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Plaintiff,

v.

EXXON MOBIL CORP., EXXONMOBIL OIL CORP., BP P.L.C., BP AMERICA INC., CHEVRON CORP., CHEVRON U.S.A. INC., CONOCOPHILLIPS, CONOCOPHILLIPS COMPANY, PHILLIPS 66, PHILLIPS 66 COMPANY, SHELL PLC; SHELL OIL COMPANY, and AMERICAN PETROLEUM INSTITUTE,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MERCER COUNTY

Docket No. MER-L-001797-22

Civil Action
CBLP Action

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

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I. INTRODUCTION[1]

Plaintiffs, Matthew J. Platkin (Attorney General of the State of New Jersey), The New Jersey Department of Environmental Protection, and Cari Fais (Acting Director of the New Jersey Division of Consumer Affairs), seek 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. To evade federal jurisdiction and obtain remand to this Court, Plaintiffs argued their claims were based exclusively on *speech*, rather than petroleum production or emissions. Plaintiffs have alleged that Defendants' *political speech* is grounds for liability—i.e., that, as the Complaint puts it, Defendants are liable for engaging in speech to "turn public opinion against stricter standards" in regulations governing fossil fuel emissions. Compl. ¶ 199. Indeed, the gravamen of the Complaint, as Plaintiffs themselves have stated, is that Defendants' alleged "sustained and widespread campaign" allowed Defendants to "sell[] more of the very same fossil fuel products driving climate change," *id.* ¶¶ 218, 221, and turn "government regulators" against "regulation" of "their fossil fuel products," *id*. ¶ 128(b).

Plaintiffs' attempt to recharacterize this case as based solely on speech, rather than emissions, does not change the fact that each of the claims asserted in the Complaint seeks damages for the volume of greenhouse gases in the global atmosphere. For this reason, the federal structure of the Constitution prohibits applying New Jersey law irrespective of the particular theory Plaintiffs rely on. *See* Defendants' Motion to Dismiss for Failure to State a Claim Upon Which Relief Can Be Granted at 8–19. But Plaintiffs' speech-based theory of liability also raises obvious First Amendment problems. And it triggers special protections for speech under California's anti-SLAPP law, which applies here under New Jersey choice-of-law principles.

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

Under California's anti-SLAPP law, defendants have a qualified immunity from suit for any "cause of action" that "aris[es] from any act" the defendant has 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); *see DC Comics v. Pac. Pictures Corp.*, 706 F.3d 1009, 1015 (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," Cal. Civ. Proc. Code § 425.16(e)(4), which unquestionably includes climate change. The immunity can be overcome only if the plaintiff "establish[es] that there is a probability that the plaintiff will prevail on the claim." *Id.* § 425.16(b)(1). But even if the plaintiff could show that *some* of its claims survive—either because they are not based on speech on a matter of public concern, or because they target speech not protected by the First Amendment—*any* speech-based claims that the plaintiff cannot support should be stricken under the anti-SLAPP law. *Baral v. Schnitt*, 1 Cal. 5th 376, 393 (2016).

Plaintiffs cannot evade California's anti-SLAPP law simply by filing suit outside of California.[2] As numerous courts have held, the anti-SLAPP choice-of-law analysis turns on which state has a stronger 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.*, *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)); *Sarver v. Chartier*,

[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.

813 F.3d 891, 897–900 (9th Cir. 2016) ("[T]he interests of interstate comity and the competing interests of the states tilt in favor of applying California law. Whereas California would appear to object strongly to the absence of a robust anti-SLAPP regime, New Jersey's interests would be less harmed by the use of [California law]."). Thus, insofar as Plaintiffs characterize their Complaint as focused on *speech*—as they did to defeat federal jurisdiction—their claims against Chevron are subject to California's anti-SLAPP law.

Plaintiffs cannot carry their burden of showing a probability that they will prevail on their claims, as they must to defeat an anti-SLAPP motion. On the contrary, all of Plaintiffs' claims fail as a matter of law for the reasons outlined in Defendants' Joint Motion To Dismiss For Failure To State A Claim ("Motion to Dismiss").

In addition, the speech "campaign" Plaintiffs complain about consists of communications allegedly intended to influence the government and the voting public on issues of energy and environmental policy. Compl. ¶¶ 1, 2, 6, 7, 17, 37(c), 103, 108, 218, 226(a), 231, 233, 243, 256, 257(d), 294(a), 309(a). Plaintiffs do not identify a *single statement* allegedly made by Chevron as part of this decades-long "campaign," *see id*. ¶¶ 97–142, which alone requires dismissal of Plaintiffs' claims against Chevron. The only statements Plaintiffs allege Chevron made at all involve its support for renewable energy, which Plaintiffs call "greenwashing," and recent comments Chevron has made about climate change. But since none of these statements is alleged to be untrue, none is actionable. *E.g.*, *id.* ¶¶ 203–04, 229–30.

