that Defendants are responsible for having supposedly caused—through alleged deception and failure to warn—some level of worldwide emissions that Plaintiff deems unlawful. Plaintiff expressly alleges that Defendants "should have taken reasonable steps *to limit the potential greenhouse gas emissions* arising out of their fossil fuel products," *id.* ¶ 142; faults Defendants for not "working to reduce the use and consumption of fossil fuel products [and] *lower the rate of greenhouse gas emissions*," *id.* ¶ 6; and insists that "[e]arlier steps *to reduce emissions*

would have led to smaller—and less disruptive—measures needed to mitigate the impacts of fossil fuel production," *id.* ¶ 180 (emphases added).

Accordingly, irrespective of Plaintiff's allegations of deception and failure to warn, Plaintiff's theory of liability is that Defendants caused an increase in *worldwide* greenhouse-gas emissions, which combined with other factors to produce global warming and thus Plaintiff's alleged injuries. But Plaintiff cannot use Maryland tort law to regulate out-of-state activities that it believes resulted in an excessive level of global emissions. Plaintiff's theory would allow municipalities across the State to use Maryland law to impose a duty of care and standards on activities across the country and around the world, even if such activities are completely lawful in the jurisdictions where they took place.

Take, for example, Plaintiff's failure to warn claims. Plaintiff asserts that failures to warn across the globe have resulted in increased consumption of fossil fuels, leading to increased emissions that have, in turn, resulted in Plaintiff's injuries. *See* Compl. ¶ 142 (alleging that Defendants should have warned "consumers, the public, and regulators"—generally—about the risks of climate change); *id.* ¶ 193 (alleging that Defendants' "concealment of known hazards associated with use of [their] products" resulted in "the increase in global mean temperature"). This means Plaintiff is seeking damages under Maryland law for increased emissions resulting from alleged failures to warn in, say, Texas, Florida, and Zimbabwe, even if there was no duty to warn in those jurisdictions. This, Plaintiff cannot do. The global causal mechanism on which Plaintiff's claims depend triggers the exclusive and preemptive effect of federal law.

Plaintiff cannot evade the preemption of state law by arguing that its claims are based solely on misrepresentations. The question whether Plaintiff's claims are based on misrepresentations as opposed to production does not change the preemption analysis, because Plaintiff admits that its

alleged *injuries* all stem from interstate and international emissions. Plaintiff alleges that "[a]nthropogenic (human-caused) greenhouse gas pollution, primarily in the form of CO_2, is far and away the dominant cause of global warming," Compl. ¶ 3, that its injuries are "*all* due to anthropogenic global warming," *id.* ¶ 8 (emphasis added), and that "*[t]he mechanism*" of global warming is emissions, *id.* ¶ 39 (emphasis added).

Just as in *City of New York*, "[i]t is precisely because fossil fuels emit greenhouse gases—which collectively 'exacerbate global warming'—that [Plaintiff] is seeking damages." 993 F.3d at 91 (emphasis omitted). Indeed, the same misrepresentation theory was alleged in *City of New York*, which focused not just on the "production and sale of fossil fuels," but also their "promotion." *See* 993 F.3d at 88, 91, 97 n.8. The City alleged there, as Plaintiff does here, that "Defendants have known for decades that their fossil fuel products pose risks of severe impacts on the global climate through the warnings of their own scientists" yet "extensively promoted fossil fuels for pervasive use, while *denying* or *downplaying* these threats." *City of New York*, 325 F. Supp. 3d at 468–69 (emphases added). The City argued there that the defendants were liable for "nuisance and trespass" damages because "for decades, Defendants promoted their fossil fuel products by *concealing* and *downplaying* the harms of climate change [and] *profited* from the misconceptions they *promoted*." Br. for Appellant at 27, *City of New York v. BP P.L.C.*, No. 18-2188, 2018 WL 5905772 (2d Cir. Nov. 8, 2018) (emphases added). Plaintiff pursues the exact same theory of liability here. *See, e.g.*, Compl. ¶ 1 (alleging Defendants "*conceal*[*ed*] and *den*[*ied*]" risks of climate change and "*promoted* and *profited* from a massive increase in the extraction and consumption of oil, coal, and natural gas" (emphases added)).

The Second Circuit rejected the City of New York's similar attempt to cast its claims as "focus[ed] on" an "earlier moment in the global warming lifecycle" (*i.e.*, sales activity rather than

emissions), holding that this was "merely artful pleading and d[id] not change the substance of its claims." *City of New York*, 993 F.3d at 97. The crucial consideration was that emissions were the "singular source of the City's harm." *Id.* at 91. Accordingly, the Second Circuit refused to allow the City to deny the obvious: Its "case hinges on the link between the release of greenhouse gases and the effect those emissions have on the environment generally," as confirmed by the fact that "the City does not seek any damages for the [defendants'] production or sale of fossil fuels that do not in turn depend on harms stemming from emissions." *Id.* at 97.

The Third Circuit, too, rejected a similar attempt to shift the focus from emissions to alleged misrepresentations: Although "Delaware and Hoboken tr[ied] to cast their suits as just about misrepresentations . . . their own complaints belie that suggestion. They charge the oil companies with not just misrepresentations, but also trespasses and nuisances. Those are caused by burning fossil fuels and emitting carbon dioxide." *City of Hoboken v. Chevron Corp.*, 45 F.4th 699, 712 (3d Cir. 2022). The same is true here: Plaintiff's claims attempt to collect damages for injuries allegedly stemming from worldwide emissions. And because Plaintiff's claimed *injuries* allegedly result from emissions—specifically, from a level of emissions that Plaintiff alleges is too high—the constitutional prohibition against using state law to impose liability for harms arising from interstate emissions applies fully here.

Cases rejecting Defendants' removal arguments arise in a different procedural posture and did not address the preemption question presented here. Some recent federal appellate decisions have addressed the issue whether claims alleging climate change-related harms "arise under" federal common law for purposes of conferring federal jurisdiction. But as the Fourth Circuit explained in this case, those cases resolved a different question in a "different procedural posture"—namely, the propriety of removal. *Mayor & City Council of Baltimore v. BP P.L.C.*, 31

F.4th 178, 203 (4th Cir. 2022). Indeed, the Second Circuit made clear that the defendants "sought to remove th[e] cases to federal court, arguing that they anticipated raising federal preemption defenses." *City of New York*, 993 F.3d at 94. In that posture, those courts could *not* consider the "preemption defense on its own terms," but had to apply "the heightened standard unique to the removability inquiry." *Id.* The Second Circuit recently reiterated that conclusion in *Connecticut ex rel. Tong v. Exxon Mobil Corp.*, __ F.4th __, 2023 WL 6279941 (2d Cir. Sept. 27, 2023), where it articulated a "distinction between complete (jurisdictional) preemption and ordinary (defensive) preemption" and explained that the removal cases addressed only the former. *Id.* at *9 n.4. The court explained that in *City of New York* it held that "claims 'to recover damages for the harms caused by global greenhouse gas emissions' were 'governed by federal common law'" and, therefore, the plaintiff's state law claims were preempted "on a theory of *ordinary* preemption." *Id.* Accordingly, its holding affirming dismissal on the merits in *City of New York* would "'not conflict with these out-of-circuit [removal] cases even if they were correct.'" *Id.*

The Fourth Circuit's and other courts' decisions regarding the removal issue left open the separate question presented here and decided in *City of New York*: whether federal law precludes Plaintiff's claims *on the merits*. *See City of New York*, 993 F.3d at 93–94 (explaining that in Rule 12(b)(6) context the court is "free to consider the [energy companies'] preemption defense on its own terms, not under the heightened standard unique to the removability inquiry"). Indeed, Plaintiff told the U.S. Supreme Court that the Fourth Circuit's decision in this case "would not preclude a district court in the Fourth Circuit from holding that a claim identical to New York City's, filed in federal court, would be preempted by federal law." Br. in Opp., *BP P.L.C.*, No. 22-361, 2022 WL 17852486, at 12–13.

"Ordinary preemption," which Defendants raise here, "is a federal defense to a plaintiff's claims." *Mayor & City Council of Baltimore*, 31 F.4th at 198–99. Such "important questions of ordinary preemption" are "*for the state courts to decide upon remand.*" *Cty. of San Mateo v. Chevron Corp.*, 294 F. Supp. 3d 934, 938 (N.D. Cal. 2018) (emphasis added).[2] Now that the parties are back in state court, this Court must decide whether Defendants' preemption defenses bar Plaintiff's claims *on the merits*. *See, e.g.*, *Hill v. Knapp*, 396 Md. 700, 722 (2007) (tort claim preempted by federal Longshore and Harbor Workers' Compensation Act). The answer to that question is "yes," as every federal court to address the preemption defense on the merits has held.

B. Plaintiff's State-Law Claims Are Preempted By The Clean Air Act.

Even if the Constitution did not preclude the application of state law to Plaintiff's claims, those claims would still fail because the Clean Air Act preempts state-law causes of action that would have the effect of regulating out-of-state greenhouse gas emissions.

Through the Clean Air Act, Congress evaluated and balanced the societal harms and benefits associated with the extraction, production, processing, transportation, sale, and use of fossil fuels. And it has comprehensively regulated fossil fuels and greenhouse gas emissions through an "informed assessment of competing interests," including the "environmental benefit potentially achievable" and "our Nation's energy needs and the possibility of economic disruption." *AEP*, 564 U.S. at 427. Under the Clean Air Act, EPA has the authority to determine and has determined the permissible levels of greenhouse gas emissions for many applications of most Defendants' combustible products (*e.g.*, as used in motor vehicles, heavy duty trucks, marine engines).

---

[2] *See also Minnesota ex rel. Ellison v. Am. Petroleum Inst.*, 63 F.4th 703, 710 (8th Cir. 2023) (noting that "the Second Circuit recently held that federal common law still provides a defense—ordinary preemption—to state-law public nuisance").

For example, Title II of the Clean Air Act governs greenhouse gas emissions standards for vehicles, aircraft, locomotives, motorcycles, and nonroad engines and equipment. 42 U.S.C. §§ 7521(a)(1)–(2), (3)(E), 7547(a)(1), (5), 7571(a)(2)(A). Based on this authority, EPA has set vehicle-specific greenhouse gas emission standards that appropriately balance environmental and other national needs. 40 C.F.R. §§ 86.1818-12, 86.1819-14. Indeed, just in recent months, EPA has proposed new pollution standards for cars and trucks aimed at accelerating the transition to clean vehicles. EPA Press Office, *Biden-Harris Administration Proposes Strongest-Ever Pollution Standards to Accelerate Transition to a Clean-Transportation Future* (Apr. 12, 2023), https://www.epa.gov/newsreleases/biden-harris-administration-proposes-strongest-ever-pollution-standards-cars-and. Although States may apply more stringent standards for vehicles sold *in-state* under carefully prescribed circumstances, *see* 42 U.S.C. § 7507, they cannot regulate emissions from vehicles sold in *other* States.

The Clean Air Act also governs "whether and how to regulate carbon-dioxide emissions from powerplants" and other stationary sources. *AEP*, 564 U.S. at 426; *see also* 42 U.S.C. §§ 7411(b)(1)(A)–(B), (d). EPA has issued comprehensive regulations to control greenhouse gas emissions up and down the fossil fuel supply chain, which include: limiting emissions of methane (the second-most prevalent greenhouse gas) and emissions from crude oil and natural gas production, including the facilities operated by some of the Defendants, *see* 40 C.F.R. § 60, subpart OOOOa; regulating carbon dioxide emissions from fossil fuel-fired power plants; and requiring many major industrial sources—including many Defendants' oil refineries and gas-processing facilities, as well as manufacturers that use Defendants' products—to employ the control technologies constituting the best system of emission reduction to limit greenhouse gas emissions. 42 U.S.C. § 7475.

