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 Exxon Mobil Corporation and ExxonMobil Oil Corporation ("Exxon Defendants") on March 10, 2023.[1] Exxon 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 Exxon 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 Exxon Defendants' public-facing climate personas as follows: "Exxon initially denied

[1] The Court is separately considering and responding to Motions to Dismiss filed by BP P.L.C. and BP America Inc ("BP 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, both through front groups and its own advertising, before pivoting to greenwashing campaigns that misleadingly portray Exxon as a leader in the fight against global climate change." 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 (1) a 1968 report commissioned by API "regarding the state of research on environmental pollutants, including carbon dioxide" (*Id.* at ¶ 32); (2) 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); and (3) an Exxon "in-house research and development project to study carbon dioxide emissions and the greenhouse effect. *Id.* at ¶ 38.

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). 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.

The District alleges that "Exxon (including its predecessor Mobil) embarked on its own long-term advertising and communications campaign designed to obscure the scientific reality of global warming in the minds of consumers in the District and nationwide." *Id.* at ¶ 72. In a 1988 memo, an Exxon public affairs manager, included two public messaging tenants as a part of the "Exxon Position": (1) "[e]mphasize the uncertainty in scientific conclusions regarding the potential enhanced Greenhouse Effect;" and (2) "[r]esist the overstatement and sensationalization [sic] of potential greenhouse effect which could lead to noneconomic development of non-fossil fuel resources." *Id.* at ¶ 73. "Consistent with the 'Exxon Position,' starting in the 1970s and continuing through at least 2004, Exxon placed at least 36 paid advertisements designed to appear to consumers as if they were actual editorials, known as advertorials, in major national newspapers with wide circulation to DC consumers, including the *New York Times* and the *Washington Post*." *Id.* at ¶ 74. For example, a Mobil advertorial ("Reset the Alarm") published in the *New York Times* in 1997 stated: "Scientists cannot predict with certainty if temperatures will increase, by how much and where changes will occur. We still don't know what role man-made greenhouse gases might play in warming the planet." *Id.* at ¶ 77(a).

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…Exxon [] spent just 0.2% of their capital spending on 'greener' energy." *Id.*

The District alleges that Exxon is currently running advertisements in "publications with wide circulation to DC consumers…in which Exxon misleadingly promotes its efforts to develop energy from alternative sources such as algae and plant waste-efforts that are vanishingly small in relation to the investments Exxon continues to make in fossil fuel production." *Id.* at ¶ 110.

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 Hon. Judge Alfred S. Irving 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. The court 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 Exxon 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. In support of their Motion to Dismiss, Exxon Defendants filed an affidavit written by Jeff Bricker ("Bricker Aff."), the Business Manager for U.S. Retail at Exxon Mobil Corporation, and a Declaration written by Paula D. Bachman ("Bachman Dec."), Exxon Defendants' counsel. 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. The District filed Oppositions on April 8, 2024, to which Defendants filed Replies on April 22, 2024.

Exxon Defendants argue the following in their Memorandum in Support of their Motion to Dismiss. (1) ExxonMobil is not subject to personal jurisdiction for these claims in the District of

Columbia. Memo at 6. (2) The District fails to state a plausible claim for relief under the CPPA as (*Id.* at 10): (a) statements in opinion pieces about climate science, climate policy, or future products are not actionable because they are not representations about consumer goods or services (*Id.* at 6); (b) aspirational statements about ExxonMobil's commitment to addressing climate change are not actionable (*Id.* at 6); (c) the Complaint fails to plausibly allege that statements about biofuels, Synergy, and Mobil 1 would mislead a reasonable consumer (*Id.* at 6); and (d) the Complaint fails to plausibly allege materiality. *Id.* at 6. (3) Federal law bars the District's claims as (*Id.* at 6): (a) ExxonMobil's speech is protected by the First Amendment (*Id.* at 6) and (b) the relief the District seeks violates the Commerce Clause. *Id.* at 6.

In its Opposition, the District responds as follows. (1) Exxon's extensive and multiple contacts with the District satisfy the District's long-arm statute and due process. Opp'n at 4. (2) The Complaint states actionable CPPA claims as (*Id.* at 8): (a) Exxon made materially misleading statements and omissions (*Id.* at 9); (b) actual falsity is not required (*Id.* at 11); (c) Exxon's statements are not non-actionable opinions or "aspirational" statements (*Id.* at 12); and (d) Exxon's deception is sufficiently connected to its sales. *Id.* at 13. (3) The CPPA and the relief sought are fully compliant with the First Amendment because they do not target protected speech. *Id.* at 16. Lastly, (4) the CPPA and the relief sought [to] comply with the Commerce Clause. *Id.* at 18.

In Exxon Defendants' Reply, they again argue (1) ExxonMobil is not subject to personal jurisdiction (Reply at 1); (2) the District fails to state a plausible CPPA claim (*Id.* at 3); and (3) federal law bars the District's claims (*Id.* at 8) because (a) ExxonMobil's speech is protected by the First Amendment (*Id.* at 8) and (b) the relief the District seeks violates the Commerce Clause. *Id.* at 10.

