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MATTHEW J. PLATKIN, ATTORNEY GENERAL OF THE STATE OF NEW JERSEY, *et al.*, *Plaintiff*s, v. EXXON MOBIL CORP., *et al.*, *Defendants*.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: MERCER COUNTY Docket No. MER-L-001797-22 Civil Action **ORAL ARGUMENT IS REQUESTED**

INDIVIDUAL MEMORANDUM OF LAW IN SUPPORT OF
SHELL DEFENDANTS' MOTION TO DISMISS

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INTRODUCTION

This Court should dismiss the Complaint for the reasons set forth in the Joint Motion To Dismiss. The Shell Defendants[1] here present three additional grounds for dismissal. ***First***, because Plaintiffs' claims sound in fraud, the heightened pleading standard of Rule 4:5-8(a) applies. Plaintiffs do not meet that standard as to Shell because—despite alleging that it engaged in a "disinformation campaign" "to deceive the public"—Plaintiffs do not identify a single false or misleading statement or omission by Shell. Compl. ¶¶ 1-3 (Tor Cert., Ex. A). Instead, the Complaint pleads that Shell *did warn* the public about climate change and encouraged action as far back as 1991, *id.* ¶ 91, and the Complaint acknowledges the widespread public debate about climate change throughout the relevant time, *see*, *e.g.*, *id.* ¶¶ 58, 99. ***Second***, Plaintiffs' New Jersey Consumer Fraud Act ("CFA") claim fails because Plaintiffs do not allege deception about products in the *consumer* marketplace—the allegations as to Shell instead concern fuels that Plaintiffs do not allege are sold to consumers. *See id.* ¶¶ 172-176. Plaintiffs' sole allegation about a consumer good—that Shell advertised certain gasolines "produce[ ] fewer emissions" and not using them can lead to "higher emissions," *see id.* ¶ 215—is taken out of context and not deceptive. ***Third***, Plaintiffs' claims fail because Plaintiffs do not adequately plead causation. Nor is Plaintiffs' theory legally cognizable: a causal chain that starts with words, relies on emissions of CO_2 molecules Plaintiffs admit cannot be traced to any particular source, and ends with effects like "vector-borne illnesses" and "myriad" other environmental harms fails. *See*, *e.g.*, *id.* ¶¶ 1, 48. The Court should dismiss Plaintiffs' claims against Shell with prejudice.

[1] Shell plc and Shell USA, Inc. are parties to motions to dismiss for lack of personal jurisdiction and failure to state a claim filed jointly with other Defendants and do not consent to personal jurisdiction. The Complaint erroneously conflates activities of Shell plc, Shell USA, Inc., and separate predecessors, subsidiaries, and affiliates. Defendants reserve the right to challenge this error. This brief refers to Shell plc and Shell USA, Inc. as "Shell" solely for convenience.

BACKGROUND

Plaintiffs' theory is that Defendants' "climate deception campaign . . . inflat[ed] . . . the market for fossil fuels, which—in turn—drove up greenhouse gas emissions, accelerated global warming, and brought about devast[at]ing climate change impacts" in New Jersey. Compl. ¶ 1. Besides allegations about Shell's corporate structure and business activities, *see id.* ¶ 28, the allegations against Shell fall into three broad categories. We outline these categories in their totality for the sake of providing the Court with a full view of the Shell-specific allegations:

1. ***Knowledge of climate risks.*** Plaintiffs allege that Shell produced a 1991 film *Climate of Concern*, which issued a "stark admonition" about the risks of climate change and urged "[a]ction now." *Id.* ¶ 91. Plaintiffs further allege that Shell prepared: (1) a 1987 briefing calling for "[s]ustained commitment" to develop "[n]ew energy sources," *id.* ¶ 153; (2) a 1988 report that "acknowledged global warming's anthropogenic nature" and "the need to consider policy changes," *id*. ¶¶ 87-88; (3) a 1994 report that "recognized the [Intergovernmental Panel on Climate Change ("IPCC")] conclusions as the mainstream view" but warned of adverse economic effects of countermeasures and "emphasized scientific uncertainty," *id*. ¶ 106; and (4) a 1998 "scenario" predicting lawsuits if the United States government and energy companies neglected the views of scientists, *id*. ¶ 93.