The Clean Air Act's Renewable Fuel Standard Program regulates the consumption and use of many of the same fossil fuel products at issue in the Complaint; specifically, the Program requires many Defendants and other fuel companies to reduce the quantity of petroleum-based transportation fuel, heating oil, or jet fuel sold by blending in renewable fuels, resulting in lower greenhouse gas emissions on a lifecycle basis. *See* 42 U.S.C. § 7545(*o*).

More than thirty years ago, the U.S. Supreme Court concluded that the Clean Water "Act pre-empts state law to the extent that state law is applied to an out-of-state point source." *Ouellette*, 479 U.S. at 500. That Act establishes a "comprehensive" regulatory regime and charges EPA with primary authority to balance the "costs and benefits" of regulation. *Id.* at 492, 494–95. Although it preserves a State's ability (subject to EPA review) to regulate pollution from *within* that State, *id.* at 489–90, it does not permit States to regulate *out-of-state* pollution, *id.* at 490–91. And although it includes a savings clause, "it is clear that the only state suits that remain available are those specifically preserved by the Act," and "[a]n interpretation of the saving[s] clause that preserved actions brought under an affected State's law would disrupt th[e] balance of interests" struck by the Act. *Id.* at 492, 495. The Act accordingly left no room for state tort suits seeking damages for harms caused by out-of-state emissions, which would "upset[] the balance of public and private interests so carefully addressed by the Act." *Id.* at 494; *see also id.* at 500 ("The application of affected-state laws would be incompatible with the Act's delegation of authority and its comprehensive regulation of water pollution.").

The Clean Air Act shares all the features of the Clean Water Act that led the Supreme Court to find preemption of state regulation of interstate pollution. Both laws authorize "pervasive regulation" and direct EPA to engage in a "complex" balancing of economic costs and environmental benefits, *Ouellette*, 479 U.S. at 492, 494–95; both laws provide States with a

circumscribed role that is "subordinate" to EPA's role, *id.* at 491; both laws have analogous savings clauses that preserve state regulation only over *in-state* pollution sources, *see* 33 U.S.C. §§ 1365(e), 1370; and both laws confirm that "control of interstate . . . pollution is primarily a matter of federal law," *Ouellette*, 479 U.S. at 492. Indeed, because no state can control its neighbor's emissions, the Clean Air Act's "Good Neighbor Provision" specifically requires each State to ensure that emissions from sources within its boundaries do not "contribute significantly" to air quality nonattainment in downwind States. 42 U.S.C. § 7410(a)(2)(D)(i)(I). And EPA must promulgate federal regulations to address such situations in the event a State's sources do so contribute. *Id.* § 7410(c)(1). Accordingly, the Clean Air Act, like the Clean Water Act, "precludes a court from applying the law of an affected State against an out-of-state source." *Ouellette*, 479 U.S. at 494.

Because the structure of the Clean Air Act so closely parallels that of the Clean Water Act, courts have consistently construed *Ouellette* to mean that the Clean Air Act preempts state laws to the extent they purport to regulate air pollution originating out of state. *See, e.g., Merrick v. Diageo Ams. Supply, Inc.*, 805 F.3d 685, 693 (6th Cir. 2015) ("[C]laims based on the common law of a non-source state . . . are preempted by the Clean Air Act."); *Bell v. Cheswick Generating Station*, 734 F.3d 188, 194–96 & n.6 (3d Cir. 2013) (same); *Cooper*, 615 F.3d at 301, 306 (same). Because Plaintiff's claims seek remedies for harms allegedly caused by cumulative worldwide greenhouse gas emissions over more than a century, imposition of those remedies would necessarily regulate interstate emissions, thereby upsetting the careful balance Congress struck through the comprehensive Clean Air Act regime overseen by EPA.

Indeed, Plaintiff *expressly* asks this Court to assess the "harms and benefits of Defendants' conduct" by "weighing the social benefit of extracting and burning a unit of fossil fuels against the

costs that a unit of fuel imposes on society." Compl. ¶ 177. Such regulation via tort law "cannot be reconciled with the decisionmaking scheme Congress enacted." *AEP*, 564 U.S. at 429. "Congress designated an expert agency . . . , EPA, as best suited to serve as primary regulator of greenhouse gas emissions," and "[t]he expert agency is surely better equipped to do the job than individual district judges issuing ad hoc, case-by-case injunctions." *Id.* at 428.

While *AEP* did not address the narrow question whether state-law claims may be brought under "the law of each State *where the defendants operate powerplants*," 564 U.S. at 429 (emphasis added), its articulation of that potential exception proves the rule—one State cannot apply its law to claims based on emissions from *another* State. Here, Plaintiff intentionally and explicitly targets global emissions: the emissions allegedly causing Plaintiff's claimed injuries come from every State in this Nation and every country in the world. *See, e.g.*, Compl. ¶¶ 107, 246, 260, 271, 283, 292. But Plaintiff is suing under *one* State's law—which federal law prohibits. *See Ouellette*, 479 U.S. at 495; *City of New York*, 993 F.3d at 92 ("Any actions [defendants would] take to mitigate their liability . . . must undoubtedly take effect across every state (and country).").

That Plaintiff seeks *damages* rather than injunctive relief makes no difference. As the U.S. Supreme Court has explained, state damages suits equally constitute state regulation: "[A] liability award can be, indeed is designed to be, a potent method of governing conduct and controlling policy." *Riegel v. Medtronic, Inc.*, 552 U.S. 312, 324 (2008); *see also BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 572 n.17 (1996) ("State power may be exercised as much by a jury's application of a state rule of law in a civil lawsuit as by a statute."). Indeed, *Ouellette* itself held that state-law claims for damages caused by interstate pollution were preempted. 479 U.S. at 484, 493–94. Because Plaintiff seeks damages based on harms caused by diffuse and commingled emissions, any liability award would result in one State regulating interstate emissions, so

Plaintiff's claims are preempted. *See Bell*, 734 F.3d at 192, 196–97 (holding that "*Ouellette* controls" claims for "damages under three state common law tort theories: (1) nuisance; (2) negligence and recklessness; and (3) trespass").

Plaintiff cannot evade the dispositive force of *Ouellette* by casting its claims as based solely on Defendants' alleged deception, rather than on greenhouse gas emissions. Plaintiff's theory of harm and damages is premised on the notion that Defendants' conduct has resulted in an excessive level of emissions in the atmosphere. *See, e.g.*, Compl. ¶ 6 ("Defendants . . . engaged in massive campaigns to promote the ever-increasing use of their products at ever greater volumes" and thus "contributed substantially to the buildup of CO_2 in the environment that drives global warming and its physical, environmental, and socioeconomic consequences"), ¶ 107 ("[Defendants] could and should have taken reasonable steps to limit the potential greenhouse gas emissions arising out of their fossil fuel products."). It is thus beyond dispute that "the *singular source* of [Plaintiff's] harm" is the nationwide greenhouse gas emissions regulated by the Clean Air Act—and the worldwide emissions that state law cannot regulate. *City of New York*, 993 F.3d at 91 (emphasis added). Thus, Plaintiff's theory of harm and requested relief are central to the preemption inquiry under the Clean Air Act.

As *Ouellette* recognized, if a downwind court rules that upwind defendants are liable based on the effects of pollution downwind, the defendant "would have to change its methods of doing business and controlling pollution to avoid the threat of ongoing liability"—regardless of whether "the source had complied fully with its [source] state and federal . . . obligations." 479 U.S. at 495. The stated goal of the Clean Air Act is "to prevent and control air pollution," *see* 42 U.S.C. § 7401(a)(4), and the statute achieves that goal by regulating pollution-generating emissions and carefully delegating authority for setting emissions standards, *see* 40 C.F.R. § 50 *et seq.* Allowing

the tort law of a downwind state to impose liability for emissions from out-of-state sources is entirely incompatible with the Clean Air Act's "delegation of authority and its comprehensive regulation" of emissions. *Ouellette*, 479 U.S. at 500.

Plaintiff's claims impermissibly seek to regulate out-of-state emissions through the imposition of damages awards. As the Second Circuit put it, permitting claims seeking "damages caused by global greenhouse gas emissions" to proceed would replace the "carefully crafted frameworks" Congress established in the Clean Air Act "with a patchwork of claims under state nuisance law." *City of New York*, 993 F.3d at 85–86. Congress and EPA have concluded that selling and using fossil fuel products should be regulated by balancing the risks to the climate with the benefits to the public and the United States. But Plaintiff's lawsuit would wield Maryland law to impose damages liability on Defendants for out-of-state emissions that were and are lawful under the Clean Air Act and the regulatory regimes of the source States. "The inevitable result of [sustaining these claims] would be that [Maryland] and other States could do indirectly what they could not do directly—regulate the conduct of out-of-state sources." *Ouellette*, 479 U.S. at 495.

C. Plaintiff's Claims Raise Nonjusticiable Political Questions.

Plaintiff's claims also fail because they would require the Court to usurp the political branches' power to set energy and climate policy, in violation of the political question doctrine. The Maryland Supreme Court has adopted the U.S. Supreme Court's articulation of the political question doctrine in *Baker v. Carr*, 369 U.S. 186 (1962). *See Est. of Burris v. State*, 360 Md. 721, 745 (2000). For "a claim [to be] justiciable," a court must determine: (1) "whether the claim presented and the relief sought are of the type which admit of judicial resolution," and (2) "whether there is," among other things, "'a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion.'" *Id.* at 745 (quoting *Baker*, 369 U.S. at 217).

Under that standard, energy and climate policy plainly present political questions that cannot be resolved by the courts. As the U.S. Supreme Court has recognized, "[t]he appropriate amount of regulation in any particular greenhouse gas-producing sector" raises "questions of national or international policy" that require an "informed assessment of competing interests." *AEP*, 564 U.S. at 427. And, as the Maryland General Assembly has proclaimed, important aspects of emissions are best "regulated on a national and international level." Md. Code Ann., Envir. § 2-1201(9)–(11).

The Weight of Authority Confirms That Climate-Related Claims Are Non-Justiciable. *Kivalina* is directly on point. There, as here, the plaintiffs alleged that the defendant energy companies were "substantial contributors to global warming" and had, among other things, "conspir[ed] to mislead the public about the science of global warming." *Kivalina*, 696 F.3d at 854. Also, as here, "Plaintiffs' global warming claim [was] based on the emissions of greenhouse gases from innumerable sources located throughout the world and affecting the entire planet and its atmosphere." 663 F. Supp. 2d at 875 (emphasis omitted). And "Plaintiffs acknowledge[d] that the global warming process involves 'common pollutants that are mixed together in the atmosphere that cannot be similarly geographically circumscribed.'" *Id.* (alteration omitted).

The court held that the claims in *Kivalina* presented nonjusticiable political questions because they would require the trier of fact to "balance the utility and benefit of the alleged nuisance against the harm caused." *Kivalina*, 663 F. Supp. 2d at 874. "Stated another way," the court explained, "resolution of [the] nuisance claim is not based on whether the plaintiff finds the invasion unreasonable, but rather 'whether reasonable persons generally, *looking at the whole situation* impartially and objectively, would consider it unreasonable.'" *Id.* The plaintiffs had "fail[ed] to articulate any particular judicially discoverable and manageable standards that would

guide the factfinder in rendering a decision that is principled, rational, and based upon reasoned distinctions." *Id.* at 875. The same is true here.

