IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIAs
CIVIL DIVISION

DISTRICT OF COLUMBIA, **Plaintiff,** **v.** **EXXON MOBIL CORP. et al.,** **Defendants.**	**2020 CA 002892 B** **Judge Yvonne Williams**

ORDER GRANTING IN PART DEFENDANTS' MOTION TO DISMISS

Before the Court is a Motion to Dismiss ("Motion") filed by BP P.L.C. and BP America Inc. ("BP Defendants") on March 10, 2023.[1] BP Defendants filed a Memorandum in Support of the Motion to Dismiss ("Memo") on March 11, 2024. Plaintiff, the District of Columbia ("the District"), filed an Opposition to the Motion ("Opp'n") on April 8, 2024, to which BP Defendants filed a Reply ("Reply") on April 22, 2024. For the foregoing reasons, the Motion to Dismiss shall be **GRANTED IN PART**.

I. BACKGROUND

A. Complaint

The District alleges that Defendants violated the District of Columbia Consumer Protection Procedures Act ("CPPA"), D.C. Code §§ 28-3901 *et seq.*, by "systematically and intentionally [misleading] consumers in Washington, DC about the central role their products play in causing climate change, one of the greatest threats facing humanity." Compl. at 1. The District describes the arc of BP Defendants' public-facing climate personas as follows: "…BP initially falsely denied

[1] The Court is separately considering and responding to Motions to Dismiss filed by Defendants Exxon Mobil Corporation and ExxonMobil Oil Corporation ("Exxon Defendants"), Shell plc and Shell USA, Inc. ("Shell Defendants"), and Chevron Corporation and Chevron U.S.A. Inc. ("Chevron Defendants"). The Court refers to BP Defendants, Exxon Defendants, Shell Defendants, and Chevron Defendants collectively as "Defendants."

the link between climate change and its products, before pivoting to greenwashing campaigns that misleadingly portray BP and its products as environmentally friendly." Opp'n at 1.

"Independently and through coordinated campaigns and industry front groups, Defendants have deceived DC consumers about how Defendants' fossil fuel products warm the planet and disrupt the climate in a quest to drive profits through increased sales of gas and other fossil fuel products." *Id.* In the meantime, "the climate crisis, as Defendants presciently anticipated, is here and is an existential threat to humankind and the planet." Compl. at 42. "Defendants continue to mislead DC consumers to this day" (*Id.* at ¶ 1), and "[t]he District seeks injunctive relief, civil penalties, and costs to deter Defendants from continuing to engage in these and similar unlawful trade practices, as well as restitution for DC consumers." *Id.* at ¶ 3.

The named "agents and front groups" are the American Petroleum Institute ("API") and the Global Climate Coalition ("GCC"). API is a national trade association whose "purpose is to advance the individual members' collective business interests, which includes increasing consumers' consumption of oil and gas to Defendants' financial benefit." *Id.* at ¶ 20(a). "Among other functions, API coordinates among members of the petroleum industry and gathers information of interest to the industry and disseminates that information to its members." *Id.* at ¶ 20(b). "All Defendants and/or their predecessors-in-interest are, or have been, core API members at times relevant to this litigation and had executives serving on the API Executive Committee and/or as API Chairman, which is akin to serving as a corporate officer." *Id.* The GCC, which was disbanded in or around 2001, "was an industry group formed to oppose greenhouse gas emission reduction initiatives." *Id.* at ¶ 21(a). "Founding members included Defendants through API," and "over the course of its existence, the GCC's individual corporate members" included Defendants. *Id.*

The District alleges that "Defendants' CPPA violations take the form of both significant **misrepresentations** and **omissions** of information material to DC consumers' decisions to purchase Defendants' fossil fuel products." *Id.* at ¶ 3 (emphasis added). "In connection with selling gasoline and other fossil fuel products to DC consumers, Defendants **failed to inform consumers** about the effects of their fossil fuel products in causing and accelerating the climate crisis." *Id.* at ¶ 9 (emphasis added). "The significant harm that Defendants knew would result from increased consumer use of their fossil fuel products is material to and would have affected DC Consumers' purchasing decisions." *Id.*

1. **The District alleges "Defendants have known for decades that their fossil fuel products would disrupt the global climate with potentially catastrophic consequences for humankind."** *Id.* at 20.

According to the District, scientists within the fossil fuel industry understood the role that greenhouse gases play in climate disruption as far back as the early 1950s. Defendants' "internal actions demonstrated awareness and acceptance of the known effects of climate change." *Id.* at ¶ 25. The District offers an extensive history to demonstrate Defendants' knowledge, including a 1968 report commissioned by API "regarding the state of research on environmental pollutants, including carbon dioxide" (*Id.* at ¶ 32); and a 1979 Task Force convened by API and its members, including Defendants, to "monitor and share climate research among the oil industry." *Id.* at ¶ 35.

2. **The District alleges "contrary to their clear knowledge of climate change and resultant business decisions, Defendants promoted disinformation and doubt among DC consumers and nationwide."** *Id.* at 27.

The District alleges individual misrepresentations made by the individual Defendants and collective misrepresentations by "industry front groups." Compl. at 1; *see supra*. The District claims Defendants "…deceptively worked to influence consumer demand for its fossil fuel products through a long-term advertising and communications campaign centered on **climate**

change denialism." Compl. at ¶ 174(a), 181(a), 188(a), 195(a) (emphasis added). Defendants made affirmative misrepresentations and material omissions "through **coordinated messaging** by industry front groups, which [Defendants] funded, controlled, and directly participated in." *Id.* at ¶ 174(a), 181(a), 188(a), 195(a) (emphasis added). Moreover, "Defendants funded and controlled scientists to sow confusion and doubt about the realities of climate science." *Id.* at 32. "By concealing and misrepresenting the scientific understanding of the consequences of burning fossil fuels and increasing atmospheric concentrations of greenhouse gases," Defendants allegedly "...failed to state and/or misrepresented material facts, which had a tendency to mislead consumers." *Id.* at ¶ 174(a), 181(a), 188(a), 195(a) (citing § 28-3094(e) & (f)).

The District claims "Defendants employed and financed several industry associations and industry-created front groups to serve their climate disinformation and denial mission." *Id.* at ¶ 19. Defendants allegedly used API "to deceive consumers as to the existence of climate change and whether fossil fuels had a role in causing it" (*Id.* at ¶ 30); and used GCC to "oppose greenhouse gas emission reduction initiatives" (*Id.* at ¶ 21(a)) and "to deceive consumers by distorting climate science." *Id.* at 28. For example, a 1995 GCC pamphlet stated "there is no evidence to demonstrate the climate has changed as a result of…man-made greenhouse gases." *Id.* at ¶ 57.

3. The District alleges "Defendants continue to mislead DC consumers about the impact of their fossil fuel products on climate change through greenwashing campaigns and other misleading advertisements." *Id.* at 44.

The District next alleges that "[a]s public concern over global warming mounted, [Defendants] deceitfully represented [themselves] as [leaders] in renewable energy and made misleading or incomplete claims about the steps [they have] taken to reduce [their] overall carbon footprint[s] as well as misrepresented or made incomplete claims about [their] investment practices and expansion in fossil fuel production." Compl. at ¶ 174(b), 181(b), 188(b), 195(b). By doing so,

according to the District, "[Defendants] failed to state and/or misrepresented material facts that tended to mislead consumers regarding its commitment to environmental sustainability." *Id.* at ¶ 174(b), 181(b), 188(b), 195(b) (citing § 28-3094(e) & (f)).

According to the District, "Defendants also made misleading claims about specific 'green' or 'greener' fossil fuel products" (Compl. at 59); and "[s]uch 'greenwashing' advertising is aimed at spreading misleading information to create a false impression that a company and/or its products are environmentally friendly." *Id.* at ¶ 98. "By falsely representing that it operated a diversified energy portfolio with meaningful renewable and low-carbon fuel components, [Defendants] falsely represented that its goods had characteristics and benefits that they do not in fact possess." *Id.* at ¶ 174(b), 181(b), 188(b), 195(b) (citing § 28-3094(a)) & (f)). "…Defendants portray themselves as working to reduce reliance on fossil fuels through investment in alternative energy sources, but Defendants' investments in low-carbon energy are negligible." *Id.* at ¶ 100. "According to a recent analysis, between 2010 and 2018…BP spent only 2.3% of its total capital expenditures on low-carbon energy sources." *Id.*

The District alleges that "BP also has misleadingly portrayed itself as diversifying its energy portfolio and reducing its reliance on fossil fuel sales when its alternative energy portfolio is negligible compared to the company's ever-expanding fossil fuel portfolio." *Id.* at ¶ 125. "To this end, BP has employed a series of misleading greenwashing advertisements, which are intended to influence consumer demand for its products, including consumers in the District." *Id.* BP's "Beyond Petroleum" advertising and rebranding campaign "falsely portrayed the company as heavily engaged in low-carbon energy sources and no longer investing in but rather moving 'beyond' petroleum and other fossil fuels." *Id.* at ¶ 126. "In truth, BP invested a small percentage of its total capital expenditure during this period on alternative energy research. The vast majority

of its capital expenditure was focused on fossil fuel exploration, production, refining, and marketing." *Id.*

4. The District argues "information regarding the role of Defendants' fossil fuel products in causing the climate crisis is material to consumers' purchasing decisions." *Id.* at 65.