   Plaintiffs allege that Shell "received" a 1972 American Petroleum Institute ("API") report, *id*. ¶ 64, and joined a 1979 API task force that monitored climate research, *id*. ¶ 70. Plaintiffs allege that, in the 1970s and 1980s, Shell "obtained . . . patent[s]" for "remov[ing] acidic gases, including CO_2, from gaseous mixtures" and "drilling in previously unreachable Arctic areas," *id*. ¶¶ 146-147, 155, and redesigned an offshore oil platform to account for rising sea levels, *id*. ¶ 148; *see also id*. ¶ 94 (describing the Sable project).

   Finally, Plaintiffs partially quote a Shell employee's 2018 blog post opining that "the prospect of runaway climate change might have passed," which Plaintiffs say is "not supported by valid scientific research." *Id.* ¶ 228. Plaintiffs mischaracterize this post, which said it is "possibl[e]" that "the future risk profile" has improved but cautioned it "isn't yet cause to stop and celebrate." Tor Cert., Ex. B.

2. ***Energy-transition and fuel-related statements.*** Plaintiffs allege that Shell ran an advertising campaign "promoting [itself] as [a] sustainable energy compan[y]," when—in fact—it spent 1.2% of its capital spending on low-carbon energy sources and is forecast to increase oil production by 38% by 2030. Compl. ¶¶ 159, 161, 163. Plaintiffs allege that Shell said it was "setting the course" for a "lower-carbon mobility future" and "a bigger player than you might expect in this budding movement to realize a cleaner and more efficient transportation future." *Id.* ¶ 174. Plaintiffs

further allege that Shell made statements about fuels not available for purchase on the consumer marketplace.[2] By contrast, Plaintiffs' sole allegation about consumer-facing fuels is that a Shell website said certain gasolines "'produce[] fewer emissions' and that not using them can lead to 'higher emissions.'" *Id.* ¶¶ 208, 215 (brackets in original). This statement is a mischaracterization: the website says that cleaner *engines* produce fewer emissions. Tor Cert., Ex. C.

3. ***Industry association memberships.*** Plaintiffs allege that Shell belonged to industry associations. Compl. ¶ 30 (API; service on executive committee from 2005-2006; payment of membership dues in 2022); *id.* ¶¶ 34, 119, 124 (Global Climate Coalition ("GCC"), which Shell joined then left); *id.* ¶ 118 (International Petroleum Industry Environmental Conservation Association ("IPIECA")).

Plaintiffs assert that these statements were part of a "deception campaign" that was "a substantial factor in" causing "sea-level rise, disruption to the hydrologic cycle, more frequent and extreme precipitation events and associated flooding, more frequent and intense heat waves along with exacerbation of localized 'heat island' effects, more frequent and intense droughts, ocean acidification, degradation of air and water quality, and habitat and species loss." *Id.* ¶¶ 8, 17 (footnotes omitted). Thus, Plaintiffs make the extraordinary claim that the statements described above are "directly responsible for a substantial portion" of "climate crisis-related impacts in New Jersey." *Id.* ¶ 8.

To connect mere words to rising seas and their other alleged harms, Plaintiffs allege an extremely lengthy causal chain. *See id.* ¶ 1. In a related case, Plaintiffs' counsel described this seven-link chain as "exactly correct."[3]

Figure 1: Plaintiffs' Causal Theory

[2] *See* Compl. ¶¶ 173-175 (alleging Shell said liquefied natural gas ("LNG") and biofuels are "cleaner sources" of energy, and LNG specifically is "a critical component of a sustainable energy mix" and a "lower-carbon fuel"); *id.* ¶ 176 (hydrogen is "sustainable in the long-term," "one of the cleaner sources," and "emit[s] nothing from" a vehicle's tailpipe "but water vapor").

[3] Mot. To Dismiss Hr'g Tr. 123:4-5, *City & Cnty. of Honolulu v. Sunoco LP*, No. 1CCV-20-0000380 (Haw. 1st Cir. Ct. Aug. 27, 2021); *see also id.* at 107:8-17.

