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Vermont Superior Court
Chittenden Unit
21-CV-02778

STATE OF VERMONT

SUPERIOR COURT CHITTENDEN UNIT	CIVIL DIVISION Docket No. __________

STATE OF VERMONT,

Plaintiff,

v.

EXXON MOBIL CORPORATION,
EXXONMOBIL OIL CORPORATION,
ROYAL DUTCH SHELL PLC,
SHELL OIL COMPANY,
SHELL OIL PRODUCTS COMPANY LLC,
MOTIVA ENTERPRISES LLC,
SUNOCO LP, SUNOCO LLC,
ETC SUNOCO HOLDINGS LLC,
ENERGY TRANSFER (R&M) LLC,
ENERGY TRANSFER LP, and
CITGO PETROLEUM CORPORATION

Defendants.

COMPLAINT

The State of Vermont ("Plaintiff" or "State"), by and through Attorney General Thomas J. Donovan, Jr., brings this action against Defendants Exxon Mobil Corporation, ExxonMobil Oil Corporation, Royal Dutch Shell plc, Shell Oil Company, Shell Oil Products Company LLC, Motiva Enterprises LLC, Sunoco LP, Sunoco LLC, ETC Sunoco Holdings LLC, Energy Transfer (R&M) LLC, Energy Transfer LP, and CITGO Petroleum Corporation for past and ongoing violations of the Vermont Consumer Protection Act, 9 V.S.A. § 2453 ("VCPA"). Defendants have violated the VCPA by engaging over a long period of time in numerous deceptive acts and unfair practices in connection with their marketing, distribution, and sale of gasoline and other fossil fuel products to consumers within the State. Through their knowing, deceptive acts and practices, including multiple misrepresentations and knowing failures to disclose material facts, Defendants have sought to mislead Vermont consumers about the risks and dangers of their products, including the causal connection between the sale and use of their products and climate change, and thereby deny Vermont consumers their opportunity to make informed and different decisions regarding fossil fuel purchases and consumption. These unfair and deceptive acts and practices are ongoing. The State seeks civil penalties, injunctive relief, disgorgement, fees, costs, and other appropriate relief.

I. INTRODUCTION

1. On August 7th of this year, a working group of the United Nations' Intergovernmental Panel on Climate Change ("IPCC") published a research document, *Climate Change 2021: The Physical Science Basis*, concerning the current state of the Earth's climate, how it is changing, and the role of human activity (including fossil fuel use) in that change. Among its findings, the IPCC working group reported that:

a. "Global surface temperature has increased faster since 1970 than in any other 50-year period over at least the last 2000 years"; the "[g]lobal mean sea level has risen faster since 1900 than over any preceding century in at least the last 3000 years"; and the "global nature of glacier retreat … since the 1950s is unprecedented in at least the last 2000 years."[1]

b. "Human influence has warmed the climate at a rate that is unprecedented in at least the last 2000 years." Human influence is "very likely the main driver of the global retreat of glaciers since the 1990s," as well as the "decrease in Arctic sea ice area," and "global upper ocean … warm[ing] since the 1970s."[2]

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[1] Intergovernmental Panel on Climate Change, *Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, at SPM-9. https://www.ipcc.ch/report/sixth-assessment-report-working-group-i/ (last visited Sept. 4, 2021).
[2] *Id.* at SPM-6, 7.

c. “Human-induced climate change is already affecting many weather and climate extremes in every region across the globe” with “human influence contributing to many observed changes in weather and climate extremes.”[3]

d. “The main human influence on the climate is via ***combustion of fossil fuels*** and land use-change-related CO_2 emissions.” Such “[c]arbon dioxide concentrations have increased by 40% since pre-industrial times, ***primarily from fossil fuel emissions***.”[4] Of “[t]he CO_2 emitted from human activities during the decade of 2010-2019 … ***the combustion of fossil fuels was responsible for 81-91%.***” Significant further global warming will occur in this century “unless deep reductions in CO_2 and other greenhouse emissions occur in the coming decades.”[5]

2. For many years, Defendants have been fully versed in the science underlying these findings relating to climate change, its impact, and the central role of their fossil fuel products with respect to that change. They have known for decades that the Earth’s climate has been changing because of emissions of CO_2 and other greenhouse gases, and that the fossil fuels they sell are the primary source of those emissions. And they have long known that the harm to the climate that has already occurred, and the further harm still to come, would be virtually inevitable so long as they could market their fossil fuel products to consumers in Vermont and elsewhere without honestly informing those consumers about the climate impacts of the products. Defendants also have known that if consumers in Vermont and elsewhere were fully apprised of the climate impacts of their fossil fuel products, those consumers’ purchasing and consumption decisions would be materially affected, and that many Vermont consumers would

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[3] *Id.* at SPM-10, 12.
[4] *Id.* at 1-21, 69 (emphases added).
[5] *Id.* at 5-6, SPM-17, 19 (emphases added).

choose to buy and consume lower quantities of their fossil fuel products, or perhaps stop buying them altogether.

3. Fossil fuels have been, and continue to be, the flagship products in Defendants' businesses – the primary source of their enormous profits. There was money to be made by Defendants, and so they chose paths of consumer deception rather than full and honest disclosure that would fairly apprise Vermont consumers and others of the real attributes of their products, including their harmful effects on the climate, thus denying consumers the opportunity to make their fossil fuel purchasing decisions based on actual facts rather than deliberate distortions and falsehoods.

4. Defendants have engaged in deceptive acts and practices directed toward Vermont consumers in a number of ways. Although fully aware for decades of the causal link between the use of their fossil fuel products and harmful climate change, Defendants and their proxies have taken extraordinary steps to keep that information a secret and to distort or misrepresent what they knew. As the phenomenon of climate change, and connection between it and fossil fuels, became an accepted consensus among scientists who study the issue, including Defendants' own scientists, Defendants engaged in calculated disinformation campaigns to convince consumers in Vermont and elsewhere that climate change either did not exist, or that there was no demonstrable connection between it and fossil fuel consumption, or that at least "the jury was still out" on the climate science that Defendants had long known was irrefutable. Their deception had material effects on consumers in Vermont, on the choices that they were able to make about fossil fuel purchase and consumption, as well as the vehicles that they purchased, the transportation choices they made, the amount of driving they did, and other energy-related choices. Those choices would have been different had Vermont consumers been provided with

accurate and complete information rather than the lies and deception propagated for decades by Defendants.

5. In more recent years, and to the present, Defendants' campaigns of consumer deception have continued. They market fossil fuel products to Vermont consumers by advertising that use of their products is supposedly better for the environment than other products, while staying silent in the ads about the continuing, significant contributions their products actually make to greenhouse gas emissions and climate change. In recent years, Defendants have sought to adjust to shifting public perception through their "greenwashing" campaigns, by which Defendants falsely hold themselves out as responsible stewards of the environment, deceptively advertising to Vermont consumers that Defendants are actively promoting solutions to climate change when in fact they remain major sources of the problem.

6. In bringing this action, the State of Vermont does not seek relief that would force Defendants to discontinue, reduce, or eliminate their extraction or production of fossil fuels, or eliminate the sale of Defendants' fossil fuel products to Vermont consumers or impose limits on the quantities sold here. Nor does the State seek to make Defendants pay for environmental degradation or remediation in Vermont or elsewhere. Further, the State does not seek to have Defendants held liable in connection with any marketing or sales of their fossil fuel products that may have occurred on federal lands. Rather, the State seeks to enforce the statutory requirement under state law, *i.e.*, the VCPA, that Defendants sell their products to Vermont consumers on the basis of fair and honest disclosures, free of unfair and deceptive acts and practices.

II. PARTIES, JURISDICTION, AND VENUE

A. Plaintiff.

7. The VCPA authorizes the Vermont Attorney General to sue in the name of the State to enforce the VCPA's prohibitions against unfair and deceptive acts and practices in commerce. This action is brought in the public interest to enforce those prohibitions and to protect Vermont consumers under the VCPA.

8. The Attorney General also has the right to appear in any civil action in which the State is a party or has an interest. 3 V.S.A. § 157. The State has an interest in ensuring a fair and honest marketplace, and that entities engaging in commerce in Vermont do so in a lawful manner.

B. Defendants.

9. Defendant **Exxon Mobil Corporation** is a New Jersey corporation headquartered in Irving, Texas. It is a multinational, vertically integrated, energy and chemicals company and one of the largest publicly traded oil and gas companies in the world. It was formerly known as, did or does business as, and/or is the successor in liability to ExxonMobil Refining and Supply Company; Exxon Chemical U.S.A.; ExxonMobil Chemical Corporation; ExxonMobil Chemical U.S.A.; ExxonMobil Refining & Supply Corporation; Exxon Company, U.S.A.; Exxon Corporation; Standard Oil Company (NJ); and Mobil Corporation. Exxon Mobil Corporation has been registered to do business in Vermont since 1972. Its registered agent for service of process is Corporation Service Company, 100 North Main Street, Suite 2, Barre, VT 05641.

10. Exxon Mobil Corporation controls and directs companywide decisions, including whether and to what extent its subsidiaries market, produce, and/or distribute fossil fuel products. In particular, Exxon Mobil Corporation controls all decisions related to advertising, promotions,

and messaging strategy with respect to its products, including, in particular, companywide advertising and public communications concerning climate change and the relationship between fossil fuel use and climate change. This includes control over positions taken in communications directed at Vermont consumers.

11. Defendant **ExxonMobil Oil Corporation** is a New York corporation headquartered in Irving, Texas. It is a wholly owned subsidiary of Exxon Mobil Corporation that acts on Exxon Mobil Corporation's behalf and subject to its control. ExxonMobil Oil Corporation was formerly known as, did or does business as, and/or is the successor in liability to Mobil Oil Corporation. ExxonMobil Oil Corporation has been registered to do business in Vermont since 1903. Its registered agent for service of process is The Prentice-Hall Corporation System, Inc., 100 North Main Street, Suite 2, Barre, VT 05641.

12. Defendants Exxon Mobil Corporation, ExxonMobil Oil Corporation, and their predecessors, successors, parents, subsidiaries, affiliates, and divisions are collectively referred to herein as "Exxon."

13. Defendant **Royal Dutch Shell plc** is a multinational, vertically integrated, energy and petrochemicals company incorporated under the laws of England and Wales with its principal place of business in The Hague, Netherlands. As the ultimate parent company of the companies that comprise the Shell Group, including Defendant Shell Oil Company, Royal Dutch Shell plc consists of over a thousand divisions, subsidiaries, and affiliates engaged in all aspects of the fossil fuel industry, including exploration, development, extraction, and manufacturing, as well as energy production, transport, trading, marketing, and sales.

14. Royal Dutch Shell plc controls and directs companywide decisions, including whether and to what extent its subsidiaries market, produce, and/or distribute fossil fuel products.

In particular, Royal Dutch Shell plc controls decisions related to advertising, promotions, and messaging strategy, including companywide advertising, promotions, and public communications concerning climate change and the relationship between fossil fuel use and climate change. This includes control over positions taken in communications directed at Vermont consumers.

15. Defendant **Shell Oil Company** is a Delaware corporation headquartered in Houston, Texas. It has been registered to do business in Vermont since 1949. Its registered agent for service of process is C T Corporation System, 17 G W Tatro Drive, Jeffersonville, VT, 05464-9919. Shell Oil Company is a wholly owned subsidiary of Royal Dutch Shell plc that acts on Royal Dutch Shell plc's behalf and subject to its control. Shell Oil Company was formerly known as, did or does business as, and/or is the successor in liability to Deer Park Refining LP, Shell Oil, Shell Oil Products, Shell Chemical, Shell Trading US, Shell Trading (US) Company, Shell Energy Services, The Pennzoil Company, and Pennzoil-Quaker State Company.

16. Defendant **Shell Oil Products Company LLC** is a Delaware corporation with its principal place of business in Houston, Texas. It is an energy and petrochemical company involved in the refining, transportation, distribution, and marketing of Shell fossil fuel products. Shell Oil Products Company LLC is a wholly owned subsidiary of Royal Dutch Shell plc that acts on Royal Dutch Shell plc's behalf and subject to its control. It was formerly known as, did or does business as, and/or is the successor in liability to Shell Oil Products Company.

17. Defendant **Motiva Enterprises LLC** is a Delaware corporation with its principal place of business in Houston, Texas. Among other things, it markets and distributes Shell-branded products in the eastern and southern United States. It has been registered to do business in Vermont since 1998. Its registered agent for service of process is C T Corporation System, 17

G W Tatro Drive, Jeffersonville, Vermont 05464. At times relevant to this Complaint, Motiva Enterprises LLC was a direct or indirect subsidiary of Royal Dutch Shell plc and/or Shell Oil Company that acted on their behalf and subject to their control. It was formerly known as, did or does business as, and/or is the successor in liability to Star Enterprises LLC.

18. Defendants Royal Dutch Shell plc, Shell Oil Company, Shell Oil Products Company LLC, Motiva Enterprises LLC, and their predecessors, successors, parents, subsidiaries, affiliates, and divisions are collectively referred to herein as "Shell."

19. Defendant **Sunoco LP** is a Delaware limited partnership with its principal place of business in Dallas, Texas. As relevant here, upon information and belief, Sunoco LP was formerly known as, did or does business as, and/or is the successor in liability to Sunoco, Inc.; Sun Company, Inc.; Sun Oil Company; and Sun Oil Company (PA). Through its ownership of Sunoco LLC, Sunoco LP provides the wholesale supply of Sunoco-branded motor fuel in the United States, supplying a distribution network of more than 5,000 Sunoco-branded gas stations, including Sunoco-branded gas stations in Vermont. Sunoco LP also is one of the largest distributors of Exxon's branded motor fuel in the United States, as well as a distributor of Shell-branded motor fuels, among others.