Lastly, the District claims that "[Defendants have] **aggressively marketed its fossil fuel products**, including at the point of sale at [Defendant]-branded gasoline stations in the District, with **misleading representations about the products' environmental benefits**, and has also **failed to adequately disclose the known risks** of burning fossil fuels, in a manner that tended to mislead consumers." Compl. at ¶ 174(c), 181(c), 188(c), 195(c) (citing § 28-3094(a)) & (f)) (emphasis added). In describing why Defendants' "false and misleading representations are material," the District states "they are capable of influencing a consumer's decision to purchase [Defendants'] fossil fuel products, have the capacity to affect consumer energy, transportation, and consumption choices, and deter consumers from adopting cleaner, safer alternatives to [Defendants'] fossil fuel products." *Id.* at ¶ 175, 182, 189, 196.

B. Procedural History

The District filed the instant suit in the D.C. Superior Court on June 25, 2020.

1. Removal to Federal Court

Exxon Defendants filed a notice of removal on July 17, 2020. On November 12, 2022, the U.S. District Court for the District of Columbia granted a Motion to Remand filed by Defendants ("USDC Remand Memorandum"). The District Court held that "federal common law does not confer jurisdiction over the District's claims" (USDC Remand Memo at 3); removal is improper under *Grable & Sons Metal Prods. v. Darue Eng'g & Mfg.*, 545 U.S. 308 (2005) because "Defendants have identified no disputed federal issue necessary to resolve the District's consumer

protection claims" (*Id.* at 9-10); "the Court does not have federal enclave jurisdiction" (*Id.* at 11); "removal is improper under the Outer Continental Shelf Lands Act" (*Id.* at 13 (citing 43 U.S. Code § 1349)); "the Federal Officer Removal Statute does not apply" (*Id.* at 15 (28 U.S. Code § 1442)); "the [District] Court does not have diversity jurisdiction over the Parties" (*Id.* at 17); "the Class Action Fairness Act does not apply" (*Id.* at 19 (citing 28 U.S. Code § 1332).

Defendants filed an Emergency Motion for a Temporary Stay of Execution of Remand Order ("Emergency Mot. for Stay) on November 13, 2022, the day after the District Court remanded the case. Defendants asked for time to file a formal motion to stay remand pending their appeal of the remand to the U.S. Court of Appeals for the District of Columbia Circuit. *See* Emergency Mot. for Stay at 1. The District Court agreed to stay its Order to permit briefing on November 14, 2022. They filed a formal Notice of Motion and Motion to Stay Execution of Remand Order Pending Appeal on November 28, 2022, the same day they filed an Appeal of the Remand with the D.C. Circuit Court. The District opposed the Motion to Stay on December 12, 2022, to which Defendants filed a Reply a week later.

The District Court denied Defendant's Motion to Stay Execution of Remand Order Pending Appeal on December 20, 2022. On December 23, 2022, the D.C. Circuit Court administratively stayed the District Court's November 12, 2022 Order pending further review ("D.C. Circuit December 23, 2022 Order"), and ordered briefing on the motion for a stay. *See* D.C. Circuit December 23, 2022 Order at 1. On January 30, 2023, the D.C. Circuit Court denied the Motion to Stay. The Parties argued before the D.C. Circuit Court on May 8, 2023, and on December 19, 2023, the case was remanded to the D.C. Superior Court.

2. Remand to the D.C. Superior Court

Meanwhile, on March 10, 2023 Defendants filed the following Motions. BP Defendants filed (1) a Motion to Dismiss on 12(b)(2) and 12(b)(6) grounds and (2) a Motion to Dismiss pursuant to the D.C. Anti-SLAPP Act. Chevron Defendants filed (3) a Motion to Dismiss on 12(b)(2) and 12(b)(6) grounds and (4) a Motion to Dismiss pursuant to the D.C. and California anti-SLAPP acts. Shell Defendants filed (5) a Motion to Dismiss on 12(b)(2) and 12(b)(6) grounds and (6) a Motion to Dismiss pursuant to the D.C. Anti-SLAPP Act. Exxon Defendants filed (7) a Motion to Dismiss on 12(b)(2) and 12(b)(6) grounds and (8) a Motion to Dismiss pursuant to the D.C. Anti-SLAPP Act. Defendants filed (9) their Joint Brief Regarding Applicability of District of Columbia Anti-SLAPP Statute ("Joint Brief").

On January 12, 2023, the D.C. Council codified D.C. Law 24-344, the Corrections Oversight Improvement Omnibus Amendment Act of 2022 ("the Exemption"), which exempted cases initiated by the District from the Anti-SLAPP Act. In the Defendants' Joint Brief, they asked the Court to (1) find that the exemption is unconstitutional and (2) consider their Motions to Dismiss pursuant to the Anti-SLAPP Act. *See generally* Joint Brief. The court accepted the Joint Brief as filed on February 13, 2024.

On March 20, 2023, Defendants filed an Opposed Motion to Stay Proceedings ("March 2023 Motion to Stay") pending resolution of the then-pending appeal before the D.C. Circuit Court and other pending cert petitions in similar suits about climate change in the Supreme Court of the United States. *See* March 2023 Motion to Stay at 1. The District filed an Opposition and Defendants filed a Reply on July 23, 2023, and Judge Irving granted the Motion and stayed the case for 90 days on September 6, 2023. As the appeal was still pending before the D.C. Circuit Court, Defendants filed an Opposed Motion to Continue Stay of Proceedings on November 29,

2023, and the District filed an Opposition on November 30, 2023. Judge Irving granted the Motion on December 4, 2023.

The District filed an Opposed Motion to Lift Stay of Proceedings on January 11, 2024, which Judge Irving denied as moot on February 1, 2024 because the case was remanded to the D.C. Superior Court on December 19, 2023. On February 8, 2024, the District filed an Opposed Motion to Amend the Briefing Schedule, which Defendants opposed on February 22, 2024. The District filed a Reply on February 28, 2024, and the Motion was granted in part on March 4, 2024 ("March 4, 2024 Order"). Judge Irving set a briefing schedule and held that if the Court invalidated D.C. Code § 16-5505(a)(2), the Exemption, the District would have to file Oppositions within fourteen days of the decision, and Defendants would file Replies fourteen days thereafter. March 4, 2024 Order at 2. On March 8, 2024, the Court granted a Joint Motion to Extend the briefing schedule by two weeks.

On March 11, 2024, Defendants filed their respective memoranda in support of their Motions to Dismiss. The District filed Oppositions to Defendants' Motions to Dismiss, as well as the Joint Brief, on April 8, 2024, to which Defendants filed Replies on April 22, 2024. The Parties have filed numerous Notices of Supplemental Authority in the months since, to which other Parties have filed Replies. For example, on September 5, 2024, the District filed a Praecipe to Provide Supplemental Authority ("District Supplemental Authority Praecipe") to give notice of the D.C. Court of Appeals' opinion in *Earth Island Inst. v. Coca-Cola Co.*, 321 A.3d 654 (D.C. App. 2024), to which BP Defendants filed a Response ("Praecipe Response") on September 20, 2024.

The instant case was transferred to Judge Williams on January 1, 2025. The Parties appeared before Judge Williams for a Motion Hearing on March 20, 2025.

C. Motions before the Court

Defendants filed their respective Motions to Dismiss pursuant to Rules 12(b)(2) and 12(b)(6) on March 10, 2023 and Memoranda in Support of their Motions to Dismiss on March 11, 2024. As to Rule 12(b)(2), Defendants argued in March of 2023 that this Court does not have jurisdiction.[2] At the time of filing the Motions to Dismiss, Defendants had removed the case to federal court. However, on December 19, 2023, the case was remanded to the D.C. Superior Court. Thus, BP Defendants' March 2024 Memorandum in support of the Motion to Dismiss does not address the 12(b)(2) arguments and the Court denies as moot the requests to dismiss pursuant to Rule (12)(b)(2). The District filed Oppositions on April 8, 2024, to which Defendants filed Replies on April 22, 2024.

In BP Defendants' Memorandum in Support of their Motion to Dismiss, they argue: (1) the District's "climate-denialism" theory fails against BP (Memo at 4); (2) the District's "greenwashing" theory fails against BP (*Id.* at 6); (3) the Invigorate and natural gas statements do not support a claim against BP (*Id.* at 9); (4) BP's purported omissions are not actionable (*Id.* at 12); (5) the District's claims violate the First Amendment (*Id.* at 13); and (6) District law cannot be used to recover climate-related harms. *Id.* at 15.