In reality, Plaintiffs' causal chain is far longer. The start of the chain is missing links because Plaintiffs allege that deception prevented "regulators" from making "material, informed decisions about whether and how to address climate change"—thereby adding the entire American political process to the chain. *Id.* ¶ 156(b). Plaintiffs' theory also adds links to the end of the chain by claiming "cascading social, economic, health, and other consequences" of climate change. *Id.* ¶ 233. To illustrate, Plaintiffs allege that they will lose "ecotourism" and "tax revenue" because climate change will decrease yields of "shelled mollusks," "[b]lueberries and cranberries," milk from "dairy cows," and "summer flounder, lobster, and black sea bass." *Id.* ¶¶ 12, 235. Plaintiffs further allege that climate change will cause "post-traumatic stress disorder, depression, and insomnia," "fragment[ation] of communities," "cardiovascular disease, cancer, COPD, and asthma," and "vector-borne illnesses." *Id.* ¶ 235.

Plaintiffs also admit that CO_2 molecules cannot be traced. *See id.* ¶ 248. That is significant because "the land and global biosphere . . . absorb CO_2 from the atmosphere," so not all CO_2 molecules contribute to the atmospheric CO_2 that allegedly harmed Plaintiffs. *Id.* ¶ 42.

LEGAL STANDARD

A party can move to dismiss for failure to state a claim upon which relief can be granted. *See* Rule 4:6-2(e). New Jersey "is a 'fact' rather than a 'notice' pleading jurisdiction, which means that a plaintiff must allege facts to support his or her claim rather than merely reciting the elements of a cause of action." *Nostrame v. Santiago*, 420 N.J. Super. 427, 436 (App. Div. 2011), *aff'd as modified*, 213 N.J. 109 (2013). "Conclusory allegations do not provide an adequate basis to deny a motion to dismiss under Rule 4:6-2." *Berger v. Frazier*, 2018 WL 3402115, at *3 (N.J. Super. Ct. App. Div. July 13, 2018). Separately, a plaintiff must plead "allegations of misrepresentation[or] fraud" with particularity. Rule 4:5-8(a).

ARGUMENT

This Court should dismiss Plaintiffs' claims against Shell because Plaintiffs do not plead with particularity, do not allege deception about consumer products, and do not allege causation.

A. Plaintiffs Fail To Plead With Particularity That Shell Made Any Deceptive Statements Or Omissions

Rule 4:5-8(a) applies to Plaintiffs' claims against Shell because the claims rest on "allegations of misrepresentation[and] fraud." Case law confirms that Rule 4:5-8(a)—like its federal counterpart[4]—applies. *See*, *e.g.*, *Delaney v. First Hope Bank, N.A.*, 2022 WL 38850, at *4-6 (N.J. Super. Ct. App. Div. Jan. 5, 2022) (applying heightened standard to tortious-interference claim based on fraud allegations); *Hoffman v. Hampshire Labs, Inc*., 405 N.J. Super. 105, 112 (App. Div. 2009) (Rule 4:5-8(a) "requires that [CFA] claims be pled with specificity").

Rule 4:5-8(a) requires Plaintiffs to allege "specifically what the misrepresentations were and when they were made," *Delaney*, 2022 WL 38850, at *4, and "specific facts that, if proven, would show that defendants' representations were false," *Hoffman*, 405 N.J. Super. at 116. Plaintiffs must allege that Shell—not other Defendants or Defendants generally, let alone non-parties—made a deceptive statement or omission. *See Mar Acquisition Grp., LLC v. Oparaji*, 2023 WL 3032156, at *2 (N.J. Super. Ct. App. Div. Apr. 21, 2023) (per curiam) (affirming finding that plaintiff's "fraud claims lacked particularity, noting that his allegations combined several parties without explaining which party did what").

