IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

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

ORDER DENYING DEFENDANTS' MOTION TO DISMISS

Before the Court is a Motion to Dismiss ("Motion") filed by Chevron Corporation and Chevron U.S.A. ("Chevron Defendants") on March 10, 2023.[1] Chevron 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 Chevron Defendants filed a Reply ("Reply") on April 22, 2024. For the foregoing reasons, the Motion to Dismiss shall be **DENIED**.

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 Chevron Defendants' public-facing climate persona as follows: "Chevron initially

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

falsely denied the link between climate change and its products, before pivoting to greenwashing campaigns that misleadingly portray Chevron as a leader in the fight against global warming." 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"). *Id.* at ¶ 20. 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). It alleges that 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). The District alleges that "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…Chevron…spent just 0.2% of their capital spending on 'greener' energy." *Id.*

The District claims that "[t]he overall thrust of [Chevron's greenwashing] campaigns was to shift the perception of fault and responsibility for global warming to consumers and make Chevron's role and that of the broader fossil fuel industry appear small." *Id.* at ¶ 137. "The misleading solution promoted to consumers was not to switch away from fossil fuels, but instead to implement small changes in consumer behavior with continued reliance on fossil fuel products." *Id.* In addition, "[b]y portraying greenhouse gas emissions as deriving from numerous sources in addition to fossil fuels, Chevron's ads obfuscated the fact that fossil fuels are the primary cause of

increased greenhouse gas emissions and the primary driver of climate change." *Id.* at ¶ 137. In a Chevron television ad in which "a farmer and Chevron employee tout the benefits of shale gas," the ad misleadingly calls shale gas 'cleaner [...] energy' even though it is often not cleaner than oil or coal in terms of greenhouse gas emissions when both carbon dioxide and methane are taken into account." *Id.* at ¶ 144.

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 Memo"). 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 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 ultimately 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 Chevron 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, Chevron 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 request 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 Chevron Defendants' Memorandum in Support of their Motion to Dismiss, they argue the following. (1) The District's climate change disinformation theory contains no allegations as to Chevron—and is not actionable anyway. Memo at 5. (2) Chevron's statements about renewable energy policy do not violate the CPPA and are protected by the First Amendment (*Id.* at 10) because (a) the alleged statements are not about goods or services made in the context of a consumer transaction (*Id.* at 11); (b) the statements are non-actionable opinion (*Id.* at 12); (c) the statements are not false (*Id.* at 14); (d) the statements are not materially misleading (*Id.* at 16); and (e) the statements are protected by the First Amendment. *Id.* at 17. (3) Chevron's truthful statements about Techron do not violate the CPPA. *Id.* at 19.

The District made the following arguments in its Opposition. (1) The District states valid CPPA claims against Chevron (Opp'n at 3) because (a) Chevron made materially misleading statements and omissions (*Id.* at 4); (b) actual falsity is not required (*Id.* at 7); (c) Chevron's

[2] *See e.g.* Mot. at 1 ("Chevron asserts, as a threshold matter, that the Court may not exercise general or specific jurisdiction over it").

representations are neither puffery nor non-actionable conduct (*Id.* at 8); (d) Chevron's deception is sufficiently connected to its sales (*Id.* at 11); and (e) Chevron is liable for its own conduct and the conduct it directed. *Id.* at 13. (2) The District's claims are not barred by the First Amendment. *Id.* at 15.

In its Reply, Chevron Defendants claim "[t]his lawsuit is not about protecting consumers from unfair trade practices or material misrepresentations and is instead an attempt "to suppress the advocacy and speech of its policy opponents on climate change and energy policy—matters of intense public concern." Reply at 1. "The CPPA is not an appropriate means for squelching public debate." *Id.* They reply (1) the District's climate change "disinformation" theory contains no allegations as to Chevron—and is not actionable anyway (Reply at 2); (2) Chevron's statements about renewable energy policy do not violate the CPPA and are protected by the First Amendment (*Id.* at 5); and (3) Chevron's truthful statements about Techron do not violate the CPPA. *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

A. The District plausibly alleges Chevron Defendants are liable under the CPPA for alleged climate disinformation statements.

Chevron Defendants claim the District's theory that "contrary to their clear knowledge of climate change and resultant business decisions, Defendants promoted disinformation and doubt among DC consumers and nationwide" (Compl. at 27) fails because the Complaint "does not identify a single statement that Chevron ever supposedly made as part of the alleged campaign." Memo at 5. "And even if it did," they argue "the District's disinformation theory is neither actionable under the CPPA nor impermissible under the First Amendment." *Id.* The Court disagrees.