In its Opposition, the District reiterates that its CPPA claims against the BP Defendants are valid, and that "BP merely disputes facts and misreads the law." Opp'n to BP at 3-4. The District offers the following rebuttals. (1) It states valid CPPA claims against BP (Opp'n to BP at 3) including that (A) BP's greenwashing statements are actionable (*Id.* at 4); (B) BP's statements about natural gas and Invigorate are plausibly misleading (*Id.* at 8); (C) BP's omissions are

[2] *See e.g.* Mot. at 2 (BP Defendants argued that the Court "may not exercise general or specific jurisdiction over them" because "[t]he BP Defendants are neither incorporated in nor have their principal place of business in the District of Columbia, and their alleged in-forum contacts do not relate or give rise to the claims at issue.").

actionable (*Id.* at 11); (D) BP's greenwashing is sufficiently connected to its sales (*Id.* at 13); and (E) BP Defendants are liable for its conduct and the conduct it directed (*Id.* at 14). (2) BP's First Amendment arguments fail (*Id.* at 16) as (A) the First Amendment does not immunize deceptive conduct perpetrated through third parties (*Id.* at 16); (B) the *Noerr-Pennington* doctrine does not shield BP's conduct (*Id.* at 17); (C) the District is not unconstitutionally compelling speech by enforcing the CPPA (*Id.* at 18); and (D) BP's deceptive commercial speech merits no First Amendment protection. *Id.* at 19.

In BP Defendants' Reply, they again argue: (1) the District's "climate-denialism" theory fails against BP (Reply at 1); (2) the District's "greenwashing" theory fails against BP (*Id.* at 4); (3) Invigorate and natural gas statements do not support a claim against BP (*Id.* at 6); (4) BP's purported omissions are not actionable (*Id.* at 8); and (5) the District's claims violate the First Amendment. *Id.* at 9.

II. LEGAL STANDARD

A complaint should be dismissed under Rule 12(b)(6) if it does not satisfy the requirement of Rule 8(a) that a pleading contain a "short and plain statement of the claim showing that the pleader is entitled to relief." *Potomac Dev. Corp. v. District of Columbia*, 28 A.3d 531, 543 (D.C. 2011) (quoting Super. Ct. Civ. R. 8(a)). "To survive a motion to dismiss, a complaint must set forth sufficient information to outline the legal elements of a viable claim for relief or to permit inferences to be drawn from the complaint that indicate that these elements exist." *Williams v. District of Columbia*, 9 A.3d 484, 488 (D.C. 2010) (citation and quotations omitted); *see Doe v. Bernabei & Wachtel, PLLC*, 116 A.3d 1262, 1266 (D.C. 2015) ("To survive a motion to dismiss, a complaint must set forth sufficient facts to establish the elements of a legally cognizable claim.") (citations and quotations omitted)). In resolving a motion to dismiss, "the court accepts as true all

allegations in the Complaint and views them in a light most favorable to the nonmoving party." *Jordan Keys & Jessamy, LLP v. St. Paul Fire & Marine Ins. Co.*, 870 A.2d 58, 62 (D.C. 2005) (citations and quotations omitted).

"A pleading that offers 'labels and conclusions' or 'a formulaic recitation of the elements of a cause of action will not do.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)); *see Sundberg v. TTR Realty, LLC*, 109 A.3d 1123, 1128–29 (D.C. 2015) ("[W]here a complaint pleads facts that are merely consistent with a defendant's liability, it stops short of the line between possibility and plausibility of entitlement to relief." (Citations and quotations omitted)). "To satisfy Rule 8(a), plaintiffs must nudge their claims across the line from conceivable to plausible." *Tingling-Clemmons v. District of Columbia*, 133 A.3d 241, 246 (D.C. 2016) (citation and quotations omitted). However, "[w]hen there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief." *Carlyle Inv. Mgmt., L.L.C. v. Ace Am. Ins. Co.*, 131 A.3d 886, 894 (D.C. 2016) (alteration in original) (citation and quotations omitted).

"A complaint should not be dismissed because a court does not believe that a plaintiff will prevail on its claim; indeed it may appear on the face of the pleadings that a recovery is very remote and unlikely but that is not the test." *Carlyle Inv. Mgmt., L.L.C.*, A.3d at 894 (citation, quotations, and brackets omitted). In addition, the Court should "draw all inferences from the factual allegations of the complaint in the [non-movant's] favor." *Id*. (citation omitted). However, legal conclusions "are not entitled to the assumption of truth," *Potomac Dev. Corp*., 28 A.3d at 544 (quoting *Iqbal*, 556 U.S. at 664), so "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Sundberg*, 109 A.3d at 1128–29 (quoting *Iqbal*, 556 U.S. at 678). The complaint must plead "factual content that allows the court to draw

the reasonable inference that defendant is liable for the misconduct alleged." *Poola v. Howard Univ.*, 147 A.3d 267, 276 (D.C. 2016) (citation and quotations omitted).

III. DISCUSSION

Pursuant to Rule 12(b)(6), BP Defendants argue that the District fails to state a viable claim under the CPPA, alleging no actionable statements or omissions made in connection with goods or services available D.C. consumers to purchase. *See* Mot. at 2. "Moreover," they argue, "holding the BP Defendants liable for the targeted statements would violate their First Amendment rights." *Id.* The District retorts in its Opposition: "Although BP's Motion to Dismiss seeks to write off some of its statements as mere opinions, aspirations, or not misleading as a matter of law, it is for the jury to decide whether BP's campaigns tend to mislead reasonable consumers about material facts—which is all the CPPA requires." Opp'n at 1. The Motion to Dismiss is granted as to the misrepresentation claim regarding BP Defendants' statement about Invigorate.[3] The Motion is denied as to all other claims.

A. The District plausibly states that BP Defendants are liable for climate-denialism statements made by named third-party associations.

BP Defendants argue that the District's climate-denialism theory fails because the Complaint fails to identify any climate-denialism statements made by BP. Memo at 4. Instead, BP Defendants argue, the District makes "conclusory assertions" of climate change denialism and "blunderbuss accusations" of deception. *Id.* at 4 (citing Compl. at ¶ 188(a), ¶ 1). These assertions are "'insufficient to sustain a complaint,'" BP Defendants state, because "settled law requires the District to plead *facts* sufficient to show that BP made 'climate-denialism statements…" *Id.* at 4 (quoting *Bereston v. UHS OF Del., Inc.*, 180 A.3d 95, 99 (D.C. 2018). The District disagrees with

[3] The District alleges that Invigorate is an additive added to "[a]ll grades of BP gasoline sold in the District…" Compl. at ¶ 159(a).

BP Defendants that it must "present specific misrepresentations by BP at the pleading stage," stating "…under Rule 8, a complaint need only state a 'plausible' claim that rises 'above the speculative level.'" Opp'n at 12 (quoting *Close It! Title Servs. v. Nadel*, 248 A.3d 132, 138 (D.C. 2021).

BP Defendants claim that because the District is "unable to identify a single 'climate-denialism' statement by BP," it "seeks to hold the company liable for statements made by third-party trade associations." Memo at 4 (citing Compl. at ¶ 188(a)) ("asserting climate-denialism 'by industry front groups'"). BP Defendants lay out three reasons why the effort to hold them liable for industry groups' statements should fail. "*First*, as a matter of law, the Act does not apply to conduct of trade associations," and instead only applies to merchants. *Id.* at 5 (citing *Howard v. Riggs Nat'l Bank*, 432 A.2d 701, 709 (D.C. 1981). "*Second*, even if the Act applied to conduct of trade associations (it does not), a company's mere membership in a trade association…does not render it liable for every statement made by the association." *Id.* "*Third*, even where a Plaintiff alleges facts showing that an intermediary drafted, or provided information supporting, a statement made by another party, liability under the act is limited to the speaker itself and does not flow to the intermediary party." *Id.* at 6 (citing *Parr v. Ebrahimian*, 2013 WL 12407058, *5-6 (D.D.C. Mar. 26, 2013).

In its Opposition, the District provides examples in which Defendants, including BP Defendants, disseminated false and misleading statements that may amount to climate-denialism. "For example, BP undermined consumers' understanding of the link between climate change and fossil fuels by disseminating false statements like 'there is no evidence to demonstrate the climate has changed as a result of…man-made greenhouse gases' and '[c]limate scientists don't say that burning oil, gas and coal is steadily warming the earth.'" Opp'n at 3 (quoting Compl. at ¶¶ 57, 59).

As to BP Defendants' first reason they should not be held liable for industry groups' statements (the Act does not apply to trade associations, and instead only applies to merchants), the District claims it is irrelevant that the trade associations are not merchants, because "BP is the Defendant, and BP is unequivocally a merchant." *Id.* at 15. As to BP Defendants' second reason they should not be held liable for industry groups' statements ("a company's mere membership in a trade association…does not render it liable for every statement made by the association"), the District does not characterize BP as a "mere member" of the named trade associations. "Here, industry groups 'act[ed] on behalf of and under the supervision and control of Defendants,' and BP 'actively supervised, facilitated, consented to, and/or directly participated in [their] misleading messaging.'"[4] *Id.* (quoting Compl. at ¶ 19).