1. Plaintiffs fail to allege that Shell made a deceptive statement

Plaintiffs' claims fail because they do not allege that Shell made any deceptive statements. As for Plaintiffs' allegations about Shell's ***knowledge of climate risks***, Plaintiffs do not allege

[4] *See Freeman v. Lincoln Beach Motel*, 182 N.J. Super. 483, 485 (Law Div. 1981) ("[I]t is appropriate to turn to federal case law for guidance.").

that the 1987 briefing, the 1991 film, or the 1998 report were deceptive in any respect. Plaintiffs allege the 1988 report—which summarized other research about global warming—was "internal," so it could not have misled the public. Compl. ¶¶ 87-88. Plaintiffs do not allege that the 1994 report was publicized, but, even so, that report correctly "recognized the IPCC conclusions as the mainstream view." *Id.* ¶ 106. Plaintiffs criticize the report for discussing "scientific uncertainty" and adverse economic effects of countermeasures, *id.*, but Plaintiffs do not allege that scientific uncertainty did not exist in 1994 or that measures to counter climate change lack adverse economic effects. Nor could they. *See*, *e.g.*, *Am. Elec. Power Co. v. Connecticut*, 564 U.S. 410, 427 (2011) ("Along with the environmental benefit potentially achievable, . . . the possibility of economic disruption must weigh in the balance."). The alleged statement in a 2018 blog post—that "the prospect of runaway climate change might have passed," Compl. ¶ 228—is a mischaracterization: in context, the post warns about the continuing risk of climate change. Tor Cert., Ex. B. Regardless, it is an opinion and therefore cannot support liability. *See Rodio v. Smith*, 123 N.J. 345, 352 (1991) (fraud requires false "statement[s] of fact"); *see also New Jersey Citizen Action v. Schering-Plough Corp.*, 367 N.J. Super. 8, 13 (App. Div. 2003) (affirming dismissal of claims premised on statements that were not "statements of fact").

Turning to the ***energy-transition and fuel-related statements***, it is Plaintiffs that engage in misrepresentation. In context, the Shell website says that certain gasolines are beneficial for engine performance and that cleaner *engines* generally produce fewer emissions. Tor Cert., Ex. C. Plaintiffs do not allege that statement is deceptive. Plaintiffs' remaining allegations involve non-consumer-facing fuels, which, according to Plaintiffs, cause unidentified people to think that Shell is a "sustainable energy compan[y]" invested mainly in alternative energy. Compl. ¶ 159. But the Complaint undermines that assertion: it pleads facts showing the New

Jersey public knows Shell is invested mainly in fossil fuels.[5] Regardless, statements that Shell is "setting the course" for a "lower-carbon mobility future" and "a bigger player than you might expect" in clean and efficient transportation are not statements of fact. *Id.* ¶ 174; *see Schering-Plough*, 367 N.J. Super. at 13-14 (puffery is not an actionable statement of fact).

Finally, Plaintiffs cannot use Shell's ***industry association memberships*** to hold Shell liable for statements Shell did not make. A plaintiff cannot impose liability by making "collectivized allegations against defendants as a group"; "instead, a plaintiff must plead fraud with particularity with respect to each defendant, thereby informing each defendant of the nature of its alleged participation in the fraud." *Premier Pork L.L.C. v. Westin, Inc.*, 2008 WL 724352, at *10 (D.N.J. Mar. 17, 2008) (cleaned up) (citation omitted); *see also Mar*, 2023 WL 3032156, at *2 ("allegations [that] combine[ ] several parties without explaining which party did what" fail). Even if a plaintiff makes defendant-specific allegations, courts refuse to impose liability if the plaintiff's sole contention is that a defendant belonged to an industry association, contributed to it, or attended meetings. *See In re Asbestos Sch. Litig.*, 46 F.3d 1284, 1289, 1294 (3d Cir. 1994) (Alito, J.) (granting writ of mandamus to defendant—an " 'extraordinary' remedy"—because "[j]oining organizations that participate in public debate, making contributions to them, and attending their meetings are activities that enjoy substantial First Amendment protection"); *see also* Def. Am. Petroleum Inst.'s Mem. of Law in Supp. of Mot. To Dismiss (Oct. 16, 2023).

