IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE, *ex rel.* KATHLEEN JENNINGS, Attorney General of the State of Delaware,

Plaintiff,

v.

BP AMERICA INC., BP P.L.C., CHEVRON CORPORATION, CHEVRON U.S.A. INC., CONOCOPHILLIPS, CONOCOPHILLIPS COMPANY, PHILLIPS 66, PHILLIPS 66 COMPANY, EXXON MOBIL CORPORATION, EXXONMOBIL OIL CORPORATION, XTO ENERGY INC., HESS CORPORATION, MARATHON OIL CORPORATION, MARATHON OIL COMPANY, MARATHON PETROLEUM CORPORATION, MARATHON PETROLEUM COMPANY LP, SPEEDWAY LLC, MURPHY OIL CORPORATION, MURPHY USA INC., ROYAL DUTCH SHELL PLC, SHELL OIL COMPANY, CITGO PETROLEUM CORPORATION, TOTAL S.A., TOTAL SPECIALTIES USA INC., OCCIDENTAL PETROLEUM CORPORATION, DEVON ENERGY CORPORATION, APACHE CORPORATION, CNX RESOURCES CORPORATION, CONSOL ENERGY INC., OVINTIV,

C.A. No. N20C-09-097-MMJ CCLD

INC., and AMERICAN PETROLEUM INSTITUTE,

Defendants.

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS CHEVRON CORPORATION'S AND CHEVRON U.S.A. INC.'S ANTI-SLAPP SPECIAL MOTION TO DISMISS

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MEMORANDUM OF LAW IN SUPPORT OF CHEVRON DEFENDANTS' ANTI-SLAPP MOTION TO STRIKE UNDER CALIFORNIA LAW[1]

I. INTRODUCTION

Plaintiff, the State of Delaware, seeks to use state tort law to force a selected group of energy companies to pay for all the alleged harms of global climate change based on a novel, *post hoc* regulation of global fossil fuel emissions. In order to evade federal jurisdiction, Plaintiff argued its claims were based exclusively on *speech*, rather than petroleum production or emissions. Indeed, Plaintiff argued that its claims target purported "misrepresentations" or "disinformation"—supposedly the ordinary stuff of state tort law and commercial advertising regulation. But Plaintiff knows it cannot allege that run-of-the-mill commercial advertisements *caused* climate change. Thus, to connect its theory of climate change harm with its theory of speech-based liability, Plaintiff has alleged that *political speech* caused climate change—i.e., that speech advocating "against regulation" of the oil and gas industry somehow caused global warming that would not have occurred without that speech. *E.g.*, Compl. ¶ 128. In short, Plaintiff wants to hold Defendants like Chevron liable for political speech (much of it not made by Chevron) opposing government action.

Plaintiff's theory raises obvious First Amendment problems. And it triggers special protections for speech under California law, which protect California-based

[1] This Memorandum of Law is submitted subject to, and without waiver of, any defense, affirmative defense, or objection, including lack of personal jurisdiction.

defendants like Chevron Corporation and Chevron U.S.A. Inc. ("Chevron") and are applicable here under Delaware choice-of-law principles. Specifically, California's "anti-SLAPP" immunity protects Chevron from suits—like Plaintiff's—that are based on speech on issues of public concern.

Under California's anti-SLAPP law, California defendants have a qualified immunity from suit for any "cause of action" that "aris[es] from any act" of the defendant that is taken "in furtherance of the [defendant]'s right of petition or free speech … in connection with a public issue." Cal. Civ. Proc. Code § 425.16(b)(1); *DC Comics v. Pac. Pictures Corp.*, 706 F.3d 1009, 1013 (9th Cir. 2013) ("California's anti-SLAPP statute functions as an immunity from suit, and not merely as a defense against liability"). An "act in furtherance of the [defendant]'s right of petition or free speech" is broadly defined to include practically all statements regarding "an issue of public interest," *id.* (e)(4), which unquestionably includes climate change. The immunity is qualified, and can be overcome if the plaintiff shows that its claims are legally valid. Cal. Civ. Proc. Code § 425.16(b)(1). But even if the plaintiff can show that *some* of its claims survive—either because they are not based on speech on a matter of public concern, or because they are legally supported—*any* speech-based allegations that the plaintiff cannot support should be stricken under the anti-SLAPP law. *Baralv. v. Schnitt*, 1 Cal. 5th 376, 393 (2016).

Plaintiff cannot evade California's anti-SLAPP immunity for its citizens by filing suit outside of California—so California's anti-SLAPP immunity protects Chevron even when, as here, it is sued by an out-of-state entity in a non-California court.[2] As numerous courts have held, the choice-of-law analysis for anti-SLAPP immunity focuses on which state has an overriding interest in applying its anti-SLAPP law to protect the speech of its citizens, which generally is the home state of the speaker. *E.g.*, *Sarver v. Chartier*, 813 F.3d 891, 897–99 (9th Cir. 2016) (California's anti-SLAPP statute applied to suit filed in New Jersey against California defendants); *Diamond Ranch Acad., Inc. v. Filer*, 117 F. Supp. 3d 1313, 1323 (D. Utah 2015) ("California has a strong interest in having its own anti-SLAPP law applied to the speech of its own citizens." (quotations omitted)). Thus, if Plaintiff is right to characterize its Complaint as focused on *speech*—as it did to defeat federal jurisdiction—its claims against Chevron are subject to strike and dismissal under California's anti-SLAPP law. And because Plaintiff cannot carry its burden under that law to show that its claims have legal validity, its claims should be struck and the Complaint dismissed.

Here, Plaintiff's claims fail as a matter of law, as demonstrated in detail in

[2] The Complaint improperly conflates the activities of Defendants with the activities of their separately organized predecessors, subsidiaries, and affiliates. Although the Chevron Defendants reject this erroneous attempted attribution to Chevron Corporation, for purposes of this motion only they accept the Complaint's unavailing conflation of Chevron Corporation with its predecessors, subsidiaries, and affiliates.

Defendants' Joint Motion To Dismiss For Failure To State A Claim ("Motion to Dismiss"). The speech "campaign" Plaintiff complains about consists of communications (all allegedly made by parties other than Chevron) intended to influence the government and the voting public. In fact, Plaintiff does not identify a *single statement* in the "campaign" that was allegedly made by Chevron. Compl. ¶¶ 108–141. This alone requires dismissal of Plaintiff's claims against Chevron. The only statements Plaintiff alleges Chevron made involve statements defending its support for renewable energy, which Plaintiff calls "greenwashing." But none of the statements made by Chevron are alleged to be untrue—so these statements are also unactionable. *E.g.*, *id.* ¶ 193.