20. Defendant **Sunoco LLC** is a Delaware limited liability company with its principal place of business in Dallas, Texas. As relevant here, upon information and belief, Sunoco LLC was formerly known as, did or does business as, and/or is the successor in liability to Sunoco, Inc.; Sun Company, Inc.; Sun Oil Company; and Sun Oil Company (PA). It is a wholly owned subsidiary of Sunoco LP that acts on Sunoco LP's behalf and subject to its control. Sunoco LLC has been registered to do business in Vermont since 2014. Its registered agent for service of process is Corporation Service Company, 100 North Main Street, Suite 2, Barre, VT, 05641.

Sunoco LLC is the exclusive wholesale supplier of Sunoco-branded motor fuel in the United States, supplying a distribution network of more than 5,000 Sunoco-branded gas stations, including Sunoco-branded gas stations in Vermont.

21. Defendant **ETC Sunoco Holdings LLC** is a Pennsylvania corporation with its principal place of business in Philadelphia, Pennsylvania. ETC Sunoco Holdings LLC was formerly known as, did or does business as, and/or is the successor in liability to Sunoco, Inc.; Sun Company, Inc.; Sun Oil Company; and Sun Oil Company (PA). In October 2012, Sunoco, Inc. merged with a wholly owned subsidiary of Energy Transfer Partners, L.P. (now doing business as Energy Transfer Operating L.P.), which owns the general partner of Sunoco LP. Upon information and belief, Sunoco Inc. and/or its subsidiaries were the exclusive supplier of Sunoco-branded motor fuel in the United States before those distribution rights were transferred to Sunoco LLC.

22. Defendant **Energy Transfer (R&M) LLC** is a Pennsylvania corporation with its principal place of business in Philadelphia, Pennsylvania. It is a wholly owned subsidiary of ETC Sunoco Holdings LLC, engaged in the business of refining and marketing gasoline and other petroleum products, which acts on ETC Sunoco Holdings LLC's behalf and subject to its control. It was formerly known as, did or does business as, and/or is the successor in liability to Sunoco (R&M) LLC; Sunoco, Inc. (R&M); Sun Company, Inc. (R&M); Sun Refining and Marketing Company; and Sun Oil Company of Pennsylvania. Sunoco, Inc. (R&M) was registered to do business in Vermont from 1971 to 2017.

23. Defendant **Energy Transfer LP** is a Delaware limited partnership with its principal place of business in Dallas, Texas. Energy Transfer LP controls and directs Sunoco LP and its subsidiaries through its sole ownership and control of the general partner of Sunoco

LP. It was formerly known as Energy Transfer Equity, L.P. and, through its merger with its wholly owned subsidiary, Energy Transfer Operating L.P. (the sole owner of ETC Sunoco Holdings LLC), is the successor in liability to Sunoco, Inc.; Sun Company, Inc.; Sun Oil Company; and Sun Oil Company (PA).

24. Defendants Sunoco LP, Sunoco LLC, ETC Sunoco Holdings LLC, Sunoco (R&M) LLC, Energy Transfer LP, and their predecessors, successors, parents, subsidiaries, affiliates, and divisions are collectively referred to herein as "Sunoco."

25. Defendant **CITGO Petroleum Corporation** is a Delaware corporation headquartered in Houston, Texas. It is a direct, wholly owned subsidiary of CITGO Holdings, Incorporated, which is a wholly owned subsidiary of PDV Holding, Incorporated. PDV Holding, Incorporated is a wholly owned subsidiary of Petróleos de Venezuela, S.A., the national oil company of the Bolivarian Republic of Venezuela. CITGO Petroleum Corporation was formerly known as, did or does business as, and/or is the successor in liability to Cities Service Company and Cities Service RMT Corporation, and is engaged in the business of refining, transporting, and marketing gasoline and other petroleum products. CITGO Petroleum Corporation has been registered to do business in Vermont since 1983. Its registered agent for service of process is C T Corporation System, 17 G W Tatro Drive, Jeffersonville, VT, 05464-9919.

26. CITGO Petroleum Corporation has controlled companywide decisions, including whether and to what extent its subsidiaries market, produce, and/or distribute fossil fuel products. In particular, CITGO Petroleum Corporation controls all decisions related to advertising, promotions, and messaging strategy with respect to its products, including, in particular, companywide advertising and public communications concerning climate change and the

relationship between fossil fuel use and climate change. This includes control over positions taken in communications directed at Vermont consumers.

27. Defendant CITGO Petroleum Corporation and its predecessors, successors, parents, subsidiaries, affiliates, and divisions are collectively referred to herein as "CITGO."

C. Jurisdiction and Venue.

28. This Court has jurisdiction over Defendants because each has transacted and/or continues to transact substantial business in the State of Vermont and each has purposefully availed itself of the Vermont market by, *inter alia*, marketing, promoting, advertising, offering for sale, selling, and distributing (directly or indirectly) its respective fossil fuel and fossil fuel-related products in Vermont. Defendants derive substantial revenue and profits from Vermont consumers through their sale of motor fuels and other petroleum products in Vermont. The unlawful acts alleged herein arise from or are related to Defendants' Vermont contacts.

29. Defendants or their predecessors have sold fossil fuel and fossil fuel products in Vermont for decades, either directly, through others, or both. Exxon's branded fuels and products are presently sold under the "Mobil" and/or "Exxon" brand names at approximately 80 "Mobil"-branded gas stations in Vermont, including approximately 24 in Chittenden County; Shell-branded fuels and products are presently sold at approximately 45 Shell-branded locations in Vermont, of which approximately 20 are in Chittenden County; Sunoco-branded fuels and products are presently sold at more than 40 Sunoco-branded gas stations in Vermont, including approximately 20 in Chittenden County; and CITGO-branded fuels and products are presently sold at approximately 62 CITGO-branded gas stations in Vermont, of which approximately 12 are in Chittenden County.

30. Through their various agreements with dealers, franchisees, and/or jobbers, or otherwise, Defendants direct and control the branding, marketing, sales, promotions, image development, signage, advertising, and sale of their branded fossil fuels at their respectively branded gas stations in Vermont, including point-of-sale advertising and marketing. Defendants dictate which grades and formulations of their gasoline may be sold at their respectively branded stations.

31. Defendants have, at all relevant times, marketed, advertised, and directed promotions to Vermont consumers through, *inter alia*, national and local television, print, and online advertisements viewed, and intended to be viewed, by Vermont consumers, as well as at their respectively branded gas and/or service stations in Vermont, displaying and using their respective trademarks and selling their respective fossil fuels and other branded products.

32. Defendants direct Vermont consumers to their respectively branded locations through their respective interactive websites, which provide a map identifying the nearest stations by street address following the input of the consumer's location.

33. Defendants also offer Vermont consumers proprietary credit cards, now known respectively as the "ExxonMobil Smart Card," the "Shell Fuel Rewards Card," the "Sunoco Rewards Credit Card," and the "CITGO Rewards Card." These cards allow Vermont consumers to pay for gasoline and other products at Defendants' respectively branded service stations in the State or elsewhere. Consumers who use these cards receive various rewards, including discounts on gasoline purchases and/or cash rebates.

34. Defendants have also developed and support smartphone applications through which Vermont consumers can set up personal accounts and use the application as a payment platform for buying fossil fuels and other products at Defendants' respectively branded retail gas

stations in Vermont and elsewhere. Defendants' smartphone applications also enable their branded stations in Vermont and elsewhere to make in-store offers to Vermont consumers, and offer Vermont consumers other rewards for using the application to purchase Defendants' branded fuel.

35. Defendants' credit card and smartphone applications are designed to induce customer affinity and brand loyalty and to capture market share in the motor fuel market in Vermont and elsewhere.

36. Exxon markets and sells other products, including engine lubricants such as its Mobil 1™ motor oil products, to Vermont consumers through retailers in the State including Advance Auto Parts, AutoZone, Costco, TSC Tractor Supply, and O'Reilly Auto Parts. Exxon directs Vermont consumers to retailers that carry Mobil 1™ motor oil products through its interactive website, which identifies nearby retailers by town and address following input of a location or zip code. During relevant periods, Exxon owned a refined products terminal in Chittenden County, which it sold in 2007. The purchaser, an entity known as Global Partners, described the terminal as "the only large gasoline storage and distribution facility in Vermont." Exxon continued to use the terminal under a five-year contract after the sale.

37. Shell also markets and sells other products, including engine lubricants and motor oils, to Vermont consumers under its Pennzoil brand name at retailers in the State including Jiffy Lube and local car dealerships. The Pennzoil interactive website, which is directly linked on the Shell interactive website, directs Vermont consumers to a map identifying the nearest retail locations offering these products by street address following the input of the consumer's location.

38. Sunoco markets and sells motor oil to Vermont consumers under the Sunoco brand name in the State.

39. CITGO markets and sells motor oils to Vermont consumers under its CITGO Supergard, CITGO Citgard, and Mystik brand names at CITGO-branded gas stations and other retail locations in the State.

40. Defendants have controlled and continue to control the messaging with respect to their products and are fully responsible for the deceptive communications to Vermont consumers regarding the adverse climate impacts of their fossil fuel products.

41. Venue lies in the Chittenden Unit of the Superior Court of the State of Vermont. Pursuant to 9 V.S.A. § 2458, venue is proper because each Defendant is doing business in Chittenden County, including, without limitation, by marketing, promoting, advertising, and offering for sale their fossil fuels and fossil fuel-related products in Chittenden County, and distributing and selling, directly or indirectly, such products in Chittenden County. In addition, each Defendant derives substantial revenue and profits from the sale of its fossil fuel and fossil fuel-related products in Chittenden County.

III. FACTUAL BACKGROUND

A. Defendants Have Known For Decades That Use Of Their Fossil Fuels Would Have Potentially "Catastrophic" Effects On The Earth And Humankind.

42. Defendants have known about the potential warming effects of greenhouse gas emissions caused by fossil fuels since as early as the 1950s, both through their own research and scientific studies, as well as their participation in various industry groups, including the American Petroleum Institute ("API"), a trade association created in 1919 to represent the business interests of the American petroleum industry. At all relevant times, Defendants or their predecessors have provided substantial funding, support, and management direction to API,

including to the research and messaging leadership of API, and have actively supported and promoted the deceptive messaging campaigns carried out by API with respect to the science regarding climate change and the role of fossil fuels in causing such change.

43. By the 1990s at the latest, Defendants had amassed an overwhelming and irrefutable body of research indicating that the use of their fossil fuel products was a leading cause of climate change and that failure to reduce usage would lead to potentially catastrophic effects to the climate, the environment, and the global economy, including significant changes in sea level, weather and ocean currents, extreme precipitation and drought, and resulting impacts on and loss of ecosystems, communities, and people. Defendants also knew, through their own internal research or information obtained through their participation in industry trade groups, that by the time global warming became detectable it could be too late to take effective measures to mitigate these effects or stabilize the situation to prevent severe adverse consequences for the environment. Rather than disclose this knowledge, Defendants spread disinformation to consumers in Vermont and elsewhere with the goal of depriving them of the ability to make fully informed choices about the purchase and consumption of Defendants' fossil fuels.

44. As early as 1957, scientists with Humble Oil, one of Exxon's predecessors, measured an increase in atmospheric carbon dioxide caused by fossil fuels.

45. In 1959, nuclear physicist Edward Teller warned the petroleum industry, at a centennial gathering organized by API, that "a temperature rise corresponding to a 10 percent increase in carbon dioxide will be sufficient to melt the icecap and submerge . . . [a]ll the coastal cities." He added that since "a considerable percentage of the human race lives in coastal regions . . . this chemical contamination is more serious than most people tend to believe." Robert Dunlop, then Director of API and President of Sunoco (then known as Sun Oil) from

1947 to 1970, was one of four key speakers at the centennial celebration. High-level representatives of Defendants were in attendance.

46. In 1962, Shell's Chief Geologist produced a report acknowledging evidence that the greatly increasing use of fossil fuels is seriously contaminating the Earth's atmosphere with CO_2 and that this may already be producing climatic change in the direction of higher average temperatures, which "could have profound effects both on the weather and on the ecological balances."

47. In or around 1965, Frank Ikard, then-president of API, addressed industry leaders at the trade association's annual meeting in Chicago. He provided them with information that "by the year 2000 the heat balance will be so modified as possibly to cause marked changes in climate beyond local or even national efforts," and that pollution from engines using fossil fuels was serious and growing fast, such that alternate, non-polluting means to propel cars and other vehicles would likely become necessary for the country.

48. In 1968, the API received a report that it had commissioned from the Stanford Research Institute ("SRI"), which the API had retained to assess the state of research on environmental pollutants, including carbon dioxide. SRI reported that "[p]ast and present studies of CO_2 are detailed and seem to explain adequately the present state of CO_2 in the atmosphere," that "[s]ignificant temperature changes are almost certain to occur by the year 2000," and that "there seems to be no doubt that the potential damage to our environment could be severe." They added: "What is lacking [] is . . . work toward systems in which CO_2 emissions would be brought under control."

49. In a supplemental report delivered to API the following year, SRI projected that atmospheric CO_2 concentrations would reach 370 ppm by 2000. The projection was eerily

accurate, as in 2000, CO_2 concentrations reached 369ppm. SRI explicitly connected the rise in CO_2 levels to the combustion of fossil fuels, finding it "unlikely that the observed rise in atmospheric CO_2 has been due to changes in the biosphere."

50. In 1972, API provided its members a status report on all environmental research projects funded by API, which summarized the SRI's findings concerning the impact of fossil fuel products on the environment, including global warming and its consequences.