1. The District plausibly alleges Defendants are liable for statements made by third-party associations API and GCC.

Chevron Defendants argue the "climate change disinformation theory contains no allegations going to Chevron—and is not actionable anyway" and that "the...theory fails at the threshold with respect to Chevron because the CPPA imposes liability only for trade practices in which a defendant directly participates." Memo at 5 (citing *Parr v. Ebrahimian*, 2013 WL 12407058, at *6 (D.D.C. Mar. 26, 2013)). They argue the District's generic allegations against "Defendants" at large, rather than against Chevron Defendants specifically, fails to "satisfy a plaintiff's duty to 'plead[] factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.'" *Id.* at 6 (quoting *Iqbal*, 556 U.S. at 678). The Court finds that for the purposes of considering a Motion to Dismiss, the District has pled

sufficient factual content to allow the Court to "draw the reasonable inference that [Chevron Defendants are] liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678.

Chevron Defendants further argue they cannot be held liable for statements made by alleged "front groups" API and GCC, as "courts have repeatedly rejected attempts to impose liability based on statements by third-party trade associations, absent allegations that the associations were under the control of—or acted as agents for—the defendants." *Id.* at 6 (citing *Praxis Project v. Coca-Cola Co.*, 2019 WL 11583140, at *12 (D.C. Super. Ct. Oct. 1, 2019)) ("Coca-Cola not liable for statements made by the American Beverage Association"); *see also* March 20, 2025 Motion Hearing. They claim "there are no plausible, non-conclusory allegations that Chevron controlled [API and GCC] or that they acted as Chevron's agents," and allegations they "funded and/or had board positions at those organizations" are "insufficient." *Id.* (citing *Praxis Project* at *12).

According to Chevron Defendants, "the statements of API or GCC are not actionable under the plain language of the CPPA, which "only covers 'trade practices arising out of consumer-merchant relationships'" (*Sundberg v. TTR Realty, LLC*, 109 A.3d 1123, 1129 (D.C. 2015) (citation omitted)), as "neither of those organizations is a 'merchant' within the meaning of the CPPA." *Id.* (citing D.C. Code § 28-3901(a)(3)). "The Complaint does not even attempt to allege that API or GCC engaged in anything resembling 'trade practices'—i.e., 'act[s] which … solicit or offer for or effectuate a sale…of consumer goods or services.'" *Id.* at 7 (quoting D.C. Code § 28-3901(a)(6)). They argue that "…because API and GCC cannot be held liable under the CPPA for the statements alleged in the Complaint—they are not even named defendants—it would make no sense to hold Chevron vicariously liable for any such statements." *Id.*

The District responds in its Opposition that "Chevron may be held liable for disseminating misleading information through front groups that it controlled," including API and GCC. Opp'n at 13. "As a 'merchant' subject to CPPA liability, Chevron is liable for sponsoring and encouraging the actions of its agents." *Id.* The District cites *McMullen v. Synchrony Bank* in which "the plaintiffs alleged a 'joint venture' where multiple parties coordinated a fraudulent scheme and 'had an equal right to control the manner in which the joint venture operated,'" and "'[t]h[o]se allegations more than suffice[d] to establish' CPPA liability." *Id.* (quoting *McMullen v. Synchrony Bank*, 164 F. Supp. 3d 77, 91-92 (D.D.C. 2016)). According to the District, its allegations against Chevron Defendants "are at least as strong as those in *McMullen* and so 'more than suffice' at the pleading stage." *Id.* (quoting *McMullen*, 164 F. Supp. 3d at 92).

The District distinguishes the instant case from *Praxis Project v. Coca-Cola Co.*, 2019 WL 11583140 (D.C. Super. Ct. Oct. 1, 2019), which Defendants relied upon to argue against liability (*see* Memo at 6). Opp'n at 14. "There, the plaintiff's allegations fell far short of those in *McMullen*: the complaint 'merely allege[d] that some of [the defendant's] officers sat on the board of directors for the organization, or that Defendant provided the initial funding for the entities.'" *Id.* (quoting *Praxis* at *12). "Here, by contrast, Chevron did much more: It directly supervised and controlled the front groups' messaging on climate change, including drafting key strategy documents, funneling funds specifically toward those groups' deception activities, and approving specific deceptive statements made by those groups." *Id.* at 14-15 (citing Compl. at ¶¶ 50, 54-56, 62-66). It describes Chevron Defendants' interpretation of CPPA case law as leading to an "absurd result, allowing merchants to escape CPPA liability whenever they used third parties (*e.g.*, ad agencies) to disseminate misleading information to their consumers." *Id.* "That result cannot be squared with

the CPPA's 'broad remedial purpose…to remedy all improper trade practices.'" *Id.* (quoting *DeBerry v. First Gov't Mortg. & Invs. Corp.*, 743 A.2d 699, 703 (D.C. 1999).

The District responds that "'merchant' status is merely a prerequisite for being sued and held liable under the CPPA," and "Chevron's front groups are not the ones being sued; Chevron is." Opp'n at 15. "At all relevant times, Chevron was undisputedly a 'merchant' who sold consumer goods, including fossil fuels, lubricants, and motor oils." *Id.* (citing *Howard v. Riggs Nat'l Bank*, 432 A.2d 701, 709 (D.C. 1981) (defining "merchant").