As to BP Defendants' third reason they should not be held liable for industry groups' statements ("liability under the act is limited to the speaker itself and does not flow to the intermediary party"), the District claims BP Defendants are incorrect that liability is limited to the speaker. Opp'n at 15 (citing *Phoenix Restoration Grp., Inc. v. Liberty Mut. Grp. Inc.*, 2020 WL 606403, at *4 (D.D.C. Feb. 7, 2020) ("denying motion to dismiss CPPA claim because defendant's agent made misrepresentations"). The District alleges that "BP controlled API as a 'core member'" and that "[w]ith other Defendants, BP 'wielded control over the policies and practices of API' and 'directly supervised and participated in API's misleading messaging regarding climate change.'" *Id.* (quoting Compl. at ¶ 20). "Similarly, BP and its predecessor Amoco were 'core members of and substantial financial contributors to the GCC.'" *Id.* at 15 (quoting Compl. at ¶ 54).

[4] In an apparent attempt to distinguish itself from the views and statements of the named trade associations' statements, BP argued at the March 20, 2025 Motion Hearing that trade associations' members are not monolithic. *See* March 20, 2025 Motion Hearing. Even so, a jury could find that BP Defendants are liable for these associations' statements, particularly if, as alleged, BP Defendants wielded significant control over the groups and their messaging. *See* Opp'n at 15.

According to the District, "BP asserts that when a merchant like BP directs a third-party to mislead consumers, the merchant cannot be liable because it itself did not mislead, Mot. 6, and the third-party cannot be liable because it is not a merchant." *Id.* (citing Memo at 4-5). The District claims that "…BP's argument would create a huge loophole in the CPPA" and that "such a perverse outcome" is not in keeping with the D.C. Court of Appeals' "instruction to 'construe[] and appl[y] [the CPPA] liberally to promote its purpose.'" *Id.* (quoting *Saucier v. Countrywide Home Loans*, 64 A.3d 428, 442 (D.C. 2013)).

In BP Defendants' Reply, they argue (1) the District has not pled facts sufficient to show BP Defendants made climate-denialism statements; and (2) the District therefore resorts to arguing for liability for statements made by third-party trade associations. Reply at 1. BP Defendants claim this attempt at accountability for third parties' statements should again fail for multiple independent reasons. *First*, BP Defendants state that whether BP is a merchant under the CPPA is "…besides the point: if the speaker itself (the trade association) cannot be liable under the Act, it makes little sense to extend liability to entities that purportedly supported the (immune) speaker's statement." *Id.* at 2 (citing *Crawford v. Signet Bank*, 179 F.3d 926, 929 (D.C. Cir. 1999) ("In the absence of agent liability…none can attach to the principal."). "*Second*," BP Defendants again argue that "even if the Act applied to trade association conduct (it does not), the District fails to plead facts sufficient to impute third-party trade association statements to BP." *Id.* According to BP Defendants, the District's allegations about BP facilitating climate-denialism through third party associations are "quintessentially conclusory."[5] *Id.* "*Third*, the District fails to rebut BP's

[5] For example, BP Defendants state that "[w]ithout supporting factual allegations explaining how BP supposedly shaped, influenced, or approved even one API statement, the District's allegations fall far short of showing that BP 'held a specific intent to further' any purported 'illegal aims' of API." Reply at 3 (citing *In re Asbestos Sch. Litig.*, 46 F.3d 1284, 1289 (3d Cir. 1994) (citation omitted); *Id.* at 1290 ("A member of a trade Group…does not necessarily endorse everything done by that organization…").

showing that liability under the Act does not flow to a party alleged to have prepared or supported the speaker's statement." *Id.* at 3. BP Defendants are not concerned about a potential loophole in the CPPA. *See id.* The argue that "[t]o the contrary, settled law and the statutory text require dismissal of the District's claims—because the Act does not reach trade association conduct, because the District does not allege facts sufficient to impute third-party statements to BP, and because liability under the Act does not extend to entities alleged to have prepared or supported the statements of others." *Id.* at 3-4.

The CPPA "…is a broad consumer protection statute, meant to 'assure that a just mechanism exists to remedy all improper trade practices.'" *Earth Island Inst. v. Coca-Cola Co.*, 321 A.3d 654, 663 (D.C. App. 2024) (quoting D.C. Code § 28-3901(b)(1)). In *Earth Island Inst. v. Coca-Cola Co.*, the D.C. Court of Appeals considered an appeal of a dismissal of a similar suit in which Earth Island Institute, an environmental organization, alleged that the Coca-Cola Company violated the CPPA. "Earth Island allege[d] that Coca-Cola engages in deceptive marketing that misleads consumers into thinking that its business is environmentally sustainable, or at least that it is currently making serious strides toward environmental sustainability," when "[i]n fact, in Earth Island's telling, the sheer scale on which Coca-Cola relies on single-use plastics in its packaging—and the scale on which it intends to use them—renders it an environmental blight and a fundamentally unsustainable business." *Id.* at 658.

Earth Island further alleged that Coca-Cola engaged in "greenwashing…deceptively billing [itself] as environmentally friendly, in an effort to generate profits, when they are in fact far from it." *Id.* The Court cited, among others, a "pertinent statement" issued by the American Beverage Association and co-signed by Coca-Cola: "Together, we're committed to getting every bottle back…Our goal is for every bottle to become a new bottle, and not end up in oceans, rivers,

beaches and landfills…This unprecedented commitment includes…[p]artnering with [other organizations] to improve recycling access, provide education to residents and modernize the recycling infrastructure in communities across the country." *Id.* at 660 (citing American Beverage Association's website, retrieved June 2021). The Court reversed the dismissal, holding that Earth Island stated a facially plausible misrepresentation claim. *Id.* at 658.

Accepting the District's allegations in the Complaint as true and viewing them in the light most favorable to the District (*see Jordan Keys & Jessamy* at 62), the Court finds a facially plausible misrepresentation claim against BP Defendants for their alleged climate-denialism statements. The District plausibly alleges that Defendants, including BP Defendants, "…conceal[ed] and misrepresent[ed] the scientific understanding of the consequences of burning fossil fuels and increasing atmospheric concentrations of greenhouse gases." Compl. at ¶ 174(a). A jury could very well find that (1) BP Defendants understood the consequences of greenhouse gas emissions, and (2) funded, controlled, and participated in third-party associations that (3) misrepresented to the public that there was a lack of consensus on the causes and effects of climate change. *See* Compl. at ¶ 188(a).

At this stage of litigation, the Court declines to hold that BP Defendants are not responsible for trade associations' statements. In reversing dismissal of *Earth Island*, the D.C. Court of Appeals cited a third-party association's statement as a potential misrepresentation. *See Earth Island*, 321 A.3d 654 at 660; *see infra*. In light of the Court of Appeals' reliance on a trade association's statement, the Court will not dismiss claims against BP Defendants for API and GCC's statements. The Court is not now in a position to decide whether, as alleged by the District, BP Defendants "'wielded control over the policies and practices of API' and 'directly supervised and participated

in API's misleading messaging regarding climate change,'" and whether BP Defendants are liable for those allegedly misleading statements. Opp'n at 15.

Crucially, it is not for the Court to decide whether the alleged climate-denialism statements were in fact misrepresentations in violation of the CPPA. "…[W]hether a trade practice is misleading under the CPPA generally is 'a question of fact for the jury and not a question of law for the court.'" *Center for Inquiry Inc. v. Walmart, Inc.*, 283 A.3d 109, 121 (D.C. 2022) (quoting *Saucier v. Countrywide Home Loans*, 64 A.3d at 445). The Court leaves it to a jury to consider evidence and answer whether BP failed to state and/or misrepresented material facts that had a tendency to mislead D.C. consumers. *See* § 28-3904(e) & (f); *see Center for Inquiry Inc. v. Walmart, Inc.* at 121.

Finally, the Court addresses BP Defendants' claim that "*Earth Island* confirms that the District's claims, which seek damages for the way BP allegedly 'represented itself' over decades, create an impermissible risk of 'rudderless' discovery." Praecipe Response at 3. The D.C. Court of Appeals acknowledged the trial court's concerns that a CPPA misrepresentation claim "'based on an amalgamation of statements' would lead to 'rudderless' discovery and a trial where 'each side cherry-picked events, documents, and actions all over the world over several decades to state or negate how the defendant entity represented' itself.'" *Earth Island*, 321 A.3d 654 at 671 (internal citations omitted). The Court of Appeals found that those concerns were "overstated, because *Earth Island*'s suit [sought] only declaratory and injunctive relief (plus costs and attorney's fees) and not any damages for statements that Coca-Cola had made in the past." *Id.*

This Court disagrees with BP Defendants that *Earth Island* "confirms" a risk of "rudderless discovery" in the instant suit. *See* Praecipe Response at 3. While the District's climate-denialism claims rely on past statements unlike in *Earth Island*, the Court is not concerned about "rudderless

discovery," as the District's claims are based on highly specific statements, projects, and working groups, rather than some ethereal, ambiguous, poor behavior.