That court reached a similar result in *General Motors*, 2007 WL 2726871. There, California sued General Motors and other automakers for creating or contributing to climate change. *Id.* at *1–2. The court found it lacked "guidance in determining what is an unreasonable contribution to the sum of carbon dioxide in the Earth's atmosphere, or in determining who should bear the costs associated with the global climate change that admittedly result from multiple sources around the globe." *Id.* at *15. The court rejected the notion that global climate change cases are just like any other trans-boundary pollution case, explaining that the State sought to impose damages on an "unprecedented scale" that left the court no way to distinguish one emitter from another. *Id.*

Similarly, the plaintiffs in *Comer v. Murphy Oil USA, Inc.* brought nuisance and trespass claims against a group of energy companies alleging that their products "led to the development and increase of global warming, which produced the conditions that formed Hurricane Katrina, which damaged their property." 839 F. Supp. 2d 849, 852 (S.D. Miss. 2012). The court rejected these claims as requiring "the Court, or more specifically a jury, to determine without the benefit of legislative or administrative regulation, whether the defendants' emissions are 'unreasonable.'" *Id.* at 864. "Simply looking to the standards established by the Mississippi courts for analyzing nuisance, trespass, and negligence claims would not provide sufficient guidance to the Court or a jury." *Id.*

More recently, the Alaska Supreme Court rejected similar climate change claims under the political question doctrine. *Sagoonick v. State*, 503 P.3d 777 (Alaska 2022). The court explained that "[t]he political question doctrine maintains the separation of powers by 'exclud[ing] from

judicial review those controversies which revolve around policy choices and value determinations constitutionally committed for resolution to' the political branches of government." *Id.* at 795. Notably, the court found that plaintiffs' claims require balancing the social utility of defendants' conduct with the harm it inflicts, *id.* at 796, a process that, "by definition, entails a determination of what would have been an acceptable limit on the level of greenhouse gases emitted by Defendants," *Kivalina*, 663 F. Supp. 2d at 876.[3]

Plaintiff's claims present even greater hurdles to judicial resolution than those in the cases discussed above. Again, Plaintiff does not seek to hold Defendants liable for their *own* emissions, but rather for production of fossil fuel products that countless *third parties* combusted and for alleged misrepresentations that supposedly caused those third parties to consume more of those products than they otherwise would have. *See* Compl. ¶¶ 36–39. Under tort law, Plaintiff would need to prove that Defendants' actions were "unreasonable." But the concept of "reasonableness" provides no guidance for resolving the far-reaching economic, environmental, foreign affairs, and national-security issues raised by Plaintiff's claims—together "with the environmental benefit potentially achievable, our Nation's energy needs and the possibility of economic disruption must weigh in the balance." *AEP*, 564 U.S. at 427; *see Vieth v. Jubelirer*, 541 U.S. 267, 291 (2004) ("'Fairness' does not seem to us a judicially manageable standard."); *State ex rel. Hunter v. Johnson & Johnson*, 499 P.3d 719, 731 (Okla. 2021) (reversing judgment holding opioid manufacturers liable under public nuisance theory and "defer[ring] the policy-making to the legislative and executive branches"). In short, Plaintiff's "global warming nuisance tort claim seek[ing] to impose damages on a much larger and unprecedented scale by grounding the claim in

---

[3] *See also Kanuk ex rel. Kanuk v. State, Dep't of Nat. Res.*, 335 P.3d 1088, 1099 (Alaska 2014) ("The limited institutional role of the judiciary supports a conclusion that the science- and policy-based inquiry here is better reserved for executive-branch agencies or the legislature, just as in *AEP* the inquiry was better reserved for the EPA.").

pollution originating both within, and well beyond, the borders of the State" presents nonjusticiable political questions and should be dismissed. *Gen. Motors*, 2007 WL 2726871, at *15.

Maryland's Political Branches Actively Address Climate-Related Issues. The political questions implicated by Plaintiff's claims are not theoretical. The Maryland executive and legislative branches have known about climate change for decades—including about the alleged climate risks that Plaintiff accuses Defendants of concealing—and, with that knowledge, have weighed the benefits and costs of fossil fuel use in enacting policies they believe best serve the State. For example, in 2009, Maryland enacted legislation to reduce greenhouse emissions and combat climate change. *See* The Greenhouse Gas Emissions Reduction Act of 2009, Md. Code Ann., Envir. § 2-1206(5). In 2015, the Maryland General Assembly codified the Maryland Climate Commission—previously established by executive order—into law and charged it with "advis[ing] the Governor and General Assembly on ways to mitigate the causes of, prepare for, and adapt to the consequences of climate change." Maryland Commission on Climate Change Act of 2015, Md. Code Ann., Envir. § 2-1302(a). And the State continues to address the issue legislatively, recently enacting the Climate Solutions Now Act, which sets significant emissions-reductions targets within Maryland. *See* 2022 Md. Laws Ch. 38. Indeed, nearly every year, Maryland revises its renewable portfolio standards to incentivize electricity generation from renewable sources instead of fossil fuels. Md. Code Ann., Public Utilities § 7-701 *et seq.*

At the same time, Maryland and the City of Baltimore have promoted, and continue to promote, the production and sale of petroleum products. The General Assembly has declared that "*the production and development of oil and gas resources is important to the economic well-being of the State and the nation.*" Md. Code Ann., Envir. § 14-101 (emphasis added). Maryland thus maintains an "Oil and Gas Fund" to "administer and implement programs to oversee the drilling,

development, production, and storage of oil and gas wells" throughout the State. *Id.* §§ 14-122, 14-123. And the Climate Solutions Now Act continues to insist that plans adopted to reduce emissions shall "[e]nsure that the plans *do not decrease* the likelihood of reliable and affordable electrical service and statewide fuel supplies," *id.* § 2-1206(5) (emphasis added), while recognizing that important aspects of emissions are "most effectively regulated on a national and international level"—the opposite of a municipal tort suit, *id.* § 2-1201(9)–(11). During the COVID-19 pandemic, both the Governor of Maryland and the Mayor of Baltimore issued orders exempting businesses in "critical infrastructure sectors"—including companies engaged in the production and sale of oil and gas products —from mandatory closure orders.[4]

These issues are political questions that have been considered by the executive and legislative branches for decades, resolution of which belongs in their hands, not in the judiciary's.

An Abatement Would Infringe on the Authority of the Other Branches. Finally, the relief Plaintiff seeks—an "order that provides for abatement of the public nuisance," Compl. ¶ 228—presumably would require this Court to estimate potential future damages resulting from global climate change over the next century and to oversee and administer a fund to pay for and address those future injuries. The Ninth Circuit rejected a similar request in *Juliana v. United States*, 947 F.3d 1159, 1169–75 (9th Cir. 2020), because it is beyond the power of the court "to order, design, supervise, or implement" such a remedial plan, which "would necessarily require a host of complex policy decisions entrusted, for better or worse, to the wisdom and discretion of the executive and legislative branches." *Id.* at 1171.

The same is true here. Administering "abatement" of the kind sought by Plaintiff would "entail a broad range of policymaking," such as determining what infrastructure projects—from

[4] *See, e.g.*, Md. Executive Order 20-03-23-01 (Mar. 23, 2020); Balt. Mayoral Executive Order Continuation of Governor's Stay at Home Order (May 29, 2020).

sea walls, to transit, to levees—are supposedly necessary to prevent climate change-related harms and how to prioritize such projects. *Juliana*, 947 F.3d at 1172. And "given the complexity and long-lasting nature of global climate change, the court would be required to supervise the [fund] for many decades," if not forever. *Id.*

D. Maryland Law Requires Dismissal Of Plaintiff's Claims.

Plaintiff's claims should also be dismissed because they are premised on a sweeping and expansive duty to third parties that Maryland courts have consistently rejected, and because Plaintiff fails to plead necessary elements of each of its state-law causes of action.[5]

1. Plaintiff Fails Adequately To Allege A Claim For Public Or Private Nuisance.

Under Maryland law, "[a] private nuisance is a nontrespassory invasion of another's interest in the private use and enjoyment of land," and a "public nuisance is an unreasonable interference with a right common to the general public." *Tadjer v. Montgomery Cty.*, 300 Md. 539, 551–52 (1984) (quoting Restatement (Second) of Torts §§ 821B, 821D).

Plaintiff fails to state a claim for private or public nuisance. The Complaint alleges that emissions resulting from Defendants' production, sale, marketing, and promotion of lawful fossil fuel products constitute a nuisance. But multiple state and federal courts have rejected similarly breathtaking attempts to expand the scope of state nuisance law. This Court should do the same. Neither the General Assembly nor the Maryland Supreme Court—the only bodies with authority to recognize new causes of action under Maryland common law—has recognized a nuisance claim based on the production, promotion, and sale of a lawful consumer product.[6] Nor does Plaintiff

---

[5] Defendants assume for purposes of this Motion that Plaintiff purports to bring its claims under Maryland law and reserve all rights to brief choice-of-law issues as necessary.

[6] *See Coleman v. Soccer Ass'n of Columbia*, 432 Md. 679, 692–95 (2013) (recognizing the Maryland Supreme Court's authority to change the common law, or for the legislature to abrogate it).

allege facts that, if taken as true, show Defendants exercised sufficient control over the instrumentality (*i.e.*, the concentration of greenhouse gases in the Earth's atmosphere) that allegedly caused the nuisance for which Plaintiff claims injuries.

Maryland does not recognize a nuisance claim based on production, promotion, and sale of a consumer product. Like courts in other States, Maryland appellate courts have recognized nuisances only based on the defendant's *use of land*. *See, e.g.*, *Tadjer*, 300 Md. at 550 (alleging nuisance based on "landfill operation"); *Whitaker v. Prince George's Cty.*, 307 Md. 368, 379 (1986) (holding that "the operation of a bawdyhouse constitutes a public nuisance"); *Bishop Processing Co. v. Davis*, 213 Md. 465, 468 (1957) (seeking to enjoin operation of a processing plant); *Gorman v. Sabo*, 210 Md. 155, 161 (1956) (intentionally disturbing neighbor with loud radio); *E. Coast Freight Lines v. Consol. Gas, Elec. Light & Power Co. of Baltimore*, 187 Md. 385, 393 (1946) (obstructing highway with lamp pole); *Burley v. City of Annapolis*, 182 Md. 307, 312 (1943) (listing "slaughterhouses" and "livery stables" as examples of potential nuisances).

Courts have long recognized that, to avoid turning nuisance law into "a monster that would devour in one gulp the entire law of tort," *Tioga Pub. Sch. Dist.*, 984 F.2d at 921, the boundaries between products liability and nuisance must be respected. Accordingly, multiple courts in other jurisdictions have explained that nuisance cases appropriately concern the use or condition of the defendant's *property*, not products. They have therefore dismissed attempts to expand common-law public nuisance claims to cover the production, sale, or promotion of consumer products such as lead paint, asbestos, prescription opioids, firearms, and tobacco.