In their Reply, Chevron Defendants reiterate that "[t]rade associations are not 'merchants,' and non-merchants cannot be held liable under the CPPA." Reply at 3. They claim the District has made a "last-ditch effort" and "retreat[ed] to the unprecedented theory that Chevron can be held liable for API's and GCC's non-actionable speech because they acted as Chevron's 'agents.'" *Id.* They argue "'[i]n the absence of agent liability, no liability can attach to the principal.'" *Id.* (quoting *Hayes v. Chartered Health Plan*, 360 F. Supp. 2d 84, 90 (D.D.C. 2004)). Importantly, they argue "the Complaint does not come close to alleging plausibly that API or GCC were Chevron's agents." *Id.* They claim allegations that "Chevron provided funding for API and GCC, and that some of Chevron's officers also sat on the boards or advisory committees of those organizations" (Compl. at ¶¶ 54, 60, 62) are "insufficient as a matter of law" to establish an agency-relationship. *Id.* (quoting *Praxis* at *12).

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.

At this stage of litigation, the Court declines to hold that Chevron Defendants are not responsible for trade associations' statements. In reversing the 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 Chevron Defendants for API and GCC's statements. The Court will not now decide whether, as alleged by the District, Chevron Defendants "'directly supervised and controlled the front groups' messaging on climate change,

including drafting key strategy documents, funneling funds specifically toward those groups' deception activities, and approving specific deceptive statements made by those group,'" such that Chevron Defendants are liable for the groups' allegedly misleading statements. Opp'n at 14-15. 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 the District plausibly alleges Chevron Defendants are liable for API and CGG's statements.

B. Chevron Defendants failed to convince the Court the First Amendment precludes liability for the alleged statements.

Chevron Defendants argue the First Amendment precludes "holding Chevron liable for the statements allegedly made by API or GCC." Memo at 7. "First, the Constitution sharply limits the circumstances in which speech by trade associations can be imputed to the associations' members." *Id.* "Second, even if the alleged speech by API or GCC could constitutionally be imputed to Chevron, it is fully protected by the First Amendment." *Id.* at 8.

They cite *NAACP v. Claiborne* for the proposition that "[t]o deem Chevron liable 'by reason of association alone,' it would be 'necessary to establish that the group itself possessed unlawful goals,' that Chevron 'held a specific intent to further those illegal aims,' and that Chevron 'authorized, directed, or ratified' the alleged tortious activity." *Id.* at 7-8 (quoting *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 920, 927 (1982)). According to Chevron Defendants, "the District has not plausibly alleged those things." *Id.* at 8. "The Complaint at most alleges only that Chevron belonged to trade associations that were allegedly engaged in climate change denialism, or that Chevron 'contributed to' trade association activities," which they claim is "not enough." *Id.* (citing e.g. Compl. at ¶¶ 62, 65).

Next, they argue the speech is protected by the First Amendment because (1) "Plaintiff's allegations about API and GCC concern fully protected speech on matters of science, regulatory

action, and other matters of public concern;" and (2) "…the *Noerr-Pennington* doctrine recognizes First Amendment protections from liability for 'publicity campaign[s] directed at the general public, seeking legislative or executive action[.]'" *Id.* at 9 (citing *Allied Tube & Conduit Corp. v. Indian Head, Inc.*, 486 U.S. 492, 499–500 (1988)). As to the first point, they argue "[t]he First Amendment 'protects scientific expression and debate just as it protects political and artistic expression.'" *Id.* at 8 (quoting *Bd. of Trustees of Leland Stanford Junior Univ. v. Sullivan*, 773 F. Supp. 472, 474 (D.D.C. 1991)). As to the second point, they argue the alleged statements made by API and GCC are immune from liability under the *Noerr-Pennington doctrine*, which—as the Supreme Court has long held—protects a "publicity campaign directed at the general public, seeking legislation or executive action." *Id.* at 10 (citing *Allied Tube*, 486 U.S. at 499). "The District's allegations that API's and GCC's speech was broadly intended to influence public opinion regarding fossil fuel regulation confirm that the District is challenging fully protected political speech and core petitioning activity." *Id.*

Because they argue the "challenged statements are fully protected, non-commercial speech," they insist "the District must satisfy its burden of showing that applying the CPPA to them satisfies strict scrutiny." *Id.* at 18. "And although securing consumers' right to truthful information about goods and services is certainly legitimate, none of Chevron's statements has anything to do with that interest." *Id.* "Indeed, the fact that the District waited a decade to bring this suit after Chevron ceased selling gas or diesel here confirms that the District has no real consumer-protection interest in remedying Chevron's allegedly misleading speech." *Id.*

The District argues in its Opposition that "Chevron's challenged conduct receives no First Amendment free speech protection because it constitutes deceptive and misleading commercial speech." Opp'n at 16 (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 Chevron's deceptive statements are commercial speech." *Id.* (quoting *Bolger v. Youngs Drug Products Corp.*, 463 U.S. 60, 66–68 (1983)). "*First*, Chevron's statements were often disseminated in traditional advertising formats." *Id.* (citing Compl. at ¶¶ 136, 139, 141, 143, 149). "*Second*, the advertisements repeatedly referred to Chevron's energy products and operations." *Id.* (citing Compl. at ¶¶ 139, 144, 160). "Third, Chevron had a profit motive." *Id.* (citing Compl. at ¶ 50). Further, "[c]ourts 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).