51. By the late 1970s, Exxon scientists were reporting internally that scientific opinion overwhelmingly attributed the increase in atmospheric carbon dioxide to fossil fuel combustion and that, if limits were not placed on CO_2 emissions, noticeable temperature changes would occur around 2010 as the carbon dioxide concentration reached 400 ppm, significant climatic changes would occur around 2035 when the concentration approached 500 ppm, and a doubling of the pre-industrial concentration would occur around 2050, bringing about a 3-degree Celsius increase in the mean global temperature and "dramatic changes in the world's environment."

52. In 1979, the API and its members convened a task force – initially called the CO_2 and Climate Task Force, but later renamed the Climate and Energy Task Force ("CO_2 Task Force") – to monitor and share climate research. Membership included senior scientists and engineers from nearly every major U.S. and multinational oil and gas company, including Defendants. In a background paper for the CO_2 Task Force, API advised the group that CO_2 concentrations were rising steadily in the atmosphere and that global warming would likely go undetected until approximately the year 2000 because its effects were being temporarily masked by a natural cooling trend. That trend aided Defendants for many years in covering up what they knew to be the ongoing effects and ultimate impact of their products on the climate. During

those years Defendants could have been truthful and transparent about this crucial attribute of their products, which would have helped to avoid today's dire climate situation. Instead, they chose the opposite strategy, concealing their knowledge and putting out a steady stream of deceptive information for the purpose of misleading consumers about climate change and the connection of their fossil fuel products to it.

53. In 1980, Dr. John Laurmann, a recognized expert in the field of CO_2 and climate, advised the CO_2 Task Force that there was "strong empirical evidence that [the carbon dioxide] rise [was] caused by anthropogenic release of CO_2, mainly from fossil fuel burning" and that, unless fossil fuel production and use were controlled, the doubling of preindustrial levels of atmospheric carbon dioxide would occur by 2038, which was much earlier than previously predicted, with "likely impacts" including a 2.5°C rise in temperature and "major economic consequences" by 2038, and a 5°C rise with "globally catastrophic effects" by 2067. Dr. Laurmann warned that there was little time for delay: "Time for action? Market penetration time theory says there is <u>no</u> leeway." But these findings were also suppressed from disclosure to consumers who had the right to make purchasing decisions free of misleading messages or omissions.

54. In August 1980, Imperial Oil Limited, a Canadian ExxonMobil subsidiary, reported to managers and others at multiple affiliated Esso and Exxon companies that there was "no doubt" that fossil fuels were aggravating the "problem of increased CO_2 in the atmosphere."

55. In December 1980, Exxon scientists again explained internally that atmospheric carbon dioxide would double around the year 2060 and that the future buildup of atmospheric carbon dioxide would be caused primarily by fossil fuel use. According to the "most widely accepted" models, this would "most likely" result in global warming of approximately 3°C and

dramatic environmental consequences and serious global problems. Exxon scientists further observed that models predicting smaller temperature increases were "not held in high regard by the scientific community" and that natural, random temperature fluctuations would mask global warming from carbon dioxide until around the year 2000. Instead of making these findings available to consumers, Defendants took advantage of the ongoing but temporary natural masking of global warming, which facilitated their concealment of the grave impact their fossil fuel products were having on the climate.

56. In a September 1982 internal memorandum provided to Exxon officials involved in the company's carbon research program, Exxon scientists again explained that there was a ***"clear scientific consensus"*** that "a doubling of atmospheric CO_2 from its pre-industrial revolution value would result in an average global temperature rise of (3.0 ± 1.5)°C" and *"**unanimous agreement in the scientific community*** that a temperature increase of this magnitude would bring about significant changes in the earth's climate," but that "the first unambiguous CO_2-induced temperature increase will not be observable until around the year 2000." (Emphases added.) Exxon's own research was "in accord with the scientific consensus on the effect of increased atmospheric CO_2 on climate" and yielded "a global average temperature increase that falls well within the range of the scientific consensus."

57. In March 1982, the Lamont-Doherty Geological Observatory at Columbia University confirmed in a report to API that atmospheric CO_2 concentration had risen significantly compared to the beginning of the industrial revolution, and warned that warming from such increased concentration "can have serious consequences for man's comfort and survival since patterns of aridity and rainfall can change, the height of the sea level can increase considerably and the world food supply can be affected."

58. At an October 1982 symposium at the Lamont-Doherty Geophysical Observatory attended by members of API, the Observatory's president, E.E. David, gave a presentation on "Inventing the Future: Energy and the CO_2 'Greenhouse' Effect," in which he discussed the opportunity to address climate change before the point of no return: "It is ironic that the biggest uncertainties about the CO_2 buildup are not in predicting what the climate will do, but in predicting what people will do . . . . It appears we still have time to generate the wealth and knowledge we will need to invent the transition to a stable energy system." Yet "what people will do" is guided by the information they are provided, and Defendants chose to hide important information about their products from consumers in Vermont and elsewhere.

59. A November 1982 briefing paper that compiled science on climate change for Exxon management confirmed that fossil fuel combustion was a primary contributor to global warming, estimated a CO_2 doubling by 2090 with a temperature increase of up to 3.1°C, discussed the catastrophic consequences of such an increase, and observed that "[m]itigation of the 'greenhouse effect' would require major reductions in fossil fuel combustion." The materials were "restricted to Exxon personnel and not distributed externally."

60. In the 1980s, Shell internally established a "greenhouse effect working group," which in 1988 issued a confidential report detailing the findings of its study: "Man-made carbon dioxide released into and accumulated in the atmosphere, is believed to warm the earth through the so-called greenhouse effect." Atmospheric CO_2 concentration had increased by 15% since the turn of the century and, if that trend were to continue, the concentration will be doubled by 2050 which, according to the "most sophisticated geophysical computer models," could significantly increase the global mean temperature; create significant changes in sea level, ocean currents, precipitation patterns, regional temperature, and weather ("larger than any which have

occurred over the last 12,000 years"); and that such "relatively fast and dramatic changes" would impact "the human environment, future living standards and food supplies, and could have major social, economic and political consequences." The report explained that fossil fuels were the primary driver of CO_2 buildup and warned that "by the time the global warming becomes detectable it could be too late to take effective countermeasures to reduce the effects or even to stabilize the situation."

61. In the mid-1990s, Shell began using scenarios to plan how the company could respond to various global climate forces in the future. In a 1998 internal report, Shell presented a scenario that in certain respects has proven to be highly prescient:

> In 2010, a series of violent storms causes extensive damage to the eastern coast of the U.S. Although it is not clear whether the storms are caused by climate change, people are not willing to take further chances. The insurance industry refuses to accept liability, setting off a fierce debate over who is liable: the insurance industry or the government. After all, two successive IPCC reports since 1993 have reinforced the human connection to climate change . . . Following the storms, a coalition of environmental NGOs brings a class-action suit against the US government and fossil-fuel companies on the grounds of neglecting what scientists (including their own) have been saying for years: that something must be done. A social reaction to the use of fossil fuels grows, and individuals become 'vigilante environmentalists' in the same way, a generation earlier, they had become fiercely anti-tobacco. Direct-action campaigns against companies escalate. Young consumers, especially, demand action.

62. Fossil fuel companies did not just consider climate change impacts in scenarios; they took account of the effects of impending climate change in their operational planning. For example, in 1989, Esso Resources Canada, an affiliate of Exxon, commissioned a report on the impacts of climate change on existing and proposed natural gas facilities in the Mackenzie River Valley and Delta in the Yukon Territory. The report concluded that, in light of climate models showing a "general tendency towards a warmer and wetter climate," operation of those facilities would be compromised by increased precipitation, increase in air temperature, changes in

permafrost conditions, and, significantly, sea level rise and erosion damage. The authors recommended factoring those eventualities into future development planning. While fossil fuel purveyors used what they knew about climate change for their own business advantage, they failed to disclose that critical knowledge to consumers since that could also impact the bottom line.

63. By virtue of its longstanding membership and leadership roles in API, Sunoco knew early on that the fossil fuels sold by it and the other Defendants were substantially contributing to climate change. Sunoco was aware of the February 1968 report API had received from the SRI regarding the state of research on environmental pollutants, including carbon dioxide, which reported that significant temperature changes were almost certain to occur by 2000 and that potential damage to the environment could be severe. Through its API membership and active participation, Sunoco also was aware of the API's March 1982 report, "Climate Models and CO_2 Warming: A Selective Review and Summary," which stated that "[r]egardless of complexity, ***all climate model studies indicate*** that a doubling of CO_2 will produce a significant increase in the global and annual mean temperature of the earth." (Emphasis added.)

64. CITGO was also a longstanding member of API and had leadership roles in the organization, including by participating in API committees and having its executive serve on API's board of directors. A CITGO representative also served on a committee that liaised with others conducting research on fuel emissions and their effect on the environment. Through its membership and active participation in API, CITGO also knew early on of the information amassed by API – including the February 1968 report that API received from the SRI, and API's

March 1982 report, both described above – that the fossil fuels sold by CITGO and the other Defendants were significantly contributing to climate change.

65. In 1979 Sunoco joined with other oil industry members to form the CO_2 Task Force (referenced in Paragraph 52 above), through which senior scientists and engineers from major oil and gas companies monitored and shared government and academic research, evaluated the implications of emerging science for the industry, and identified where reductions in greenhouse gas emissions from fossil fuel products could be made.

66. Defendants Exxon and Shell studied global warming-related climate impacts that had already taken hold, and coordinated to account for them in their planning. In the mid-1990s, Exxon and its Canadian subsidiary, Imperial Oil, collaborated with Shell on the Sable Offshore Energy Project in Nova Scotia. The project's Environmental Impact Statement declared: "The impact of a global warming sea-level rise may be particularly significant in Nova Scotia . . . . For the design of coastal and offshore structures, an estimated rise in water level, due to global warming, of 0.5m [1.64 ft] may be assumed for the proposed project life (25 years)."

B. Defendants Affirmatively Concealed From Vermont Consumers The Catastrophic Consequences Of Continued Use Of Their Products.

67. As shown above, by the 1990s, if not before, Defendants well knew that a consensus among scientists studying the issue had formed as to the immediacy and gravity of climate change, as well as the important role of fossil fuels in causing it. Responsible industry actors would have alerted their customers about this, rather than disseminate deceptive information to them about the undisputed science in order to maintain their profits from fossil fuel sales. They would have chosen not to misrepresent and conceal material information for the purpose of preventing consumers from making purchasing decisions based on accurate knowledge of the climate impacts of Defendants' fossil fuels. Instead, Defendants chose to

engage in deception, to sow false doubts, to duck and weave, with the aim of keeping Vermont consumers and others in the dark about the dangers Defendants knew were associated with continuing, unabated use of their products.

68. Rather than warn Vermont consumers and others of the catastrophic dangers known to them regarding the unabated consumption of their fossil fuel products, Defendants, individually and collectively through API and other industry groups, took precisely the opposite course, embarking on decades-long activities to have consumers believe that Defendants' products were not harmful or were far less harmful to the environment than other products. Over time, Exxon gave tens of millions of dollars to organizations supporting climate change denial, including an estimated $5 million to API in 2015 alone. Defendants Shell, Sunoco, and CITGO also led this effort through their substantial funding of and participation in API. In large measure, these were payments to API to run a massive campaign of deception on behalf of Defendants and other oil and gas industry participants, misrepresenting to Vermont consumers and others the scientific consensus that fossil fuel products were causing climate change.

69. Defendants engaged in these deceptive practices for the purpose of misleading consumers in Vermont and elsewhere in their purchasing decisions by misrepresenting to and concealing from them the connection between Defendants' fossil fuel products and climate change – a key attribute of those products.

70. Beginning as early as November 1979, an Exxon scientist urged that Exxon adopt "a very aggressive defensive program in . . . atmospheric science and climate because there is a good probability that legislation affecting our business will be passed."

71. These efforts evolved into a concerted and knowingly deceptive campaign of climate science denial that included advertisements designed to raise doubts about climate

change and which were directly contradicted by the findings of Exxon's own scientists that fossil fuel burning was "increasingly having a perceptible influence on Earth's climate" and that the "[i]mpacts of climate change have become more pronounced over time."

72. As part of its carefully designed campaign of disinformation, an August 1988 internal memo stated that Exxon would: (1) "emphasize the uncertainty in scientific conclusions regarding the potential enhanced greenhouse effect"; and (2) "resist the overstatement and sensationalization of potential greenhouse effect which could lead to noneconomic development of nonfossil fuel resources." Exxon also was "providing leadership" through the API in developing the petroleum industry position on the "greenhouse effect," which was effectively to deny, confuse, or avoid responsibility for it, when industry actors, including Exxon and the other Defendants, knew that they ***were*** substantially responsible.

73. Shell followed the same course as Exxon. For example, Shell prepared a report in 1994 falsely emphasizing scientific uncertainty about climate change and its causes. According to Shell, the "only statements which can be made with confidence" were that, while human activities have contributed to an increase in atmospheric greenhouse gas concentration, "it is not possible to quantify the consequences for global climate with respect to timing, magnitude or regional distribution nor to specify their significance in comparison with natural climate variation." Thus, while it is "not possible to dismiss the enhanced global warming hypothesis as scientifically unsound . . . any policy measures should take into account explicitly the uncertainties in the science." This was a deceptive statement and Shell knew it. By creating a veneer of uncertainty, Shell sought to undermine the fact of a consensus among scientists studying climate change so that it could continue to sell its fossil fuel products to consumers while obscuring the products' connection to climate change.

74. In 1996, Exxon released a publication titled "Global warming: who's right? Facts about a debate that's turned up more questions than answers," in which it asserted, among other things, that "scientific evidence remains inconclusive as to whether human activities affect the global climate"; that "[t]aking drastic action immediately is unnecessary since many scientists agree there's ample time to better understand climate systems"; that the greenhouse effect was "definitely a good thing" which "makes the earth's atmosphere livable"; that "a slightly warmer climate would be more healthful"; that rising temperatures reflected "natural fluctuations that occur over long periods of time"; that models projecting the future impacts of unabated fossil fuel product had been "proved to be inaccurate"; and that advocates for limiting fossil fuel products were "drawing on bad science, faulty logic or unrealistic assumptions." These were deceptive statements and Exxon knew it.