As the Oklahoma Supreme Court recently explained in overturning a public nuisance judgment arising from a manufacturer's allegedly deceptive sale and promotion of opioids, public nuisance "has historically been linked to the use of land by the one creating the nuisance." *Hunter*,

499 P.3d at 724. Similarly, the New Jersey Supreme Court rejected attempts to expand nuisance law to cover the sale and promotion of lead paint because "essential to the concept of a public nuisance tort ... is the fact that it has historically been linked to the use of land by the one creating the nuisance." *In re Lead Paint Litig.*, 924 A.2d 484, 495 (N.J. 2007). The Rhode Island Supreme Court concurred, explaining that "[p]ublic nuisance focuses on the abatement of annoying or bothersome activities," whereas claims based on a defendant's sale or distribution of an allegedly harmful product sound in products liability, which is "designed specifically to hold manufacturers liable for harmful products." *State v. Lead Indus. Ass'n*, 951 A.2d 428, 456 (R.I. 2008). Thus, "[t]he law of public nuisance never before has been applied to products, however harmful." *Id.* And in affirming dismissal of nuisance claims related to the production and sale of asbestos products, the Eighth Circuit explained that "cases applying the state's nuisance statute all appear to arise in the classic context of a landowner or other person in control of the property conducting an activity on his land in such a manner as to interfere with the property rights of a neighbor." *Tioga Pub. Sch. Dist.*, 984 F.2d at 920.

In short, "[t]he core historical policies underlying [public nuisance] are inconsistent with its use to impose liability for the manufacture or distribution of lawful products." Donald G. Gifford, *Public Nuisance as a Mass Products Liability Tort*, 71 U. Cin. L. Rev. 741, 834 (2003). "Courts should not replace the substantial bodies of mature doctrinal and policy analysis available to guide them in products liability actions with a vaguely defined tort that is being used in ways utterly foreign to its historical context." *Id.* at 837; *see also* Schwartz & Goldberg, *The Law of Public Nuisance: Maintaining Rational Boundaries on a Rational Tort*, 45 Washburn L.J. 541, 552 (2006). Such a result would run counter to Maryland courts' reluctance to "expand traditional tort concepts beyond manageable bounds." *Gourdine*, 405 Md. at 750.

The New Jersey Supreme Court's reasoning as to lead paint is instructive. The court there declined to allow a nuisance claim based on the sale and promotion of lead pigment, notwithstanding the harmful effects of lead poisoning. As the court explained, doing so would "stretch the concept of public nuisance far beyond recognition and would create a new and entirely unbounded tort antithetical to the meaning and inherent theoretical limitations of the tort of public nuisance." *In re Lead Paint*, 924 A.2d at 494. Similarly, the Oklahoma Supreme Court's decision overturning an award of damages based on the production, distribution, and deceptive marketing of opioids is on point. *Hunter*, 499 P.3d at 721. "[T]he central focus" of those complaints was that the defendants "failed to warn of the dangers" of their products when they "promot[ed] and market[ed]" them. *Id.* at 725. The court held that "[p]ublic nuisance is fundamentally ill-suited to resolve claims against product manufacturers," *id.* at 726, and that "[e]xtending public nuisance law to the manufacturing, marketing, and selling of products . . . would allow consumers to 'convert almost every products liability action into a [public] nuisance claim.'" *Id.* at 729–30. Indeed, applying nuisance law "to lawful products as the State requests would create unlimited and unprincipled liability for product manufacturers," which is why the court had "never applied public nuisance law to the manufacturing, marketing, and selling of lawful products." *Id.* at 725. In reaching its conclusion, the court recognized the "clear national trend to limit public nuisance to land or property use." *Id.* at 730.

Here, Plaintiff does not (and cannot) allege that Defendants' use of land or property in Maryland caused or contributed to global warming. To the contrary, Plaintiff has insisted that its nuisance claims are based on a theory that Defendants engaged in deception and misrepresentation unconnected to any real property in Maryland. *See, e.g.*, Compl. ¶ 221. But Maryland appellate courts have never recognized such a non-property basis for a nuisance action, and the "clear

national trend" is to resist extending nuisance to cover the production and promotion of consumer products. This Court should decline Plaintiff's invitation to upend centuries of established nuisance law by "creat[ing] a new and entirely unbounded tort antithetical to the meaning and inherent theoretical limitations of the tort of . . . nuisance." *In re Lead Paint Litig.*, 924 A.2d at 494.

While the U.S. District Court for the District of Maryland recently allowed two nuisance claims to proceed where the alleged conduct related to a defendant's products, rather than land use, *see State v. Exxon Mobil Corp.*, 406 F. Supp. 3d 420, 469 (D. Md. 2019); *Mayor & City Council of Baltimore v. Monsanto Co.*, 2020 WL 1529014, at *10 (D. Md. Mar. 31, 2020), this Court is not bound by a federal district court's expansion of Maryland law, *see Sessoms v. State*, 357 Md. 274, 287 (2000). Neither of those cases is precedential authority for extending Maryland nuisance law to engulf the distinct law of products liability. And both cases focused on the question whether Maryland law requires the defendant to have "exclusive control" of the nuisance-causing instrumentality. *Exxon*, 406 F. Supp. 3d at 468; *accord Monsanto*, 2020 WL 1529014, at *9. On that distinct point, the *Exxon* court allowed the claim to proceed because it could not find "case law foreclos[ing] this theory of public nuisance liability under Maryland law"—not because it identified any case law *supporting* a product-based nuisance claim. 406 F. Supp. 3d at 469.

Moreover, both cases relied on *Adams v. NVR Homes, Inc.* for the proposition that "[i]t has been held that where the finished product of a third party constitutes a public nuisance, the third party may be held liable for creation of the public nuisance, even though it no longer has control of the product creating the public nuisance." 193 F.R.D. 243, 256 (D. Md. 2000) (relying on *E. Coast Freight Lines*, 187 Md. at 397). But both *Adams* and *East Coast Freight Lines* involved the use of land: "contamination emanating from property formerly owned by the defendant" in the

former, 193 F.R.D. at 256, and a light pole that allegedly obstructed a public highway in the latter, 187 Md. at 393. Thus, *Exxon* and *Monsanto* erred in relying on property-based nuisance cases to expand nuisance law to allow claims untethered to the use of land.

In all events, neither *Monsanto* nor *Exxon* presented a nuisance theory that is remotely analogous to the theory in this case. In each case, the defendant purportedly "manufactured and distributed the toxic chemicals at issue," *Monsanto*, 2020 WL 1529014, at *10, and those chemicals leaked directly into the plaintiff's waters, *see id.* at *3; *Exxon*, 406 F. Supp. 3d at 461 (State "alleges that its waters were contaminated when MTBE gasoline was released into the environment from hundreds of release sites in the State, primarily from storage and delivery systems."). Here, by contrast, Plaintiff's nuisance theory is not predicated on the allegation that Defendants' fossil fuel products were released onto Plaintiff's land or into its waters. To the contrary, Plaintiff alleges that the "emissions" from billions of "humans combusting fossil fuels"—over more than a century and mostly not produced by Defendants—"comingle[d] in the atmosphere" from sources around the world, causing global warming, which in turn alters the environment in a manner that impacts its land through "rising sea levels" and flooding. Compl. ¶¶ 39–41, 224, 235. That attenuated theory of nuisance liability is readily distinguishable from the theories in *Monsanto* and *Exxon*—and finds no support in Maryland law.

In addition, Plaintiff purports to base liability on Defendants' alleged misrepresentations and deception. *See, e.g.*, Compl. ¶ 1. But there is no support in Maryland law for the proposition that this type of conduct is cognizable as a nuisance either. Maryland law requires a plaintiff to plead that the defendant has caused "an unreasonable interference with a right common to the general public." *Tadjer*, 300 Md. at 552 (quoting Restatement (Second) of Torts § 821B). What this Complaint essentially pleads for the nuisance is a right not to be deceived—which is an

"individual right," not a public right that could trigger a nuisance claim. Restatement (Second) of Torts § 821B. cmt. g. Thus, Plaintiff's allegations regarding purportedly deceptive marketing have no basis in nuisance law.[7]

Plaintiff's nuisance claims also fail because Defendants did not control the instrumentality alleged to cause the nuisance. Under Maryland law, as in many other States, "an action for either public or private nuisance requires the plaintiff to plead and prove that the defendant has control over the alleged nuisance." *Cofield v. Lead Indus. Ass'n*, 2000 WL 34292681, at *7 (D. Md. Aug. 17, 2000) (relying on *E. Coast Freight Lines*, 187 Md. at 401–02; *Callahan v. Clemens*, 184 Md. 520, 524 (1945)); *see also, e.g., In re Paraquat Prods. Liab. Litig.*, 2022 WL 451898, at *11 (S.D. Ill. Feb. 14, 2022) (dismissing nuisance claims under laws of all 11 States involved in multidistrict litigation because laws required control of instrumentality causing alleged nuisance). Plaintiff asserts that alleged impacts of global climate change constitute a nuisance caused by the combustion of fossil fuel products that release emissions into the atmosphere. Compl. ¶¶ 3, 45, 224, 233. But Plaintiff does not, and cannot, allege that Defendants control the time, place, or rate of combustion of coal, oil, and natural gas used by third parties worldwide. Under nuisance law, it "would run contrary to notions of fair play" to hold sellers liable when "they lack direct control over how end-purchasers use" the product. *City of Phila. v. Beretta U.S.A., Corp.*, 126 F. Supp. 2d 882, 911 (E.D. Pa. 2000), *aff'd*, 277 F.3d 415 (3d Cir. 2002). For these reasons, "courts have refrained from applying public nuisance doctrine in cases

[7] The D.C. Circuit rejected an attempt to premise a public nuisance claim on misleading statements as "radical," noting that it could "brook much mischief, including a multitude of inconsistent state prohibitions and requirements." *Holloway v. Bristol-Myers Corp.*, 485 F.2d 986, 1002 (D.C. Cir. 1973).

where the instrument of the nuisance is a lawfully sold product which has left the manufacturer's control." *Id.*[8]

Plaintiff's suit hinges on the premise that its purported harms flow not from any single source of emissions, but from the overall cumulative concentration of greenhouse gases in the Earth's atmosphere caused by, *inter alia*, the "combustion of fossil fuel products." Compl. ¶ 48. In other words, the "instrumentality" allegedly causing Plaintiff's claimed harms is the worldwide combustion of fossil fuels that releases greenhouse gas emissions. But combustion, and the resulting emissions, are not alleged to have occurred while Defendants controlled or possessed these fossil fuel products. By definition, those emissions occurred *after* Defendants relinquished control over these products to third parties. Even more problematic, the overwhelming majority of the emissions that Plaintiff alleges has caused global climate change resulted from the use of fossil fuels by consumers *outside of Maryland* and from fossil fuels that *Defendants did not produce or supply*. Defendants here supply a relatively small fraction of all the fossil-fuel products combusted by consumers and governments across the world, and there can be no serious dispute that Defendants lack control over fossil fuels they did not produce, let alone how consumers used the fuels they did produce.

---

[8] *See also, e.g.*, *Hunter*, 499 P.3d at 727–28 ("Another factor in rejecting the imposition of liability for public nuisance . . . is that J&J, as a manufacturer, did not control the instrumentality alleged to constitute the nuisance at the time it occurred."); *Lead Indus. Ass'n*, 951 A.2d at 449 ("As an additional prerequisite to the imposition of liability for public nuisance, a defendant must have *control* over the instrumentality causing the alleged nuisance *at the time the damage occurs*."); *In re Lead Paint Litig.*, 924 A.2d at 499 ("[A] public nuisance, by definition, is related to conduct, *performed in a location within the actor's control*, which has an adverse effect on a common right." (emphasis added)); *Beretta U.S.A. Corp.*, 277 F.3d at 422 ("[A]s defendants lack the requisite control over the interference with a public right, we will affirm the district court's dismissal of plaintiffs' public nuisance claim" alleging harm from gun violence); *Tioga Public School Dist.*, 984 F.2d at 920 (explaining in asbestos case that "liability for damage caused by a nuisance turns on whether the defendant is in control of the instrumentality alleged to constitute a nuisance").