II. LEGAL STANDARD

A. Motion to Dismiss pursuant to Rule 12(b)(2)

"'A motion to dismiss for lack of personal jurisdiction tests not whether the plaintiff will prevail on the merits, but instead whether or not the court may properly exercise jurisdiction over the movants.'" *Kundrat v. D.C.*, 106 F. Supp. 2d 1, 4 (D.D.C. 2000) (quoting *District of Columbia v. Daro Realty*, LLC, LEXIS 12, *4-5 (D.C. Super. 2020)).

To exercise personal jurisdiction over a nonresident Defendant, (1) "the exercise of personal jurisdiction must be authorized by the District's long-arm statute;" and (2) "the exercise of personal jurisdiction must comport with the requirements of due process." *Companhia Brasileira Carbureto De Calcio v. Applied Indus. Materials Corp.*, 35 A.3d 1127, 1130 (D.C. App. 2024). Under the District's long-arm statute, D.C. Code § 13–422 codifies personal jurisdiction based on enduring relationship, and D.C. Code § 13–423 codifies personal jurisdiction based on conduct.

Next, "[t]o satisfy the requirements of due process, the nonresident defendant must have had sufficient 'minimum contacts' with the forum state to justify subjecting him to the exercise of personal jurisdiction by its courts." *Companhia Brasileira Carbureto De Calcio v. Applied Indus. Materials Corp.*, 35 A.3d 1127 at 1130 (quoting *Environmental Research Int'l, Inc. v. Lockwood Greene Engineers, Inc.*, 355 A.2d 808, 811 (D.C. App. 1976)). The most important inquiry in assessing whether a Defendant has sufficient minimum contacts is "whether the defendant's contacts with the forum are of such a quality and nature that they manifest a deliberate and voluntary association with the forum and are not fortuitous or accidental." *Harris v. Omelon*, 985 A.2d 1103, 1105 (D.C. App 2009) (internal citations omitted). "This requires some act by which

the defendant purposefully avails itself of the privilege of conducting activities within the forum State to establish personal jurisdiction." *Id.* (internal citations omitted).

B. Motion to Dismiss pursuant to Rule 12(b)(6)

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. This Court has personal jurisdiction over Exxon Defendants, as their alleged conduct is closely tied to their contacts with the District.

Exxon Defendants argue that the District's claims should be dismissed under Rule 12(b)(2) because "the Complaint fails to allege claims arising out of ExxonMobil's statements that targeted D.C. consumers, or that ExxonMobil specifically directed its products into the District." Memo at 10. Exxon Defendants are incorporated outside of the District "[a]nd the Complaint does not allege that ExxonMobil's contacts with the District are 'so substantial and of such a nature as to render the corporation at home' in D.C." Memo at 7 (citing Compl. at ¶ 13(a), (f))), (quoting *Daimler AG*

v. Bauman, 571 U.S. 117, 139 n.19 (2014). "The District instead alleges that the Court can assert specific personal jurisdiction over ExxonMobil under D.C.'s long-arm statute," D.C. Code § 13-423(a), which "…allows D.C. courts to exercise personal jurisdiction only to the extent permitted by due process." *Id.* (citing *Thompson Hine, LLP v. Taieb*, 734 F.3d 1187, 1189 (D.C. Cir. 2013)). Exxon Defendants claim the District has failed to "allege facts showing that its claims against ExxonMobil arise out of or relate to contacts ExxonMobil has created with the District." *Id.* (citing *Ford Motor Co. v. Montana Eighth Jud. Dist. Ct.*, 592 U.S. 351, 359 (2021)).

The District responds that "[t]he Complaint establishes that Exxon has engaged for decades in extensive, systemic contacts with the District to promote and supply its fossil fuel products, leading to increased sales from which Exxon profited significantly." Opp'n at 5. "Until 2010, Exxon directly owned and operated gas stations in the District." *Id.* (citing Compl. at ¶ 13(i); Bricker Aff. at ¶ 4). "Since then, it has continued to supply fossil fuel products to District consumers, including through Exxon/Mobil-branded gas stations in the District, for which Exxon 'provides brand guidelines' and licenses and controls trademark usage, and dictates at-the-pump advertisements for its Synergy fuel." *Id.* (citing Compl. at ¶¶ 13(j), 156(c); Bricker Aff).

"Further, Exxon engaged in extensive marketing campaigns to promote and profit from the sale of its fossil fuel products, including placing dozens of 'paid advertisements styled as editorials (known as 'advertorials') in major national newspapers with wide circulation to DC consumers, including the *New York Times* and the *Washington Post*.'" *Id.* (quoting Compl. at ¶¶ 74–75). "In many instances, Exxon's contacts with the District and the at-issue conduct in this suit are one and the same." *Id.* "That is true for Exxon's advertorials in national publications and the *Washington Post*, Compl. ¶¶ 74–75, and for Exxon's at-the-pump advertising, *id.* ¶¶ 152, 156, both of which establish Exxon's targeting of the District and constitute deceptive advertisements that (in

conjunction with Exxon's other conduct) caused the harm alleged and impacted consumer consumption of Exxon's products." *Id.* (citing Compl. at ¶¶ 48–97, 161–68).