75. Also in 1996, API, on behalf of its members, including Defendants, published a report with a false but clear message: "[F]acts don't support the arguments for restraining oil use." The report claimed there was "no persuasive basis for forcing Americans to dramatically change their lifestyles to use less oil," that those advocating for alternative fuel and electric cars lacked facts "to support the assertion that either is superior to existing fuels and technologies," and that no "scientific evidence exists that human activities are significantly affecting sea levels, rainfall, surface temperatures or the intensity and frequency of storms." Defendants knew this was untrue.

76. In 1997, the Annapolis Center for Science-Based Policy, an industry advocacy organization funded in part by API, Exxon, and other industry members, issued a report, "Global Climate Change: Policy Making in the Context of Scientific and Economic Uncertainty," which

it widely circulated to the media, emphasizing the supposed "uncertainty" surrounding climate change and urging substantially more study before taking action to curb emissions.

77. In 1998, API organized a Global Climate Science Communications Team ("GCSCT"), whose members included Exxon's senior environmental lobbyist and an API public relations representative. Despite its name, there were no scientists on the GCSCT. Rather, API founded GCSCT in conjunction with The Advancement of Sound Science Coalition ("TASSC"), a fake grassroots citizen group (sometimes called "Astroturf groups") created by the tobacco industry to discredit the scientific link between second-hand tobacco smoke and cancer and heart disease. TASSC, through API and with the approval and backing of Defendants, became a front group for the fossil fuel industry, using the same tactics – presenting industry propaganda as sound science – that it had perfected while operating on behalf of tobacco companies, in order to spread false doubt about climate science among the public and consumers.

78. While TASSC falsely posed as a grassroots group of concerned citizens, between 2000 and 2004, Exxon donated $50,000 to TASSC. Exxon also contributed $110,000 to other organizations, the Free Enterprise Education Institute and the Free Enterprise Action Institute, both of which were registered to the home address of TASSC's founder.

79. GCSCT thereafter launched a multi-million-dollar, multi-year "Global Climate Science Communications Action Plan," funded in part by API and Exxon, to generate national, regional, and local media coverage on the "scientific uncertainties" regarding climate change. This plan included creation of an "information kit" designed to undermine the "conventional wisdom" on climate science, a series of op-ed columns, and an outreach program "to inform and educate members of Congress . . . and school teachers / students about uncertainties in climate science." According to the plan, "Victory Will Be Achieved" when "[a]verage citizens

'understand' (recognize) uncertainties in climate science," such recognition "becomes part of the 'conventional wisdom,'" and climate change "becomes a non-issue."

80. In 1999, API distributed a memorandum to its members explaining: "Climate is at the center of the industry's business interests. Policies limiting carbon emissions reduce petroleum product use. That is why it is API's highest priority issue and defined as strategic." API's "strategic" priority was to build the case for a "long-term approach" to climate change in order to avoid short-term solutions – that is, to prevent any solutions to climate change that could reduce consumer purchases of API members' fossil fuel products in the near or medium term. For Defendants, the objective of the "long-term approach" was to mislead consumers and prop up fossil fuel sales and profits in the short and medium term, despite their knowledge of the severe impact on the climate in the long term.

81. Acting directly and/or through API, Defendants also spread disinformation through the Global Climate Coalition ("GCC"), which was formed in 1989 to oppose greenhouse gas emission reduction initiatives. API was a founding member of GCC and served as a "board level" member. Exxon and Mobil also were "board level" members of GCC at relevant times, and Shell was also a member. Between 1989 and 1998, GCC spent $13 million on advertisements as part of Defendants' campaign to question climate science.

82. An internal GCC "primer" acknowledged that various "contrarian theories" (referring to theories put forth by climate change skeptics) "do not offer convincing arguments against the conventional model of greenhouse gas emission-induced climate change." Nevertheless, the GCC excluded this from the information that it disseminated to the public, instead promoting some of those same contrarian theories. The "primer" was prepared by

GCC's Science and Technology Assessment Committee, of which a Mobil (Exxon) representative was co-chair.

83. For example, in a 1994 report made available to consumers in Vermont, GCC stated that "observations have not yet confirmed evidence of global warming that can be attributed to human activities," that "[t]he claim that serious impacts from climate change have occurred or will occur in the future simply has not been proven," and that "[c]onsequently, there is no basis for the design of effective policy actions that would eliminate the potential for climate change." These knowingly false assertions were contradicted by information held by the fossil fuel industry participants responsible for the GCC's founding and funding, including Defendants.

84. Similarly, in 1995, GCC published a passport-sized booklet titled "Climate Change: Your Passport To The Facts," that it said was "intended to introduce readers to essential facts about climate change," in which it stated: "While many warnings have reached the popular press about the consequences of a potential man-made warming of the Earth's atmosphere during the next 100 years, there remains no scientific evidence that such a dangerous warming will actually occur." This also was false and designed to mislead consumers.

85. In 1996, more than thirty years after API's president warned that "time is running out" to address the "catastrophic consequences of pollution," API published the book "Reinventing Energy: Making the Right Choices" to try to refute this very conclusion. Contradicting the scientific consensus known by its members for decades, the book claims: "Currently, no conclusive—or even strongly suggestive—scientific evidence exists that human activities are significantly affecting sea levels, rainfall, surface temperatures, or the intensity and frequency of storms."

86. The book downplayed nearly every aspect of established climate science, even claiming that if some warming did occur, it "would present few if any problems" because, for example, farmers could be "smart enough to change their crop plans" and low-lying areas would "likely adapt" to sea level rise. API posited that "the state of the environment does not justify the call for the radical lifestyle changes Americans would have to make to substantially reduce the use of oil and other fossil fuels." The API knew from the research it had commissioned that its statements were deceptive, and that the actual "state of the environment" was that increased CO_2 concentrations in the atmosphere were already having warming effects, though they were temporarily masked. But these were the talking points and the entire disinformation network was sticking to the script, with a false patina of science.

87. A key part of Defendants' strategy of discrediting scientific consensus on climate change was to bankroll scientists who, although accredited, held fringe opinions that were even more dubious given the sources of their research funding. These scientists received part, or in some cases all, of their research budget from Defendants and other industry members directly, or through organizations funded by industry members, such as API. The scientists frequently failed to disclose their funding sources. Defendants and other fossil fuel industry members intended for the research of these scientists to be distributed to and relied upon by consumers in Vermont and elsewhere when making decisions about buying fossil fuel products.

88. During this same period, Mobil (a predecessor of Defendant Exxon) paid for a series of "advertorials" in which it sought to undermine arguments for reducing greenhouse gas emissions. These advertorials were placed in the editorial sections of newspapers such as the *New York Times*, with significant readership in Vermont, and were meant to look like editorials

rather than paid ads. Upon information and belief, the advertorials also were made available on Exxon websites to consumers nationwide, including in Vermont.

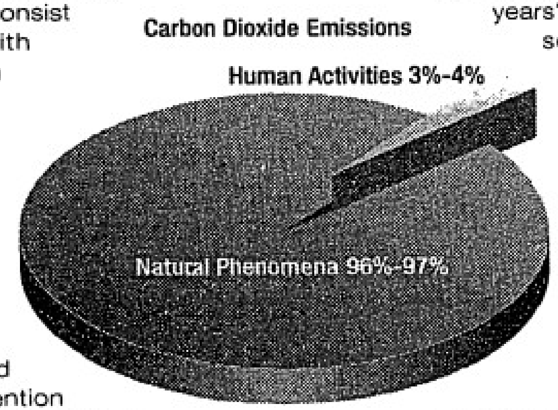
89. One of those advertorials, published in the *New York Times* on August 14, 1997 and entitled “When facts don’t square with the theory, throw out the facts,” argued that economic analysis of emissions restrictions was faulty and inconclusive and questioned the accuracy of climate models showing global warming, citing both as justification for delaying action on climate change. The advertorial misled consumers by questioning global warming and the role of emissions even though Exxon knew the science behind both was accurate.

90. Another advertorial by Exxon’s predecessor Mobil appeared in the *New York Times* on November 6, 1997, entitled “Science: what we know and don’t know.” It sought to mislead customers by emphasizing in a pie chart and in text that “most of the CO2 emitted by far is the result of natural phenomena,” and asserting that human activities only account for 3 to 4% of carbon dioxide emissions. Such representations aimed to mislead consumers by downplaying the key role of fossil fuels in climate change, even though Exxon fully knew its fossil fuel products were a significant cause of the problem. The advertorial was also misleading in repeatedly emphasizing uncertainties in climate science as a justification for inaction. It is reproduced below:

Science: what we know and don't know

As the debate over climate change heats up, science is being upstaged by the call for solutions. At stake is a complex issue with many questions. Some things we know for certain. Others are far from certain.

First, we know greenhouse gases account for less than one percent of Earth's atmosphere. The ability of these gases to trap heat and warm Earth is an important part of the climate system because it makes our planet habitable. Greenhouse gases consist largely of water vapor, with smaller amounts of carbon dioxide (CO_2), methane and nitrous oxide and traces of chlorofluorocarbons (CFCs).



The focus of concern is CO_2. While most of the CO_2 emitted by far is the result of natural phenomena—namely respiration and decomposition, most attention has centered on the three to four percent related to human activities—burning of fossil fuels, deforestation. The amount of carbon dioxide in the atmosphere has risen in the last 100 years, leading scientists to conclude that the increase is a result of man-made activities.

Although the linkage between the greenhouse gases and global warming is one factor, other variables could be much more important in the climate system than emissions produced by man.

The UN-sponsored Intergovernmental Panel on Climate Change (IPCC) thought it had found the magic bullet when it concluded that the one-degree Fahrenheit rise in global temperatures over the past century may bear a "fingerprint" of human activity. The fingerprint soon blurred when an IPCC lead author conceded to the "uncertainty inherent in computer climate modeling."

Nonetheless, nations at Kyoto are being asked to embrace proposals that could have potentially huge impacts on economies and lifestyles. Nations are being urged to cut emissions without knowing either the severity of the problem—that is, will Earth's temperature increase over the next 50–100 years?—or the efficacy of the solution—will cutting CO_2 emissions reduce the problem?

Within a decade, science is likely to provide more answers on what factors affect global warming, thereby improving our decision-making. We just don't have this information today.

Answers to questions on climate change will require more reliable measurements of temperature at many places on Earth, better understanding of clouds and ocean currents along with greater computer power.

This process shouldn't be short-circuited to satisfy an artificial deadline, like the conference in Kyoto. Whatever effect increased concentrations of man-made gases may have, it will develop slowly over decades. Thus, there is time for scientists to refine their understanding of the climate system, while governments, industry and the public work to find practical means to control greenhouse gases, if such measures are called for. Adopting quick-fix measures at this point could pose grave economic risks for the world.

Mobil The energy to make a difference.

http://www.mobil.com/climatechange

91. A March 23, 2000 Exxon advertorial in the *New York Times*, entitled "Unsettled Science," misled consumers by questioning climate science, stating that "fundamental gaps in knowledge leave scientists unable to make reliable predictions about future changes" and that scientists are "unable to confirm" their findings, and by relying on a graph – taken out of context such that the scientist responsible for the data described it as "very misleading" – to suggest that due to "poorly understood variability, it is impossible for scientists to attribute the recent small surface temperature increase to human causes."

92. An Exxon *Washington Post* advertorial appearing on August 10, 2000 deceptively asserted that the First National Climate Assessment – a landmark report on climate change in the United States – put the "[p]olitical cart before a scientific horse" and was based "on unreliable models."

93. Exxon continued to question climate science in a June 21, 2004 advertorial entitled "Weather and climate," asserting that "scientific uncertainties continue to limit our ability to make objective, quantitative determinations regarding the human role in recent climate change or the degree and consequences of future change."

94. CITGO also disseminated false and misleading information in an effort to sow doubt and confusion among consumers about climate change and its connection to fossil fuel use, which CITGO had known about for many years. In 2001, CITGO's website called into question the existence of climate change, stating that the "scientific debate on whether global warming is a real phenomenon is ongoing and should not be cut short." In 2002, and continuing for several years thereafter, CITGO's website said that "the global warming issue is amazingly complex" and that "it is a daunting task to understand and calculate the interactions of every earth system, and then to create computer models that can predict global temperatures." On its

website, CITGO denounced a treaty that called for reductions in greenhouse gas emissions, stating that officials who negotiated it did so while "[i]gnoring the controversial science and questionable computer modeling on global warming."

95. Defendants intended their campaigns of disinformation about fossil fuels and climate change to reach consumers in Vermont, and they did. The statements and omissions of Defendants were intentionally designed to mislead such consumers and influence their decisions regarding the purchase of Defendants' fossil fuel products.

C. Defendants Continue To Mislead Vermont Consumers About The Impact Of Their Fossil Fuel Products On Climate Change.

96. Having committed acts of deception for decades by failing to disclose, and then denying, crucial information about the climate impacts of their fossil fuel products, and having tried to create confusion or uncertainty when there was none, Defendants continue to engage in deceptive practices directed toward Vermont consumers through their marketing of specific products as climate friendly.

97. Just as the labelling and advertising of cigarettes as "low-tar," "light," or "mild," misleads consumers into believing that certain cigarettes are safer than others and a healthy alternative to quitting smoking, so too the Defendants market their gasoline and other fossil fuel products using terminology such as "green," "clean," "cleaner," "purer," and "lower emissions."