The federal court in *Monsanto* and *Exxon* declined to follow *Cofield*, reasoning that "Maryland courts have never adopted the 'exclusive control' rule for public nuisance liability" and thus that "no case law *forecloses*" the plaintiffs' "theor[ies] of public nuisance liability under Maryland law." *Exxon*, 406 F. Supp. 3d at 468–69 (emphasis added). But the Maryland Supreme Court rejected a nuisance claim on precisely that basis in *Callahan*: There, a landowner brought a nuisance claim alleging that a negligently constructed wall on an adjoining property caused water to discharge onto her land, and she sued (among others) the adjoining landowners. 184 Md. at 522, 525. That claim failed because there was no allegation that the landowners "attempted to or could exercise any control over the manner in which the work [*i.e.*, constructing the wall] was performed, and there was no relation of principal and agent." *Id.* at 525. Similarly, in *Maenner v. Carroll*, the Maryland Supreme Court explained that when "a person is sought to be made responsible for a nuisance, not simply on the ground of his being the owner of the ground on which the nuisance exists, but because he has ordered or directed the doing of an act in a public highway which has created a nuisance, *it is necessary that the act be alleged either as having been done or caused to be done by the defendant himself, or by others under his direction and authority.*" 46 Md. 193, 215 (1877) (emphasis added).

Moreover, none of the cases cited in *Exxon* addressed a situation at all analogous to this case. In *Adams*, the court explained that "there has been no clear expression in the Maryland law concerning the viability of a claim of public nuisance arising as a result of contamination emanating from property formerly owned by the defendant," and it refused to "render a definitive ruling on the issue" at an early stage of the case. 193 F.R.D. at 256. In *East Coast Freight Lines*, the court explained that, in theory, "a contractor, even after he has completed his work, may be held liable in damages if such work is inherently dangerous and constitutes a public nuisance,"

such as (in that case) if the contractor placed a light pole "improperly." 187 Md. at 397–98. And in *Gorman v. Sabo*, the court reasoned that "[o]ne who does not create a nuisance may be liable for some active participation in the continuance of it or by the doing of some positive act evidencing its adoption." 210 Md. at 161. The defendant there did so by refusing to turn down an obnoxious radio "in the home he owned and lived in"; he "turned it up" himself on one occasion; and he "stood silent when his wife said that 'they' were purposely annoying" their neighbors. *Id.*

Even if those cases could be read to stand for the limited proposition that a defendant need not have "exclusive" control over the instrumentality causing the nuisance, they do not come close to establishing that a nuisance claim may proceed where, as here, Defendants have *no* control over such instrumentality. This Court should reject Plaintiff's proposed unprecedented expansion of Maryland nuisance law.

* * *

Maryland courts have rebuffed efforts to expand the law of nuisance. *See Little v. Union Trust Co.*, 45 Md. App. 178, 185 (1980) (efforts to expand nuisance law to cover negligence claims "have been repulsed by the Court of Appeals") (citing *State v. Feldstein*, 207 Md. 20 (1955)). This Court, too, should decline to upend hundreds of years of established nuisance law to "create a new and entirely unbounded tort antithetical to the meaning and inherent theoretical limitations of the tort of . . . nuisance." *In re Lead Paint Litig.*, 924 A.2d at 494.

2. Plaintiff's Failure-To-Warn Claims Should Be Dismissed Because Defendants Had No Duty To Warn Of Widely Publicized Risks Relating To Climate Change.

Plaintiff does not even attempt to allege that a warning by Defendants to Plaintiff could have prevented its injuries. Rather, Plaintiff alleges that Defendants "breached their duty of care by failing to adequately warn *any consumers or any other party* of the climate effects that inevitably flow from the intended use of their fossil fuel products." Compl. ¶ 241 (emphasis

added). "Duty . . . is an essential element of both negligence and strict liability causes of action for failure to warn." *Gourdine*, 405 Md. at 743. Here, Plaintiff seeks to use Maryland products liability law to impose a duty on Defendants to warn the world. Maryland courts have declined to impose such duties, however, which could result in unlimited liability. *See id.* at 744–54 (rejecting duty to an indeterminate class of people). Moreover, Plaintiff's Complaint acknowledges that the potential link between fossil fuel use and global climate change has been well understood for at least half a century, *see, e.g.*, Compl. ¶¶ 2, 103, 104, 143, precluding any duty to warn of such a "clear and obvious" danger and "generally known" risk. *Mazda Motor of Am., Inc. v. Rogowski*, 105 Md. App. 318, 330–31 (1995).

First, Plaintiff's sweeping duty-to-warn-the-world theory flies in the face of established law. "Duty," as the Maryland Supreme Court has explained, "requires a close or direct effect of the tortfeasor's conduct *on the injured party*." *Gourdine*, 405 Md. at 746 (emphasis added). For that reason, Maryland courts have "resisted the establishment of duties of care to indeterminate classes of people," because doing so would foster "boundless" liability and "make tort law unmanageable." *Id.* at 749 (quoting *Doe v. Pharmacia & Upjohn Co.*, 388 Md. 407, 420–21 (2005)). In *Gourdine*, for example, the Supreme Court held that a drug company owed no duty to warn a motorist killed by a woman taking the company's medication, because "duty should be defined . . . [with] regard to the size of the group to which the duty would be owed." *Id.* at 750–52. Imposing a duty to warn in such circumstances would create "a duty to the world, an indeterminate class of people," a result the Maryland Supreme Court has consistently rejected. *Id.* (collecting cases).

But that is exactly what Plaintiff proposes here. Plaintiff's theory is that Defendants "should have warned the public"—writ large—about the risks of climate change and that

Defendants' alleged failure to warn "consumers, the public, and regulators" caused a marginal increase in cumulative greenhouse gas emissions by unidentified third parties throughout the world, which ultimately injured Plaintiff and others. Compl. ¶ 142. Under that theory, no single actor's use of fossil fuels created risk to that user—because the harm flows not from any individual's use of the product, but rather from the overall concentration of greenhouse gases in the atmosphere, from cumulative *global* emissions over many decades. *See id.* ¶ 235. As in *Gourdine*, this Court should reject Plaintiff's attempt to impose such a boundless duty.

Second, under Maryland law there is no duty to warn of "clear and obvious" dangers and "generally known" risks. *Mazda Motor*, 105 Md. App. at 330–31; *see also Waterhouse v. R.J. Reynolds Tobacco Co.*, 368 F. Supp. 2d 432, 435 (D. Md. 2005), *aff'd*, 162 F. App'x 231 (4th Cir. 2006). A manufacturer has a duty to warn only when "the item produced has an inherent and *hidden* danger that the producer knows or should know could be a substantial factor in causing injury." *Virgil v. Kash N' Karry Serv. Corp.*, 61 Md. App. 23, 33 (1984) (emphasis added) (citation omitted). But Plaintiff repeatedly alleges that the link between fossil fuel use and global climate change has been *well understood and widely known for at least half a century*. For example, Plaintiff alleges that:

- "Decades of scientific research show that pollution from the production and use of Defendants' fossil fuel products plays a direct and substantial role in the unprecedented rise in emissions of greenhouse gas pollution and increased atmospheric CO_2 concentrations that have occurred since the mid-20th century. This dramatic increase in atmospheric CO_2 and other greenhouse gases is the main driver of the gravely dangerous changes occurring to the global climate." Compl. ¶ 2.

- "By 1965, concern over the potential for fossil fuel products to cause disastrous global warming reached the highest levels of the United States' scientific community" with the publication of a report by "President Lyndon B. Johnson's Science Advisory Committee's Environmental Pollution Panel." *Id.* ¶ 103.

- "In 1988, National Aeronautics and Space Administration (NASA) scientists confirmed that human activities were actually contributing to global warming" with "significant news coverage." *Id.* ¶ 143(a).

- "In 1990, the [Intergovernmental Panel on Climate Change] published its First Assessment Report on anthropogenic climate change, in which it concluded that . . . 'there is a natural greenhouse effect which already keeps the Earth warmer than it would otherwise be.'" *Id.* ¶ 143(d) (footnote omitted).

- "The United Nations began preparing for the 1992 Earth Summit . . . [which] resulted in the United Nations Framework Convention on Climate Change (UNFCCC), an international environmental treaty providing protocols for future negotiations aimed at 'stabiliz[ing] greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system.'" *Id.* ¶ 143(e).

See also, e.g., *id.* ¶ 136 (describing 1991 Shell film discussing "serious warning" about climate change "endorsed by a uniquely broad consensus of scientists in their report to the UN at the end of 1990"), ¶ 181 (discussing 1997 public speech of BP's chief executive acknowledging the "effective consensus" that "there is a discernible human influence on the climate").

Because Plaintiff's own allegations make clear that the alleged potential effects of fossil fuel use on the climate have been "open and obvious" for decades, Defendants had no duty to warn about these alleged dangers, "whether or not [the danger was] actually known" to Plaintiff. *Mazda Motor*, 105 Md. App. at 327 (quoting 1 Am. L. Prod. Liab. 3d § 1:70 (1987)). The standard is not "whether the plaintiff actually recognized the risk, but whether a reasonable person in the plaintiff's position would have done so." *Id.* at 328 (citation omitted); *see also Estate of White v. R.J. Reynolds Tobacco Co.*, 109 F. Supp. 2d 424, 435 (D. Md. 2000) (cigarette manufacturers did not have a duty to warn "because the dangers of smoking cigarettes were commonly known").

3. Plaintiff's Design Defect Claims Should Be Dismissed Because Plaintiff Fails To Allege Any "Design" Defect.

For a seller to be strictly liable for a design defect, "the product must be both in a 'defective condition' *and* 'unreasonably dangerous' at the time that it is placed on the market by the seller."

Phipps v. Gen. Motors Corp., 278 Md. 337, 344 (1976) (emphasis added); *accord Ellsworth v. Sherne Lingerie, Inc.*, 303 Md. 581, 591 (1985) (plaintiff must show "the product is in a defective condition . . . and unreasonably dangerous").[9] Plaintiff has not and cannot adequately allege either.

To begin, it is black-letter law in Maryland that a product "which functions as intended and as expected is not 'defective,'" even if use of the product creates negative externalities. *Kelley v. R.G. Indus., Inc.*, 304 Md. 124, 138 (1985), *abrogated on other grounds by* Md. Code Ann., Pub. Safety § 5-402(b). Thus, in *Halliday v. Sturm, Ruger & Co.*, the Maryland Supreme Court held that a firearm was not defective because "it worked exactly as it was designed and intended to work." 368 Md. 186, 208 (2002). And in *Ziegler v. Kawasaki Heavy Industries, Ltd.*, the Appellate Court of Maryland held that a motorcycle was not defective, despite lacking a safety feature, because it "operated exactly as intended." 74 Md. App. 613, 623 (1988).