Exxon Defendants reply that "ExxonMobil has not owned stations in D.C. for nearly fifteen years; its finished products reach D.C. consumers only through chain of third-party distributors, suppliers, and retailers; and its nationwide product advertisement campaigns are not specifically prepared for or directed to the District." Reply at 1 (citing Memo at 8-10) (citing Bricker Aff. at ¶¶ 5, 7, 1 0). Therefore, Exxon Defendants argue, the alleged trade practices do not arise of or relate to contacts that they purposefully created with the District. *Id.* (citing Memo at 7-10).

As to the District's arguments about Exxon's products being sold in the District, Exxon Defendants argue that "the undisputed facts show that ExxonMobil 'does not control the operations' of the independent owners who operate Exxon- or Mobil-branded fueling stations in the District." *Id.* (citing Bricker Aff. at ¶¶ 4, 8). "And D.C. caselaw is clear that 'the mere fact that a franchisor has franchisees in a particular state does not subject it to that state's jurisdiction." *Id.* (citing *Rundquist v. Vapiano SE*, 798 F. Supp. 2d 102, 114 (D.D.C. 2011) (citation omitted). Additionally, they allege "…the record shows that none of ExxonMobil's product advertisement campaigns are specifically prepared for or directed to D.C. consumers, and that ExxonMobil does not sell products, or operate fueling stations or refineries, in the District." *Id.* "In any event, what ExxonMobil allegedly failed to say in its advertisements cannot be a basis for jurisdiction because an omission does not create the necessary minimum contacts." *Id.* (citing Memo at 10). Finally, Exxon Defendants reply that "…the bare fact that ExxonMobil expressed its opinions in a public debate on *policy* issues in the op-ed pages of one of D.C.'s newspapers does not mean that ExxonMobil is subject to jurisdiction for claims arising out of allegedly deceptive product advertisements that were *not* targeted to D.C. consumers." *Id.* (citing Bricker Aff. at ¶ 10).

At the March 20, 2025 Motion Hearing, the District argued that *Environmental Working Group v. Tyson Foods, Inc.* is analogous to the instant case. *See* March 20, 2025 Motion Hearing (citing *Environmental Working Group v. Tyson Foods, Inc.*, No. 2024 CAB 5935 (D.C. Super. Ct. Feb 3, 2025)). The Court agrees. In *Environmental Working Group v. Tyson Foods, Inc.*, Plaintiff Environmental Working Group alleged that Defendant Tyson Foods, Inc. "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, sip op. at 1. This Court denied Defendant Tyson Foods' Motion to Dismiss and found it fair to exercise personal jurisdiction over Tyson. *Id.* at 6. "According to the complaint, Tyson…established contacts with the District by marketing directly to consumers, selling its products to consumers through affiliated websites, placing online advertisements in the *Washington Post*, distributing its products to major retailers throughout the city, and publishing press reports and other online content accessible to D.C. consumers." *Id.* at 5.

While Plaintiff EWG did not allege that any "products carrying the allegedly misleading statements" were sold in the District, this Court found "specific personal jurisdiction does not 'requir[e]…proof that the [P]laintiff's claim came about because of the [D]efendant's in-state conduct.'" *Id.* at 6 (quoting *Ford Motor Co. v. Mont. Eighth Judicial Dist. Court*, 592 U.S. 351, 362 (2021)). It found that "[g]iven Tyson's extensive sales and marketing within the District, as well as the relation between those contacts and EWG's CPPA claims, Tyson could 'reasonably anticipate being haled into court in the District of Columbia.'" *Id.* (quoting *Shoppers Food Warehouse v. Moreno*, 746 A.2d 320, 336 (D.C. 2000). So too here.

As in *EWG v. Tyson*, the District alleges that the Exxon Defendants sold products in the District through third parties and published advertisements in national publications available to

D.C. consumers. Opp'n at 5. The Court finds that it may fairly exercise personal jurisdiction over Exxon Defendants. Under the District's long-arm statute, this Court may exercise personal jurisdiction over a Defendant as to a claim for relief arising from, among other things, their "transacting any business in the District of Columbia" (D.C. Code § 13–423(a)(1)); and their "causing tortious injury in the District of Columbia by an act or omission outside the District of Columbia if he regularly does or solicits business, engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed, or services rendered, in the District of Columbia." D.C. § Code 13–423(a)(4); *see* Opp'n at 4. First, Exxon Defendants transact business in the District. *See* § D.C. Code 13–423(a)(1)). Second, the District alleges tortious injury by acts and omissions, and Exxon Defendants regularly do business and derive substantial revenue in the District by selling gas through Exxon/Mobil-branded gas stations. *See* D.C. Code § 13–423(a)(4). The District's long-arm statute requirements are satisfied.