98. Absent disclosure of the key role Defendants' fossil fuel products have in causing climate change, such terminology, and other assertions indicating that Defendants' products are better for the environment, are designed to mislead Vermont consumers into believing that the use of Defendants' products will minimize or reduce the impact of their fossil fuel consumption on the environment and the climate. In fact, undisclosed to consumers but known to Defendants for decades is that the use of their fossil fuel products – whether "green," "clean," "cleaner,"

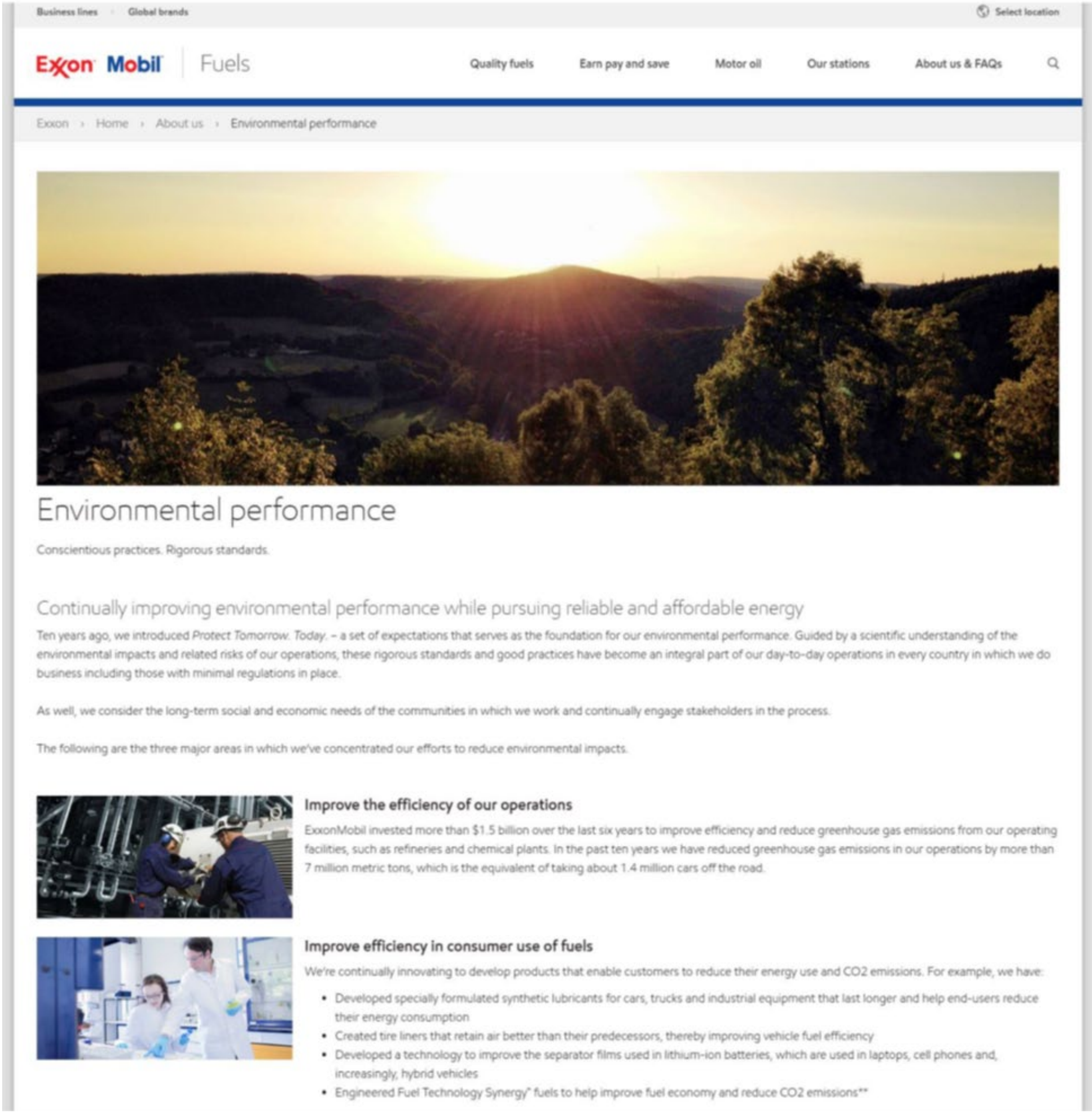
"purer," "lower emissions," or otherwise – is and remains a leading cause of global warming and, unless abated, will bring about grave consequences of which their own scientists have long warned.

Exxon Products

99. Exxon has aggressively marketed, and continues to market, fossil fuel products that it falsely claims "reduce greenhouse gas emissions, "reduce [] energy use and CO2 emissions," and "improve fuel economy."

100. In July 2016, Exxon introduced its Synergy™ fuel as its new fuel formula for all grades of its gasoline at Mobil-branded gas stations in Vermont and for its branded stations elsewhere. Exxon claims in its marketing materials, including on its website accessible to Vermont consumers, that Synergy™ fuel is "engineered" for "better gas mileage" and "lower emissions" and "helps improve your vehicle's fuel economy." Additional promotional material on Exxon's website features a photograph of a mountain sunrise with trees in the foreground, connecting the use of its products with a healthy, flourishing environment, as excerpted in the text and screenshot below:

> **Environmental performance**
>
> Conscientious practices. Rigorous standards.
>
> Continually improving environmental performance while pursuing reliable and affordable energy
>
> Ten years ago, we introduced Protect Tomorrow. Today. – a set of expectations that serves as the foundation for our environmental performance. Guided by a scientific understanding of the environmental impacts and related risks of our operations, these rigorous standards and good practices have become an integral part of our day-to-day operations in every country in which we do business including those with minimal regulations in place.
>
> As well, we consider the long-term social and economic needs of the communities in which we work and continually engage stakeholders in the process.



101. This website image and introductory "Environmental performance" text are accompanied by Exxon's claims that "[w]e're continually innovating to develop products that enable customers to reduce their energy use and CO2 emissions" and that the use of its Synergy™ products will help "improve fuel economy and reduce CO_2 emissions." Exxon does not state in this promotional material that the reduction in CO_2 emissions is very small, that any

improvement in greenhouse gas emissions over similar products is very limited, and that its Synergy™ fossil fuel products remain a significant contributor to climate change.

102. Exxon also states that Synergy™ Supreme+ premium fuel, which it introduced in July 2019 as its "best fuel ever," will produce even better results: "2X cleaner for better gas mileage." Exxon similarly advertises in Vermont and elsewhere its Synergy Diesel Efficient™ fuel as a "better diesel fuel" that helps consumers "[r]educe emissions and burn cleaner," and "[i]ncrease fuel economy."

103. Exxon's 2021 Energy and Carbon Summary, available on Exxon's website and accessible by Vermont consumers, further represents to consumers that Exxon's Synergy™ fuels reduce greenhouse gas emissions, stating:

> Premium fuels such as Synergy™ gasoline and diesel also help consumers improve gas mileage. By improving engine efficiency and fuel economy, these products can help reduce greenhouse gas emissions compared to conventional lubricants and fuels. ExxonMobil is progressing several multibillion-dollar refinery expansion projects to supply the growing demand for these advanced fuel products.

Exxon also states that it is "responding to product demand growth by delivering solutions that enable customers to meet product performance requirements while reducing greenhouse gas emissions."

104. Promotional material at Exxon's Mobil-branded gas stations in Vermont repeats the claim that Exxon's fuel is "cleaner" and will deliver "better gas mileage."

105. Exxon's website, accessible by Vermont consumers, advertises its "green" Mobil 1™ products referencing the "engineering," "technology," "test data," and "innovati[on]" supposedly behind these "green" products that "improve fuel efficiency," and the claim that its "scientists deliver [] unexpected solution[s]." Exxon does not disclose that the development,

refining, and consumer use of its fossil fuel products emit large volumes of greenhouse gases, which are causing climate change.

<u>Shell Products</u>

106. Shell promotes the use of its gasoline by asserting on its website that all grades of Shell gasoline contain a patented cleaning system, and that a clean engine "is more fuel-efficient" and "produces fewer emissions." Shell further asserts that its gasolines are "scientifically proven to help improve your mileage" and "engineered" to provide "improved fuel economy."

107. In 2015, Shell launched its V-Power Nitro+ Premium fuel as an additional fuel option, embarking on its then "largest campaign ever to promote" the product in the U.S. Shell invested three times the marketing spend of previous campaigns and branded it "one of the largest in industry's history." In doing so, Shell stated: "We are investing bigger than ever before because we have a real fuels technology breakthrough with our new Shell V-Power Nitro+ Premium Gasoline. We want the 220 million drivers across America to know that not all gasolines are the same; and certainly not all premium gasolines are the same . . . When we were talking about how to launch such a breakthrough in fuels technology, we knew we had to go big and create a disruptive, holistic marketing campaign." Shell's 2019 advertising for V-Power Nitro+ Premium gasoline described it as Shell's "best, most advanced fuel ever" and promised that it "would reduce engine friction – a major source of wasted energy and wear in engines – while preventing a buildup of carbon deposits and corrosion, which can reduce the engine's performance, leading to higher emissions and lower fuel efficiency."

108. In its ads for V-Power Nitro+ Premium fuel on its website and social media accessible to consumers in Vermont, Shell claims that the fuel "is more efficient," has "lower

emissions," and contains seven times the cleaning agents required to meet federal standards. Shell's website also advertises that this gasoline surpasses the minimum requirements for gasoline detergent additives set by the Environmental Protection Agency and thus has earned the so-called "Top Tier" certification. These ads do not disclose that the difference in CO_2 emissions is very small and that V-Power Nitro+ Premium and other Shell fossil fuel products still contribute significantly to climate change.

109. Shell thus has aggressively promoted the supposed relative benefit of this product in reducing emissions while failing to disclose that any such impact on CO_2 emissions would be very small as compared to the continuing overall climate impact of use of its fossil fuels.

110. Shell also promotes its Pennzoil and Shell Rotella synthetic motor oils as environmentally friendly. These products are derived from natural gas, a fossil fuel, and the greenhouse gas impacts of converting natural gas into a synthetic base oil are significant. Pennzoil and Shell Rotella are sold in Vermont and Shell misleadingly advertises that they "avoid or reduce emissions" and that they are "cleaner," "emissions-reducing," "lower carbon," "carbon neutral," "pure," and/or "lower emission" products.

111. Shell advertises Pennzoil with the tagline "Protection and Lower Emissions Driving Side By Side," explaining that "[w]ith select Pennzoil synthetic … motor oils, you can reduce your CO_2 footprint with improved fuel efficiency." In another advertisement for Pennzoil, Shell explains that "natural gas is pure" and implies that because Pennzoil is made with natural gas the product is "pure." Shell also deceptively promotes these products as "carbon neutral": "When you choose Pennzoil's Carbon Neutral motor oils, you're joining us in protecting and restoring natural ecosystems around the world and in the US."

112. Shell also promotes Shell Rotella synthetic oil products as carbon neutral lubricants, claiming they represent the "next step in our journey towards net zero," a "sustainable" product, with "low emissions," and suggests consumers who use the products can "avoid emissions" altogether. Shell describes Shell Rotella oil as "carbon neutral from raw material extraction to end-of-life," though it is made from liquefied natural gas ("LNG") converted into gas for transport and then reconverted from gas to liquid ("GTL"). Shell ads omit that LNG and GTL are fossil fuels that produce significant greenhouse gas emissions at all stages of their lifecycle.

113. Shell's promotion of its synthetic oils as "carbon neutral" is also deceptive insofar as Shell means only that it purchases carbon offsets: "Shell's global portfolio of nature-based carbon credits will compensate CO_2 emissions from the lifecycle of these products, including the raw materials, packaging, production, distribution, customer use and product end of life." But that explanation is buried in footnotes and fine print so as to elude the notice of Vermont consumers.

<u>Sunoco Products</u>

114. For years, Sunoco has advertised its fuels on television, radio, digital/social media, print, and its trucks, and at the point-of-purchase at Vermont gas stations, as being "cleaner," "ultra-clean," having "lower emissions," and/or being "green."

115. In April 2017, Sunoco introduced its new formula for all grades of its gasoline, "Sunoco UltraTech" fuel, which it is still marketing and selling today at all Sunoco-branded stations. Sunoco marketing material asserts that "not all fuels are created equal" and that Sunoco UltraTech gasoline "will help your car run cleaner, longer, and more efficiently," and "ensure compliance with tighter vehicle emissions . . . requirements." UltraTech is held out by Sunoco

as meeting “stringent TOP TIER™ standards and exceed[ing] EPA standards for vehicle emissions and engine durability.” Point-of-sale marketing material in Vermont reiterates the claim that UltraTech gasoline “helps your engine run cleaner, longer, and more efficient.”

116. Sunoco advertising rhetorically asks on social media, for example, “Who would say ‘no’ to fuel that helps your car run longer, cleaner, and more efficiently? … Say ‘yes’ to #SunocoUltratech fuels, available at your local Sunoco station right now!” Another Sunoco Instagram post stated: “Not All Fuels Are Created Equal,” and that if consumers want their engines to run “cleaner, longer and more efficiently” then they should purchase Sunoco’s fossil fuel products. Sunoco makes similar representations on Facebook, promoting its fuel as “cleaner” and “more efficient” while touting its “Top Tier” standard. Sunoco ads deceptively portray the supposed environmental benefits of these fossil fuel products sold in Vermont, promoting them as “clean,” “cleaner,” and resulting in “lower emissions,” while making no mention of the enormous amounts of greenhouse gas emissions associated with its products and the very limited impact of any “lower emissions” benefit.