As to Chevron Defendants' argument that the trade associations' speech cannot be imputed to Chevron (Memo at 8), the District responds that it does not seek to hold Defendants liable "'by reason of association alone' for the climate deception campaigns run through groups like the GCC and API, but rather alleges that Chevron funded, directed, and controlled those nominally third-party deception campaigns." Opp'n at 19. "Chevron's freedom of association does not immunize its control over, nor its support and approval of, its surrogates' deceptive conduct." Opp'n at 20 (citing *Holder v. Humanitarian L. Project*, 561 U.S. 1, 39–40 (2010) ("constitutional freedom of association only protects 'mere association with' others, not 'material support' of another's unlawful conduct").

As to Chevron Defendants' argument that alleged statements "on matters of science, regulatory action, and other matters of public concern" amount to "fully protected speech" (Memo at 9), the District responds that the First Amendment does not immunize deceptive conduct simply

because the deception "involved assertions about science." *Id.* at 18 (citing *United States v. Philip Morris USA Inc.*, 566 F.3d 1095 at 1142-45). As to Chevron Defendants argument that the *Noerr-Pennington* doctrine protects the speech from liability (Memo at 9), the District responds "the Constitution does not protect Chevron's right to deceive about the dangers of its fossil fuel products—even if those dangers are grave enough to prompt public concern." *Id.*; *see e.g. United States v. Philip Morris USA Inc.*, 566 F.3d 1095 at 1142-45. In their Reply, Chevron Defendants claim "the District cannot and does not attempt to identify any speech by API or GCC that proposed any form of commercial transaction." *Id.* at 4. "For that reason alone, the climate change disinformation theory cannot proceed." *Id.*

Chevron Defendants have failed to convince the Court that the First Amendment precludes liability for the alleged climate disinformation statements. "'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 the allegedly misleading statements were intended to generate sales. *See* Opp'n at 19; *see infra* ("Chevron's liability rests on commercial activities—*i.e.*, its 'longterm campaign to influence consumers' demand…"). 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 District plausibly alleges Chevron Defendants' climate disinformation and greenwashing statements are commercial speech that would mislead reasonable consumers. *See* Opp'n at 14 (Consumers may be misled about the role fossil fuels play in climate change when reading a GCC pamphlet that stated "there is no evidence to demonstrate the climate has changed as a result of…man-made greenhouse gases." *See* Compl. at ¶¶ 56, 57.). While any future remedies may not intrude on Chevron Defendants' First Amendment rights, the instant claims are not in and of themselves First Amendment violations worthy of dismissal.

C. The District plausibly alleges Chevron Defendants are liable under the CPPA for their alleged greenwashing statements.

Chevron Defendants attempt to undermine the Complaint's greenwashing allegations, arguing "the District does not identify any misleading statements by Chevron about its goods or services, much less any statements that could be materially misleading to a reasonable consumer." Memo at 10. Court disagrees.

1. For purposes of considering a Motion to Dismiss, the alleged greenwashing statements are sufficiently connected to goods or services.

Pursuant to D.C. Code § 28-3904, it is a violation to engage in an unfair or deceptive trade practice. The statute defines "trade practice" to mean "any act which does or would create, alter, repair, furnish, make available, provide information about, or, directly or indirectly, solicit or offer for or effectuate, a sale, lease or transfer, of consumer goods or services." D.C. Code § 28-3901(a)(6). "As this Court has noted," Chevron Defendants state, '"to succeed on a claim under the CPPA,' a plaintiff 'must allege that a law is violated *in the context of a commercial transaction*.'" Memo at 11 (quoting *DC v. Washington Hebrew Congregation, Inc.*, No. 2020 CA 004429 B, Order at *8 (D.C. Super. Sept. 13, 2022) (emphasis added)).