Industry-association conduct cannot be attributed to Shell. Plaintiffs do not specify what role (if any) Shell played in any GCC, API, or IPIECA conduct. Instead, the Complaint alleges

[5] *See*, *e.g.*, Compl. ¶ 28(h) ("Over the last several decades, Shell spent millions of dollars on radio, television, and outdoor advertisements in the New Jersey market related to its fossil fuel products."); *id.* ¶ 28(i) ("Shell operates approximately 200 Shell-branded petroleum service stations in New Jersey."); *id.* ¶ 28(j) (alleging Shell maintains "an interactive website," a "proprietary credit card," and "smartphone application" to support its retail gasoline sales).

that Shell belonged to, participated in, and contributed financially to these groups. That is insufficient as a matter of law. *See In re Mun. Stormwater Pond*, 429 F. Supp. 3d 647, 655 (D. Minn. 2019) (dismissing complaint because "a trade association is not a 'walking conspiracy' of its members"), *appeals dismissed*, 73 F.4th 975 (8th Cir. 2023).

2. Plaintiffs fail to allege that Shell made a deceptive omission

Plaintiffs' claims also fail because they do not allege that Shell deceived by omission or that it omitted any information it had a legal duty to disclose. Rule 4:5-8(a) applies to omissions: a plaintiff must "specify what [a defendant] concealed or omitted." *Vercammen v. LinkedIn Corp.*, 2022 WL 221388, at *5 (N.J. Super. Ct. App. Div. Jan. 26, 2022) (per curiam).

Plaintiffs do not do so. On the contrary, they allege that Shell *did* warn about climate risks in its 1991 film *Climate of Concern*. Compl. ¶ 91. That allegation is hard to square with Shell's purported participation in a "climate deception campaign." *Id.* ¶ 1. Plaintiffs' remaining allegations fare no better. They allege (¶¶ 87-88) that Shell produced an "internal report" in 1988. But they do not allege that the report contained any unique knowledge (it did not), and instead allege that the human contribution to global warming was publicized widely *that same year*. *See id.* ¶ 99 (alleging that, in 1988, "NASA scientist James Hansen's presentation of this information to Congress engendered significant news coverage"). Nor do Plaintiffs allege that Shell concealed information in patents that Shell allegedly obtained; those patents are public, as Plaintiffs admit. *See id.* ¶¶ 147 n.179, 155 n.196. Finally, Plaintiffs do not allege that design changes to Shell's North Sea platform and other energy-related facilities were made in secret. To the contrary, Plaintiffs cite a newspaper article showing that Shell publicly announced the redesign of the North Sea platform and the reason for it. *See id.* ¶ 148 n.180; Tor Cert., Ex. D.

Independently, Plaintiffs' claims fail because Shell had no relevant legal duty. No New Jersey court has ever recognized a duty to warn "the public" generally. *Id.* ¶ 1. New Jersey

courts instead recognize a "basic duty to warn," which "*protect[s]* and alert[s] *product users*." *Coffman v. Keene Corp.*, 133 N.J. 581, 599 (1993) (emphases added). In the absence of a duty, Plaintiffs cannot allege an actionable omission.

It is beyond dispute, and the Complaint itself acknowledges, that there was widespread public discussion of potential climate risks during the relevant period. *See* Compl. ¶ 58 ("global warming reached the highest levels of the United States' scientific community" in 1965); *id.* ¶ 99 (global warming received "significant news coverage and publicity" from 1988-1992); *see also Juliana v. United States*, 947 F.3d 1159, 1164 (9th Cir. 2020) ("the federal government has long promoted fossil fuel use despite knowing that it can cause catastrophic climate change"); *City of Oakland v. BP P.L.C.*, 325 F. Supp. 3d 1017, 1019 (N.D. Cal. 2018) ("The science dates back 120 years."), *vacated & remanded*, 960 F.3d 570 (9th Cir.), *op. am. & superseded on denial of reh'g*, 969 F.3d 895 (9th Cir. 2020); *California v. Gen. Motors Corp.*, 2007 WL 2726871, at *8 (N.D. Cal. Sept. 17, 2007) (elected branches addressed climate change as early as 1978).

That widespread recognition would vitiate the duty that Plaintiffs ask this Court to create. Common-law duties to warn do not apply to "obvious and generally known risks." *Mathews v. Univ. Loft Co.*, 387 N.J. Super. 349, 362 (App. Div. 2006). The CFA is similar. *See*, *e.g.*, *In re Toshiba Am. HD DVD Mktg. & Sales Pracs. Litig.*, 2009 WL 2940081, at *12 (D.N.J. Sept. 11, 2009) (dismissing CFA claim because defendant could not "'conceal' something that was so well covered in the media"). Because Plaintiffs do not allege that Shell had any unique knowledge it omitted to disclose, dismissal is proper.