Moreover, "a product cannot be defective because of a characteristic that is *inherent* in the product itself." *Cofield*, 2000 WL 34292681, at *2 (dismissing design defect claim as to lead pigment). That is exactly why the Appellate Court of Maryland in *Dudley v. Baltimore Gas & Elec. Co.* rejected a claim that natural gas was defective on the theory "that the gas was flammable and highly explosive." 98 Md. App. 182, 202–03 (1993). The court reasoned that "[f]lammability and explosiveness are intrinsic to the nature of natural gas." *Id.* at 202. Thus, "[t]o claim that the gas supplied by [the defendant] was defective and unreasonably dangerous because it is flammable

[9] With respect to a negligent design defect claim, the elements "are essentially the same, except that in a negligence action the plaintiff must show a breach of a duty of care by the defendant, while in a strict liability context the plaintiff must show that the product was unreasonably dangerous." *Cofield*, 2000 WL 34292681, at *2. Here, because Plaintiff cannot show that Defendants' products were in a defective condition at the time they were placed on the market, or that Defendants breached a cognizable duty, the negligent design defect claim also fails.

and highly explosive is equivalent to asserting that a kitchen knife is defective and unreasonably dangerous because it is sharp and can cut things." *Id.* at 203.[10]

Far from alleging that Defendants' products did not function as intended and expected, the Complaint insists that *all* of Plaintiff's alleged injuries resulted from "the normal and intended use" of Defendants' "fossil fuel products." Compl. ¶ 18. Plaintiff does not allege that any user of Defendants' products would have expected them to function any differently than alleged. Nor could it: Gasoline, jet fuel, natural gas, coal, and other fossil fuels are meant to be combusted, and carbon emissions are an inherent byproduct of the combustion of fossil fuel products by end users. Plaintiff itself asserts that the "climate effects" that caused its alleged injuries "*inevitably flow from the intended use* of [Defendants'] fossil fuel products." *Id.* ¶ 241. But, as the Maryland Supreme Court explained in *Kelley*, the fact that a product's "normal function" may be dangerous "is not sufficient for [a] manufacturer to incur liability"—there must *also* "be a problem" in the product's "manufacture or *design*." 304 Md. at 136 (emphasis altered). Because Plaintiff does not and cannot identify any problem with how Defendants *designed* their fossil fuel products, its *design* defect claims should be dismissed.

Even if Plaintiff could allege a "defective condition," it does not and cannot allege facts showing that Defendants' fossil fuel products are "unreasonably dangerous." *Phipps*, 278 Md. at 344. To evaluate design defect claims where a product has functioned as intended, Maryland courts employ the "consumer expectation" test, *Simpson v. Standard Container Co.*, 72 Md. App.

---

[10] *See also, e.g., Town of Lexington v. Pharmacia Corp.*, 133 F. Supp. 3d 258, 270 (D. Mass. 2015) (holding no design defect where Plaintiff was unable to identify a defective aspect of the design of polychlorinated biphenyls ("PCBs") beyond the "mere presence of PCBs," as "PCBs cannot be PCBs without the presence of PCBs themselves, along with their inherent characteristics"); *Godoy ex rel. Gramling v. E.I. du Pont de Nemours & Co.*, 768 N.W.2d 674, 678 (Wis. 2009) (rejecting design defect claim involving lead pigment "where the presence of lead is the alleged defect in design, and its very presence is a characteristic of the product itself. Without lead, there can be no white lead carbonate pigment").

199, 203 (1987), which considers whether a product "is dangerous to an extent beyond that which would be contemplated by the ordinary consumer who purchased it with the ordinary knowledge common to the community as to the product's characteristics," *Halliday*, 368 Md. at 194 (adopting Restatement (Second) of Torts § 402A); *see also Kelley*, 304 Md. at 136 (finding a handgun not unreasonably dangerous, though "capable of being used . . . to inflict harm," because an ordinary consumer would "expect a handgun to be dangerous").

As an initial matter, Plaintiff does not attempt to allege that Defendants' products themselves, or even emissions from Defendants' products, are dangerous to the user. Rather, Plaintiff's theory is that the collective emissions from billions of users of fossil fuels produced and sold by Defendants and many others over decades, combined with emissions from countless other sources, have contributed to climate change. *See* Compl. ¶ 253. That unprecedented theory of "dangerousness" finds no support in Maryland design-defect law.

But even if Plaintiff had adequately alleged that fossil fuel products are dangerous, they are not unreasonably so as a matter of law. Plaintiff alleges widespread, longstanding knowledge of the exact characteristics of the fossil fuels that Plaintiff claims are hazardous. For example, Plaintiff alleges that the relationship between greenhouse gas emissions and climate change has been publicly known since at least the 1960s, and that knowledge only grew in magnitude, specificity, and urgency in the years that followed. Compl. ¶¶ 103–05. Indeed, Plaintiff alleges that in 1965, President Lyndon B. Johnson and his science advisory committee publicly acknowledged and forewarned of anthropogenic climate change. *Id.* ¶ 103. Those allegations belie Plaintiff's claim that fossil fuel products "have not performed as safely as an ordinary consumer would expect them to" with respect to emissions of greenhouse gases. *Id.* ¶ 253. Despite the known risks associated with fossil fuels, billions of ordinary consumers (including Plaintiff)

have continued to use them as intended for their myriad benefits, thus demonstrating that fossil fuels are not defective or unreasonably dangerous. In fact, in 2021, three years *after* Plaintiff filed its Complaint, the Biden Administration announced that it was "engaging with relevant OPEC+ members" to encourage "*production increases*" of crude oil in hopes of lowering "high[] gasoline costs," because "reliable and stable energy supplies" were (and still are) essential to the "ongoing global recovery" from the pandemic.[11] And as recently as March of this year, the Biden Administration praised the recent increase in U.S. oil and gas exports, acknowledging that "oil and gas is going to remain a part of our energy mix for years to come. Even the boldest projections for clean energy deployment suggest that in the middle of the century we are going to be using abated fossil fuels."[12]

4. Plaintiff's Trespass Claim Fails Because Plaintiff Has Not Adequately Pleaded Any Of Its Elements.

Plaintiff's trespass claim fares no better, for multiple reasons. ***First***, to prevail on a trespass claim under Maryland law, a plaintiff must establish "an interference with a possessory interest in his property." *United Food & Commercial Workers Int'l Union v. Wal-Mart Stores, Inc.*, 228 Md. App. 203, 234 (2016). But here, Plaintiff fails to allege, as it must, that Defendants interfered with property over which it has "exclusive possession." *Exxon Mobil Corp. v. Albright*, 433 Md. 303, 408 (2013), *reconsideration granted in part on other grounds*, 433 Md. 502 (2013). Plaintiff vaguely alleges that floodwaters have "enter[ed] its real property," *id.* ¶ 286, but Defendants and

[11] The White House, *Statement by National Security Advisor Jake Sullivan on the Need for Reliable and Stable Global Energy Markets* (Aug. 11, 2021), https://www.whitehouse.gov/briefing-room/statements-releases/2021/08/11/statement-by-national-security-advisor-jake-sullivan-on-the-need-for-reliable-and-stable-global-energy-markets.

[12] Brian Dabbs, *Biden Admin Paradox: Boost Oil – and Cut CO2?*, EnergyWire (March 9, 2023), https://subscriber.politicopro.com/article/eenews/2023/03/09/biden-admin-paradox-boost-oil-but-cut-co2-00086186.

the Court are left to speculate about which property Plaintiff refers to and whether Plaintiff had exclusive possession of any such property.

Second, Plaintiff does not allege that Defendants, *or even their products*, intruded upon any property owned by Plaintiff. Rather, Plaintiff alleges that Defendants "caused flood waters, extreme precipitation, saltwater, and other materials, to enter [its] real property." Compl. ¶ 284. But no precedent supports the novel assertion that a party can be held liable in trespass because use of its product by third parties around the world over nearly a century results in weather changes that affect another's property. In fact, the Restatement suggests the opposite, providing that an actor causes an object to trespass upon another's property when, "without himself entering the land, [he] may invade another's interest in its exclusive possession *by throwing, propelling, or placing a thing* either on or beneath the surface of the land or in the air space above it." Restatement (Second) of Torts § 158 cmt. i (emphasis added).

Consistent with the Restatement, Maryland courts have long held that where, as here, property is allegedly "invaded by an inanimate or intangible object[,] it is obvious that the defendant must have *some connection with or some control* over that object in order for an action in trespass to be successful against him." *Rockland Bleach & Dye Works Co. v. H. J. Williams Corp.*, 242 Md. 375, 387 (1966) (emphasis added). Just as obvious, Plaintiff does not and cannot allege that Defendants exercised control over the oceans, clouds, or precipitation. Rather, Plaintiff's theory is that Defendants should be held liable for trespass because they introduced "fossil fuel products into the stream of commerce," which allegedly contributed to global warming and its resultant weather changes. Compl. ¶ 287. The link between this activity and the harms of which Plaintiff complains is far too attenuated to constitute the control necessary to establish liability for trespass. *See JBG/Twinbrook Metro Ltd. P'ship v. Wheeler*, 346 Md. 601, 625–26

(1997) (finding that a gas company contracting with station owner to sell company's gas was not liable in trespass for subsurface percolation of gas onto an adjacent property because company had "insufficient control, as a matter of law" over the gasoline).

Third, Plaintiff's trespass claim is not ripe to the extent it is based on anticipated *future* invasions of property, and virtually all of Plaintiff's alleged injuries are entirely speculative and will be felt (if at all) only decades hence. For example, Plaintiff alleges that, "*within 80 years*, floods breaking today's records would be expected once a year in Baltimore" and that there "is also a higher than 4 in 5 chance of flooding above nine feet in Baltimore *by 2100* under [a] high sea level rise scenario." *See, e.g.*, Compl. ¶ 198 (emphases added). But Plaintiff cannot state a trespass claim based on such speculative forecasts because "trespass requires that the defendant . . . *entered* or *caused* something harmful or noxious to enter onto the plaintiff's land." *Albright*, 433 Md. at 408 (emphases added). Future invasions that have not yet occurred—and may never occur—are not actionable. *See id.* ("General contamination of an aquifer that may or may not reach a given [plaintiff's] property at an undetermined point in the future is not sufficient to prove invasion of property.").

As one court observed, "modern courts do not favor trespass claims for environmental pollution." *In re Paulsboro Derailment Cases*, 2013 WL 5530046, at *8 (D.N.J. Oct. 4, 2013). Indeed, "use of trespass liability for [environmental pollution] has 'been held to be an inappropriate theory of liability' and an 'endeavor to torture old remedies to fit factual patterns not contemplated when those remedies were fashioned.'" *Woodcliff, Inc. v. Jersey Constr., Inc.*, 900 F. Supp. 2d 398, 402 (D.N.J. 2012). The Court should therefore dismiss Plaintiff's claim for trespass.

5. Plaintiff Fails Adequately To Allege An MCPA Claim.

To state an MCPA claim, a plaintiff must show: (1) an unfair or deceptive practice or misrepresentation, (2) upon which it relied, (3) that caused it actual injury. *See Lloyd v. Gen. Motors Corp.*, 397 Md. 108, 140–43 (2007). Plaintiff's MCPA claim fails for multiple reasons.

a. Plaintiff Does Not Allege That It Relied On Any Statements.