CITGO Products

117. For years, and currently, CITGO’s advertising misleadingly portrays its fossil fuels as having environmental benefits, stating that its fuel “[c]leans” internal combustion engine parts and “[l]owers emissions.” To convey the misleading impression that using these products will reduce or minimize environmental impacts, CITGO calls all grades of its gasoline “TriCLEAN”; asserts on its website that TriCLEAN has earned the “stringent” “TOP TIER” designation because it “surpasses the existing standards set forth by the EPA”; and claims that with continuous use by consumers TriCLEAN will maximize fuel mileage “while minimizing exhaust emissions.” But this advertising of “TriCLEAN” fuels makes no mention of the massive

greenhouse gas emissions associated with CITGO's fossil fuel products and the very limited impact of any "minimizing" benefit. Promotional posters at CITGO-branded gas stations in Vermont reiterate the claim that continuous use of its TriCLEAN gasoline "lowers emissions."

118. As illustrated in the foregoing paragraphs, Exxon's, Shell's, Sunoco's, and CITGO's marketing is deceptive in emphasizing their products' purported environmentally beneficial qualities – such as "cleanliness," "better mileage," and "lower emissions." Even if it were true that these products improve engine performance and/or efficiency relative to prior or other products, Defendants' ads convey a false impression that the use of their products results in environmental benefits. Defendants fail to disclose what they have long known to the contrary: that the development, production, refining, and use of their fossil fuel products (including products that may yield somewhat more efficient engine performance than other fossil fuels) *increases* greenhouse gas emissions and is a leading cause of global warming; and that the continued use of these products will cause catastrophic effects on the environment if unabated. Such misrepresented and withheld information is material to the purchasing decisions of Vermont consumers.

D. Defendants Continue To Mislead Vermont Consumers Through Their "Greenwashing" Campaigns.

119. Defendants continue to deceive Vermont consumers by engaging in "greenwashing" – public relations and marketing tactics designed to make a company or product appear environmentally friendly even though it has little or no meaningful impact on harm reduction, while distracting the public from the environmental damage caused by the company's activities.

120. Defendants know that purchasing decisions of environmentally conscious consumers in Vermont and elsewhere are materially influenced by their perceptions of whether a

particular company is environmentally responsible. Defendants' greenwashing campaigns thus employ false and misleading advertising and promotions – on television and radio, in print, online and in social media, and at the point-of-sale at Vermont gas stations selling their products – to deceive Vermont consumers into believing that they are environmentally responsible companies that are leading the way and committed to finding solutions to the climate crisis, when in fact they are a significant cause of it. The campaigns direct consumer attention away from the fact that Defendants' core businesses remain focused upon expanding the production, distribution, and sale of fossil fuel products that exacerbate climate change, and that any alternative energy efforts of the Defendants are miniscule in comparison.

121. Defendants have expended considerable resources on greenwashing. In 2018, Exxon spent $56 million on "climate branding" initiatives intended to persuade consumers that the company was committed to clean energy and climate change mitigation. By 2019, Shell had spent more than $50 million on advertising to convince the public it was supporting action on climate change, though it continued to invest in oil and gas projects and to lobby against climate action. In that year alone Shell spent $55 million on "climate branding" initiatives to underscore the company's supposed commitment to clean energy and climate change mitigation, position the company as an expert on climate issues, and conceal the role of fossil fuels – and its own role – in climate change. Shell continues to pour money into advertising to draw attention to its supposed development of "cleaner resources" and away from its production and sale of fossil fuels. Sunoco also has committed millions of dollars to greenwashing deception to present itself as an environmental steward that develops/sells "pure," "green," "ultra-clean," and "low emission" fuels, while remaining focused on increasing the distribution and sales of its fossil fuel

products and delaying governmental or other action to reduce emissions that would affect such sales.

Exxon's Greenwashing Campaigns

122. As part of its greenwashing campaigns, Exxon has run full-page ads in print editions and posts in the electronic edition of the *New York Times* bragging about its efforts to develop biofuels. These ads do not reveal the miniscule scale of these efforts compared to its continued investment in fossil fuel production. In one such ad, Exxon tells consumers that it is "working to decrease [its] overall carbon footprint," and that its "sustainable and environmentally friendly" biodiesel fuel could reduce "carbon emissions from transportation" by greater than 50%. In another such ad, Exxon says it is "exploring" how to convert plant waste into biofuel "on a vast scale," claiming that biofuels have "the power to make a big difference." Exxon also claims that its biodiesel fuel could reduce carbon emissions from transportation by more than 50%. In addition to not disclosing the very small scope of these efforts, Exxon's greenwashing ads do not acknowledge that Exxon's biodiesel fuel is generally a blend that uses only 5% to 20% biofuel, with the remainder composed of fossil fuel. Thus, Exxon's greenwashing ads misleadingly overstate both the "sustainable" or "environmentally friendly" nature of its biodiesel investment as well as its scope.

123. Exxon's website touts its supposed "clean energy" credentials, stating that "[t]he abundance and versatility of natural gas make[s] it a valuable energy source to meet a variety of needs while also helping the world shift to less carbon-intensive sources of energy." It also touts its "demonstrated leadership in carbon capture and emissions reduction technologies" and its "commit[ment] to meeting the demand for affordable energy while reducing emissions and managing the risks of climate change." But the website misleadingly omits that natural gas is

not clean energy because it produces significant amounts of greenhouse gas emissions, and the website exaggerates Exxon's investments in carbon capture and emissions reductions technologies.

124. On Facebook, Exxon extols its supposed leadership in carbon capture technology and purported pioneering technologies to reduce emissions and increase fuel efficiency, and touts natural gas as "cleaner" energy. On LinkedIn, it promotes plans to reduce greenhouse gas emissions, stating that its "2025 plans are expected to reduce absolute greenhouse gas emissions by an estimated ~ 30% for the company's upstream business." On Instagram, it says it is committed to addressing climate change, stating: "Over the last 40 years, we have cumulatively captured the most CO_2 of any company," and that it is "[w]orking to meet the world's growing #energy needs while addressing the risks of climate change."

125. These greenwashing campaigns are deceptive, as they falsely portray Exxon as focused on transitioning to clean energy and making significant contributions to combatting climate change, when in fact Exxon remains laser-focused on increasing the production, distribution, and use of fossil fuel products, and its "investments" in alternative energy sources are relatively miniscule and inconsequential in comparison.

126. Contrary to the impression created by its greenwashing, Exxon has continued to ramp up fossil fuel production, and to plan for unabated oil and gas exploitation indefinitely into the future. In 2018, while Exxon touted to consumers its clean energy investments, its chief executive said it would spend $230 billion to pump an additional one million barrels of oil and gas a day by 2025. Exxon is projected to ***increase*** oil production by over 35% between 2018 and 2030, a sharper rise than over the prior 12-year period. It has also invested billions of dollars in Canadian tar sand projects, among the most carbon-intensive oil extraction projects in the world.

127. By contrast, Exxon's investment in alternative energy falls far short of the amount necessary to reach the scale touted by Exxon in its greenwashing ads. Between 2010 and 2018, Exxon spent just 0.2% of its total capital on low-carbon energy sources, while it continues to expand and invest capital in fossil fuel production.

128. Similarly, Exxon's advertised goal of producing 10,000 barrels of biofuel per day by 2025 would equate to only 0.2% of its current refinery capacity. Any climate-related benefit would be vastly offset by Exxon's projected 35% increase in oil production, which Exxon fails to disclose in its greenwashing ads. Exxon's greenwashing ads do not disclose that fossil fuels remain the mainstay of its business and will continue to contribute substantially to global warming and catastrophic climate change.

129. Exxon's greenwashing material also is deceptive insofar as it fails to disclose that while Exxon may be taking steps to reduce greenhouse gas emissions from its upstream operations (*i.e.*, exploration and production), its downstream operations also contribute significantly to global warming, as does consumer use of its products.

Shell's Greenwashing Campaigns

130. Shell's greenwashing campaigns likewise mislead consumers by saturating its brand with deceptive "green" images portraying Shell as a good environmental caretaker when, in fact, these images deflect from, and are contradicted by, the actual environmental and climate impacts of Shell's fossil fuel products. The campaigns are designed to falsely persuade environmentally minded consumers in Vermont and elsewhere that buying Shell products will help to solve climate change rather than contribute to the problem. They do not disclose that the production, distribution, and use of these products is a major source of the greenhouse gas

emissions causing climate change, and Shell's historical denial and deception of that fact; instead, they mislead consumers about Shell's purported efforts to address climate change.

131. Shell's greenwashing includes campaigns known as "Profits and Principles," "Let's Go," "Make The Future," "Powering Progress," and "Zero Net Emissions By 2050." Through them, Shell misleadingly highlights its investments in alternatives to fossil fuels, which are actually miniscule in comparison with its investments in fossil fuel development. Shell also greenwashes through the publication of "Sustainability" reports, which tout Shell as an environmental steward. Its campaigns present Shell as leading the charge in innovation to develop "low emission" and "low carbon" fuels, whereas Shell actually remains intensely focused on increasing fossil fuel production and is actively engaged in delaying actions to reduce emissions, including by opposing emission standards for passenger vehicles.

132. In recent years, Shell ads have included the #Make the Future campaign which claims that Shell is combatting climate change by producing and selling cleaner fossil fuels and developing cleaner energy sources. In fact, between 2010 and 2018, Shell spent only 1.2% of its total capital spending on low-carbon energy sources, a negligible amount in comparison to its investment in new oil and gas horizons. The proportion of actual energy it produced from "cleaner" sources as compared to fossil fuels during that period was even smaller. In 2020, Shell earmarked $17 billion for fossil fuel operations but less than 2% of that amount for "low-carbon businesses." Shell thus conveys to Vermont consumers that it is leading the charge against climate change when its aims and actions are quite the opposite. Indeed, Shell was recently forecast to increase output by 38% by 2030, by expanding its crude oil production by more than half and its gas production by over a quarter.

133. To create brand loyalty and enlarge its customer base, Shell inundates Vermont consumers with ads giving the false impression that renewable and low-carbon energy is an extensive part of its business. None of this messaging discloses that those investments are negligible compared to the amounts it spends on (and profits from) fossil fuels.

134. Many of these misleading advertisements are designed to look like newspaper articles rather than paid ads. On the *New York Times* and *Washington Post* websites accessible by Vermont consumers, Shell touts its investment in "alternative energy sources," including natural gas, LNG, hydrogen fuel cells, and biofuel, which Shell repeatedly refers to as "cleaner sources," and exaggerates the "benefits" of these "sustainable" or "lower-carbon" fuels as well as the scope of Shell's investment in them. A Shell ad puts it at the center of the solution of greenhouse gas emissions from transportation sources, stating: "Thankfully, an array of scientists, innovators and business are hard at work creating more efficient ways of moving around. Shell is one of them."

135. Shell's greenwashing campaigns are also carried out on social media. Shell's Instagram bio contains the catch phrase: "Powering progress together with more and cleaner energy solutions." Shell describes itself similarly on its LinkedIn page with over 5 million followers. In a recent LinkedIn post, Shell asserted that "[r]especting nature is a key goal of [its] strategy." On Shell's Facebook and Twitter pages, with close to 9.7 million followers combined, Shell's bio states that: "We power progress together by providing more and cleaner energy solutions for the world." A screen shot from Shell's Twitter page follows:

136. As such, Shell falsely portrays itself as substantially invested in clean energy when in fact those activities are dwarfed by its fossil fuel investments.

137. The #Make the Future campaign included a highly publicized music video entitled "Best Day of My Life" in which Shell pledged more and cleaner energy. The video, which is still viewable, has had tens of millions of views on YouTube and Facebook.

138. On social media, Shell touts its renewable energy investments in wind power, solar power, and electric vehicle charging stations, not disclosing that these investments are negligible compared to its still increasing investment in and production of fossil fuels.

139. Shell's advertising proclaims its ostensible goal of "net-zero emission." On Twitter, Shell has tweeted that it "is moving at pace with our transition to net-zero emissions … and delivering on our strategy." But Shell's recent "Climate Target" report belies this, stating that: "As of February 11, 2021, Shell's operating plans and budgets do not reflect Shell's Net-Zero Emissions targets. Shell's aim is that, in the future, its operating plans and budgets will change to reflect this movement towards is new Net-Zero Emissions target. However, these plans and budgets need to be in step with the movement towards a Net Zero Emissions economy within society and among Shell's customers." Indeed, Shell typically does not even include non-fossil energy systems in its key performance indicators or reported annual production statistics. It is anything but a leader in tackling climate change, and its greenwashing ads are at odds with operating plans and budgets, which make no room for Shell to have a meaningful impact on the problem for which it bears substantial responsibility.

140. Shell's greenwashing overstates the climate benefits from its natural gas products, including LNG and hydrogen fuel cells, and its so-called "alternative energy portfolio," such as other biofuels and energy powered by the sun, wind, and water. It unequivocally portrays natural gas as "sustainable," when in fact it emits greenhouse gases at all phases of its lifecycle, including significant releases of methane (which accelerates global warming at a faster rate than carbon dioxide) from extraction and transportation, and releases of carbon dioxide when gas is flared at the well and at the point of combustion. Thus, even if natural gas is considered to have fewer emissions and climate impacts than other products that Shell sells, its promotion of the supposed climate benefits of its natural gas products misleadingly omits this information concerning the greenhouse gas emissions and climate impacts that are associated with natural gas.

141. In addition to liquefaction of natural gas to produce LNG, significant greenhouse gas emissions occur at all stages of its lifecycle, including energy required to cool and re-gasify it, and combustion at end use. This is contrary to Shell's messaging, which describes LNG as "the cleanest-burning fossil fuel," and as a "sustainable" source of "low-emission" energy that is critical to combating climate change.