Even ignoring the paucity of Chevron speech alleged, Plaintiff's speech-based claims are barred by the First Amendment. Under the *Noerr-Pennington* doctrine, the First Amendment's Petition Clause immunizes from liability "[a] publicity campaign directed at the general public and seeking government action." *Manistee Town Ctr. v. City of Glendale*, 227 F.3d 1090, 1091–92 (9th Cir. 2000) (citing *Noerr*, 365 U.S. 127; *United Mine Workers of Am. v. Pennington*, 381 U.S. 657 1965)); *accord Salem Church (Delaware) Assocs. v. New Castle Cnty.*, 2006 WL 4782453, at *13 n.116 (Del. Ch. Oct. 6, 2006) (explaining *Noerr-Pennington* applies to conduct when "lobbying" for government action). This legal bar applies even if Plaintiff's allegations are accepted as true. *See Page v. Oath Inc.*, 270 A.3d 833, 842 (Del.

2022). And factual development on this issue is unnecessary: Plaintiff does not identify *any* speech that it claims caused its harm—i.e., climate change—*except* for the purported publicity campaign aimed at influencing the public's and therefore lawmakers' views on climate change. *Noerr-Pennington* bars Plaintiff's claims, and the Complaint should be dismissed under California's anti-SLAPP statute, or alternatively under Superior Court Civil Rule 12(b)(6).

In short, Plaintiff's attempt to hold Chevron liable for climate change based on speech opposing energy regulation fails. California's anti-SLAPP immunity protects California-based defendants, like Chevron, from meritless claims that burden constitutionally protected speech on issues of public interest. And Plaintiff cannot satisfy its anti-SLAPP burden to show its claims have merit: it has not pleaded facts showing Chevron's involvement in the complained-of speech, its claims are barred by *Noerr-Pennington* and the First Amendment, *and* its claims fail for all the reasons explained in the Defendants' concurrently filed motion to dismiss. Accordingly, the Court should strike and dismiss the Complaint as to Chevron, and award Chevron its attorney's fees and costs under California's anti-SLAPP law. At the very least, the allegations barred by the First Amendment should be struck.

II. PLAINTIFF'S ALLEGATIONS AND PROCEDURAL BACKGROUND

A. Plaintiff Seeks Remedies for Global Emissions

Plaintiff seeks to hold Chevron liable for harms allegedly caused or to-be-

caused by all the cumulative causes of global warning, including the emissions of anyone who might have burned any fossil fuels, including coal. *See* Compl. ¶¶ 2–3 ("[D]isruptions of the Earth's otherwise balanced carbon cycle have substantially contributed to a wide range of dire climate-related effects," and Plaintiff's "residents … suffer the consequences"); ¶ 2 (alleging "massive increase in the extraction and consumption of oil, coal, and natural gas"); ¶ 9 ("Defendants are directly responsible for the substantial increase in *all* CO_2 emissions between 1965 and the present.") (emphasis added); *see generally id.* ¶¶ 47–57 (alleging harm from greenhouse gas emissions). Plaintiff concedes that "it is not possible to determine the source of any particular individual molecule of CO2 in the atmosphere … because such greenhouse gas molecules do not bear markers that permit tracing them to their source, and because greenhouse gasses quickly diffuse and comingle in the atmosphere." *Id.* ¶ 245. Nonetheless, Plaintiff seeks to compel Chevron to pay damages for global warming. *E.g., id.* ¶ 228 (identifying numerous "injuries and damages" from climate change); ¶ 244 (vaguely alleging "damage to publicly owned infrastructure and real property" from climate change).

The first half of the Complaint is a lengthy discussion of the extent to which "global warming and climate disruption" is "caused by anthropogenic greenhouse gas emissions." *Id.* ¶ 48. Plaintiff alleges that the burning of fossil fuels—conducted by inhabitants worldwide—has caused "myriad environmental and physical

consequences," including warming of the Earth's average surface temperature and "[c]hanges to the global climate." *Id.* ¶¶ 55 (a)–(h). Although Plaintiff includes a bare assertion that Defendants' "contribution to the buildup of CO_2" can somehow be quantified, it does not explain how. *Id.* ¶ 8. Furthermore, it does not identify any Chevron statement as false or misleading or allege how such statement(s) impacted greenhouse gas emissions. Instead, Plaintiff blames Defendants for all harmful aspects of climate change. *Id.* ¶¶ 10–11.

B. Plaintiff Attacks Defendants' Political Speech and Petitioning on a Public Issue

In an attempt to make this case about something other than emissions, Plaintiff attacks Defendants' (and others') purported participation in the public discourse on oil and gas regulation and climate change—arguing that Defendants are liable for the greenhouse gas emissions of humanity because Defendants allegedly launched "a public campaign aimed at evading regulation of their fossil fuel products and/or emissions therefrom." *Id.* ¶ 106. According to Plaintiff, Defendants "embarked on a decades-long campaign designed to maximize continued dependence on their products and undermine national and international efforts to rein in greenhouse gas emissions." *Id.* ¶ 108. Plaintiff claims this "public campaign" was intended to discourage further "regulation of their business practices," *id.* ¶ 128, and "prevent[] U.S. adoption of the Kyoto Protocol," *id.* ¶ 129. Plaintiff vaguely claims all "Defendants" engaged in this "campaign," but does not identify *any* statement

allegedly made by Chevron in the "campaign." *Id.* ¶¶ 108–141.

Plaintiff alleges that "Defendants" engaged in speech that was intended "to change public opinion and avoid regulation" by emphasizing the heavy social costs imposed by over-regulation of energy. *Id.* ¶ 115. For example, Plaintiff denounces a 1994 (non-Chevron) report advocating against "policies to curb greenhouse gas emissions beyond 'no regrets' measures." *Id.* ¶ 113. Similarly, Plaintiff criticizes a 1997 (non-Chevron) speech arguing that "[i]t's bad public policy to impose very costly regulations and restrictions when their need has yet to be proven." *Id.* ¶ 119. The Complaint also includes images of (non-Chevron) print advertisements discussing "global warming" and the "substantial loss of U.S. jobs and manufacturing capacity" that could result from regulation and "higher energy prices." *Id.* ¶¶ 116, 121. But though Plaintiff alleges these public statements were intended to "induce political inertia" against regulation, *id.* ¶ 116, it says nothing about whether or how they affected what was a robust and uninhibited public discourse about energy policy—an important deficiency because competing views obtained extensive media coverage, including on the front pages of major national newspapers.