B. The District states a facially plausible misrepresentation claim against BP for greenwashing.

BP Defendants argue that the District's greenwashing theory fails against BP. *Id.* The Act applies to "information from merchants about consumer goods and services that are or would be purchased, leased, or received in the District of Columbia." § 28–3901(c). According to BP Defendants, while the goods and services "BP is alleged to offer in the District are 'fuel, motor oil, and other fossil fuel-related services'… BP's purported 'greenwashing' statements are not about those products." *Id.* at 6. Rather, they are "statements about BP's 'non-fossil energy systems.'" *Id.* According to BP Defendants, "[b]ecause the District fails to allege these 'non-fossil' forms of energy are available to District consumers, statements about these energy systems cannot form the basis of a claim." *Id.* at 7 (citing § 28–3901(c)). Additionally, BP Defendants argue, "…the statements the District targets convey BP's aspirations, goals, and opinions—quintessential non-actionable statements." *Id.* (citing *Earth Island Inst. v. Coca-Cola Co.*, 2022 WL 18492133, *3 (D.C. Super Ct. Nov. 10, 2022); *Cannon v. Wells Fargo Bank, N.A.*, 926 F. Supp. 2d 152, 173-74 (D.D.C. 2013).

"The District has alleged that there was common knowledge of the risks of climate change among the public for many, many years," BP Defendants stated at the March 20, 2025 Motion Hearing. "And if that's the case, then it can't be that so-called greenwashing statements can be misleading, can mislead a reasonable consumer." *Id.* "The question is what a reasonable consumer would believe, not what some rube who [is]…not paying attention to anything happening in the world would [believe]." *Id.*

The District contends that "[a] statement is actionable under the CPPA if it misrepresents, fails to state, or uses ambiguity as to a material fact in a way that tends to mislead" and that "[w]hether statements or omissions 'have a tendency to mislead reasonable consumers is a jury question.'" Opp'n at 4 (citing D.C. Code § 28-3904(e), (f), (f-1); (quoting *Ctr. for Inquiry Inc. v. Walmart, Inc.*, 283 A.3d 109, 117 (D.C. 2022)). "Here, the Complaint plausibly alleges that each ad BP challenges misleadingly misrepresents, omits, or uses innuendo about material facts." For example, "BP's 'Rise and Shine' ad portrayed BP's so-called 'cleaner-burning natural gas' as merely 'play[ing] a supporting role' to solar energy, while emphasizing BP's investments in projects 'advancing the possibilities of solar.'" *Id.* at 5 (citing Compl. at ¶ 131). "But…less than 5% of BP's natural gas is used to back up renewables…and BP's activities in solar energy represent only about 0.4% of its annual capital expenditures." *Id.* (citing Compl. at ¶¶ 130, 132).

According to the District, the allegations against BP Defendants, including the allegation that BP's "Rise and Shine" ad is an example of greenwashing, "easily satisfy the CPPA's lenient test for statements and omissions that tend to mislead." *Id.* (citing *McMullen v. Synchrony Bank*, 164 F. Supp. 3d 77, 94 (D.D.C. 2016) ("[T]he CPPA does not require much by way of pleading to state a claim under § 28-3904(e)."). Whether statements or omissions "'have a tendency to mislead reasonable consumers is a jury question.'" *Id.* (quoting *Ctr. for Inquiry Inc. v. Walmart, Inc.* at 117).

The District also argues the allegations satisfy the CPPA's test for materiality: "'[i]f consumers understood the full degree to which [BP's] products contributed to climate change, they likely would have acted differently' by purchasing less or none of BP's fossil fuel products." *Id.* (citing *Saucier v. Countrywide Home Loans*, 64 A.3d at 442) ("[T]he CPPA does not require much by way of pleading to state a claim under § 28-3904(e)."); (quoting Compl. at ¶ 154). The District

argues that materiality is "a question of fact for the jury." *Id.* (quoting *Saucier v. Countrywide Home Loans* at 445) (cleaned up).

The District posits that "BP's greenwashing is sufficiently connected to its sales." Opp'n at 13. "The CPPA is also clear that unlawful and deceptive trade practices can be representations about 'goods or services,' id. § 28-3904(a), but they can also be representations about 'the person' making the sale, *id.* § 28-3904(b), and other misrepresentations and omissions of 'material fact[s],' *id.* § 28-3904(e), (f), (f-1)." *Id.* "To be clear, some of BP's greenwashing statements explicitly describe products it sells in the District." *Id.* (citing Compl. at ¶ 159(a)). "And many others describe the harms caused by BP's fossil fuel products." *Id.* (citing Compl. at ¶ 134). "Putting that aside, however, the CPPA covers more than advertisements that explicitly reference a company's goods or services by name." *Id.* "In view of [the CPPA's] expansive definitions, this court has applied the CPPA to trade practices that greenwash a company's entire brand or business, not just its specific products." *Id.*

BP Defendants cite D.C. Code § 28–3901(c), which specifies an "enforceable right to truthful information from merchants about consumer goods and services that are or would be purchased, leased, or received in the District of Columbia," to argue that "[s]ubsequent statutory provisions, including the prohibition on 'unfair or deceptive trade practices' the District cites, cannot override the Act's overarching enumerated purpose." Reply at 4-5 (citing *Cerovic v. Stojkov*, 134 A.3d 766, 779 (D.C. 2016)) ("statutory language 'must be viewed in context and interpreted consistent with the statutory purpose'"). "The District fails to explain how the Act applies to BP's so-called 'greenwashing' statements about wind and solar energy, which are not alleged to be available for sale to District consumers." Reply at 4. BP Defendants claim that "[i]f

the D.C. Council had intended the Act to reach any statement about 'a company's…brand or business,' as the District contends…it would have said so." *Id.* at 5 (quoting Opp'n at 13).

As articulated by the D.C. Court of Appeals, "[w]hile some provisions of the CPPA specifically require that any misleading statements be about 'goods or services,' *see, e.g.*, § 3904(a), (d); *Floyd v. Bank of Am. Corp.*, 70 A.3d 246, 254 (D.C. 2013) (discussing those subsections in particular), other CPPA provisions do not contain that express limitation, *see*, e.g., § 3904(e), (f)." *Earth Island*, 321 A.3d 654 at 671, n.6. The Court of Appeals "…assume[d], without deciding, that Coca-Cola's statements had to relate to its goods or services to be actionable under any subsection of § 3904, as strongly suggested by the CPPA's overarching purpose." *Id.* (citing § 3901(c) ("This chapter establishes an enforceable right to truthful information from merchants about consumer goods and services.").

The CPPA broadly defines "goods and services" as "any and all parts of the economic output of society, at any stage or related or necessary point in the economic process…" D.C. Code § 28-3901(7). For example, in *Earth Island*, the D.C. Court of Appeals held that "…Coca-Cola's various claims about its plastic packaging are very much statements about its 'goods and services'…" *Earth Island*, 321 A.3d 654 at 659. "Coca-Cola's packaging is part of the products that it sells, and the environmental impact of how it creates that product, and what becomes of it, are qualities of the product itself under the CPPA's broad approach to goods and services." [6] *Id.* at 671.

[6] In BP Defendants' Praecipe Response, they distinguish the instant case. While Earth Island alleged misleading statements about packaging, "[h]ere, by contrast, many of BP's so-called 'greenwashing' statements address products not alleged to be available for sale to District consumers." Praecipe Response at 1. BP Defendants claim that "the only products it is alleged to sell in the District are fossil fuel products" and that "statements about non-fossil energy systems—specifically, wind and solar—that are not alleged to be available for sale to District consumers…are not actionable." *Id.* While these energy systems may not be sold in the District, the Court still finds that the District has plausibly alleged an actionable sustainability narrative to sell products in the District. *See* District Supplemental Authority Praecipe at 4 (citing *Earth Island*, 321 A.3d 654).

As noted by the District, some of the alleged statements do address products sold in the District. For example, BP's Rise and Shine ad, while touting a solar power project, also advertised natural gas. "'Projects like these are advancing the possibilities of solar,' BP claimed, 'and even rainy days can't dampen the excitement for this fast-growing energy source. That's because, whatever the weather, our cleaner-burning natural gas can play a supporting role to still keep your kettle ready for action.'" Compl. at ¶ 131. This statement addresses BP's brand at-large, as well as natural gas, which is indeed a good sold in the District. A jury could find that because BP connects its solar and wind projects to its natural gas, a consumer may conclude that she is supporting climate-friendly projects by buying BP gas.

As to whether the CPPA applies to statements that do not explicitly address goods or services that may be purchased, leased or received in the District, the Court follows the analysis in *Earth Island*. This Court assumes, "without deciding, that [BP Defendants'] statements had to relate to its goods or services to be actionable under any subsection of § 3904…" *Earth Island*, 321 A.3d 654 at 671, n.6. While it appears that all of the alleged statements were made in the name of selling BP Defendants' products, the Court will not now decide whether the individual statements sufficiently relate to goods or services such that the CPPA applies.