142. In 2017, Shell was censured for its misleading advertising by the Dutch Advertising Code Authority for describing natural gas as "the cleanest fossil fuel." The agency found it misleading because it "suggested that fossil fuels can be clean in that they do not cause environmental damage. It is firm … that that suggestion is not correct." In 2019, that agency censured Shell again for misleadingly advertising gas-to-liquid, *i.e.*, GTL, the liquefaction to create LNG, as sustainable. The agency determined that gas-to-liquid "is a fossil fuel and therefore can never be sustainable." Shell nonetheless continues to represent the LNG that gas-to-liquid generates to be the "cleanest" fossil fuel and as sustainable

143. Shell has used a similar misleading tactic in advertising its investments in biofuels, hydrogen fuels, and other so-called "alternative energy resources." It exaggerates the scope of these investments and downplays the emissions produced by them.

144. In ads currently viewable by Vermont consumers on the *New York Times* and *Washington Post* websites, Shell makes misleading statements concerning the environmental impact of the advertised alternative energy sources. One ad promoted its hydrogen fuel cells as "sustainable in the long term," and "[o]ne of the cleaner sources" that power electric vehicles, emitting nothing from their tailpipes but water vapor. The greenwashing ads do not state that almost all hydrogen fuel in the United States is produced by reforming natural gas – a fossil fuel

– with a process that releases significant amounts of greenhouse gases. Shell's focus on tailpipe emissions creates the false impression that hydrogen fuel is a zero-emission fuel.

145. Other Shell advertising promotes biofuels along with hydrogen fuel cells as climate change solutions. While asserting that biofuels such as sugarcane ethanol can reduce CO_2 emissions by around 70 percent compared to gasoline, or that biofuels could ultimately make jet emissions nearly carbon neutral, the ads misleadingly omit the environmental impacts of agricultural expansion needed to produce biofuels, that making such fuels itself uses fossil fuels, and that only a nominal amount of Shell's capital spending is on biofuels of this type.

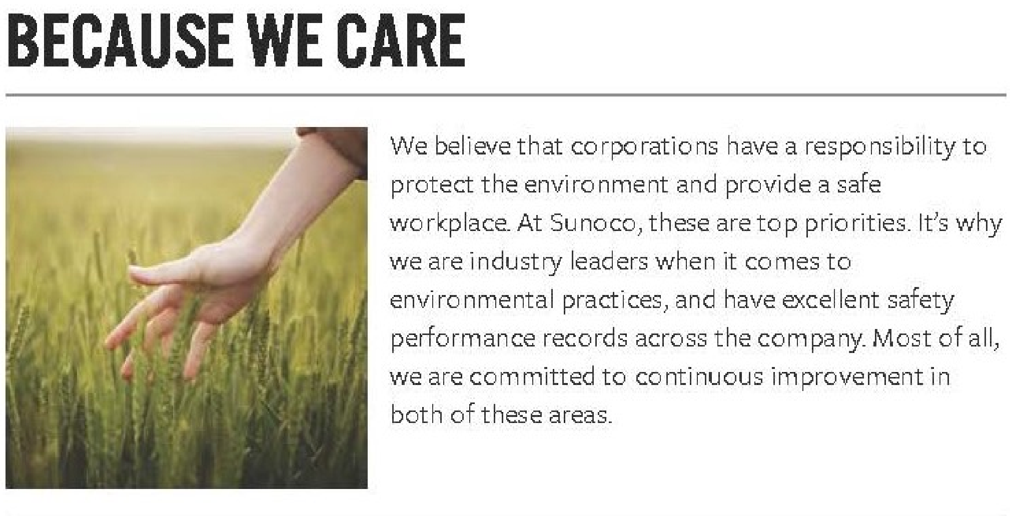
Sunoco's Greenwashing Campaigns

146. Sunoco also continues its deception of Vermont consumers through greenwashing that holds itself out as an environmentally responsible company whose products can benefit the environment, while failing to disclose that the production and use of its fossil fuel products emit large amounts of greenhouse gases which cause increases in global average temperatures and the associated adverse impacts to the climate – information that Sunoco has known about for decades.

147. Sunoco's greenwashing has saturated its brand with deceptive "green" images and statements about environmental principles it has adopted and environmental organizations to which it belongs, to portray Sunoco as a good environmental caretaker, which is contrary to the actual environmental impact of its business. These images and statements draw attention away from the climate harms caused by the production and use of Sunoco's fossil fuel products and focus consumers instead on Sunoco's purported environmental responsibility and stewardship.

148. For years beginning in the mid-to-late 2000's, and continuing to today, Sunoco has promoted itself and its fossil fuel products with slogans including "Corporate Responsibility:

It's How We Do Business"; "Blue and Yellow make Green. We take sustainability very seriously"; "Because We Care"; as well as "Not all Fuels Are Created Equal," which Sunoco uses to promote its "Ultra-Clean" fuel and tout its Top-Tier" designation. The ads have included images of pristine natural settings to make consumers associate Sunoco and its products with a healthy environment. Here is a recent example of greenwashing from its website:



149. These advertisements misleadingly portray Sunoco and its fuels as "clean," "green," and safe for the environment, and depict Sunoco as a caring corporate actor protecting the planet's environmental resources, while omitting any mention of the harms of climate change caused in large part by the production and use of fossil fuels, Sunoco's main product.

150. After the Exxon Valdez oil spill, the Coalition for Environmentally Responsible Economies ("CERES") was formed to heighten corporate environmental responsibility so that corporations such as Defendants would respond to environmental crises promptly and adequately.

151. As part of Sunoco's public relations strategy, it entered into negotiations with CERES, explaining that it would adopt the CERES Principles if certain language in those

principles was removed, including language about its products' emissions "contributing to the greenhouse effect" and "depletion of the ozone layer." Sunoco thus pressed CERES into agreeing to remove that key language in order to obtain Sunoco's endorsement. As a result, Sunoco became the first Fortune 500 company to endorse the CERES Principles, so as to promote itself as a protector of the environment, while at the same time it affirmatively acted to conceal its knowledge of the climate impacts of its fossil fuel products.

152. Sunoco also adopted its "Principles of Health, Environment & Safety," wherein it pledged that it was and would continue to be an "environmental steward[]" and would protect the general public by reducing its fossil fuel emissions and initiating sustainability efforts. This was mere window dressing, as Sunoco later went on to tout the environmental benefits of its fossil fuel products while continuing to conceal that using its fossil fuel products – including those held out as "cleaner" or "lower emissions" fuels – is harmful to the climate.

153. Sunoco advertising represents that its fuels are "cleaner" and "more efficient" and have "lower emissions" and thus implies that their use results in significant environmental benefits. Yet Sunoco's promotional campaigns fail to disclose that fossil fuels are a leading contributor to climate change and that current levels of fossil fuel use – even purportedly "cleaner" or more efficient products – represent a substantial threat to the environment.

154. Sunoco uses images of the sun, clean beaches, and pristine ocean water to separate in consumers' minds the connection between its fossil fuel products and global warming, similar to the tobacco companies' use of images of athletes and wellness to separate in consumers' minds the connection between smoking, cancer, illness, and death.

155. As part of its "yellow and blue" campaign, Sunoco utilized "pump topper" ads – small posters on top of the gas pumps at Sunoco-branded stations – and created "license plate"

posters that fit over each pump. It was a consistent, branded template that was constantly refreshed with *green* brand messages. Examples of the messaging used at point-of-sale at the pumps include Sunoco statements, joined with its claim of “lower emissions,” that Sunoco was a “proud sponsor of breathing,” and that “Spring is in the air, not Sulphur.” Another “license plate” touted Sunoco fuels as “How the tree hugger gets to the protest faster.”

156. Sunoco’s website continues to state that “Environmental stewardship is a priority for our company.” Sunoco has long advertised, and continues to advertise, its “environmental accomplishments” and that it markets “cleaner transportation fuels.” Sunoco intends for these representations to make environmentally conscious consumers in Vermont and elsewhere trust that its fossil fuel products are “green” and safe for the environment. But Sunoco in reality does very little to protect the environment and prevent or mitigate climate change; it remains focused on selling fossil fuels while it seeks to draw consumers’ attention away from the significant role it continues to have in contributing to climate change.

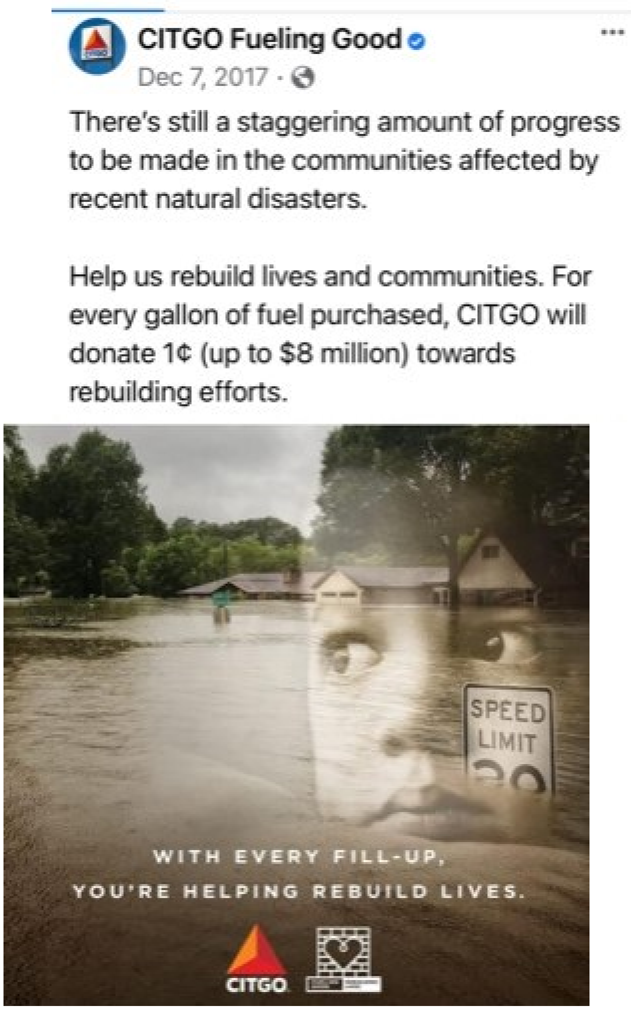
CITGO’s Greenwashing Campaigns

157. Like the other Defendants, CITGO also continues its deceptive acts and practices, in more recent years through greenwashing ads that hold itself out as an environmentally responsible company whose products can benefit the environment, while those ads avoid any mention that consumption of its fossil fuel products generates large amounts of greenhouse gases which result in climate change and its adverse consequences, and in no way benefits the environment.

158. From 2017 to the present day, CITGO’s website has touted its commitment to the environment, stating that “[w]e operate our businesses safely and as good stewards of the environment . . . . We will comply with environmental regulations and serve as guardians of our

natural resources and environment." To the contrary, CITGO is neither a good steward nor a guardian of natural resources or the environment, but a leading contributor to the climate change that threatens them.

159. To deflect attention from the impact of fossil fuels on the climate, and the consequent increase in severity of extreme weather events, CITGO uses social media greenwashing to portray itself as a savior of communities ravaged by storms or other natural disasters. In the following greenwashing ad, CITGO audaciously told consumers that buying its gasoline would *help* communities suffering from natural disasters, while making no mention that fossil fuel use makes such disasters *more likely to happen*:

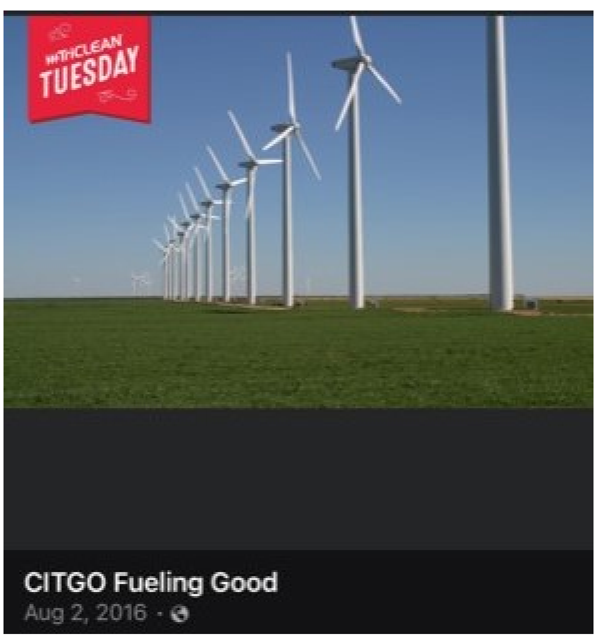


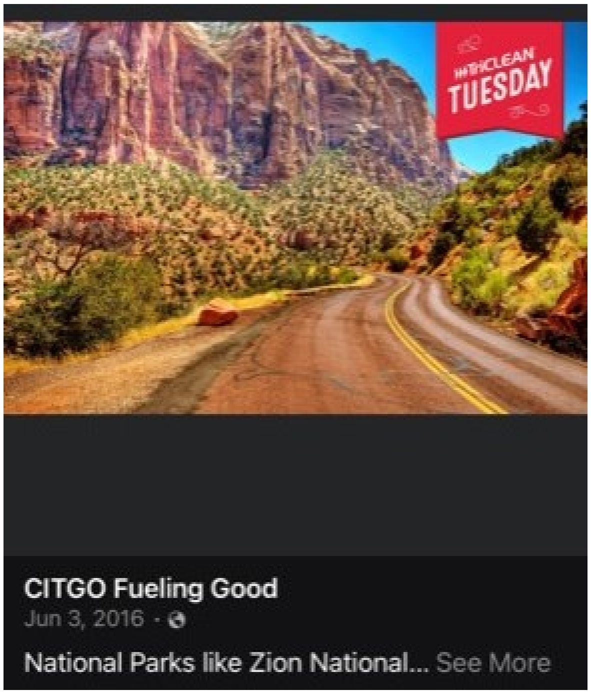

CITGO Fueling Good
Nov 9, 2017 ·

The aftermath of the recent natural disasters across the country are, unfortunately, still affecting communities. For our #FuelItForward challenge this month, we invite you to help rebuild lives when you fill up. For every gallon of fuel purchased, CITGO will donate 1¢ (up to $8 million) towards rebuilding efforts.