Plaintiff alleges that Defendants supported trade organizations that organized campaigns to oppose energy regulation, but these campaigns indisputably focused on political issues of public concern. For example, Plaintiff alleges that the "Global Climate Coalition (GCC), on behalf of Defendants and other fossil fuel companies,

funded deceptive advertising campaigns and distributed misleading material to generate public uncertainty around the climate debate, with the specific purpose of preventing U.S. adoption of the Kyoto Protocol." *Id.* ¶ 129. Plaintiff likewise alleges that Defendants were connected to the American Petroleum Institute ("API"), which developed a "Global Climate Science Communications Plan" with a "multi-million-dollar, multi-year plan" to "'[d]evelop and implement a direct outreach program to inform and educate members of Congress … and school teachers/students about uncertainties in climate science' to 'begin to erect a barrier against … impos[ing] Kyoto-like measures in the future.'" *Id.* ¶ 123. Plaintiff describes this campaign as "a blatant attempt to disrupt international efforts … to negotiate any treaty curbing greenhouse gas emissions." *Id.*

C. Plaintiff Attacks Truthful Statements Supporting Renewable Energy

After numerous (non-Chevron) allegations about the alleged campaign to oppose fossil fuel regulation, the Complaint shifts gears to describing what it calls a "greenwashing" campaign, *see id.* ¶¶ 188–195. But Plaintiff does not explain how the few purported "greenwashing" statements it identifies somehow *caused* climate change—the alleged harm's source. *Id.* ¶ 228(a)–(h) (alleging numerous purported harms from climate change). The "greenwashing" allegations thus appear irrelevant to Plaintiff's claims of injury.

Regardless, Plaintiff does not identify any false statement by Chevron.

Instead, Plaintiff attacks truthful statements, like Chevron's accurate representation that it has spent "millions" on renewables. Compl. ¶ 194. Plaintiff does not dispute that representation's truth, but instead complains that Chevron spent more on fossil fuels. *See id.* The few other "greenwashing" allegations Plaintiff makes about Chevron likewise attack indisputably true statements. *See infra* pp. 25–26.

D. Plaintiff Concedes Its Complaint Targets Political Speech

Defendants removed this case to federal court, arguing that the Complaint "arises under federal laws and treaties and out of federal enclaves and presents substantial federal questions," Dkt. 1 at ii,[3] because it seeks to hold Defendants liable for the nationwide and international emission of greenhouse gases. In response, Plaintiff argued that its claims were not based on emissions but on Defendants' purported *speech* opposing regulation. In its motion to remand the case to this Court, Plaintiff described its Complaint as based on "a sophisticated and widespread disinformation campaign to undermine the science of climate change" that was purportedly intended to thwart "fossil-fuel regulation." Dkt. 89 at 63. And Plaintiff argued that this "purposeful disinformation campaign" was the *sole basis* for "render[ing] Defendants liable." *Id.*[4]

[3]Unless otherwise indicated, citations to "Dkt." are to filings on the federal district court docket in *Delaware v. BP Am. Inc.,* No. 20-CV-01429-LPS (D. Del.).
[4]Although Plaintiff vaguely invokes language used in the context of product advertising, its Complaint does not identify *any* product advertisement by Chevron. *Cf.* Compl. ¶¶ 108–141.

The federal district court credited Plaintiff's framing of its complaint and remanded the case. *See Delaware v. BP Am. Inc.*, 578 F. Supp. 3d 618, 626 (D. Del. 2022). In its remand order, the district court adopted Plaintiff's argument that its claims are based *solely* on speech—i.e., "the injuries alleged in the complaint are limited to the incremental impact resulting from Defendants' wrongful and tortious promotion and marketing." *Id.* at *12 (cleaned up).

III. LEGAL STANDARDS

"Under Delaware's choice-of-law approach, a court conducts a two-part inquiry." *Laugelle v. Bell Helicopter Textron, Inc.*, 2013 WL 5460164, at *2 (Del. Super. Ct. Oct. 1, 2013). First, the court determines if a "conflict" exists by answering a "single and simple query"—whether "application of the competing laws" yields different results. *Id.*

Then, the Court applies the "significant relationship" test, a fact-specific inquiry considering which state has the greatest "interest" in having its law applied to the issue. *Bell Helicopter Textron, Inc. v. Arteaga*, 113 A.3d 1045, 1050–51 (Del. 2015). "Pursuant to Section 145 of the Second Restatement, the local law of the state which 'has the most significant relationship to the occurrence and the parties under the principles stated in § 6' will govern the rights of litigants in a tort suit." *Travelers Indem. Co. v. Lake*, 594 A.2d 38, 47 (Del. 1991) (quoting RESTATEMENT

(SECOND) OF CONFLICTS § 145).[5] The Restatement also identifies "four contacts" that may bear on a choice-of-law inquiry: "(1) the place where the injury occurred; (2) the place where the conduct causing the injury occurred; (3) the domicile, residence, nationality, place of incorporation and place of business of the parties; and (4) the place where the relationship, if any, between the parties is centered." *Bell Helicopter*, 113 A.3d at 1050. However, the relevance or importance of any particular factor varies depending on the choice-of-law inquiry at hand: "the facts specific to each issue are relevant in determining which factors are most important." *Id.* at 1051, n.20.

Choice-of-law principles dictate "that a court need not use a single jurisdiction's law to adjudicate all issues in a case." *Those Certain Underwriters at Lloyd's London v. Nat'l Installment Ins. Servs., Inc.*, 2007 WL 4554453, at *15 (Del. Ch. Dec. 21, 2007), *aff'd*, 962 A.2d 916 (Del. 2008); *accord Baker v. Gonzalez*, 2020 WL 7342052, at *1 (Del. Super. Ct. Dec. 14, 2020) (applying this doctrine).

IV. ARGUMENT

The Chevron Defendants are California-domiciled corporations and protected

[5] The principles stated in Restatement (Second) of Conflicts § 6 are:
(a) the needs of the interstate and international systems,
(b) the relevant policies of the forum,
(c) the relevant policies of other interested states and the relative interests of those states in the determination of the particular issue,
(d) the protection of justified expectations,
(e) the basic policies underlying the particular field of law,
(f) certainty, predictability and uniformity of result, and
(g) ease in the determination and application of the law to be applied.

by California's anti-SLAPP immunity. Plaintiff cannot show that its claims are subject to any of the narrow exemptions from California's law; therefore, Plaintiff bears the burden to show its claims are legally valid. Plaintiff cannot carry its burden—both because Plaintiff has failed to allege that Chevron is responsible for the speech it complains of, and because the First Amendment bars Plaintiff's attempt to impose tort liability based on speech attempting to influence public opinion.