The D.C. Court of Appeals stated there is "nothing implausible" about Earth Island's claims that "…when Coca-Cola promotes its sustainability efforts, it omits the alleged fact that Coca-Cola's mass-scale production of single-use plastics make it one of the single greatest blights on our environment (regardless of its recycling efforts); that deceives consumers into believing that Coca-Cola is an environmental steward, where it is in fact an environmental scourge." *Id.* at 664-665. The D.C. Court of Appeals also found that the statements at issue in *Earth Island* were "material" because "there is no dispute that costumers" care about products' potential harm to the

environment. *Id.* So too here. For pleading purposes, the Court finds that the District has plausibly alleged that BP's statements, "when viewed in their surrounding context, mislead consumers into believing that it is an environmental steward, when it is in fact an environmental scourge," and that such statements were material. *See id.* at 659.

Finally, the Court addresses BP Defendants' clam that if there was common knowledge of the risks of climate change "then it can't be that so-called greenwashing statements… can mislead a reasonable consumer." *See* March 20, 2025 Motion Hearing. The Court disagrees. A reasonable consumer can be aware of the concept of climate change and still be deceived by an oil company's clever advertising. It is true, as argued by BP Defendants, that the CPPA uses the "reasonable consumer" as a standard (*Earth Island*, 321 A.3d 654 at 663) and not, as elucidated by BP defendants, the uninformed "rube." *See* March 20, 2025 Motion Hearing. But a consumer need not understand the intricacies of clean energy versus fossil fuels to be reasonable. A reasonable consumer may be aware of, or even be concerned about, climate change and believe, based on advertising, that BP Defendants are doing net good for the environment. The Court declines to dismiss the District's greenwashing claims against BP Defendants.

C. While the District does not state a facially plausible misrepresentation claim against BP Defendants for their statements about Invigorate, it does state a facially plausible misrepresentation claim for BP Defendants' statements about natural gas.

The District claims that "all grades of BP gasoline sold in the District have Invigorate, an additive that BP describes on its website as better than 'ordinary fuels' that have problems like 'increased emissions.'" Compl. at ¶ 159(a). "BP's website advertises its fuel selection as 'including a growing number of lower-carbon and carbon neutral products.'" *Id.* at ¶ 159(b). According to the District, "[t]hese representations are misleading because they omit any mention of the products' role in causing catastrophic climate change," and "they seek to influence consumer

demand for their products by misleading DC consumers to believe BP invests materially in low-carbon energy products and that BP's fossil fuel products will help consumers reduce emissions." *Id.* at ¶ 159(c).

BP Defendants claim that their Invigorate and natural gas statements do not support a claim against them. Memo at 9. "BP never made an unqualified statement that its fuels 'reduce emissions.'" *Id.* "The District grossly misrepresents BPs actual statement by cherry-picking certain words and omitting crucial qualifying language." *Id.* BP Defendants compare the "cherry-picked" version of the statement about Invigorate with the statement in its totality, arguing "…BP did *not* make a broad, unqualified claim that Invigorate fuels 'reduce emissions.'" *Id.* at 10 (quoting Compl. at ¶ 159(c)). "To the contrary, the statement is narrow, specific, and qualified: Invigorate fuels provide 'better protection against intake deposits' relative to 'minimum-detergency fuels' which promotes improved engine performance—none of which the District contests." *Id.*

According to BP Defendants, "[a] reasonable consumer would understand these statements to discuss engine performance with Invigorate fuels relative to other fuels, not that Invigorate fuels produce no emissions or somehow reduce existing emissions levels in the atmosphere, as Plaintiff suggests." *Id.* (citing *Pearson v. Chung*, 961 A.2d 1067, 1075 (D.C. 2008). They further argue that "…BP's complete statement adheres to the Federal Trade Commission's 'Guides for the Use of Environmental Marketing Claims'" because it made a "narrow, qualified statement about Invigorate fuels and intake valve deposits" instead of the sort of "unqualified general environmental benefit claims" the Green Guides discourage.[7] *Id.* at 10-11 (citing 16 C.F.R. § 260.1 *et seq*).

[7] BP Defendants and the District rely on the FTC Guides for the Use of Environmental Marketing Claims 16 C.F.R. § 260.1, et seq. ("Green Guides"). *See* Opp'n at 9; see also Memo at 10. "The Green Guides warn against 'overstat[ing] . . . an environmental attribute or benefit,' 16 C.F.R. § 260.3(c), and '[u]nqualified general environmental benefit claims,' which 'likely convey that [a] product…has specific and far-reaching environmental benefits and…no negative

The District argues that BP Defendants' statements promoting natural gas as "cleaner-burning," "burn[ing] 50% cleaner than coal in power generation," and providing "more energy with fewer emissions," are misleading. Compl. at ¶ 134. "By concealing important information from natural gas production and transportation emissions, BP omitted a critical aspect of natural gas's impact on the climate that DC consumers would find important." *Id.* "When considering a fuel's contribution to climate change, it is the total emissions over the full lifecycle that contribute to climate change, not just from one point in the supply chain." *Id.* BP Defendants claim this theory is "not viable." Memo at 11. They argue that BP's express reference to *burning* "limits the statements to combustion emissions," and that the because the statement does not suggest that non-combustion emissions are calculated in the carbon footprint calculation, "the statement does not mislead the reasonable consumer." *Id.* (citing *Dwyer v. Allbirds Inc.*, 598 F. Supp. 3d 137, 150 (S.D.N.Y. 2022).

The District states that "BP has…advertised its 'Invigorate' gasoline as better than 'ordinary fuels' that result in 'increased emissions,' misleadingly conveying that use of this fossil fuel product will help consumers reduce their emissions." Opp'n at 10 (citing Compl. at ¶ 159(a), (c)). "BP misunderstands the Complaint by arguing that its statements do not convey that 'Invigorate fuels produce no emissions or somehow reduce existing emissions levels in the atmosphere.'" *Id.* at n. 13 (quoting Memo 10). "BP's statements are misleading because they portray Invigorate gasoline as environmentally superior, without disclosing the key role of fossil fuels in causing climate change." *Id.* (citing Compl. at ¶ 159(c)).

environmental impact.'" Opp'n at 9-10 (citing 16 C.F.R. § 260.4(b)). "Courts around the country have relied on the Green Guides in finding that statements about general environmental benefits may be actionable under consumer protection laws." Opp'n at 10.

According to the District, the Green Guides would "suggest that BP's ads misleadingly overstate the environmental benefits of natural gas by describing it as 'cleaner-burning,' for example…without mentioning the emissions generated by producing and transporting natural gas." *Id.* at 10 (citing Compl. at ¶¶ 128, 134). Acknowledging BP Defendants' claim that their statements adhere to the Green Guides, the District claims it is improper at this stage of litigation (responding to Rule 12(b)(6) motions) to decide whether individual statements are properly qualified or likely to mislead "when viewed in the context of…for example the full webpage." *Id.* at 11 (citing *Earth Island Inst. v. BlueTriton Brands*, No. 2021 CA 003027 B, 2022 WL 2132634, *5) (D.C. Super. Ct. June 7, 2022). BP Defendants reply that "[t]he Court can and should consider the entire BP statement at the pleading stage." Reply at 7. "The contrary rule the District urges would permit plaintiffs to end-run pleading challenges by cherry-picking certain words from a company's website." *Id.*

The District undercuts BP Defendants' argument that the natural gas statements are not misleading to a reasonable consumer because they do not suggest that non-combustion emissions are calculated in the carbon footprint. *See* Memo at 11. According to the District it is an omission, rather than an inclusion, that makes BP Defendants' natural gas statements misleading: "these ads are misleading because they focus solely on combustion emissions while omitting information about natural gas's production and transportation emissions…which are critical parts of the fossil fuel's 'impact on the climate that DC consumers would find important.'" Opp'n at 8-9 (quoting Compl. at ¶¶ 103, 134). BP Defendants retort that "the District cites no case holding that accurate emissions statements—like 'natural gas' 'burn[s] 50% cleaner than coal in power generation,' Compl. ¶ 134—must conform to the District's preferred method of reporting emissions." Reply at 7.

The District has not alleged a facially plausible misrepresentation claim against BP Defendants for their statements about Invigorate. The Court agrees with BP Defendants that a reasonable consumer would understand their statement about Invigorate "to discuss engine performance with Invigorate fuels relative to other fuels, not that Invigorate fuels produce no emissions or somehow reduce existing emissions levels in the atmosphere, as Plaintiff suggests." Memo at 10 (citing *Pearson v. Chung* at 1075). To advertise that Invigorate is better than fuels that increase emissions is not to say that by purchasing Invigorate, a consumer can reduce emissions. The Court is unable to draw a reasonable inference that a reasonable consumer would be misled into believing that the use of Invigorate reduces emissions. *See Poola v. Howard Univ.* at 276. Thus, the Court must dismiss the District's misrepresentation claim against BP Defendants for their statement about Invigorate.