B. Plaintiffs Fail To Plead Shell Made An Actionable Statement Under The CFA

The Court should dismiss the CFA claim against Shell for an additional and independent reason: Plaintiffs do not allege (other than the allegation about emissions from Shell gasolines that Plaintiffs take out of context, *see* Compl. ¶¶ 208, 215; *supra* pp. 6-7) that Shell made any

deceptive statement in the consumer marketplace. The CFA "is aimed basically at unlawful sales and advertising practices designed to induce consumers to purchase merchandise." *Daaleman v. Elizabethtown Gas Co*., 77 N.J. 267, 270 (1978). Accordingly, it requires deception "in connection with the sale or advertisement of" merchandise. N.J.S.A. § 56:8-2.

Here, the statements that Plaintiffs allege Shell made did not occur "in connection with the sale or advertisement of" fossil fuels to consumers. *Id.* The Complaint challenges statements about LNG, biofuels, and hydrogen fuel cells, *see* Compl. ¶¶ 174-175, but these products are not alleged to be consumer-facing. *See Papergraphics Int'l, Inc. v. Correa*, 389 N.J. Super. 8, 13-14 (App. Div. 2006) ("CFA protections [a]re . . . inapplicable to the purchase of non-consumer goods") (collecting cases). The other statements that Plaintiffs challenge (¶¶ 161, 176) did not occur in connection with the sale or advertisement of merchandise either: they allegedly involve Shell "promoting [itself] as [a] sustainable energy compan[y]," *id.* ¶ 159, without offering to sell any product, *see DepoLink Ct. Reporting & Litig. Support Servs. v. Rochman*, 430 N.J. Super. 325, 339 (App. Div. 2013) (CFA applies only to activities that involve "an offer to sell merchandise"); *PNC Bank v. Great Gorge Vill. S. Condo. Council, Inc.*, 2017 WL 436389, at *2 (D.N.J. Feb. 1, 2017) (dismissing CFA claim because plaintiff did not "specifically identify what . . . sale it is referring to and what . . . misrepresentation or omission was made in connection with that sale"). Accordingly, Plaintiffs do not state a CFA claim.

C. Plaintiffs Fail To Allege Causation

Finally, Plaintiffs' claims fail because they do not adequately allege proximate causation. Plaintiffs do not plead a link between Shell's mere words and effects like "vector-borne illnesses" or the "myriad" of other environmental harms about which they complain. Regardless, that causal chain is far too attenuated and speculative to support legal liability. Courts dismiss claims

that are far less remote; *every case* cited below dismissed a complaint on causation grounds with causal chains less attenuated.

"Proximate causation is an essential element in any case, such as this one, where a party alleges an injury resulting from the wrongful actions of another." *Plumbers & Pipefitters Loc. 572 Health & Welfare Fund v. Merck & Co.*, 2003 WL 25652433 (N.J. Super. Ct. Law Div. Feb. 14, 2003). It requires "a direct relation between the injury asserted and the injurious conduct alleged." *Id.* While proximate cause ordinarily may be determined by the factfinder, courts make "an exception" when, "[b]ased on the facts alleged," a plaintiff cannot "establish defendants' actions or inactions were the proximate cause of . . . foreseeable injury." *Maloney v. Maxwell*, 2023 WL 1792306, at *2 (N.J. Super. Ct. App. Div. Feb. 7, 2023) (per curiam); *see also Enriguez v. Johnson & Johnson*, 2019 WL 5586557, at *16 (N.J. Super. Ct. Law Div. Oct. 10, 2019) ("[C]ourts have found that it is prudent for the court to determine proximate cause . . . at th[e] [motion-to-dismiss] stage of the litigation."), *aff'd*, 2021 WL 5272370 (N.J. Super. Ct. App. Div. Nov. 12, 2021).