Exxon Defendants' contacts with the District are "of such a quality and nature that they manifest a deliberate and voluntary association" with the District "and are not fortuitous or accidental." *See Harris v. Omelon*, 985 A.2d 1103, 1105 (D.C. App 2009) (internal citations omitted). By marketing to D.C. consumers and selling products in the District, Exxon Defendants have "purposefully avail[ed] themselves of the privilege of conducting activities" within the District. *See id.*

B. For purposes of considering the instant Motion to Dismiss, the Court uses a mosaic approach to consider the alleged statements in the aggregate.

At the March 20, 2025 Motion Hearing, Exxon Defendants argued that the Court should consider each alleged misleading statement, instead of relying on the "gestalt" of the statements. *See* March 20, 2025 Motion Hearing. In *Earth Island Inst. v. Coca-Cola Co.*, 321 A.3d 654 (D.C. App. 2024), the D.C. Court of Appeals held that misleading representations need not be contained

in a single statement to be actionable. *Earth Island*, 321 A.3d 654 at 659 (reversing a dismissal of CPPA claims against Coca-Cola Co.). Exxon Defendants distinguished the current case from *Earth Island*, arguing that the D.C. Court of Appeals applied a mosaic approach because the claims in the latter case were limited to representations that Coca Cola *was still making* about its sustainability practices. *See* March 20, 2025 Motion Hearing. In the instant case, some of the claims at issue are based on Defendants' past statements. Exxon Defendants expressed concern about how the District would calculate damages reflecting both past and present statements, and therefore asks that the Court to consider statements individually.

"…[T]he 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. The fact that the District alleges both past and present misrepresentations is not a sufficient reason to ignore the D.C. Court of Appeals' instructive holding in *Earth Island*. Neither is Exxon Defendants' concern for complex discovery. While "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," it does not appear that the District had stripped isolated statements out of context to cobble together an unrepresentative tapestry. *Id.* The District alleges a singular decades-long story of deceit. Therefore, the Court is inclined to take a mosaic approach and consider the alleged misrepresentations in the aggregate, rather than separately.

C. The District plausibly states a claim for relief under the CPPA.

Accepting the Complaint's allegations as true and viewing them in the light most favorable to the District (*see Jordan Keys & Jes*samy at 62), **the Court finds that the District has plausibly alleged its misrepresentation claims against Exxon Defendants are actionable**. First, Exxon

Defendants argue that "[s]tatements allegedly made by ExxonMobil about climate policy, climate science, or its aspirations to develop next generation biofuels are not actionable because they make no representations regarding characteristics of 'goods or services' currently for sale in the District." Memo at 11. Additionally, they state that "ExxonMobil's *opinions* also cannot form the basis of a CPPA claim because they are not 'representations of material fact upon which a plaintiff successfully may place dispositive reliance.'" *Id.* at 11, n.6 (quoting *Howard v. Riggs Nat'l Bank*, 432 A.2d 701, 706 (D.C. 1981)) (emphasis added).

Second, Exxon Defendants argue that "aspirational statements about ExxonMobil's commitment to addressing climate change are not actionable." Memo at 12. They rely on *Earth Island Inst. v. The Coca-Cola Co.*, 2022 WL 18492133 (D.C. Super. Ct. Nov. 10, 2022), which has since 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 that "statements that 'represent[ ] the company as sustainable and environmentally friendly' are not actionable if they are aspirational, qualified, and not factually incorrect." Memo at 12 (quoting *Earth Island*, 2022 WL 18492133 at *1-2, *6). "ExxonMobil's allegedly misleading statements regarding its next generation biofuels, which were not for sale in the District or elsewhere, are aspirational and qualified in nature and, therefore, not a violation of the CPPA." *Id.* at 13 (citing *Earth Island*, 2022 WL 18492133 at *2).

Third, "[t]he District's claims based on statements about biofuels and ExxonMobil's Synergy and Mobil 1 products also must be dismissed because they would not mislead a reasonable consumer" and because "the Complaint does not allege that any of those statements are false." *Id.* at 14. "'[A] reasonable consumer generally would not deem an accurate statement to be misleading, and hence, such statement generally would not be actionable under' the CPPA." *Id.* (quoting *Saucier v. Countrywide Home Loans*, 64 A.3d 428, 442 (D.C. 2013). Additionally, Exxon

Defendants argue, "[t]he District cannot transform accurate statements into misleading ones by arguing that ExxonMobil should have told consumers more about the link between fossil fuel products and global climate change." *Id.* at 15 (citing Compl. at ¶¶ 9, 106, 147–49, 155, 156(f), 157(e), 158(c), 159(c), 160(d)).