They argue their alleged greenwashing statements were neither made in the context of a commercial transaction nor about goods and services, and that thus the CPPA does not apply. *See id.* (citing a Chevron ad allegedly urging consumers to "leave the car at home" (Compl. at ¶ 138)); (citing a Chevron ad stating the company is "behind renewables" and "tackling the challenge of making them affordable and reliable on a large scale" (Compl. at ¶ 139)).[3] They cite *Earth Island Inst. v. The Coca-Cola Co.*, 2022 WL 18492133 (D.C. Super. Ct. Nov. 10, 2022), which has since

[3] Chevron Defendants have twice pointed out that "far from encouraging consumers to purchase more fossil fuel products, the statements urged viewers to join Chevron in 'using *less*.'" Memo at 12 (citing Compl. at ¶ 138) (emphasis added); *see also* March 20, 2025 Motion Hearing.

been overturned by the D.C. Court of Appeals in *Earth Island Inst. v. Coca-Cola Co.*, 321 A.3d 654 (D.C. App. 2024), to argue "'corporate ethos, hopes, and philosophies … cannot be evaluated' under the CPPA." *Earth Island Inst. v. The Coca-Cola Co.*, 2022 WL 18492133 at *5.

Moreover, they argue "the bulk of the statements the Complaint identifies could not have been about Chevron's goods or services" available in D.C., as "the Complaint alleges that Chevron sold gasoline and diesel in the District '[p]rior to 2010'" (Compl. at ¶ 16(h)), "[a]nd it nowhere alleges that Chevron sold natural gas in the District." Memo at 12. Thus, they argue advertisements about renewable energy and natural gas cannot be actionable under the CPPA. *See id.* The District responds in its Opposition that it is "inconsequential" that Chevron Defendants "stopped licensing branded service stations in D.C. in 2010," as "Chevron engaged in unlawful trade practices in connection with its gasoline and diesel sales before 2010, which are actionable today because there is no applicable statute of limitations." Opp'n at 11 (citing *D.C. Water & Sewer Auth. v. Delon Hampton & Assocs.*, 851 A.2d 410, 413–14 (D.C. 2004)). After 2010, Chevron continued to sell branded lubricants and motor oils in the District. *Id.* (citing Compl. at ¶ 16(i)). "And Chevron encouraged sales of those products by continuing to disseminate greenwashing ads that worked to burnish consumers' perceptions of Chevron and its brand." *Id.* (citing Compl. at ¶¶ 139-44, 154-55).

The District posits that "Chevron's deception is sufficiently connected to its sales." *Id.* at 11. "To be clear, some of Chevron's greenwashing statements explicitly describe the products it sold." *Id.* (citing Compl. at ¶ 160) (Techron fuel advertisement). "Putting that aside, however, the CPPA covers more than advertisements that explicitly reference a company's goods or services by name." *Id.* Pursuant to D.C. Code § 28-3904, it is a violation to engage in an unfair or deceptive trade practice. The statute defines "trade practice" to mean "any act which does or would create,

alter, repair, furnish, make available, provide information about, or, directly or indirectly, solicit or offer for or effectuate, a sale, lease or transfer, of consumer goods or services." D.C. Code § 28-3901(a)(6). The District argues that Chevron Defendants' campaigns qualify as trade practices "at a minimum" because they "'indirectly…effectuate[] a sale of consumer goods,' including Chevron's gasoline, lubricants, and motor oils." Opp'n at 12 (quoting D.C. Code § 28-3901(a)(6)). "Indeed," the District claims, "that was the intended purpose of [their] campaigns" *Id.* "And they engaged in greenwashing tactics in order to 'induce purchases and brand affinity.'" *Id.* (quoting Compl. at ¶ 164). In their Reply, Chevron Defendants claim this theory "makes no sense." Reply at 6.

As to any statements that do not explicitly address goods or services that may be purchased, leased or received in the District to be eligible for protection under the CPPA, the Court follows the analysis in *Earth Island*. 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" to mean "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." [4] *Id.* at 671. This Court assumes, "without deciding, that [Chevron 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. At this stage of litigation, the Court will not decide whether individual statements relate to goods or services such that the CPPA applies.

2. Chevron Defendants have failed to convince the Court the alleged greenwashing statements are non-actionable.

The District claims Chevron Defendants attempted to "shift the perception of fault and responsibility for global warming to consumers and make Chevron's role and that of the broader fossil fuel industry appear small." Compl. at ¶ 137. "By portraying greenhouse gas emissions as deriving from numerous sources in addition to fossil fuels, Chevron's ads obfuscated the fact that fossil fuels are the primary cause of increased greenhouse gas emissions and the primary driver of climate change." *Id.*

According to Chevron Defendants, the District "criticizes Chevron for announcing its support for renewable energy and encouraging consumers to use less fossil fuels." Memo at 12. They argue "[t]he supposedly proper 'perception of fault and responsibility' for—and 'solution' to—global warming (Compl. ¶ 137) are matters of opinion and debate, not fact." *Id.* at 13.

[4] In Chevron Defendants' Praecipe Response, they distinguish the instant case. While Earth Island alleged misleading statements about packaging, the instant Complaint "focuses on statements that are not about Chevron's fossil fuel products—but about Chevron's ***separate*** renewable energy investments." Praecipe Response at 3-4. The Court finds 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).