A. Chevron Is Protected by California's anti-SLAPP Immunity

Although Delaware has its own anti-SLAPP statute, California law governs the anti-SLAPP immunity applied to California speakers like Chevron.[6] Delaware's choice-of-law test is *issue specific*, meaning that different jurisdictions' laws can apply to different issues in the case. *Laugelle*, 2013 WL 5460164, at *3, n.23. And the exact contours of the choice-of-law analysis vary by issue—for example, while the "place of injury" has overwhelming importance in evaluating some choice-of-law questions (such as for personal injury claims), in other instances the "place of injury" is effectively "fortuitous" and "bears little relation" to the issues at hand. *Ortega v. Yokohama Corp. of N. Am.*, 2010 WL 1534044, at *2 (Del. Super. Ct. Mar. 31, 2010); *accord KT4 Partners LLC v. Palantir Techs. Inc.*, 2021 WL 2823567, at *16 (Del. Super. Ct. June 24, 2021) ("[T]he Court assesses and assigns differing weight to the contacts as appropriate for the facts and issues involved").

[6] The California law provides a broader immunity from suit. *Compare* Cal. Civ. Proc. Code § 425.16(b)(1), *with* Del. Code Ann. tit. 10, § 8138.

As numerous courts have held when applying a similar issue-specific choice-of-law analysis, the defendant's home state generally has the strongest interest in seeing its anti-SLAPP immunity applied to claims based on its citizens' speech. Accordingly, the defendant's domicile is given heavy—and often dispositive—weight in anti-SLAPP choice-of-law analysis. This is especially so where, as here, Plaintiff's location and the site of Plaintiff's injury is merely fortuitous. Plaintiff alleges that the Defendants caused *global* climate change by opposing *federal* regulation through a *nation-wide* speech campaign—there is nothing that ties this suit to Delaware except the identity of the Plaintiff. Consequently, California's anti-SLAPP protections apply here to the California-based Chevron Defendants.

1. California's anti-SLAPP Law Provides Broad Immunity

Based on its finding of "a disturbing increase in lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition," the California legislature passed California's anti-SLAPP law to protect and encourage speech and "participation in matters of public significance." Cal. Civ. Proc. Code § 425.16(a). "California's anti-SLAPP statute functions as an immunity from suit, and not merely as a defense against liability." *DC Comics v. Pac. Pictures Corp.*, 706 F.3d 1009, 1013 (9th Cir. 2013). And this immunity is "substantive," meaning that it can be applied in other courts. *Batzel v. Smith*, 333 F.3d 1018, 1025–26 (9th Cir. 2003), *superseded in part by statute on other grounds as stated in*

Breazeale v. Victim Servs., Inc., 878 F.3d 759, 766–67 (9th Cir. 2017) ("Because California law recognizes the protection of the anti-SLAPP statute as a substantive immunity from suit, this Court, sitting in diversity, will do so as well."). In order to effectuate this immunity, the statute "authorizes defendants to file a special motion to strike in order to expedite the early dismissal of unmeritorious claims" that are based on speech. *City of Montebello v. Vasquez*, 1 Cal. 5th 409, 416 (2016). Discovery is stayed and a defendant whose motion is denied has an immediate right to appeal. *See* Cal. Civ. Proc. Code §§ 425.16(c)(1), (g) & (i).

California's anti-SLAPP "special motion to strike" may target any cause of action that "aris[es] from any act" of the defendant that is taken "in furtherance of the [defendant]'s right of petition or free speech under the United States or California Constitution in connection with a public issue." Cal. Civ. Proc. § 425.16(b)(1). An "act in furtherance of a person's right of petition or free speech under the United States or California Constitution" is defined broadly to include all speech regarding "a public issue or an issue of public interest," and speech regarding topics that are "under consideration" by "a legislative, executive, or judicial body." Cal. Civ. Proc. Code § 425.16(e). A cause of action "aris[es] from" such speech, and thus is subject to strike, *whenever* the speech is alleged to "support a claim for recovery," and the only speech allegations that are *not* subject to the anti-SLAPP statute are those that are "merely background" and thus irrelevant to the plaintiff's claims. *Sheley v.*

Harrop, 9 Cal. App. 5th 1147, 1170 (2017).

"If the defendant makes the required showing" that a cause of action arises from speech or petitioning activity, "the burden shifts to the plaintiff to demonstrate the merit of the claim by establishing a probability of success." *Baral*, 1 Cal. 5th at 384. The plaintiff must establish that its allegations are properly pleaded and not subject to a legal bar. *See Planned Parenthood Fed'n of Am., Inc. v. Ctr. for Med. Progress*, 890 F.3d 828, 834 (9th Cir. 2018).

2. There Is A Conflict Between California And Delaware's Anti-SLAPP Laws

The first part of Delaware's choice-of-law inquiry asks a "single and simple" question: "does application of the competing laws yield the same result?" *Laugelle*, 2013 WL 5460164, at *2. Here, the answer is clearly "no"—so a conflict exists.

The only anti-SLAPP laws that could be at issue in this case are California's (where Chevron is located) and Delaware's (where Plaintiff is located), and there is an outcome-determinative conflict between those laws. On one hand, California's broad anti-SLAPP immunity applies to *any* suit based on speech on matters of public concern—and so applies to this suit. *See* Cal. Civ. Proc. § 425.16(b)(1), (e)(1). On the other, Delaware's narrow anti-SLAPP law applies only to cases involving permits, land-use applications, and similar "entitlement[s] for use or permission to act from any government body"—so the Delaware law would *not* apply here. Del. Code Ann. tit. 10, § 8136(a)(4). Indeed, Delaware courts have expressly

acknowledged that California's anti-SLAPP law is far "more sweeping" than Delaware's and provides "an expansive shield against any lawsuit brought with an intent to muzzle or inflict retribution for free speech." Delaware's statute is generally limited to "land use" issues. *Agar v. Judy*, 151 A.3d 456, 474, 477 (Del. Ch. 2017). There is a clear conflict here.