However, the District has stated a facially plausible misrepresentation claim against BP Defendants for their statements about natural gas. It is plausible that reasonable consumers are misled by BP Defendants' natural gas advertisements. In *Earth Island*, the D.C. Court of Appeals stated that it did "not presume to know what reasonable consumers understand a company to mean when it claims that it is working to be 'more sustainable' or the like." *Earth Island*, 321 A.3d 654 at 665. "For all we know, reasonable consumers would immediately dismiss that type of speech as vacuous corporate jargon, not to be relied upon." *Id.* "But that is not obviously true; the concerted efforts that companies like Coca-Cola make to cultivate an image of being environmentally friendly strongly suggests that even their vague assurances have a real impact on consumers." *Id.* at 665-666.

Similarly, it is not obviously true that reasonable consumers would understand that BP Defendants' reference to *burning* limits the statements about natural gas to combustion emissions.

It is plausible that a reasonable consumer would rely on BP Defendants' statement about combustion emissions to reflect the reality of natural gas' impact on climate change. It may be that most consumers do not differentiate between combustion and non-combustion emissions, and so to boast about one without mentioning the other is indeed misleading.

As to BP Defendants' concerns about cherry-picked statements, the Court notes that "the CPPA does not require that misleading representations be contained in a single statement in order to be actionable; a series of statements can in combination be misleading even when, taken individually, they fall short of that." *Earth Island*, 321 A.3d 654 at 659. Still, as instructed by the D.C. Court of Appeals, "a litigant cannot unfairly strip isolated statements out of their context and then cobble them together to form an unrepresentative tapestry of what has been conveyed…" *Id.* It does not appear to the Court that the District has stripped isolated statements out of context to cobble together an unrepresentative tapestry, although that could be the case. It is plausible, at the very least, that the District has instead diligently pieced together a decades-long story of deceit. This plausibility requires the Court to deny BP Defendants' Motion to Dismiss as to the alleged greenwashing statements.

D. The District plausibly states that BP Defendants' *omissions* are actionable under the CPPA.

According to BP Defendants, "…the District would require BP—as a condition of making any statement about is products—to declared in the statement that the products also 'caus[e] catastrophic climate change.'" Memo at 12 (citing Compl. at ¶¶ 155, 159(b)-(c). BP Defendants wish for the Court to hold that BP's purported omissions are not actionable for two reasons. *Id.* at 12. "*First*, the Act does not require companies to provide consumers information they already possess or can readily obtain." *Id.* (citing *Dahlgren v. Audiovox Commc'ns Corp.*, 2010 D.C. Super. LEXIS 9, *63-64 (D.C. Super. Ct. July 8, 2010) ("where a complaint reveals 'knowledge

among consumers about' the purportedly omitted topic, the 'plaintiff's claim must be dismissed'"). "Given the longstanding publicly available information concerning the link between fossil fuels and climate change…the District's omissions theory fails." *Id.* at 13. "*Second*, the District's attempt to *force* BP to speak—against its interests—violates the First Amendment." *Id.*

According to the District, "BP contends that its omissions are not actionable because consumers know that fossil fuels contribute to climate change." Opp'n at 11 (citing Memo at 12-13). The District states that this contention shows that BP Defendants misconstrue the Complaint. "For decades, BP failed to disclose material facts about its products' climate risks, including while selling gasoline in the District." *Id.* at 11-12 (citing Compl. at ¶¶ 9, 15(g)–(h), 71, 188(c). "And during that time, BP was misrepresenting the scientific consensus on climate change, successfully 'deceiv[ing] DC consumers about how Defendants' fossil fuel products warm the planet and disrupt the climate.'" *Id.* at 12 (quoting Compl. at ¶1) (citing Compl. at ¶¶ 7, 48–70, 188(a)). "Here," the District argues, "it is for a factfinder to determine how long BP's failure to disclose its products' risks was materially misleading to DC consumers." *Id.*

The District does not assert that all of BP Defendants' statements about fossil products are actionable unless they mention the products role in climate change. *See id.* n.17 (citing Memo at 12). Instead, "[t]he Complaint alleges that BP's greenwashing statements tend to mislead because they deceptively portray BP's fossil fuel products as helping to address climate change without disclosing that continued use of such products—even if they produce marginally fewer emissions—contributes to climate change." *Id.* (citing Compl. at ¶¶ 149, 159). Lastly, according to the District, BP Defendants' arguments that the omissions in their greenwashing statements could not have misled consumers ignores why BP engages in greenwashing: "'to capitalize on

consumers' concerns about climate change' and 'reassure' them that using Invigorate and other BP products will help 'address[] climate change.'" *Id.* at 12 (quoting Compl. at ¶¶ 99, 151).

In BP Defendants Reply, they again claim, incorrectly, that "[a]ccording to the District, any BP statement describing a benefit of its non-fossil fuel energy systems, Invigorate fuel, or natural gas is actionable—even if accurate—unless the statement affirmatively 'disclos[es] that' 'use of' 'fossil fuel products' 'contributes to climate change.'" Reply at 8 (citing Opp'n at 12 n.17). Instead, "[t]he Complaint alleges that BP's greenwashing statements tend to mislead because they deceptively portray BP's fossil fuel products as helping to address climate change without disclosing that continued use of such products—even if they produce marginally fewer emissions—contributes to climate change." Opp'n at 12 n.17 (citing Compl. at ¶¶ 149, 159).

BP Defendants next argue that "…omissions are not actionable where consumers 'already know the information omitted.'" Reply at 8 (citing *Dahlgren v. Audiovox Commc'ns Corp.*, 2010 D.C. Super. LEXIS 9, 2010 WL 2710128 (D.C. Super. Ct. July 8, 2010)). "Given the longstanding publicly available information concerning the link between fossil fuels and climate change—a topic that has been 'at the very center of this Nation's public discourse'—the District's omissions theory fails." Reply at 13 (citing *Nat'l Rev., Inc. v. Mann*, 140 S. Ct. 344, 348 (2019) (Alito, J., dissenting from denial of certiorari)). Finally, "…the District's attempt to force BP to speak—against its interests—violates the First Amendment." *Id.* "'Compelling individuals to mouth support for views they find objectionable violates [a] cardinal constitutional demand, and in most contexts, any such effort would be universally condemned.'" *Id.* (quoting *Janus v. Am. Fed'n of State, Cty., & Mun. Emps.*, Council 31, 138 S. Ct. 2448, 2463 (2018)).

In *Earth Island*, the D.C. Court of Appeals held that "Earth Island plausibly allege[d] that Coca-Cola misleads consumers about the extent to which recycling can offset the environmental

impacts of its mass-scale plastic production." *Earth* Island, 321 A.3d 654 at 665. The Court found that a reasonable consumer could plausibly think, based on Coca-Cola's advertisements, that "its recycling efforts will put a serious dent in its environmental impacts," which Earth Island alleged was misleading. *Id.* "If those facts are borne out, then it is quite plausible that Coca-Cola misleads consumers both through its statements and by failing to qualify them, i.e., via omission." *Id.* "That is, when it promotes its recycling efforts, it omits the fact that those efforts will not prevent the vast bulk of its plastic products from ending up as waste or pollution, a deception that Earth Island alleges Coca-Cola very much intends." *Id.*

So too here. "Under the CPPA, people and businesses are precluded from 'misrepresent[ing]' any 'material fact which has a tendency to mislead.'" *Earth Island*, 321 A.3d 654 at 664 (quoting D.C. Code § 28-3904(e)). "That prohibition extends beyond literal falsehoods and includes any omissions, 'innuendo[s],' or 'ambiguit[ies]' that have a tendency to mislead reasonable consumers." *Id.* (quoting D.C. Code § 28-3904(e)). The District plausibly states that BP Defendants' omissions are actionable under the CPPA. If the facts are "borne out" in the instant suit, a jury could very well find that reasonable consumers are misled into believing that by using BP products, they are addressing, rather than contributing to climate change.

E. The Court is not convinced that the District has violated Defendants' First Amendment rights.

As previously stated, BP Defendants allege that the District is attempting to force BP Defendants to speak against their interests in violation of the First Amendment. Memo at 13; *see supra*. BP Defendants allege other First Amendment violations. "…[T]he District seeks to hold BP liable for petitioning activities that sought to influence public policy on climate-related matters—a core form of speech protected by the *Noerr-Pennington* doctrine." *Id.* The "*Noerr-Pennington* [doctrine] protects 'publicity campaign[s] directed at the general public' which 'seek

legislation or executive actions' even if 'the campaign employs unethical and deceptive methods.'" *Id.* at 14 (quoting *Allied Tube & Conduit Corp. v. Indian Head, Inc.*, 486 U.S. 492, 499–500 (1988)). Further, BP Defendants allege that "…the District impermissibly targets speech on matters of public concern." *Id.*

The District argues that "[c]ontrary to BP's arguments…BP's freedom of association does not immunize its control over, nor its support and approval of, its surrogates' deceptive conduct." *Id.* at 16-17 (citing *Holder v. Humanitarian L. Project*, 561 U.S. 1, 39–40 (2010)) ("freedom of association only protects 'mere association with' others, not 'material support' of another's unlawful conduct"); (citing *United States v. Philip Morris USA Inc.* (*Philip Morris II*), 566 F.3d 1095, 1116 (D.C. Cir. 2009) ("holding tobacco companies liable for 'defrauding existing and potential smokers…both through informal association and through the formation of several formal organizations' that sowed disinformation on companies' behalf").