"'Opinions…do not constitute representations of material fact upon which a plaintiff successfully may place dispositive reliance' and thus cannot form the basis of a CPPA claim."[5] *Id.* (quoting *Howard v. Riggs Nat'l Bank*, 432 A.2d 701, 706 (D.C. 1981); *cf. Floyd v. Bank of Am. Corp.*, 70 A.3d 246, 255–56 (D.C. 2013)). They also argue "'general and subjective' statements, 'the truth or falsity of which cannot be precisely determined,' are non-actionable 'puffery.'" *Id.* at 12 (quoting *Whiting v. AARP*, 701 F. Supp. 2d 21, 30 n.7 (D.D.C. 2010)).

Responding to Chevron Defendants' claim that the statements are non-actionable opinions, the District states "even expressions of opinion 'explicitly affirm[]…that the speaker actually holds the stated belief' and so are actionable if the speaker does not in fact hold that belief." Opp'n at 8 (quoting *Omnicare, Inc. v. Laborers Dist. Council Indus. Pension Fund*, 575 U.S. 175, 184-85 (2015)). "Given that Chevron continues to invest more than 99% of its budget in fossil fuel production, a reasonable consumer could find that Chevron did not believe that it would ever become a leader in renewable energy development." *Id.* (citing Compl. at ¶ 140). They argue "even if certain statements in those campaigns might qualify as non-actionable opinions in isolation, they are accompanied by statements that misrepresent or omit material facts, rendering the advertisement as a whole misleading." *Id.*

Responding to Chevron Defendants' claim that the statements are puffery, the District argues that the question of puffery is typically left to the "'trier of facts." *Id.* (quoting *Hagedorn v. Taggart*, 114 A.2d 430, 431 (D.C. 1955). It claims "a reasonable consumer could conclude that Chevron's misleading statements about its fossil fuels' climate impacts and about its investments

[5] They also argue "the District has repeatedly taken substantially similar positions to those it now says violated the CPPA." Memo at 13. "For example, while the District asserts that Chevron's statements to 'leave the car at home' violate the CPPA, the District has told its residents that 'everyone wins when we take cars off the road' and has 'encourage[d] carpooling and carsharing.' The District cannot have it both ways." *Id.* The Court disagrees: a statement can be misleading out of one mouth and not another, depending, for example, on financial motive.

in renewable energy are not exaggerations reasonably expected of a fossil fuel company." *Id.* "And he or she could precisely determine that these statements create false impressions by comparing Chevron's external and internal statements about the science of climate change, the climate risks of its products, and its investments in renewable energy *vis-à-vis* fossil fuel production." *Id.*

Chevron Defendants reply that "[t]elling consumers to use less gasoline is the opposite of proposing a commercial transaction" and "staking out the position that 'It's time oil companies get behind the development of renewable energy' is not commercial speech under any conceivable test." Reply at 7 (quoting Compl. at ¶ 139). "It is opinion about a matter of public concern." *Id.*

"Puffery is a legal doctrine that posits some statements are of a type that no reasonable consumer would rely upon them, because there is a certain amount of bluster or 'sales talk' that is to be expected when pushing one's wares." *Earth Island*, 321 A.3d 654 at 666. "The puffery 'rule has not been a favored one,' and except in rare cases, the question of whether a statement is an 'actionable misrepresentation' or mere puffery must be 'left to the jury.'" *Id.* (quoting Prosser & Keeton on Torts § 109 at 757 (5th ed. 1984)) (citing *Hagedorn v. Taggart*, 114 A.2d 430, 431 (D.C. 1955) ("[W]hether statements...amount to mere 'puffing'…depends upon the surrounding circumstances, the manner in which they are made, and the ordinary effect of the words used. Ultimately, this is a question to be resolved by the trier of the facts.").

In *Earth Island*, the D.C. Court of Appeals also held that it "was not the rare case where we can say that no reasonable consumer would rely on Coca-Cola's representations that it 'act[s] in ways to create a more sustainable and better shared future,' including for 'our planet,' as some assurance that Coca-Cola is not the environmental menace that Earth Island alleges it is." *Earth Island*, 321 A.3d 654 at 667. So too here. This is not the "rare case" where the Court can say for certain that no reasonable consumer would rely on Chevron Defendants' alleged greenwashing

statements "as some assurance that [Chevron Defendants are] not the environmental menace that [the District] alleges [they are]." *See id.*

The District plausibly alleges the greenwashing statements are indeed actionable under the CPPA, rather than non-actionable opinions or puffery. A reasonable consumer could, as alleged by the District, be misled by the greenwashing statements. For example, a reasonable consumer might read that Chevron Defendants are "behind renewables" and "tackling the challenge of making them affordable and reliable on a large scale" (Compl. at ¶ 139) and conclude that Chevron Defendants are putting a great deal of effort into promoting renewable energy and combatting climate change. If, as the District alleges, this is not true, a jury could find that the greenwashing statements are misleading.