3. California's Anti-SLAPP Immunity Protects California Defendants Like Chevron

As Delaware courts have explained (*see supra* pp. 12–14), the choice-of-law analysis changes depending on the issue being considered—meaning facts that may be relevant to the choice-of-law analysis for one issue may not be relevant when analyzing another issue. This is particularly true here, where a plaintiff brings substantive tort claims based on the defendant's speech, and the defendant invokes the protection of anti-SLAPP immunity. As numerous courts have explained, though the location of the plaintiff and place of injury might be relevant to determining the law that governs the *plaintiff's affirmative tort claims*, those facts are not particularly relevant to determining the law that governs the *defendant's anti-SLAPP immunity. See Diamond Ranch*, 117 F. Supp. 3d at 1323 ("the place where the injury occurred … [has] little, if any, relevance in this area of law"); *Underground Sols., Inc. v. Palermo*, 41 F. Supp. 3d 720, 726 (N.D. Ill. 2014) ("'[P]lace of injury ... is less important' in 'the anti-SLAPP context.'" (quoting *Chi v. Loyola Univ. Med. Ctr.*, 787 F. Supp. 2d 797, 803 (N.D. Ill. 2011)).

A defendant's home state has an overriding interest in applying its anti-SLAPP immunity to claims based on the defendant's speech: "The purpose behind an anti-SLAPP law is to encourage the exercise of free speech, and California has a strong interest in having its own anti-SLAPP law applied to the speech of its own citizens." *Diamond Ranch*, 117 F. Supp. 3d at 1323 (quotations omitted). For that reason, the Ninth Circuit in *Sarver* held that California's strong interest in protecting its citizens' speech mandated application of California's anti-SLAPP law to a suit filed in New Jersey by a New Jersey plaintiff against California defendants that produced a movie in California. *See* 813 F.3d at 899. Likewise, in *Diamond Ranch*, a Utah court applied California's anti-SLAPP law to a suit brought by a Utah plaintiff against a California defendant, alleged to have posted defamatory statements on the internet. 117 F. Supp. 3d at 1323.

Other courts have similarly held that the defendant's domicile is overriding in the anti-SLAPP choice-of-law analysis. *E.g.*, *Palermo*, 41 F. Supp. 3d at 726 (applying Tennessee anti-SLAPP law to suit filed in Illinois against Tennessee defendant, due to "the importance of a speaker's domicile in a court's decision on which state's anti-SLAPP law to apply"). This is so even when it is unclear where the speech at issue was created. *See O'Gara v. Binkley*, 384 F. Supp. 3d 674, 682 (N.D. Tex. 2019) ("Although it is unclear whether … [defendant] made these allegedly defamatory statements in Texas, it is undisputed that [defendant] is

domiciled in Texas, which weighs heavily in favor of applying Texas's anti-SLAPP statute."); *Diamond Ranch*, 117 F. Supp. 3d at 1323–24 (without contrary evidence, speech "likely originated" from plaintiff's home state); *Palermo*, 41 F. Supp. 3d at 725 (defendant made statements in "multiple states," but anti-SLAPP law of his home state controlled).

Here, the Complaint alleges that Chevron Corporation has "its global headquarters and principal place of business in San Ramon, California," Compl. ¶ 22(a), and "controls and has controlled companywide decisions related to climate change and greenhouse gas emissions from its fossil fuel products, including those of its subsidiaries," *id.* ¶ 22(d). Likewise, Chevron U.S.A. Inc. is alleged to have "its principal place of business in San Ramon, California." *Id.* ¶ 22(f). Thus, to the extent the Chevron Defendants are purported to have been involved in any of the alleged speech, the Complaint necessarily alleges that speech would have emanated from its California headquarters, *see id.*[7]

Delaware's choice-of-law rules are the *same* as those of other states that have

[7] Though Chevron Corporation (*not* Chevron U.S.A.) is incorporated in Delaware, this has little-to-no relevance to the anti-SLAPP choice-of-law analysis—this is not a corporate law case, and the state of incorporation has no obvious connection to Chevron's speech. *See Bell Helicopter*, 113 A.3d at 1058 (defendant being "incorporated here" was irrelevant to choice-of-law analysis, because the defendant's choice to incorporate in Delaware was "entirely unrelated" to the personal injury litigation at issue). And Chevron Corporation's place-of-incorporation has no impact on the choice-of-law analysis for Chevron U.S.A., which has no relevant contacts with Delaware. *See* Joint Opening Brief in Support of Certain Defendants' Motion To Dismiss For Lack Of Personal Jurisdiction.

held that California speakers are entitled to California's anti-SLAPP immunity. Delaware has adopted the "most significant relationship" test expressed in "the Second Restatement." *Travelers*, 594 A.2d at 47. This is the same test adopted by New Jersey and Utah. *P.V. ex rel. T.V. v. Camp Jaycee*, 962 A.2d 453, 460 (N.J. 2008); *Waddoups v. Amalgamated Sugar Co.,* 54 P.3d 1054, 1059 (Utah 2002). This Court should thus follow the *Sarver* court, which held that New Jersey's choice-of-law rules required the application of California's law because "California has expressed a strong interest in enforcing its anti-SLAPP law" as to its citizens, 813 F.3d at 899, and the *Diamond Ranch* court, which held that Utah's choice-of-law rules required the application of California's law because of "California's strong interest in protecting its citizens' free speech activities," 117 F. Supp. 3d at 1324.

Just as those courts found when applying the Restatement analysis, California has the greatest "interest" in having its anti-SLAPP immunity applied to protect the speech of a California-based company. *Bell Helicopter*, 113 A.3d at 1050–51. California has an obvious and "strong interest in protecting its citizens' free speech activities" by applying its own anti-SLAPP law to its citizens. *Sarver*, 813 F.3d at 899. Therefore, the "relevant policies of other interested states" and "the basic policies underlying the particular [anti-SLAPP] field of law" both point strongly to the application of California law. Restatement (Second) of Conflicts of Laws § 6(2)(c), (e). And it would make little sense if a California speaker lost the protection

of California's anti-SLAPP laws just because a plaintiff sued in a different forum—in order to protect "California's strong interest in protecting its citizens' free speech activities," California's law should apply wherever those free speech activities are challenged. *Diamond Ranch*, 117 F. Supp. 3d at 1324. Thus, "the needs of the interstate … system[]," "the protection of justified expectations" of California speakers, and the interest in "certainty, predictability and uniformity of result" all point to application of the law of the anti-SLAPP law of the speaker, rather than the anti-SLAPP law of whatever state a plaintiff sues in. Restatement (Second) of Conflicts of Laws § 6(2)(a), (d), (f).