"A statement is not misleading because it does not disclose something already known to the consuming public," Exxon Defendants argue, alleging the District has made two "dispositive concessions." *Id.* "…[T]he Complaint concedes that D.C. consumers not only know about the link between fossil fuel products and climate change, but that such knowledge is an 'important' factor in their purchasing decisions." *Id.* (citing Compl. at ¶¶ 10, 165). Additionally, "…the Complaint alleges that ExxonMobil adopted its allegedly misleading advertising strategies in response to—*i.e.*, only *after*—consumer understanding of these issues began impacting consumer behavior." *Id.* (citing Compl. at ¶ 10). "No *reasonable* person would be deceived by ExxonMobil's failure to disclose risks of using products that the Complaint concedes District consumers already understood." *Id.* at 15-16 (citing *Whiting v. AARP*, 637 F.3d 355, 364 (D.C. Cir. 2011)).

At the March 20, 2025 Motion Hearing, Exxon Defendants again argued that the District could not argue an omission is misleading when the information was a widely known fact. *See* March 20, 2025 Motion Hearing. They cited a decision published in a comparable case before the Supreme Court of New York, *City of New York v. Exxon Mobil Corp.*, in which that court held that "[t]he City cannot have it both ways by, on one hand, asserting that consumers are aware of and commercially sensitive to the fact that fossil fuels cause climate change, and, on the other hand, that the same consumers are being duped by Defendants' failure to disclose that their fossil fuel products emit greenhouse gases that contribute to climate change." *City of New York v. Exxon Mobil Corp.*, 226 N.Y.S.3d 863, 879.

Fourth, Exxon Defendants argue that "[e]ven if the District could plausibly allege an actionable misrepresentation or omission—which it cannot—the Complaint should still be dismissed because it fails to allege facts showing that any of the purported misrepresentations or omissions were material to consumers' decisions to purchase ExxonMobil's products." *Id.* at 16-17. "A statement or omission is material 'if a significant number of unsophisticated consumers would find that information important in determining a course of action.'" *Id.* at 17 (citing *Saucier*, 64 A.3d at 442). "Here, the Complaint alleges that consumers care about emission reductions, Compl. ¶¶ 98–99, but does not allege that any D.C. consumer purchased fossil fuel products from ExxonMobil because of the challenged statements."[2] *Id.* Further, "…the Complaint alleges that D.C. consumers already know about the connection between fossil fuel products and climate change and have altered their purchasing decisions accordingly" (Compl. at ¶¶ 10, 165), and "[i]t is not plausible that consumers would have further changed their behavior if ExxonMobil told them what they already knew." *Id.* (citing *Dahlgren v. Audiovox Commc'ns Corp.*, 2010 D.C. Super. LEXIS 9, *61 (D.C. Super. Ct. July 8, 2010)).

According to the District, whether statements or omissions have a tendency to mislead and whether a statement or omission is material are jury questions. Opp'n at 9-10. As to Exxon Defendants' argument that the District's claims are not actionable, the District responds that "[v]iewed in the light most favorable to the District, these allegations satisfy the CPPA's relaxed test for statements and omissions that tend to mislead." *Id.* at 9. "Exxon incorrectly argues that its greenwashing statements could not have misled because consumers know that fossil fuels contribute to climate change, Mot. 15-16, but that ignores why Exxon engaged in greenwashing in

[2] The District responds that this "is just another way to argue the District must show actual injury or reliance." Opp'n at 10. "That is plainly incorrect. False advertising is actionable under the CPPA 'whether or not any consumer is in fact misled, deceived, or damaged thereby.'" *Id.* (quoting D.C. Code § 28-3904) (citing *Frankeny v. Dist. Hosp. Partners, LP*, 225 A.3d 999, 1004 (D.C. 2020)).

the first place." *Id.* "Exxon 'intended to capitalize on consumers' concerns about climate change' and 'reassure' them that using its products would help 'address[] climate change.'" *Id.* (Citing Compl. at ¶¶ 99, 151). The District refers to Exxon Defendants' practices as "deceptive practices that prey on consumer concerns." *Id.* at 10. The test for materiality, the District states, is relaxed: "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 (citation omitted).

The District frames Exxon Defendants arguments as follows: "Exxon asserts that its misleading claims about its fossil fuel products are 'aspirational' opinions because it used the word 'could' and said it was 'working on' reducing its carbon footprint." *Id.* at 12 (quoting Memo at 13). "But even expressions of opinion 'explicitly affirm[]…that the speaker actually holds the stated belief' and may be actionable if the speaker does not in fact hold that belief.'" *Id.* (quoting *Omnicare, Inc. v. Laborers Dist. Council Indus. Pension Fund*, 575 U.S. 175, 184–85 (2015)). "And given that Exxon continues to invest 99.8% of its capital expenditures on fossil fuel production, a reasonable consumer could conclude that Exxon did not believe that it would ever become a leader in renewable energy development." *Id.* (citing Compl. at ¶ 112). Further, the District argues that "even if certain statements in those campaigns might qualify as non-actionable opinions in isolation, they are accompanied by statements that a jury could conclude misrepresent or omit material facts." *Id.* (quoting Compl. at ¶ 115) ("Because biodiesel is produced predominantly from fossil fuel, it is not 'sustainable' nor 'environmentally friendly' as claimed in Exxon's advertisement.").