Plaintiff invokes the MCPA's "private right of action" provision, Md. Code Ann., Com. Law § 13-408(a). Compl. ¶ 293. But Plaintiff cannot state a claim to remedy any harm it purportedly incurred as a consumer because Plaintiff does not allege that it relied on any supposed misrepresentation by Defendants, as it must do "to prevail on a damages action under the MCPA." *Bank of Am., N.A. v. Jill P. Mitchell Living Tr.*, 822 F. Supp. 2d 505, 532 (D. Md. 2011); *see also Bey v. Shapiro Brown & Alt, LLP*, 997 F. Supp. 2d 310, 319 (D. Md. 2014) (dismissing MCPA claim because plaintiff "did not rely on Defendants' representations"); *Farwell v. Story*, 2010 WL 4963008, at *8–9 (D. Md. Dec. 1, 2010) (same). Plaintiff alleges only that Defendants "intended that recipients of their marketing messages would rely" on those messages and that as a result, Defendants "obtained income, profits, and other benefits [they] would not otherwise have obtained," Compl. ¶¶ 296–97, not that *Plaintiff* purchased additional fossil fuel products *in reliance on Defendants' supposed misrepresentations*. Plaintiff's MCPA claim should be dismissed on this ground alone.[13]

---

[13] Plaintiff does not allege that third-party consumers in fact relied on Defendants' alleged misrepresentations. But if it had, Plaintiff could not state a claim based on reliance by third-party consumers because Plaintiff lacks standing to pursue MCPA claims on behalf of such consumers. The Consumer Protection Division of the Office of the Attorney General can enforce the MCPA on behalf of third-party consumers under certain circumstances, *see* Md. Code Ann., Com. Law § 13-204, but Plaintiff does not—and as a local government cannot—invoke any such regulatory authority here. *See id.* § 13-408(a) ("In addition to any action by the Division or Attorney General authorized by this title . . . , any person may bring an action to recover for injury or loss sustained *by him* as the result of a practice prohibited by this title." (emphasis added)); *see also Lloyd*, 397 Md. at 143 (explaining that plaintiff bringing MCPA claim must have suffered actual injury or loss "as a result of his or her reliance on the seller's misrepresentation").

b. Plaintiff's MCPA Claim Is Otherwise Meritless Because It Is Not Premised on Any Allegedly Deceptive Statements About Defendants' Products.

Plaintiff's MCPA claim should also be dismissed because the Complaint does not identify any alleged misrepresentations relating to Defendants' particular *products*, as opposed to *climate change*, a climatological phenomenon. The MCPA requires that the misrepresentations be "in" the "sale" or "offer for sale" of "consumer goods . . . or consumer services." Md. Code Ann., Com. Law § 13-303(1)–(2). As a result, a claim under the MCPA cannot be based on alleged misrepresentations that "were not made in the course of a sale." *Rutherford v. BMW of N. Am., LLC*, 579 F. Supp. 3d 737, 751 (D. Md. 2022); *see also Morris v. Osmose Wood Preserving*, 340 Md. 519, 542 (1995) (MCPA requires deception in the course of "selling, offering or advertising the [product] that the plaintiffs bought").

Here, the focus of Plaintiff's Complaint is not deception related to the sale of Defendants' products. Plaintiff's allegations with respect to the supposed "campaign" relate only to the *risks of climate change* writ large—not to Defendants' specific products. According to Plaintiff, "Defendants embarked on a concerted public relations campaign to cast doubt *on the science* connecting climate change to fossil fuel products and greenhouse emissions," including through "advertisements challenging the validity of climate science . . . intended to obscure the scientific consensus on anthropogenic climate change and induce political inertia to address it," and their supposed campaign sought "to convince the public that the scientific basis for climate change was in doubt." Compl. ¶¶ 147 (emphasis added), 152. Those alleged statements have nothing to do

---

Thus, Plaintiff's MCPA claim should be dismissed to the extent it seeks damages for statements to third parties.

with any particular fossil fuel product, much less the sale of any such product. This, too, is fatal to the MCPA claim.

c. Plaintiff's MCPA Claim Is Time-Barred.

MCPA claims are "subject to the [default] three-year statute of limitations" codified in Section 5-101 of the Maryland Code, Courts and Judicial Proceedings Article. *Cain v. Midland Funding, LLC*, 475 Md. 4, 39 (2021). Plaintiff's MCPA claim focuses on a supposed "decades-long campaign" to "conceal[], discredit[], and/or misrepresent[] information" about climate change. Comp ¶¶ 145–46. But Plaintiff does not identify any allegedly misleading statements by Defendants as part of that "campaign" during the limitations period. Rather, Plaintiff alleges that this campaign started in approximately 1988, Compl. ¶ 141, and that the last alleged statement made as a part of this purported campaign occurred in 1998—*nearly two decades before the relevant limitations period began in 2015. See id.* ¶ 158. Thus, Plaintiff's claim is time-barred.

Notably, Plaintiff does not attempt to allege that it could not have discovered the facts giving rise to its claim before July 20, 2015. *See Cain*, 475 Md. at 35 (under Maryland's discovery rule, "a claim accrues"—and the statute of limitations begins to run—"when the plaintiff 'knew or reasonably should have known of the wrong'"). For good reason: Any suggestion that a reasonable plaintiff could not have known about Defendants' purported "campaign" and its alleged effects before July 2015 is inconceivable and controverted by Plaintiff's own allegations.

After all, the Complaint itself alleges that as early as *1965*, "statements from the Johnson Administration . . . put Defendants on notice of the potentially substantial dangers to people, communities, and the planet associated with unabated use of their fossil fuel products." Compl. ¶ 104. And the Complaint alleges that the link between the combustion of fossil fuels and global climate change has been well understood, and widely known, since that time. *See, e.g., id.* ¶¶ 2, 103, 128, 143. Similarly, Plaintiff alleges that Defendants began their supposed "campaign" *30*

years before Plaintiff filed this action and that this alleged "campaign" was purportedly carried out in full view of the public. *See, e.g.*, *id.* ¶ 147. If, as Plaintiff alleges, fossil fuels' impact on climate change was *publicly* known and Defendants engaged in a *public* "campaign of denial," then Plaintiff clearly would have been on inquiry notice of its MCPA claim as soon as Defendants made their alleged statements purportedly denying any such impact.

Moreover, the same accusations that Plaintiff makes here regarding a purported "campaign of denial" by energy companies have been widely publicized by other parties for decades before Plaintiff filed its Complaint. As early as 1997, *The Washington Post* ran a story on the front page of its opinions section charging that, "[e]ven as global warming intensifies, the evidence is being denied with a ferocious disinformation campaign. Largely funded by oil and coal interests, it is being carried out on many fronts." Ross Gelbspan, *Hot Air, Cold Truth*, Wash. Post (May 25, 1997), https://tinyurl.com/mwwxdbuv. A year later, the Sunday edition of *The New York Times* reported on its front page that oil-and-gas "[i]ndustry opponents of a treaty to fight global warming have drafted an ambitious proposal to spend millions of dollars to convince the public that the environmental accord is based on shaky science." John H. Cushman Jr., *Industrial Group Plans to Battle Climate Treaty*, N.Y. Times (Apr. 26, 1998), https://tinyurl.com/fakcbkph.[14] And given that Plaintiff alleges that the *Washington Post* and the *New York Times* are publications "with substantial circulation to Maryland," Compl. ¶ 129, Plaintiff cannot seriously contend that these articles did not provide it with at least reasonable notice of its potential MCPA claim.

And if all that were not enough, States and municipalities filed suits alleging a link between fossil fuels and climate change more than a *decade* before this suit, including in cases that reached

[14] Defendants deny the accuracy of these materials and do not offer them for the truth of their contents, but only to show that they put Plaintiff on notice of its potential MCPA claims. Accordingly, the Court may take judicial notice of the fact that these articles were published. *See* Md. R. 5-201(b)(2).

the U.S. Supreme Court. *See, e.g.*, *AEP*, 564 U.S. 410; *Kivalina*, 663 F. Supp. 2d 863. In fact, Plaintiff *itself* was one of the petitioners in *Massachusetts v. EPA*, where Plaintiff called "global warming 'the most pressing environmental challenge of our time,'" and the Supreme Court found "that burning fossil fuels could lead to global warming." 549 U.S. 497, 505 (2007). Plaintiff filed its petition in that action *twenty years* ago. Petition, *Mayor of Balt. City v. EPA*, No. 03-1364 (D.C. Cir. Oct. 23, 2003).

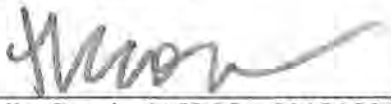
Accordingly, Plaintiff cannot possibly deny that it was aware of the asserted link between fossil fuel emissions and climate change long before July 2015. Indeed, in "response to the growing concern over climate change, the Maryland General Assembly enacted legislation" *in 2004* "intended to reduce Maryland greenhouse gas emissions." *Bd. of Cty. Comm'rs of Washington Cty. v. Perennial Solar, LLC*, 464 Md. 610, 621 (2019); *see also Accokeek v. Public Serv. Comm.*, 451 Md. 1, 13 (2016) (explaining that "the public had raised concerns about greenhouse gas emissions . . . and its overall contribution to climate change"). Any assertion that Plaintiff was not on reasonable notice of the facts giving rise to its claim by July 2015 would be absurd.

IV. CONCLUSION

For these reasons, Defendants respectfully request that the Court dismiss Plaintiff's Complaint in its entirety with prejudice.

Dated: October 16, 2023

Respectfully submitted,



Tonya Kelly Cronin (AIS No. 0212180158)
Alison C. Schurick (AIS No. 1412180119)
BAKER, DONELSON, BEARMAN,
CALDWELL & BERKOWITZ P.C.
100 Light Street, 19th Floor
Baltimore, MD 21202
Telephone: (410) 862-1049
Facsimile: (410) 547-0699
Email: tykelly@bakerdonelson.com
Email: aschurick@bakerdonelson.com

Theodore J. Boutrous, Jr. (*pro hac vice*)
William E. Thomson (*pro hac vice*)
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071
Telephone: 213.229.7000
Facsimile: 213.229.7520
tboutrous@gibsondunn.com
wthomson@gibsondunn.com

Andrea E. Neuman (*pro hac vice*)
GIBSON, DUNN & CRUTCHER LLP
200 Park Avenue
New York, NY 10166
Telephone: 212.351.4000
Facsimile: 212.351.4035
aneuman@gibsondunn.com

Thomas G. Hungar (*pro hac vice*)
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.,
Washington, DC 20036
Telephone: 202.955.8500
Facsimile: 202.467.0539
thungar@gibsondunn.com

Joshua D. Dick (*pro hac vice*)
GIBSON, DUNN & CRUTCHER LLP
555 Mission Street
San Francisco, CA 94105-0921
Telephone: 415.393.8200
Facsimile: 415.393.8306
jdick@gibsondunn.com

Attorneys for Defendants Chevron Corporation (#7) and Chevron U.S.A. Inc. (#8)

Martha Thomsen (CPF No. 1212130213)
Megan Berge (*pro hac vice*)
Sterling Marchand (*pro hac vice*)
BAKER BOTTS L.L.P.
700 K Street, N.W.
Washington, D.C. 20001-5692
Telephone: (202) 639-7863
Facsimile: (202) 508-9329
Email: martha.thomsen@bakerbotts.com
Email: megan.berge@bakerbotts.com
Email: sterling.marchand@bakerbotts.com

J. Scott Janoe (*pro hac vice*)
BAKER BOTTS L.L.P.
910 Louisiana Street, Suite 3200
Houston, Texas 77002-4995
Telephone: (713) 229-1553
Facsimile: (713) 229 7953
Email: scott.janoe@bakerbotts.com

Attorneys for Defendant Hess Corporation (#23)

Jerome A. Murphy (CPF No. 9212160248)
Tracy A. Roman (admitted *pro hac vice*)
CROWELL & MORING LLP
1001 Pennsylvania Avenue, NW
Washington, DC 20004
Tel: (202) 624-2500
Fax: (202) 628-5116
jmurphy@crowell.com
troman@crowell.com