Conversely, Delaware has no obvious interest in applying its own anti-SLAPP law to California speakers. *Cf. id.* § 6(2)(b) (choice-of-law analysis considers "the relevant policies of the forum"). Indeed, Plaintiff's Complaint is based on an allegedly nationwide speech "campaign" against regulation, with nothing connecting that speech to Delaware in particular. *See* Compl. ¶ 114 (alleging a "national climate change science denial campaign"); *id.* ¶ 123 (alleging a "national media relations program" opposing federal regulation). Although Plaintiff also alleges that Chevron made "greenwashing" advertisements, these ads are also alleged to have been circulated "across the United States and internationally" (*id.* ¶ 192)—again, there is no particular connection between the alleged speech and Delaware. Finally, California's anti-SLAPP caselaw is the most robust and well-developed in the

country, with thousands of opinions providing guidance on the scope and application of the law—so applying California's anti-SLAPP law will not negatively impact the Court's interest in the "ease in the determination and application of the law to be applied." Restatement (Second) of Conflicts of Laws § 6(2)(g); *see also Abbas v. Foreign Pol'y Grp., LLC*, 975 F. Supp. 2d 1, 9 (D.D.C. 2013) (interpreting D.C.'s anti-SLAPP law by looking to "California, which has a well-developed body of case law" interpreting California's anti-SLAPP law).

Thus, this Court should follow courts applying the Restatement by holding that "the interests of interstate comity and the competing interests of the states tilt in favor of applying California law" to the anti-SLAPP question. *Sarver*, 813 F.3d at 899.

B. The Complaint Is Subject To Anti-SLAPP Immunity

1. Plaintiff Argues the Claims Arise From Speech On Issues of Public Interest

California's anti-SLAPP immunity applies to claims "arising from" speech on issues of "public interest" or issues that have been subject to "consideration or review" by a governmental body. Cal. Civ. Proc. Code § 425.16(e)(2), (3), (4). It also applies to "mixed" claims predicated both on speech and activity if the speech is not "merely incidental" to the claim. *Baral*, 1 Cal. 5th at 394. And here, there is no dispute that fossil fuel emissions, energy regulation, and climate change are all "issue[s] of public interest." "Global warming is one of the greatest challenges facing humanity today." *City of New York*, 993 F.3d 81, 86 (2d Cir. 2021).

Plaintiff expressly admits that each of the Complaint's causes of action "aris[es] from" Defendants' speech about this important topic. In fact, Plaintiff has argued that—despite the Complaint's allegations about production and emissions—the *only* basis for liability here is the alleged "campaign … to misrepresent the climate impacts of fossil fuel products." Dkt. 89 at 63. And it emphasizes that the alleged speech it targets advocated against "policies to curb greenhouse gas emissions," Compl. ¶ 113, in an attempt "to change public opinion and avoid regulation," *id.* ¶ 115. Because Plaintiff has already successfully argued that its Complaint is based on speech on matters of public concern, Plaintiff is judicially estopped from arguing otherwise now. *See MidAtlantic Farm Credit, ACA v. Morgan*, 2015 WL 1035423, at *3 (Del. Ch. Mar. 4, 2015).

2. Plaintiff's Claims Do Not Fall Within Any Anti-SLAPP Exemption.

Given that Plaintiff's claims arise from Defendants' speech, Plaintiff's claims are subject to strike and dismissal *unless* Plaintiff can meet its burden to demonstrate that its suit falls within one of the three narrow exemptions to California's anti-SLAPP statute. *See Simpson*, 49 Cal. 4th at 26 (plaintiff bears the burden of showing an anti-SLAPP exemption is applicable). But Plaintiff cannot carry this burden because none of the three "narrowly construed" exemptions—the public enforcement, public interest, and commercial speech—applies here. *See Montebello*, 1 Cal. 5th at 419–20.

The public "enforcement" exemption is extremely narrow, applying only to actions that are "brought in the name of the people of the State of California." Cal. Civ. Proc. Code § 425.16(d). Plaintiff's suit clearly does not qualify. *See Montebello*, 1 Cal. 5th at 420 (enforcement exception applies only to actions brought by California itself, and does not even apply to enforcement actions brought by California municipalities).

Plaintiff's suit also does not qualify for the "public interest" exemption for "private enforcement" lawsuits. Cal. Civ. Proc. Code § 425.17(b). By its terms, this exemption applies only to "private" class actions and private-attorney-general suits. *Id.* (b)(3); *Tourgeman v. Nelson & Kennard*, 222 Cal. App. 4th 1447, 1459 (2014). And the exemption is doubly inapplicable here because it does not apply to actions seeking compensatory damages for the plaintiff. *Ingels v. Westwood One Broad. Servs., Inc*., 129 Cal. App. 4th 1050, 1067 (2005) ("Because appellant alleges and seeks recovery of damages personal to himself, his claim fails to meet the first requirement [of the statute].").

Finally, the "commercial speech exemption" does not apply. *See Dean v. Friends of Pine Meadow*, 21 Cal. App. 5th 91, 105 n.5 (2018); Cal. Civ. Proc. Code § 425.17(c). As the California Supreme Court has explained, this exception applies to one narrow "subset of commercial speech": "comparative advertising" between competitors. *FilmOn.com Inc. v. DoubleVerify Inc.*, 7 Cal. 5th 133, 147 (2019). The

exemption, "by its terms, is limited to statements by one business competitor about the products or services of another." *Indus. Waste & Debris Box Serv., Inc. v. Murphy*, 4 Cal. App. 5th 1135, 1152 (2016). Here, Plaintiff's claims are not based on this kind of comparative advertising. Rather, Plaintiff's allegations focus on the speech of trade associations allegedly on behalf of the whole industry. *E.g.*, Compl. ¶ 114 ("the Information Council for the Environment ('ICE') … launched a national climate change science denial campaign"); *id.* ¶ 118 (allegations about the speech of "API"); *id.* ¶ 129 (same for "GCC"). Chevron cannot be held liable for the speech of these third parties, but even if it could, "the [commercial speech] exception does not apply" to statements by "trade association[s]." *All One God Faith, Inc. v. Organic & Sustainable Indus. Standards, Inc.*, 183 Cal. App. 4th 1186, 1212 (2010).