As to Exxon Defendants arguments that its statements are not actionable because they are not connected to goods and services available in the District (Memo at 6), the District responds

that the alleged deception is sufficiently connected to its sales (Opp'n at 13) and moreover, that "the CPPA covers more than advertisements that explicitly reference a company's goods or services by name." Opp'n at 14. "To be clear," the District states, "some of Exxon's misrepresentations explicitly describe the products it sold," and "many others discuss (and deny or seek to minimize) the harms caused by Exxon's fossil fuel products." *Id.* "Putting that aside, however, by its plain terms, the CPPA forbids any 'unfair or deceptive trade practice.'" *Id.* (quoting D.C. Code § 28-3904). The District argues that "Exxon's disinformation and greenwashing campaigns qualify as trade practices because they would, at minimum, indirectly effectuate the sale of Exxon's consumer products." *Id.* Lastly, as to Exxon's claims that statements about its "future products" are not actionable (Memo at 6), the District claims they are "actionable under at least Sections 28-3904(b), (e), and (f) as false statements concerning 'a…status…that [Exxon] does not have' because they misleadingly portrayed Exxon as a leader in reducing carbon emissions and they 'misrepresent[ed]' and 'fail[ed] to state' material facts." Opp'n at 15.

Exxon Defendants reiterate that their "statements of opinion cannot form the basis of a CPPA claim as a matter of law because 'they are not representations of material fact upon which a plaintiff successfully may place dispositive reliance.'" Reply at 4 (*Howard v. Riggs Nat'l Bank*, 432 A.2d 701, 706 (D.C. 1981)). Additionally, "Exxon Mobil's aged opinions on policy issues and forward-looking statements about environmental stewardship do not relate to the sale of consumer goods or services, so they are not actionable." *Id.* at 5. "*Finally*, to the extent the Complaint actually does focus on statements about consumer goods—ExxonMobil's advertisements for Synergy fuel and Mobil 1 motor oil, Compl. at ¶¶ 156-157—it nevertheless fails to state a claim because those statements are accurate and not materially misleading." *Id.* at 6.

As to Exxon Defendants' first point (the statements are not actionable because they do not make representations about goods and services), **the District plausibly alleges that Defendants' statements are actionable**. A statement may reference climate change or climate policy and still be misleading. 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."[3] *Id.* at

[3] In Exxon Defendants' Praecipe Response, they distinguish the instant case. While *Earth Island* alleged misleading statements about packing, in the instant suit, "[b]y contrast, the vast majority of the ExxonMobil statements challenged in the District's Complaint have nothing to do with ExxonMobil's products, but rather either reflect the company's opinions on climate change and energy policy, or describe its research and development efforts." Praecipe Response

671. This Court assumes, "without deciding, that [Exxon 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. The Court will not now decide decide whether individual statements relate to goods or services such that the CPPA applies.

As to Exxon Defendants' second point (aspirational statements are not actionable), **the District plausibly alleges that Defendants' aspirational statements are actionable**. In arguing that its allegedly aspirational statements were not actionable, Exxon Defendants relied on this Court's decision in *Earth Island*, 2022 WL 18492133, which has since been overturned. The D.C. Court of Appeals held in *Earth Island*, 321 A.3d 654 that "…even aspirational statements can be actionable under the CPPA because they can convey to reasonable consumers that a speaker is taking (or intends to take) steps that at least have the potential of fulfilling those aspirations." *Earth Island*, 321 A.3d 654 at 659. "Earth Island alleges that Coca-Cola neither takes nor intends to take any such steps, and if that is correct, then its representations could mislead reasonable consumers." *Id.* "Further," the D.C. Court of Appeals stated, "even if reasonable consumers take Coca-Cola's statements to mean that it is taking substantial strides to improve the environment, it is not at all obvious at this stage of the proceedings whether Coca-Cola's efforts on the ground align with those statements." *Id.* at 666. In the instant case, the District does not allege that Defendants have no intention to take these steps. Rather, it plausibly alleges that in describing its aspirations, Exxon Defendants mislead consumers about whether the aspirations are even helpful to the environment, and if so, to what extent.

"For example, an online advertisement in the *New York Times* promotes the company's development of algae biofuels but omits that it is extremely resource extensive to produce algae

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at 2. 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).

for biofuel on a large scale due to the massive amounts of land and fertilizer needed." *Id.* at ¶ 111. The District alleges that "[t]he advertisement also misleadingly tells consumers that Exxon is 'working to decrease [its] overall carbon footprint,' and that the company's 'sustainable and environmentally friendly' biodiesel fuel could reduce 'carbon emissions from transportation' by greater than 50%." *Id.* The claim that Exxon's "biodiesel fuel could reduce carbon emissions from transportation by greater than 50%" is "highly misleading," according to the District. *Id.* at ¶ 115. "Because biodiesel is produced predominantly from fossil fuel, it is not 'sustainable' nor 'environmentally friendly' as claimed in Exxon's advertisement." *Id.* The District plausibly alleges that Exxon Defendants' aspirational statements are actionable. Defendants cannot hide from CPPA allegations under the guise of aspiration.