Crucially, it is not for the Court to decide whether the alleged greenwashing 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 Chevron Defendants failed to state and/or misrepresented material facts in their alleged greenwashing statements that had a tendency to mislead D.C. consumers (§ 28-3904(e) & (f)), or whether the statements are "mere puffery." *Earth Island*, 321 A.3d 654 at 666 ("…[E]xcept in rare cases, the question of whether a statement is an 'actionable misrepresentation' or mere puffery must be 'left to the jury.'").

3. Actual falsity is not required under the CPPA.

Chevron Defendants next argue that the Complaint does not allege any of their statements are false. Memo at 14. They state "'a reasonable consumer generally would not deem an accurate

statement to be misleading.'" *Id.* (quoting *Saucier v. Countrywide Home Loans*, 64 A.3d 428, 442 (D.C. 2013)). But, as argued by the District, "Chevron cannot evade liability by arguing that its statements are not false." Opp'n at 7. It alleges "Chevron directed its front groups to disseminate false statements denying the link between climate change and its fossil fuels—statements that flatly contradicted Chevron's own internal knowledge." *Id.* (citing Compl. at ¶¶ 48-52). "Regardless, 'a representation may be misleading' under the CPPA 'even if true'" (*Ctr. for Inquiry*, 283 A.3d at 120 n.11) "because 'a reasonable consumer could still be misled by technically accurate information.'" *Id.* (quoting *D.C. v. Amazon.com, Inc.*, No. 2022 CAB 5698, 2023 WL 8850053, at *6 (D.C. Super. Ct. June 23, 2023)). Falsity is not required: a statement may be true *and* misleading. *Ctr. for Inquiry Inc. v. Walmart, Inc.*, 283 A.3d 109, 120, n.11 (D.C. 2022)).

4. The Court will not now decide whether the alleged greenwashing statements are materially misleading.

Chevron Defendants argue "the District does not—and cannot—plausibly allege that any of Chevron's supposed 'greenwashing' statements were capable of 'influenc[ing]' reasonable D.C. consumers 'to take an action he or she may have refrained from taking if aware of the actual facts.'" Memo at 16 (quoting *Jackson v. ASA Holdings*, 751 F. Supp. 2d 91, 99 (D.D.C. 2010)). They allege much of the Complaint as applied to Chevron Defendants is "immaterial as a matter of law" because "…it is not possible that any of Chevron's post-2010 statements could have prompted consumers to purchase Chevron gas or diesel in the District of Columbia, or that any statements could have caused consumers to purchase Chevron natural gas here at any time." *Id.*

They also argue "[n]one of the statements are material in any event as a matter of fact." *Id.* They explain "the District alleges that consumers who 'received accurate information' might have cut back on their use of fossil fuel products by, for example, 'avoid[ing] or combin[ing] car travel trips,' sharing rides, or 'seek[ing] transportation alternatives all or some of the time.'" *Id.* at 16-17

(quoting Compl. at ¶ 168). "But that is precisely what Chevron allegedly told consumers to do—join Chevron in 'leav[ing] the car at home.'" *Id.* (quoting Compl. at ¶ 168).[6]

To reiterate, the District claims whether the statements were made pre- or post-2010 is "inconsequential." *See* Opp'n at 11. "Chevron engaged in unlawful trade practices in connection with its gasoline and diesel sales before 2010, which are actionable today because there is no applicable statute of limitations." *Id.* After 2010, Chevron continued to sell branded lubricants and motor oils in the District. *Id*. (citing Compl. at ¶ 16(i)). "And Chevron encouraged sales of those products by continuing to disseminate greenwashing ads that worked to burnish consumers' perceptions of Chevron and its brand." *Id.* (citing Compl. at ¶¶ 139-44, 154-55).

The District argues that, generally, the question of materiality should not be treated as a matter of law. Opp'n at 6 (citing *Mann v. Bahi*, 251 F. Supp. 3d 112, 126 (D.D.C. 2017)). Moreover, it argues that the Complaint easily clears the "low threshold" of the test for materiality: "a deceptive statement or omission is material so long as 'a significant number of unsophisticated consumers would find that information important in determining a course of action.'" *Id.* (quoting *Saucier*, 64 A.3d at 442 (cleaned up)). They allege that statements about "climate impacts that endanger 'health' and 'safety'" are "'presumed material.'" *Id.* (quoting *Novartis Corp. v. FTC*, 223 F.3d 783, 786 (D.C. Cir. 2000)) (citing FTC Deception Policy Statement, 103 F.T.C. at 182). Chevron Defendants reply that "[b]ecause 'no reasonable person would be…deceived' by anything Chevron said, this Court should dismiss the District's greenwashing theory." Reply at 9 (quoting *Whiting v. AARP*, 637 F.3d 355, 364 (D.C. Cir. 2011)).