Though Plaintiff includes a perfunctory assertion that Defendants are "greenwashing" by "promoting themselves as sustainable energy companies," Plaintiff does not identify any comparative product advertisement. Compl. ¶¶ 164–66. Nor does Plaintiff contend its alleged "injuries"—"global warming" and its "environmental changes"—have been *caused* by alleged "greenwashing," *id.* ¶¶ 10–11. Rather, Plaintiff alleges that the campaign against regulation (*id.* ¶¶ 108–141) is the but-for cause of climate change. Compl. ¶ 9 ("[b]ut for such campaigns," no Plaintiff injury). The greenwashing allegations are thus irrelevant to Plaintiff's claims.

C. Plaintiff Cannot Carry Its Burden to Support Its Claims

1. Plaintiff Cannot Carry Its Pleading Burden

Because Plaintiff is estopped from denying that its claims against Chevron arise from speech, the burden shifts to Plaintiff to establish that its claims are legally valid. But Plaintiff cannot carry its burden. Plaintiff's claims fail under anti-SLAPP if they fail for *any* reason, *see supra* 5, and as explained in the concurrently filed Motion to Dismiss, Plaintiff's claims against Chevron suffer from several fatal deficiencies. *See* Motion to Dismiss. And Plaintiff's claims against Chevron fail for other reasons as well. Although Plaintiff pins its case on the purported decades-long speech "campaign"—which Plaintiff alleges somehow caused Plaintiff's climate change injuries (*see* Compl. ¶ 228)—Plaintiff has not identified *any* speech by Chevron that was actually part of this "campaign." *See id.* ¶¶ 108–141 (not attributing *any* statement in the campaign to Chevron). For that reason alone, Plaintiff's speech-based claims against Chevron—which, according to Plaintiff, are *all* of its claims, *see supra* pp. 7–8—must be dismissed. *E.g.*, *Page*, 270 A.3d at 842.

Furthermore, all of Plaintiff's claims against Chevron are barred by the First Amendment because Plaintiff has not shown—and cannot show—that Chevron made knowingly false misstatements. All the speech at issue discusses matters of public concern. *Supra* pp. 22–23. And suits "on matters of public concern" are subject "to a constitutional requirement that the plaintiff bear the burden of showing falsity, as

well as fault." *Philadelphia Newspapers, Inc. v. Hepps*, 475 U.S. 767, 776 (1986); *Unelko Corp. v. Rooney*, 912 F.2d 1049, 1057–58 (9th Cir. 1990) (such suits "are subject to the same first amendment requirements" as "defamation" claims). Even if Plaintiff could show that *some* conduct it attacks is not protected, it must plead and prove that it is basing its claims *only* on that unprotected conduct or speech. *NAACP. v. Claiborne Hardware Co.*, 458 U.S. 886, 934 (1982) (the plaintiff bears "[t]he burden of demonstrating that [unprotected conduct] rather than protected conduct" caused injury). It must also show that this unprotected speech was made by *Chevron itself*, not by some organization that happened to include Chevron as one member among many. *Santopietro v. Howell*, 857 F.3d 980, 990 (9th Cir. 2017) (under *Claiborne*, plaintiffs cannot allege the defendant is responsible for a group's conduct).

Here, Plaintiff does not identify *any false statement* by Chevron. Although it includes over 30 paragraphs of allegations about the purported speech "campaign" (*see* Compl. ¶¶ 108–141), *none* involves any statement by Chevron—and only two paragraphs even *mention* Chevron at all, *see id.* ¶¶ 122, 124. In those paragraphs, Plaintiff merely alleges that "representatives from Chevron" were somehow affiliated with API, an organization that opposed energy regulation. *Id.* ¶ 122; *see also id.* ¶ 124. But even if that were true, Chevron cannot be held liable for being associated with a "group" that engaged in speech. *Santopietro*, 857 F.3d at 990.

Aside from the "campaign," Plaintiff also alleges that Chevron engages in "greenwashing"—but again, Plaintiff does not identify any false statement by Chevron. Instead, it attacks anodyne and admittedly truthful statements about Chevron's support for renewable energy. Plaintiff complains that Chevron states "We're not just behind renewables. We're tackling the challenge of making them affordable and reliable on a large scale." Compl. ¶¶ 192–93. Plaintiff does not contend that this statement is factually false, but rather that "only 0.2% of Chevron's capital spending from 2010 to 2018 was in low-carbon energy sources." *Id*. ¶ 193. Likewise, Plaintiff says that even though Chevron *truthfully* represented that it has spent "millions" on renewables, Chevron spent more on fossil fuels. *See id.* ¶ 194. Plaintiff also says a Chevron advertisement stating that natural gas reduces "emissions" is somehow "misleading" because the advertisement cites studies "that measure only CO_2 and ignore other important greenhouse gases." *Id.* ¶ 195. But the advertisement, which is filled with citations, makes clear that it is discussing CO_2 emissions. *See* Chevron Paid Post, "How Abundant Energy is Fueling U.S. Growth," *available at* https://www.nytimes.com/paidpost/chevron/how-abundant-energy-is-fueling-us-growth.html (citations discuss "Carbon" and "CO_2 Emissions").[8] Moreover, Plaintiff does not allege that including methane emissions in the

[8] This advertisement is quoted and "incorporated" into the Complaint. *See Morrison v. Berry*, 191 A.3d 268, 276 n.20 (Del. 2018) (documents that are "incorporated by reference" into the complaint may be considered on a pleading motion).

calculation somehow makes Chevron's statement false. *See* Compl. ¶ 195. Simply put, the *only* statements in the Complaint that are actually attributed to Chevron are indisputably true—barring Plaintiff's claims. *See also* Motion to Dismiss.