Honor R. Costello (admitted *pro hac vice*)
Mara R. Lieber (*pro hac vice* forthcoming)
CROWELL & MORING LLP
590 Madison Avenue, 20th Fl.
New York, NY 10022
Tel.: (212) 223-4000
Fax: (212) 223-4134
hcostello@crowell.com
mlieber@crowell.com

Daniella A. Einik (AIS No. 1012140232)
Noel J. Francisco (admitted *pro hac vice*)
David M. Morrell (admitted *pro hac vice*)
51 Louisiana Avenue, N.W.
Washington, DC 20001
Telephone: (202) 879-3939
Facsimile: (202) 626-1700
Email: njfrancisco@jonesday.com
Email: dmorrell@jonesday.com
Email: deinik@jonesday.com

David C. Kiernan (admitted *pro hac vice*)
555 California Street, 26th Floor
San Francisco, CA 94104
Telephone: (415) 626-3939
Facsimile: (415) 875-5700
Email: dkiernan@jonesday.com

Andy R. Stanton (*pro hac vice* pending)
Joseph N. Parsons (*pro hac vice* pending)
500 Grant Street, 45th Floor
Pittsburgh, PA 15219
Telephone: (412) 391-3939
Facsimile: (412) 394-7959
Email: astanton@jonesday.com
Email: jparsons@jonesday.com

Attorneys for Defendant CNX Resources Corporation (#24)

Attorneys for CONSOL Energy Inc. (#25) and CONSOL Marine Terminals LLC (#26)

Mark S. Saudek (AIS No. 9512140123)
GALLAGHER EVELIUS & JONES LLP
218 North Charles Street, Suite 400
Baltimore, Maryland 21201
Ph.: (410) 347-1365
Fax: (410 468-2786
msaudek@gejlaw.com

Robert Reznick (*pro hac vice* forthcoming)
ORRICK, HERRINGTON & SUTCLIFFE, LLP
1152 15th Street NW
Washington, DC 20005
Tel.: (202) 339-8600
Fax: (202) 339-8500
rreznick@orrick.com

James Stengel (*pro hac vice* forthcoming)
ORRICK, HERRINGTON & SUTCLIFFE, LLP
51 West 52nd Street

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,

New York, New York 10019-6142
Tel.: (212) 506-5000
Fax: (212) 506-5151
jstengel@orrick.com

Attorneys for Defendants Marathon Oil Corporation (#20) and Marathon Oil Company (#19)

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 (#9) and EXXONMOBIL OIL CORPORATION (#10)

William N. Sinclair (CPF No. 0808190005)
Ilona Shparaga (CPF No. 1712140176)
SILVERMAN THOMPSON
SLUTKIN & WHITE, LLC
400 E. Pratt St., Suite 900
Baltimore, MD 21202
Telephone: (410) 385-2225
Facsimile: (410) 547-2432
Email: bsinclair@silvermanthompson.com
Email: ishparaga@silvermanthompson.com

David C. Frederick (*pro hac vice*)
James M. Webster, III (CPF No. 9412150266)
Daniel S. Severson (*pro hac vice*)
Grace W. Knofczynski (*pro hac vice*)
KELLOGG, HANSEN, TODD, FIGEL & FREDERICK, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
Tel.: (202) 326-7900
Fax: (202) 326-7999
dfrederick@kellogghansen.com
jwebster@kelloghansen.com
dseverson@kellogghansen.com
gknofczynski@kellogghansen.com

Counsel for Defendants Shell plc (f/k/a Royal Dutch Shell plc) (#11) and Shell USA, Inc. (f/k/a Shell Oil Company) (#12)

Michelle N. Lipkowitz (AIS No. 0212180016)
MINTZ, LEVIN, COHN, FERRIS, GLOVSKY AND POPEO, P.C.
555 12th Street NW , Suite 1100
Washington, DC 20004
(202) 434-7449
Email: MNLipkowitz@mintz.com

Thomas K. Prevas (AIS No. 0812180042)
SAUL EWING ARNSTEIN & LEHR LLP
Baltimore, Maryland 21202-3133
Telephone: (410) 332-8683
Facsimile (410) 332-8123
Email: thomas.prevas@saul.com

Attorneys for Defendants CROWN CENTRAL LLC (#5) and CROWN CENTRAL NEW HOLDINGS LLC (#6)

Warren N. Weaver (CPF No. 8212010510)
WHITEFORD TAYLOR &
PRESTON LLP
7 Saint Paul Street., Suite 1400
Baltimore, MD 21202
Telephone: (410) 347-8757
Facsimile: (410) 223-4177
Email: wweaver@wtplaw.com

EIMER STAHL LLP
Nathan P. Eimer, (*pro hac vice* forthcoming)
Lisa S. Meyer, (*pro hac vice* forthcoming)
224 South Michigan Avenue, Suite 1100
Chicago, IL 60604
Tel: (312) 660-7600
neimer@eimerstahl.com
lmeyer@eimerstahl.com

Robert E. Dunn (*pro hac vice* forthcoming)
99 S. Almaden Blvd. Suite 600
San Jose, CA 95113
Tel: (408) 889-1690
rdunn@eimerstahl.com

Attorneys for Defendant CITGO Petroleum Corporation (#13)

John B. Isbister (AIS No. 7712010177)
Jaime W. Luse (AIS No. 0212190011)
TYDINGS & ROSENBERG LLP
One East Pratt Street, Suite 901
Baltimore, MD 21202
jisbister@tydings.com
jluse@tydings.com
Tel: 410-752-9700
Fax: 410-727-5460

SULLIVAN & CROMWELL LLP
Richard C. Pepperman II (*pro hac vice* pending)
125 Broad Street
New York, NY 10004

Perie Reiko Koyama (CPF No. 1612130346)
HUNTON ANDREWS KURTH LLP
2200 Pennsylvania Avenue, NW
Washington, DC 20037
Telephone: (202) 955-1500
Facsimile: (202) 778-2201
Email: PKoyama@HuntonAK.com

Shannon S. Broome (*pro hac vice*)
HUNTON ANDREWS KURTH LLP
50 California Street, Suite 1700
San Francisco, CA 94111
Telephone: (415) 975-3700
Facsimile: (415) 975-3701
Email: SBroome@HuntonAK.com

Shawn Patrick Regan (*pro hac vice*)
HUNTON ANDREWS KURTH LLP
200 Park Avenue, 52nd Floor
New York, NY 10166
Telephone: (212) 309-1000
Facsimile: (212) 309-1100
Email: SRegan@HuntonAK.com

Cassandra (Sandy) C. Collins (*pro hac vice* pending)
HUNTON ANDREWS KURTH LLP
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, VA
Tel: (804) 788-8692
Fax: (804) 788-8218
Email: SCollins@HuntonAK.com

Counsel for Defendants MARATHON PETROLEUM CORPORATION (#21) and SPEEDWAY LLC (#22)

David B. Hamilton (CPF No. 8406010156)
A. Neill Thupari (CPF No. 1412180223)
DLA PIPER LLP (US)
650 South Exeter Street
11th Floor

Telephone: (212) 558-4000
Facsimile: (212) 558-3588
peppermanr@sullcrom.com

Amanda Flug Davidoff (*pro hac vice* pending)
1700 New York Avenue, NW
Washington, D.C. 20006
Telephone: (202) 956-7570
Facsimile: (202) 956-7676
davidoffa@sullcrom.com

ARNOLD & PORTER KAYE SCHOLER LLP
Nancy Milburn (admitted *pro hac vice*)
Diana Reiter (admitted *pro hac vice*)
250 West 55th Street
New York, NY 10019-9710
Telephone: (212) 836-8000
Facsimile: (212) 836-8689
nancy.milburn@arnoldporter.com
diana.reiter@arnoldporter.com

John D. Lombardo (admitted *pro hac vice*)
777 South Figueroa Street, 44th Floor
Los Angeles, CA 90017-5844
Telephone: (213) 243-4000
Facsimile: (213) 243-4199
john.lombardo@arnoldporter.com

Jonathan W. Hughes (admitted *pro hac vice*)
Three Embarcadero Center, 10th Floor
San Francisco, CA 94111-4024
Telephone: (415) 471-3100
Facsimile: (415) 471-3400
jonathan.hughes@arnoldporter.com

Attorneys for BP p.l.c. (#1), BP America Inc. (#2), and BP Products North America Inc. (#3)

Matthew J. Peters (CPF No. 1212120369) (cap with authority)
LATHAM & WATKINS LLP
555 Eleventh Street NW, Suite 1000
Washington, DC 20004-1304

Baltimore, MD 21202-4200
Telephone: (410) 580-4120
Facsimile: (410) 580-3001
Email: david.hamilton@us.dlapiper.com
Email: Neill.thupari@us.dlapiper.com

Rebecca Weinstein Bacon (*pro hac vice*)
BARTLIT BECK LLP
Courthouse Place
54 West Hubbard Street
Chicago, IL 60654
Telephone: (312) 494-4400
Facsimile: (312) 494-4440
Email: rweinstein.bacon@bartlitbeck.com

Jameson R. Jones (*pro hac vice*)
Daniel R. Brody (*pro hac vice*)
BARTLIT BECK LLP
1801 Wewatta Street, Suite 1200
Denver, CO 80202
Telephone: (303) 592-3123
Facsimile: (303) 592-3140
Email: jameson.jones@bartlit-beck.com
Email: dan.brody@bartlit-beck.com

Steven M. Bauer (*pro hac vice*)
Margaret A. Tough (*pro hac vice*)
Nicole C. Valco (*pro hac vice*)
Katherine A. Rouse (*pro hac vice*)
LATHAM & WATKINS LLP
505 Montgomery Street, Suite 2000
San Francisco, CA 94111-6538
Telephone: (415) 391-0600
Facsimile: (415) 395-8095
Email: steven.bauer@lw.com
Email: margaret.tough@lw.com
Email: nicole.valco@lw.com
Email: katherine.rouse@lw.com

Matthew J. Peters (CPF No. 1212120369)
LATHAM & WATKINS LLP
555 Eleventh Street NW, Suite 1000
Washington, DC 20004-1304
Telephone: (202) 637-2200
Facsimile: (202) 637-2201
Email: matthew.peters@lw.com

Telephone: (202) 637-2200
Facsimile: (202) 637-2201
Email: matthew.peters@lw.com

Steven M. Bauer (*pro hac vice*)
Margaret A. Tough (*pro hac vice*)
Nicole C. Valco (*pro hac vice forthcoming*)
Katherine A. Rouse (*pro hac vice*)
LATHAM & WATKINS LLP
505 Montgomery Street, Suite 2000
San Francisco, CA 94111-6538
Telephone: (415) 391-0600
Facsimile: (415) 395-8095
Email: steven.bauer@lw.com
Email: margaret.tough@lw.com
Email: nicole.valco@lw.com
Email: katherine.rouse@lw.com

Attorneys for Defendants Phillips 66 (#17) and Phillips 66 Company (#18)

Attorneys for Defendants ConocoPhillips (#14), ConocoPhillips Company (#15), and Louisiana Land & Exploration Co., LLC (#16)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of October, 2023, a copy of the foregoing was served on all counsel of record via email (by agreement of the parties).

Alison Schurick

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

Upon consideration of Defendants' Motion to Dismiss Plaintiff's Complaint for Failure to State a Claim Upon Which Relief Can Be Granted, Plaintiff's opposition thereto, and Defendants' reply, it is this _____ day of _____, 20____, hereby

ORDERED that Defendants' Motion to Dismiss Plaintiff's Complaint for Failure to State a Claim Upon Which Relief Can Be Granted is **GRANTED**; it is further

ORDERED that all claims against Defendants 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