If there ever were a case warranting dismissal for lack of causation, this is it. ***First***, the Complaint fails to plead facts to support a causal chain linking Shell's conduct to Plaintiffs' alleged environmental or other harms. To start, Plaintiffs' deception theory requires that consumers were exposed to, persuaded by, and chose to change their behavior because of Shell's alleged statements. The Complaint has no such allegation. It asserts that "Defendants *Intended* for Consumers to Rely" but does not allege that any consumer (much less Plaintiffs) actually did so or how they could have, given that some statements were allegedly non-public. Compl. at 134 (header; emphasis added). And while the Complaint speculates that consumers "*might* purchase less fossil fuel products, or decide to buy none at all," it alleges no facts, and, even if it did, the allegation that a consumer in our modern, industrialized society could use *no* fossil fuels is

baseless. *Id.* ¶ 224 (emphasis added). Nor does it allege that governments would have forced reductions in fossil-fuel use absent the alleged statements. This pleading failure is critical because Plaintiffs' causal chain breaks at the first link; it starts with deception and ends there, too. *See Enriguez*, 2019 WL 5586557, at *19 (dismissing because "Plaintiff's Complaint . . . does not name a single [person] who" relied on "Defendants' misinformation campaign").

Plaintiffs do not plead the rest of the causal chain, either. Plaintiffs allege that their injuries are "all due to anthropogenic global warming." Compl. ¶ 9. As the Second Circuit recognized, they seek to recover "for the cumulative impact of conduct occurring simultaneously across just about every jurisdiction on the planet." *City of New York v. Chevron Corp.*, 993 F.3d 81, 92 (2d Cir. 2021). But Plaintiffs allege no facts suggesting that Shell's statements—in or outside New Jersey—affected conduct in jurisdictions across the globe. Plaintiffs do not allege, for example, that, absent Shell's statements or omissions, the Senate would have ratified the Kyoto Protocol (and, if it did, that the Protocol would have changed U.S. consumption patterns and global emissions levels), that China would have opened fewer coal-fired power plants, or that the hockey-stick graphs at pages 41-42 of the Complaint showing a planetary increase in atmospheric emissions since the Industrial Revolution would have changed. Instead, because government policies, national security demands, the hydrocarbon usage of consumers worldwide, and so many other factors contribute to emissions of greenhouse gases every second, Plaintiffs cannot suggest that any statement or omission by Shell would have made a difference—much less a "substantial" one—in the global consumption that allegedly affected New Jersey. *See Enriguez*, 2019 WL 5586557, at *20 (dismissing complaint because "[t]here are a myriad of reasons, independent of [defendants], which" caused alleged harm).

Second, Plaintiffs' causal chain is legally insufficient because it is far too attenuated and speculative. "Proximate cause is 'any cause which in the natural and continuous sequence,

unbroken by an efficient intervening cause, produces the result complained of and without the result would not have occurred.'" *Id.* at *16 (citation omitted).

Because "intervening" or "superseding" causes negate proximate cause, the more links there are in a plaintiff's causal chain, the more susceptible the plaintiff's claims are to dismissal. For example, in *Contel Global Marketing, Inc. v. Dreifuss*, a plaintiff sued his lawyers, alleging that, because they failed to move for entry of default against a defendant in an underlying legal dispute, he was deprived of a default judgment enforceable in Chile. 2010 WL 374946, at *3 (N.J. Super. Ct. App. Div. Feb. 4, 2010) (per curiam). The Appellate Division affirmed dismissal with prejudice for lack of proximate cause. *Id.* at *6-7. It rejected the plaintiff's "speculative" account of how events would have unfolded if the lawyers had properly moved for entry of default, *see id.* at *3, *6:

Figure 2 Dismissed Causal Chain in *Contel*

The Appellate Division held "[n]othing in the pleading's factual content permits even an inference of a causal connection between defendants' alleged legal malpractice and any damages suffered by plaintiff." *Id.* at *5. It rejected the assertion that proximate cause was a fact question, explaining "courts may resolve the issue where reasonable minds could not differ." *Id.* at *6; *Enriguez*, 2019 WL 5586557, at *20-21 (dismissing five-link chain as "far too attenuated and remote"); *see also Camden Cnty. Bd. of Chosen Freeholders v. Beretta U.S.A. Corp.*, 273 F.3d 536, 541 (3d Cir. 2001) (per curiam) (affirming dismissal of "a chain of seven links" because it "is simply too attenuated").