As to Exxon Defendants' third point (statements about biofuels, Synergy, and Mobil 1 products are not actionable because they would not mislead a reasonable consumer and the Complaint does not allege they are false), **the District plausibly alleges that Defendants' statements about biofuels, Synergy, and Mobil 1 products are actionable**. First, 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)). Second, the argument that "[a] statement is not misleading because it does not disclose something already known to the consuming public" distracts from the alleged misrepresentation at hand. Memo at 15. In reality, a reasonable consumer can be aware that fossil fuels play a significant role in climate change and still be deceived by oil companies' clever omissions. A reasonable consumer may be aware of, or even be concerned about, climate change and believe, based on an omission, that Exxon Defendants are doing net good for the environment.

As to Exxon Defendants fourth point (the Complaint should be dismissed because it fails to show the purported misrepresentations or omissions were material), **the District plausibly**

alleges materiality. 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 the products' potential harm to the environment. *Earth Island*, 321 A.3d 654 at 664. "…[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 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).

D. Federal law does not bar the District's claims.

1. The District's theory of liability does not run afoul of the First Amendment.

Exxon Defendants argue that the District's theory of liability under the CPPA "runs afoul of the First Amendment." Memo at 18. "On its face, the Complaint is an overt attempt to impermissibly chill ExxonMobil's protected speech on issues related to climate change." *Id.* They state they have a "constitutional right to opine in the public debate on the efficacy or desirability of climate change policies." Opp'n at 18 (citing *Competitive Enter. Inst. v. Mann*, 150 A.3d 1213, 1242 (D.C. 2016)). Referencing their speech about climate change, Exxon Defendants argue that "petitioning activities aimed at influencing public opinion are the type of 'core political speech' at the heart of the First Amendment." *Id.* (citing *Initiative & Referendum Inst. v. U.S. Postal Serv.*, 417 F.3d 1299, 1311 (D.C. Cir. 2005) (citation omitted)); (citing *Allied Tube & Conduit Corp. v. Indian Head, Inc.*, 486 U.S. 492, 499–500 (1988) (The "*Noerr-Pennington* [doctrine] protects 'publicity campaign[s] directed at the general public, seeking legislative or executive action.'").

Exxon Defendants also allege the District is attempting to compel speech in violation of the First Amendment. "[U]nless ExxonMobil issues the District's preferred 'catastrophic' warning, it may not advertise its products or discuss its investments in alternative energy sources without allegedly running afoul of the CPPA." *Id.* at 19. "The First Amendment forbids such government-compelled speech, particularly on controversial issues of public concern" *Id.* (citing *Nat'l Inst. of Family & Life Advocs. v. Becerra*, 585 U.S. 755, 767–68 (2018)), and "[a] company cannot be required to 'publicly condemn itself' to advance a government viewpoint on controversial subjects." *Nat'l Ass'n of Mfrs. v. S.E.C.*, 800 F.3d 518, 528 (D.C. Cir. 2015).

The District responds in its Opposition that "Exxon'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. of Supreme Ct. of Ohio*, 471 U.S. 626, 638 (1985)) (states "are free to prevent the dissemination of commercial speech that is false, deceptive, or misleading"). They argue that the three factors for commercial speech ("(1) the challenged speech's 'advertis[ing]' format; (2) its 'reference[s] to a specific product'; and (3) the speaker's 'economic motivation'") set out in in *Bolger v. Youngs Drug Products Corp.* "make clear that Exxon's deceptive statements are commercial speech. *Id.* (quoting *Bolger v. Youngs Drug Products Corp.*, 463 U.S. 60, 67–68 (1983)). (1) "Exxon's statements were often disseminated in traditional advertising format;" (2) "[t]he advertisements repeatedly referred to Exxon's energy products and operations;" and (3) "…Exxon had a profit motive." *Id.*

Further, "…the Constitution does not protect Exxon's right to deceive about the dangers of its fossil fuel products—even if those dangers are grave enough to prompt public concern." *Id.* at 17 (citing *United States v. Philip Morris Inc.*, 304 F. Supp. 2d 60, 1142-45 (D.D.C. 2004)); (citing

Bolger, 463 U.S. at 67–68). The District states that the *Noerr-Pennington* Doctrine does not protect Exxon Defendants' speech, because the doctrine appeals to "petitions" and not to commercial speech (even if the speech has a political impact). Finally, "enforcing the CPPA against Exxon's misleading advertising is closely related to the District's interest in protecting consumers from deceptive advertising." *Id.* (citing *Zauderer*, 471 U.S. at 651).