[6]According to Chevron Defendants, it is a "contradiction" that (1) the District imagined consumers might reduce their car usage if they received accurate information and (2) the District alleged it was misleading for Chevron Defendants to tell consumers to leave their cars at home. *See* Memo at 17. There is no contradiction, and Chevron Defendants' claim as such is a red herring. In the first case, the District describes a result, and in the second case, the District critiques an allegedly misleading statement. The fact that they both mention leaving one's car at home is immaterial.

Importantly, there is no requirement under the CPPA "that any consumer in fact be misled by the deceptive statements." *Earth Island*, 321 A.3d 654 at 664 (citing D.C. Code § 28-3904) ("It shall be a violation…for any person to engage in an unfair or deceptive trade practice, whether or not any consumer is in fact misled, deceived, or damaged."). In *Earth Island*, the D.C. Court of Appeals found that the statements at issue there were "material" because "there is no dispute that costumers" care about products' potential harm to the environment. *Id.* "…[T]he 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.

The Court is not prepared to hold that the alleged statements are indeed "presumed material." Opp'n at 6. Even so, the District has more than plausibly alleged that D.C. consumers care about the environment such that information as to a company's role in causing climate change might affect their purchasing decisions. *See* Compl. at ¶¶ 61-68 (arguing that as consumer awareness grows, particularly related to issues of public health, purchasing decisions are affected). For the purposes of a Motion to Dismiss, the District plausibly alleges the greenwashing statements are material.

D. The District plausibly alleges the statements about Techron violate the CPPA.

Several of the District's allegations against Chevron relate to deceptive statements about Techron, a type of Chevron gasoline additive. "Chevron advertises its Techron fuel with claims that emphasize its supposed positive environmental qualities, such as: 'less is more,' 'minimizing emissions,' and 'up to 50% cleaner.'" Compl. at ¶ 160(b)-(d). "In a Q and A on Chevron's website, one question says, 'I care for the environment. Does Techron impact my car's emissions?' Chevron answers that '[g]asolines with Techron' clean up carburetors, fuel injectors, and intake valves,

'giving you reduced emissions.'" *Id.* at ¶ 160(c). The District claims "these representations are misleading because they emphasize the products' supposed environmentally beneficial qualities without disclosing the key role fossil fuels play in causing climate change." *Id.* at ¶ 160(d).

Chevron Defendants claim that as to the Techron statements, "the District does not assert a claim under D.C. Code § 28-3904(a), implicitly conceding that Chevron did not represent that Techron has any 'characteristics' or 'benefits' that it does not have." Memo at 19. "…[T]here is no support in the law for the proposition that a company must mention climate change whenever it discusses emissions." *Id.* at 19-20. Further, they argue "the District misleadingly omits Chevron's statement in the very Q&A it quotes: 'Deposits on carburetors, fuel injectors and intake valves can cause your car to produce higher emissions, which contribute to air pollution.'" *Id.* at 20. "Thus, the District's theory amounts to quibbling with the precise language of a disclosure that Chevron actually made.' *Id.* They also claim that "[i]n light of widespread media coverage and public discussion of the role that fossil fuels play in contributing to climate change…no reasonable consumer could possibly have been misled into thinking that fossil fuels do not play a role in causing climate change." Memo at 20.

As to the omitted statement from the Q&A, the District argues it is improper and beyond the scope of 12(b)(6) Motion to Dismiss to engage in a detailed analysis of each statement. Opp'n at 7. "Regardless," they claim "context does not sanitize Chevron's misleading statements," as "those ads are still deceptive because they tell consumers who 'care for the environment' that they can 'reduce[] [their] emissions' by purchasing Techron fuels, while failing to disclose that those fuels cause climate change." *Id.* (quoting Compl. at ¶ 60).

In their Reply, Chevron Defendants state "[t]he District's theory that Chevron's Techron statement could have been misleading to a reasonable consumer is manifestly implausible." Reply

at 10. They argue that a "detailed analysis" of the statement is not necessary, because the first sentence of the answer in the Q&A discusses "air pollution," and "no reasonable consumer" would ignore that sentence. *Id.* They claim that no reasonable person who cares about the environment "could possibly be misled because Chevron's express disclosure did not use the words 'climate change.'" *Id.*

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 Chevron Defendants' omissions about Techron are actionable under the CPPA. If the facts are "borne out" in the instant suit, a jury could find that reasonable consumers are misled into believing

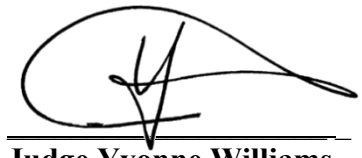
that by using Techron, they are addressing, rather than contributing to climate change. The Court declines to dismiss the District's claims regarding Chevron Defendants' statements about Techron.

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

ORDERED that Chevron Defendants' Motion to Dismiss is **DENIED**; 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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