Reasonable minds cannot differ here, either. The *at least* seven-link causal chain underlying Plaintiffs' claims is even longer than the one the Appellate Division rejected at the motion-to-dismiss stage in *Contel*. And Plaintiffs allege no facts permitting even an inference of causal connection between *mere words*—most of which allegedly were spoken decades ago—and "the cascading social, economic, health, and other consequences" of climate change that Plaintiffs claim, like lost "ecotourism" and "tax revenue" or "post-traumatic stress disorder, depression, and insomnia." Compl. ¶¶ 12, 233. Instead, countless intermediate causes render each link in the chain speculative and the entire chain attenuated. Those causes include forces of nature, like "extreme weather." *Id.* ¶ 9. Others include humanity's knowing and voluntary choices, including: billions of people across the world who, over centuries, have used hydrocarbons or otherwise contributed to climate change, *see id.* ¶ 42 (referencing "land-use practices, such as forestry and agriculture"), ¶ 44 (showing fossil-fuel emissions since the nineteenth century); the choices of the United States and foreign governments to prioritize national defense and energy security instead of enacting policies combatting climate change, *see id.* ¶ 99(b) ("George H.W. Bush pledged that his presidency would combat the greenhouse effect with 'the White House effect' "), ¶ 99(e) (United Nations Framework Convention on Climate Change provided "protocols for future negotiations aimed at 'stabiliz[ing] greenhouse gas concentrations' ") (brackets in original); and New Jersey's own choices to prioritize the benefits of fossil fuels over exercising its "police powers . . . to prevent and abate hazards to public health, safety, welfare, and the environment," *id.* ¶ 22. Even assuming Shell made deceptive statements or omissions about climate change (which it did not), "the tortured path one must follow from the [Defendants'] alleged wrongdoing to [Plaintiffs' alleged harms] demonstrates that [Plaintiffs'] claims are precisely the type of indirect claims the proximate cause requirement is

intended to weed out." *Camden Cnty. Bd. of Chosen Freeholders v. Beretta U.S.A. Corp.*, 123 F. Supp. 2d 245, 264 (D.N.J. 2000), *aff'd*, 273 F.3d 536 (3d Cir. 2001) (per curiam).

Federal courts already have dismissed similar-climate change complaints for lack of causation and this Court should, too. In *Comer v. Murphy Oil USA, Inc.*, the court held: "The assertion that the defendants' emissions combined over a period of decades or centuries with other natural and man-made gases to cause or strengthen a hurricane and damage personal property is precisely the type of remote, improbable, and extraordinary occurrence that is excluded from liability." 839 F. Supp. 2d 849, 868 (S.D. Miss. 2012), *aff'd on other grounds*, 718 F.3d 460 (5th Cir. 2013). Other courts have dismissed for lack of standing or personal jurisdiction, reasoning that the causal chain was too attenuated and speculative. *See Native Vill. of Kivalina v. ExxonMobil Corp.*, 663 F. Supp. 2d 863, 880 (N.D. Cal. 2009) (dismissing because "the pleadings make[ ] clear that there is no realistic possibility of tracing any particular alleged effect of global warming to any particular emissions by any specific person, entity, [or] group at any particular point in time"), *aff'd*, 696 F.3d 849 (9th Cir. 2012); *City of Oakland v. BP p.l.c.*, 2018 WL 3609055, at *3 (N.D. Cal. July 27, 2018) (dismissing because "whatever sales or events occurred in California were causally insignificant in the context of the worldwide conduct leading to the international problem of global warming"), *vacated on other grounds*, 2022 WL 14151421, at *8 (N.D. Cal. Oct. 24, 2022); *cf. Anza v. Ideal Steel Supply Corp.*, 547 U.S. 451, 457 (2006) ("the common-law foundations of the proximate-cause requirement" include the "demand for some direct relation between the injury asserted and the injurious conduct alleged"). Because Plaintiffs do not and cannot adequately allege that any deception by Shell proximately caused injuries, the Court should dismiss as to Shell.

CONCLUSION

The Court should dismiss Plaintiffs' claims against Shell with prejudice

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Respectfully submitted,

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