Together, we're Fueling Good. Together, we're Rebuilding Lives.

160. CITGO has also used social media to associate itself with cleaner energy (such as wind power) and pristine images of a thriving environment, in an effort to greenwash from consumers' minds that its business is focused on selling fossil fuel products that pose a serious threat to the climate, as shown in these examples from CITGO's "Fueling Good" campaign:





161. In 2019, CITGO tied its "Fueling Good" greenwashing campaign to its first-ever Environmental Social Governance Report, which was entitled "A Clear Direction Forward." In it, CITGO's chief executive officer asserted that "CITGO has never been more dedicated to our core values of environmental stewardship, integrity, respect, fairness, social responsibility, operational availability and competitiveness, which guide everything we do as a company. From refinery to terminal to corporate office, we live these values each day knowing that it's a privilege to operate our business – not a right. Living by these values and supporting local communities is what we call Fueling Good."

162. While professing in the report to be "dedicated" to "environment stewardship," CITGO's greenhouse gas emissions from its refineries have steadily increased since 2015, and the fossil fuels it generates and sells from those refineries continue to contribute to climate change.

API's Greenwashing on Behalf of Defendants

163. API, on behalf of its members, including at times Defendants Exxon, Shell, and Sunoco (and with their knowledge and financial and other support), has facilitated their greenwashing campaigns. After decades of climate change denial, API has pivoted to messaging that Defendants and other fossil fuel companies are leaders in combatting climate change and that Defendants' fossil fuel products are actually good for the environment.

164. During the 2017 Super Bowl, API debuted its "Power Past Impossible" campaign, with advertisements telling consumers that the petroleum industry could help them "tap[] potential" and live better lives. A "Power Past Impossible" YouTube ad advertised that "Oil Runs Cleaner."

165. Recognizing that "88% of Americans favor energy companies helping meet environmental challenges," API touts "Energy for a Cleaner Environment," including "lower emissions," "cleaner gasoline," and "[c]leaner operations," while omitting the products' leading role in climate change and its attendant environmental consequences. But Vermont consumers are entitled to honest information on the challenges, not the illusion that Defendants are meeting those challenges. While Defendants have evidently concluded that it is now good business to promote themselves as responsible environmental stewards, when that supposed "stewardship" is an illusion it is also a mechanism of consumer deception.

166. API has run ads in the online platform of the *Washington Post*, which are still accessible today, touting the environmental and climate benefits of natural gas with catchphrases like "natural gas will thrive in the age of renewables," "[r]eal climate solutions won't happen without natural gas and oil," and "[l]ow- and no-carbon future starts with natural gas." API thus

deceptively claims that fossil fuel products are a “solution” to climate change without revealing that they are its primary cause.

167. API has also run a campaign titled “Energy for Progress” through television, radio, and social media advertisements reaching Vermont consumers. The campaign deceptively portrays Defendants and others in the oil and gas industry as leaders in reducing greenhouse gas emissions. The campaign’s website previously portrayed natural gas as a “clean” fuel and more recently has described it as “cleaner.” API promotes “5 Ways We’re Helping to Cut Greenhouse Gas Emissions,” and “4 Ways We’re Protecting Wildlife.” On Facebook, as part of API’s “Energy for Progress” campaign, it posted statements such as: “We can tackle climate change and meet the world’s energy needs by embracing new innovations together,” “We can all agree we need strong climate solutions—and with natural gas as a dominant energy source, U.S. carbon emissions are the lowest levels in a generation,” and “Let’s work together to find climate solutions while meeting our essential energy needs.” While drawing consumer attention to marginal improvements in the fossil fuel industry, and touting Defendants’ purported environmental stewardship, the API omits that their continued and expanded fossil fuel production continues to be a source of substantial greenhouse gas emissions. API’s messages aim to *increase* Vermont consumers’ purchase and use of fossil fuels while reassuring them that their buying decisions are compatible with their environmental concerns.

168. Defendants’ false and misleading statements and conduct, including their historical concealment and disinformation about the climate impacts of their fossil fuels, and continuing through their greenwashing and misleading ads of today, have presented and continue to present to Vermont consumers a deceptive portrayal of the role of Defendants’ fossil fuel products in causing global warming; of the strength of the scientific evidence of that impact and

its acceleration; and of the adverse consequences of climate change to which Defendants' products contribute, including rising sea levels, disruptions to the hydrologic cycle, increases in extreme precipitation, heatwaves, and droughts.

169. Defendants continue to pursue their first priority as fossil fuel purveyors, while promoting their supposedly "green" fossil fuel products at Vermont gas stations, on their websites, and in publications and social media targeted at Vermont consumers. Their greenwashing campaigns continue to mislead Vermont consumers about the degree to which their products contribute to climate change, and that they have not in fact significantly invested in alternative energy sources or otherwise taken steps to minimize their environmental impacts. Absent such deceptive advertising and promotion, Vermont consumers would very likely have acted differently, including by not purchasing Defendants' fossil fuel products or by buying them in significantly lower quantities.

E. Defendants' Unfair And Deceptive Practices Concern Matters That Are Material To The Purchasing Decisions Of Vermont Consumers.

170. The use of Defendants' fossil fuel products, including for gasoline-powered cars and other vehicles, is a significant contributor to climate change, causing serious consequences for the environment, and that is material to Vermont consumers in their decisions concerning the purchase and use of these products. The Defendants know this, and have known it for many years. By misrepresenting and failing to disclose to Vermont consumers the climate impacts of using Defendants' fossil fuel products, even to the point of claiming that certain of those products may actually benefit the environment, Defendants have misled and continue to mislead Vermont consumers about key attributes of the products and the consequences of purchasing them.

171. The materiality to consumers of information about the climate impacts of fossil fuel use is well documented. For instance, in a Harris Poll conducted in December 2019, more than half of U.S. adults said climate change is the most important issue facing society today, and six in ten survey respondents reported changing their habits to reduce their contribution to climate change, including by using renewable energy sources.

172. A recent study by Ipsos surveyed nearly 20,000 adults in 28 countries, including 1,000 in the United States, and found that 69% of respondents reported having made changes in products and services that they buy or use specifically out of concern about climate change, and 17% reported making a "lot of changes." In the United States, 56% of respondents reported that they had made changes in products and services acquired specifically out of concern about climate change, with 12% reporting that they had made a "lot of changes." Among U.S. respondents who reported changes in their behavior, 24% reported changing the type of motor vehicle they drive (*i.e.,* by size, fuel type, energy efficiency, etc.), 16% reported changing how they travel to and from work, and 27% reported changing how they travel for personal reasons. The study demonstrates the materiality of the matters which have been and continue to be the focus of Defendants' unfair and deceptive practices: as more consumers are becoming aware of the harmful impacts of fossil fuel consumption on the climate, many of them are altering their purchasing decisions as a result. But Defendants' prior and ongoing deceptive actions have denied, and continue to deny, Vermont consumers their right to make such decisions based on fair and honest disclosures regarding Defendants' fossil fuel products.

173. When consumers are made aware of the harmful effects of products, they choose in large numbers not to purchase them or they reduce their purchases. For example, increased awareness about the negative health impacts of cigarettes caused many consumers to stop

purchasing cigarettes, while awareness about the health and environmental harms caused by pesticides resulted in consumers shifting to purchasing more organically grown foods.

174. The conclusions of recent studies showing the environmental priorities of U.S. consumers apply with particular force to Vermont consumers, who tend to be more ecologically minded than most. Studies have identified Vermont as the "most environmentally friendly" or "greenest" state, based in part on government policies to promote energy efficiency and other environmental priorities that reflect the pro-environmental values and preferences of the State's electorate, *i.e.*, Vermont consumers.

175. During the period of Defendants' continuing deception, Vermont consumers have had options to purchase more fuel-efficient vehicles, to carpool, to walk or bike to work, to use public transit, to live closer to their jobs, to pursue telecommuting options, and/or to alter their fuel consumption for travel, recreation, or other personal reasons, and in the course of so doing, to purchase and use Defendants' fossil fuel products less frequently, in lesser quantities, or not at all. Defendants' deception materially affected the purchasing decisions of Vermont consumers with regard to these matters.

IV. <u>CAUSES OF ACTION</u>

COUNT ONE
Violations of the Vermont Consumer Protection Act
(Deceptive Acts and Practices)

176. Plaintiff repeats and re-alleges each and every allegation set forth in the preceding paragraphs as though set forth herein.

177. The Vermont Consumer Protection Act prohibits unfair and deceptive acts and practices in commerce. 9 V.S.A. § 2453(a).

178. Defendants engaged and continue to engage in deceptive acts or practices in commerce in their marketing, promotion, and selling of their fossil fuel products to Vermont consumers.

179. Defendants' misleading statements and conduct were and are deceptive because they were and are likely to create an impression among consumers that Defendants' fossil fuel products are better or safer for the environment when, in fact, the use of Defendants' fossil fuel products will contribute to global warming, sea level rise, disruptions to the hydrologic cycle, increased extreme precipitation, heatwaves, drought, and other consequences of the climate crisis.

180. Further, Defendants have intentionally concealed and disseminated information that is likely to mislead Vermont consumers regarding the acceleration of global warming, and the fact that the continued increase in fossil fuel product consumption creates severe environmental threats and significant economic costs for communities, including in the state of Vermont. Defendants have also concealed and intentionally disseminated information that is likely to mislead Vermont consumers about the scientific evidence on human-induced climate change, and in particular, about the strength of the scientific consensus demonstrating the role of fossil fuels in causing both climate change and a wide range of associated adverse impacts.

181. The meaning ascribed to Defendants' claims and omissions is reasonable given the nature of those claims and omissions, and the circumstances in which they were made.

182. Defendants' misrepresentations and omissions about their fossil fuel products were and are likely to mislead Vermont consumers and were and are material in that they were and are likely to affect Vermont consumers' decisions with regard to the purchase or use Defendants' fossil fuel products.

183. If Vermont consumers understood the full degree to which Defendants' fossil fuel products contribute to climate change, that Defendants' fossil fuel products are not environmentally friendly (contrary to the information conveyed and impressions created by Defendants' marketing), and that Defendants have not in fact significantly invested in alternative energy sources or otherwise taken steps to minimize environmental impacts, then Vermont consumers would have been able to make fully informed and different decisions about Defendants' products, including making it more likely that they would have made, or would make, alternative decisions either not to purchase Defendants' fossil fuel products or to purchase lesser quantities of such products.

184. Defendants' deceptive acts and practices have been and are willful in that Defendants knew or should have known, at all relevant times, that their conduct was of the nature prohibited by the VCPA.

185. Defendants' unlawful acts and practices in violation of the VCPA were targeted at and affected Vermont residents.

COUNT TWO
Violations of the Vermont Consumer Protection Act
(Unfair Business Practices)

186. Plaintiff repeats and re-alleges each and every allegation set forth in the preceding paragraphs as though set forth herein.

187. The Vermont Consumer Protection Act prohibits unfair acts or practices in commerce. 9 V.S.A. § 2453(a).

188. Business conduct is considered an unfair business practice if it offends public policy; or is immoral, unethical, oppressive, or unscrupulous; or causes substantial injury to consumers.

189. Defendants engaged in unfair acts or practices in commerce in the course of marketing, promoting, selling, and distributing their fossil fuel products.

190. These acts or practices are unfair because they: (i) offend the public policy reflected in § 2453 (a) of the VCPA, which protects consumers from deceptive marketing to ensure an honest marketplace; and (ii) are contrary to other statutory, regulatory, and/or common law policies and prohibitions against material misrepresentations and nondisclosures, including with respect to environmental benefits and/or environmental products or services, that influence economic decision-making and interfere with a fair and honest marketplace.

191. In addition, these acts and practices are unfair as immoral and unscrupulous because they have been calculated to unethically deprive Vermont consumers of material information needed for their decisions with respect to the purchasing of Defendants' products.

192. Because of Defendants' conduct, Vermont consumers have suffered substantial injury by reason of the financial cost of making purchases based on materially inaccurate and incomplete information about the products in question, to the extent that consumers would not have made such purchases, or would have made purchases in lesser quantities, if they had been given fair and honest disclosures regarding Defendants' products.

193. In doing so, Defendants acted willfully in that they knew or should have known, at all relevant times, that their conduct was of the nature prohibited by the VCPA.

194. Defendants' unlawful acts and practices in violation of the VCPA were targeted at and affected Vermont consumers.

V. REQUEST FOR RELIEF

WHEREFORE, the State of Vermont respectfully requests the Court enter judgment in its favor and the following relief:

a. A permanent injunction prohibiting Defendants from engaging in unfair or deceptive acts and practices described in the Complaint, and requiring Defendants to take appropriate steps to rectify their prior and ongoing unfair and deceptive acts and practices, including without limitation the required disclosure of the role of fossil fuels in climate change at every point of sale in the State of Vermont;

b. A judgment requiring Defendants to disgorge all funds acquired and/or retained as a result of any acts or practices found to be unlawful, and to pay interest thereon;

c. Statutory civil penalties, based on the imposition of a separate $10,000 penalty for each violation of the Vermont Consumer Protection Act;

d. The award of all investigative and litigation costs and fees to the State of Vermont; and

e. Such other and further relief as the Court deems appropriate.

Dated: September 14, 2021

STATE OF VERMONT

THOMAS J. DONOVAN, JR.
ATTORNEY GENERAL

By: ______________________

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