Exxon Defendants reply that "[t]he vast majority of the speech targeted by the District's Complaint is core political speech, not commercial speech." Reply at 8. "'The test for identifying commercial speech' is whether the speech in question 'does no more than propose a commercial transaction.'" *Id.* (quoting *City of Cincinnati v. Discovery Network, Inc.*, 507 U.S. 410, 422-23 (1993) (quoting *Harris v. Quinn*, 573 U.S. 616, 648 (2014)). Exxon Defendants argue that their published statements in the *New York Times* and the *Washington Post* did not propose commercial transactions, but rather "sought to influence the public policy debate about how to reduce emissions while meeting global energy needs." *Id.* "Likewise," they state, their "more recent forward-looking statements about next-generation biofuels and the company's emissions reduction goals are not 'commercial speech'" because they do not propose commercial transactions, but instead "make clear that ExxonMobil's next-generation biofuels are in development and *not* currently for sale." *Id.* at 9.

"At bottom," Exxon Defendants state, "the District's argument rests on the faulty premise that any speech that might enhance a company's reputation could benefit the corporation financially and thus is not protected by the First Amendment." *Id.* Finally, they claim that "[a]ny requested remedy within the scope of the District's Complaint would violate the First Amendment." *Id.* at 10.

Exxon Defendants have failed to convince the Court that the District's theory of liability under the CPPA runs afoul of the First Amendment. "'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). The 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 17 ("Exxon's liability rests on its 'long-term campaign' to 'increase sales and protect profits.'" (Citing Compl. at ¶¶ 49–50, 55). 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 Exxon Defendants' First Amendment rights, the instant claims are not in and of themselves First Amendment violations worthy of dismissal.

2. The relief the District seeks does not violate the Commerce Clause.

Claiming that "[t]o avoid liability, ExxonMobil must either make the District's preferred disclosures in any statement that could possibly find its way into D.C., or refrain from distributing nationally any statements that the District deems misleading," Exxon Defendants argue that the District's proposed relief would violate the Commerce Clause. Memo at 20. "The District cannot use its local laws to dictate what consumers in other states read and hear about the alleged link between ExxonMobil's products and climate change." *Id.* "…[T]he Commerce Clause does not permit local regulation that has the 'practical effect' of controlling ExxonMobil's 'conduct beyond the boundaries' of the District" (*Healy v. Beer Inst., Inc.*, 491 U.S. 324, 332, 336 (1989)), "or allow the District to 'impose [its] own policy choice on neighboring States.'" *Id.* (quoting *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 571 (1996)).

The District argues in its Opposition that the Supreme Court of the United States rejected the "practical effect" test in *Nat'l Pork Producers Council v. Ross*, 598 U.S. 356 (2023). *See* Opp'n at 19. "[The Supreme Court]…rejected a broad extraterritoriality rule based on *Healy*,

explaining that 'many (maybe most) state laws have the 'practical effect of controlling' extraterritorial behavior,' including 'laws long understood to represent valid exercises of the States' constitutionally reserved powers.'" *Id.* (quoting *Nat'l Pork Producers Council v. Ross* at 374-75).

The District asks that this Court use the dormant Commerce Clause standard set out in *Pike v. Bruce Church, Inc.* that "a nondiscriminatory statute 'will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits.'" *Id.* at 19-20 (quoting at *Pike v. Bruce Church, Inc.*, 397 U.S. 137 at 142). "The CPPA and this suit do not target or regulate the production, sale, or use of fossil fuels—they target only the deceptive statements promoting them. Nor do they impede the interstate flow of goods…" *Id.* at 20. "On the other side of the ledger, protecting consumers from deception is well within the States' police power." *Id.* In their Reply, Exxon Defendants argue "the District's remedy would require ExxonMobil to make the District's preferred climate disclosures in any nationally distributed advertising or public statement, thus regulating transactions across the country," an "impermissible" outcome. Reply at 10.

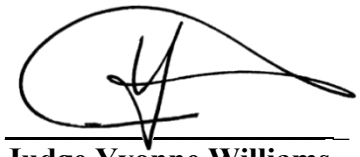
Exxon Defendants have not convinced the Court that the relief the District seeks would violate the Commerce Clause. "Where the statute regulates even-handedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental, it will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits." *Pike v. Bruce Church, Inc.*, 397 U.S. 137 at 142. The District has more than plausibly alleged that the proposed application of the CPPA addresses a legitimate local public interest, preventing D.C. consumers from being misled about climate change. *See e.g.* Compl. at ¶ 1 (Defendants allegedly mislead D.C. consumers about the "the central role their

products play in causing climate change, one of the greatest threats facing Humanity."). At the very least, Exxon Defendants have not convinced the Court that the potential burden on interstate commerce would be "clearly excessive" such that dismissal is appropriate at this stage. The Court declines to dismiss the Complaint out of concern for the Commerce Clause, or for any other justification offered by Exxon Defendants.

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

ORDERED that Shell Defendants' Motion to Dismiss is **DENIED**.

IT IS SO ORDERED.



Judge Yvonne Williams

Date: April 21, 2025

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