2. Any Speech-Based Claims Are Barred by the *Noerr-Pennington* Doctrine

Even if Plaintiff could allege that Chevron engaged in the purported publicity "campaign" *and* made false statements that *caused* Plaintiff's injuries, Plaintiff's claims would *still* be subject to dismissal. Plaintiff argues that the Complaint targets "a decades-long campaign" to avoid government regulation. Compl. ¶¶ 108, 140. But under the *Noerr-Pennington* doctrine, "[a] publicity campaign directed at the general public and seeking government action" is protected by the First Amendment—*even if* the speech is allegedly misleading. *Manistee*, 227 F.3d at 1092; *accord Abbott v. Gordon*, 2008 WL 821522, at *15 (Del. Super. Ct. Mar. 27, 2008) ("[T]he doctrine shields ... a concerted effort to influence public officials regardless of intent or purpose," and applies even if the campaign is allegedly "unethical" (quotations omitted)), *aff'd*, 957 A.2d 1 (Del. 2008). Plaintiff's speech-based claims are legally barred and should be dismissed. Superior Court Civil Rule 12(b)(6).

a. The Noerr-Pennington *Doctrine Applies to Claims About Public Policy Campaigns*

The *Noerr-Pennington* doctrine protects activities intended to influence the government—including publicity campaigns designed to influence the voting

public—pursuant to the Petition Clause of the First Amendment. The doctrine was first articulated in *E. R. R. Presidents Conf. v. Noerr Motor Freight, Inc.*, 365 U.S. 127 (1961), a case brought by a group of trucking plaintiffs against railroads and affiliated defendants. The trucking plaintiffs alleged the railroads violated the Sherman Act by "conduct[ing] a publicity campaign against the truckers designed to foster the adoption and retention of laws and law enforcement practices destructive of the trucking business," and "creat[ing] an atmosphere of distaste for the truckers among the general public." *Id.* at 129. The plaintiffs alleged that this "publicity campaign" was "fraudulent," because "the publicity matter circulated in the campaign was made to appear as spontaneously expressed views of independent persons and civic groups when, in fact, it was largely prepared and produced by [the railroads' PR firm] and paid for by the railroads." *Id.* at 130. After a bench trial, the district court awarded "substantial damages" and a "broad injunction" to the plaintiffs. *Id.* at 133–34.

The Supreme Court reversed, explaining that "publicity campaign[s]" aimed at influencing governmental action cannot be the grounds for civil liability, as "representative democracy … depends upon the ability of the people"—including businesspeople—"to make their wishes known to their representatives." *Id.* at 137. The fact that the defendants "deliberately deceived the public and public officials" was irrelevant. *Id.* at 145. Four years later, the Court reiterated that defendants could

not be liable for "a concerted effort to influence public officials." *Pennington*, 381 U.S. at 669–70.

Although *Noerr* and *Pennington* focused on antitrust claims under the Sherman Act, later decisions have clarified that the *Noerr-Pennington* doctrine embodies a constitutional rule that applies to *all* claims—including the state-law claims that Plaintiff brings in this case. "Given the constitutional basis of the *Noerr-Pennington* doctrine it is apparent that activity which it shields from federal antitrust liability is also protected from claims based on state common law." *City of Newark v. Delmarva Power & Light Co.*, 497 F. Supp. 323, 328 (D. Del. 1980); *accord Theme Promotions, Inc. v. News Am. Mktg. FSI*, 546 F.3d 991, 1007 (9th Cir. 2008) ("There is simply no reason that a common-law tort doctrine can any more permissibly abridge or chill the constitutional right of petition than can a statutory claim." (quotation omitted)).

b. Noerr-Pennington *Protects the Publicity Campaign Alleged in the Complaint*

Just as the *Noerr* plaintiffs could not use the Sherman Act to punish the defendants for engaging in an allegedly "fraudulent" "publicity campaign" aimed at legislative and regulatory action, Plaintiff here cannot punish Defendants for allegedly doing the same. The Petition Clause protects "the right of the people ... to petition the Government," U.S. Const. amend. I—and in a republic, the most effective means of petitioning "the Government" is to speak to the voting *public*. "The dual principles underlying the *Noerr–Pennington* doctrine are the constitutional right to

petition under the First Amendment *and the importance of open communication in representative democracies*." *Mariana v. Fisher*, 338 F.3d 189, 197 (3d Cir. 2003) (emphasis added). For that reason, *Noerr* "extended immunity not only to the railroads' direct communications with legislators but *also* to its public relations campaign, finding that the latter's aim was to influence the passage of favorable legislation." *Sosa v. DIRECTV, Inc.*, 437 F.3d 923, 934 (9th Cir. 2006) (emphasis added) (citing *Noerr*, 365 U.S. at 140–43).

Here, Plaintiff repeatedly describes the speech it attacks as a publicity campaign aimed at influencing public opinion and regulators, for example:

- "a public campaign aimed at … evading regulation of [Defendants'] fossil fuel products and/or emissions therefrom," Compl. ¶ 106;
- an "advertising campaign" whose "goal" "was to change public opinion and avoid regulation," *id*. ¶ 115;
- "a deceptive public campaign against regulation of their business practices," *id.* ¶ 128;
- "deceptive advertising campaigns … with the specific purpose of preventing U.S. adoption of the Kyoto Protocol," *id.* ¶ 129; and
- an attempt "to evade regulation of the emissions resulting from use of their fossil fuel products," *id.* ¶ 134.

In short, Plaintiff alleges Defendants engaged in "[a] publicity campaign directed at the general public and seeking government action," which is precisely what the *Noerr-Pennington* doctrine protects. *Manistee*, 227 F.3d at 1092; *Noerr*, 365 U.S. at 129.

It is irrelevant that Plaintiff alleges the campaign was "false" or "misleading," Compl. ¶ 141, or purportedly conducted through "front groups," *id.* ¶ 135. As the

Supreme Court explained, "[t]he political campaign operated by the railroads in *Noerr* to obtain legislation crippling truckers employed deception and misrepresentation and unethical tactics," but it was still protected by the Constitution. *California Motor Transp. Co. v. Trucking Unlimited*, 404 U.S. 508, 512 (1972). "As pointed out by the Court in *Noerr*, attempts to influence public officials may occasionally result in 'deception of the public, manufacture of bogus sources of reference, [and] distortion of public sources of information.'" *Boone v. Redev. Agency of City of San Jose*, 841 F.2d 886, 894 (9th Cir. 1988). Even if such "misrepresentations" occur, the political process is intended to "accommodate false statements and reveal their falsity." *Id.* Merely alleging a speech campaign is "false" does not remove *Noerr-Pennington* immunity. *Id.*; *accord Abbott*, 2008 WL 821522, at *15 (the doctrine applies even to "unethical" conduct in the "political" sphere). In truth, the speech Plaintiff identifies accurately described the costs of regulation and advocated that voters, legislators, and regulators weigh those costs. Plaintiff may disagree with this advocacy, but it cannot hold anyone liable for taking a different view.

V. CONCLUSION

For the foregoing reasons, the Court should grant Chevron's special motion to strike, dismiss the case with prejudice, and award Chevron its attorney's fees. In the alternative, the Court should dismiss the complaint against Chevron for failure to

state a claim. Superior Court Civil Rule 12(b)(6).

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Respectfully submitted,

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