The District disagrees with BP Defendants about the applicability of the *Noerr-Pennington* doctrine. "That doctrine 'applies only to what may fairly be described as petitions,' *Freeman v. Lasky, Haas & Cohler*, 410 F.3d 1180, 1184 (9th Cir. 2005), and does not immunize 'what are in essence commercial activities simply because they have a political impact.'" *Id.* at 17 (quoting *Allied Tube & Conduit Corp. v. Indian Head, Inc.*, 486 U.S. 492, 507 (1988)). "BP's liability rests on commercial activities—*i.e.*, its 'longterm campaign to influence consumers' demand,' Compl. ¶ 55, which sought to stymie 'consumer awareness of the detrimental impacts of the purchase and use of fossil fuel products…to increase sales and protect profits.'" *Id.* (quoting Compl. at ¶¶ 49-50). "So, *Noerr-Pennington* does not apply." *Id.* (citing *United States v. Philip Morris Inc.*, 304 F. Supp. 2d 60, 73 (D.D.C. 2004) ("*Noerr-Pennington* immunity did not apply to 'press releases' and 'statements made to members of the public' aimed at influencing demand for cigarettes"). "At a

minimum, it is premature to determine whether *Noerr-Pennington* applies without a fully developed factual record." *Id.* at 18. (citing *United States v. Philip Morris Inc.*, 304 F. Supp. 2d 6073 at 73) ("*Noerr-Pennington* is a 'fact-intensive inquiry that can only be resolved at trial'").

In the District's words, "BP's argument that the District is 'attempt[ing] to force BP to speak'… is meritless." Opp'n at 18 (citing Memo at 13). "The First Amendment 'does not prohibit the State from insuring that the stream of commercial information flow[s] cleanly as well as freely,' and the District may 'requir[e] that a commercial message…include such additional information, warnings, and disclaimers, as are necessary to prevent its being deceptive." *Id.* (quoting *Va. State Bd. of Pharmacy v. Va. Citizens Consumer Council, Inc.*, 425 U.S. 748, 771–72 & n.24 (1976), quoted in *Meta Platforms, Inc. v. D.C.*, 301 A.3d 740, 758 (D.C. 2023). "…[E]nforcing the CPPA against BP's misleading advertising is closely related to the District's interest in protecting consumers from deceptive advertising, and requiring BP to make truthful disclosures about its fossil fuel products' climatic risks would not be unjustified or unduly burdensome." *Id.* at 18-19.

Additionally, the District argues that "BP's challenged conduct receives no First Amendment free speech protection because it constitutes deceptive and misleading commercial speech." *Id.* at 19 (citing *Zauderer v. Off. of Disciplinary Couns.*, 471 U.S. 626, 638 (1985)). The three factors for commercial speech set out in *Bolger v. Youngs Drug Products Corp.*, (1) the speech's "advertis[ing]" format; (2) its "reference[s] to a specific product"; and (3) the speaker's "economic motivation," "make clear that BP's deceptive statements are commercial speech." *Id.* (quoting *Bolger v. Youngs Drug Products Corp.*, 463 U.S. 60, 66–68 (1983)). "*First*, BP's statements were often disseminated in traditional advertising format." *Id.* (citing Compl. at ¶ 127 (billboard ads); ¶ 128 (video ad); ¶¶ 131, 133–34). "*Second*, the ads repeatedly referred to BP's energy products and operations." *Id.* (citing Compl. at ¶¶ 126–28, 131, 134, 159). "*Third*, BP had

a profit motive." *Id.* (citing Compl. at ¶ 50). "Further, courts have consistently held that the First Amendment does not protect sophisticated campaigns designed to mislead consumers about the dangers of a product." *Id.*; *see e.g. United States v. Philip Morris USA Inc.*, 566 F.3d 1095, 1144 (D.C. Cir. 2009).

BP Defendants claim the Complaint "plainly targets petitioning activities," while failing to allege facts "showing BP engaged in any such activities…" Reply at 9. "…[T]he District targets a purported 'campaign' to 'influenc[e] public policy'…" *Id.* "These allegations fall squarely within the *Noerr-Pennington* doctrine," BP Defendants state, "which protects speech 'designed to influence governmental action' even if the speech allegedly involves 'deception of the public' and 'distortion of public sources of information.'" *Id.* (quoting *E.R.R. Presidents Conf. v. Noerr Motor Freight, Inc.*, 365 U.S. 127, 140 (1961)).

Finally, BP Defendants assert that *Virginia State Bd. Of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, rather than *Bolger v. Youngs Drugs Products Corp.*, establishes the standard for commercial speech. "…[C]ommercial speech is 'speech that does 'no more than propose a commercial transaction.'" *Id.* (quoting *Virginia State Bd. Of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 760–62 (1976) (citation omitted). According to BP Defendants, the speech does not "propose a commercial transaction." *Id.*

"'The First Amendment does not prohibit the State from insuring that the stream of commercial information flow cleanly as well as freely.'" *Earth* Island, 321 A.3d 654 at 672 (quoting *Meta Platforms, Inc. v. District of Columbia*, 301 A.3d 740, 758 (D.C. 2023) (quoting *Va. State Bd. of Pharmacy v. Va. Citizens Consumer Council, Inc.*, 425 U.S. 748, 772, 96 S. Ct. 1817, 48 L. Ed. 2d 346 (1976)) (internal citations omitted). In *Earth Island*, the D.C. Court of Appeals stated that "[t]he speech that Earth Island targets is Coca-Cola's commercial speech about

its goods and services; it is alleged that Coca-Cola cultivates a sustainability narrative in an effort to sell products." *Id.* The District similarly argues in the instant suit that Defendants cultivate a sustainability narrative to sell their products. *See* District Supplemental Authority Praecipe at 4.

In *Environmental Working Group v. Tyson Foods, Inc.*, Plaintiff Environmental Working Group ("EWG") alleged that Defendant Tyson Foods, Inc. ("Tyson") "…made false or misleading statements to consumers in advertising its commitment to achieving net-zero greenhouse gas emissions by 2050." *Environmental Working Group v. Tyson Foods, Inc.*, No. 2024 CAB 5935, slip op. at 1 (D.C. Super. Ct. Feb 3, 2025). This Court held that "Tyson's net-zero and climate-smart beef statements are clearly commercial speech, as EWG alleges that Tyson *launched these campaigns to generate more sales* from 'consumers [who] care about the climate and environmental impact of the products they purchase.'" *Id.* at 15-16 (quoting *EWG v. Tyson* Compl. at ¶ 56). Here, the District similarly argues that the allegedly misleading statements were intended to increase sales. *See* Opp'n at 12 ("BP's greenwashing is sufficiently connected to its sales."). The District plausibly alleges that it targets commercial speech.

In *Earth Island*, the Court of Appeals held that "[b]ecause Earth Island plausibly alleges that commercial speech would mislead reasonable consumers, Coca-Cola's First Amendment claim [was] a non-starter," and that "[t]he fact that some remedy could conceivably intrude on Coca-Cola's First Amendment rights [was] no basis to preclude [the] suit at its inception." *Earth* Island, 321 A.3d 654 at 673. The Court declines to dismiss the instant suit on account of Defendants' First Amendment concerns, as the District plausibly alleges (1) that the suit targets commercial speech and (2) that the speech at issue would mislead reasonable consumers. *See infra.* While any future remedies may not intrude on BP Defendants' First Amendment rights, the instant claims are not in and of themselves First Amendment violations worthy of dismissal.

F. The District does not seek recovery for climate-related harms.

Lastly, BP Defendants argue that District law cannot be used to recover climate-related harms because (1) under the U.S. Constitution, such claims implicate conflicting rights of states and foreign relations (citing *City of New York v. Chevron Corp.*, 993 F.3d 81, 92 (2d Cir. 2021) and (2) "...the clean Air Act preempts any District-law claim that seeks to regulate out-of-state emissions." Memo at 15 (citing *BP Am. Inc.*, 2024 WL 98888, *9).

In the District's Opposition, it responds in a footnote that "[t]he District does not seek relief for the physical impacts of climate change in the District" and "thus, the Court need not reach BP's arguments that the District could not recover such damages." Opp'n at 1, n. 1. The Court agrees that the District does not seek relief for the physical impacts of climate change, and therefore declines to address BP Defendants' arguments that the District cannot recover such damages.

Accordingly, it is on this 21st day of April, 2025, hereby,

ORDERED that BP Defendants' Motion to Dismiss is **GRANTED IN PART**; and it is further

ORDERED that as to Rule (12)(b)(2), the Motion is **DENIED AS MOOT.**

IT IS SO ORDERED.

Judge Yvonne Williams

Date: April 21, 2025

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