Even if the speech in the "campaign" alleged by Plaintiffs could be attributed to Chevron, Plaintiffs still cannot demonstrate a probability that they will prevail on their claims because the campaign, as alleged, is absolutely protected by the First Amendment. The *Noerr-Pennington* doc-

trine holds that "[a] publicity campaign directed at the general public and seeking government action" is immune from liability under the First Amendment's Petition Clause. *Manistee Town Ctr. v. City of Glendale*, 227 F.3d 1090, 1091–92 (9th Cir. 2000); *accord Main St. at Woolwich, LLC v. Ammons Supermarket, Inc.*, 451 N.J. Super. 135, 144 (App. Div. 2017) (explaining that *Noerr-Pennington* applies to conduct when "lobbying" for government action). This legal bar applies even if Plaintiffs' allegations are accepted as true. *See Oasis Therapeutic Life Ctrs., Inc. v. Wade*, 457 N.J. Super. 218, 232 (App. Div. 2018) (stating the lobbying conduct "must be examined objectively and without consideration of the actor's underlying motivation"). Simply put, Plaintiffs cannot overcome the high burden imposed by *Noerr-Pennington* and the First Amendment, which protects not only the heartland of political speech, but even "the *prospect* of chilling fully protected expression." *Counterman v. Colorado*, __ S. Ct. __, 2023 WL 4187751, at *4 (U.S. June 27, 2023) (emphasis added). As the United States Supreme Court recently emphasized, this includes so-called commercial speech, because "the First Amendment extends to all persons engaged in expressive conduct, including those who seek profit." *303 Creative LLC v. Elenis*, __ S. Ct. __, 2023 WL 4277208, at *15 (U.S. June 30, 2023).

In short, Plaintiffs' attempt to hold Chevron liable for climate change based on alleged speech opposing stricter energy and environmental regulation fails on multiple levels. California's anti-SLAPP law protects California-based defendants, like Chevron, from meritless claims that burden constitutionally protected speech on issues of public interest. And Plaintiffs cannot satisfy their burden under California's anti-SLAPP law to show their claims have merit: they have not pleaded facts showing Chevron's involvement in any allegedly actionable speech, their claims are barred by *Noerr-Pennington* and the First Amendment, *and* their claims fail for all the reasons explained in the 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. Cal. Civ. Proc. Code § 425.16(c)(1).[3] At the very least, the causes of action barred by the First Amendment should be struck.

II. PLAINTIFFS' ALLEGATIONS AND PROCEDURAL BACKGROUND

A. Plaintiffs Seek Remedies for Global Emissions

Plaintiffs seek to hold Chevron liable for harms allegedly caused (or to-be-caused) by global climate change and the emissions of anyone who might have burned any fossil fuels, including coal.[4] Much of the Complaint is a lengthy discussion of the extent to which "human activity causes global warming and climate disruption" through "anthropogenic greenhouse gas emissions." Compl. ¶ 40. Plaintiffs allege that the burning of fossil fuels—conducted by inhabitants world-wide—has caused "global warming and climate disruption" including "ocean and atmospheric warming." *Id.* ¶¶ 40. Although Plaintiffs include a bare assertion that Defendants' supposed "half a century" of "deceptive commercial practices" caused "the climate crisis [] already impacting New Jersey," *id.* ¶¶ 49, 319, they do not identify any Chevron statement as false or misleading or allege how such statement(s) impacted greenhouse gas emissions.

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[3] Defendants will file an affidavit of attorney's fees and costs in the event this Motion is granted.

[4] *See* Compl. ¶ 1 ("fossil fuels produce carbon dioxide and other greenhouse gas pollution that can have catastrophic consequences for the planet and its people."); *id.* ¶ 2 ("damages to the State of New Jersey … and to its residents, infrastructure, lands, assets, and natural resources caused by Defendants' decades-long campaign"); *id.* ¶ 4 ("Fossil fuel emissions—especially CO_2—are far and away the dominant driver of global warming."); *id.* ¶ 8 ("Defendants' deceptive and tortious conduct was therefore a substantial factor in bringing about devastating climate change impacts in New Jersey, including: sea-level rise, disruption to the hydrologic cycle, more frequent and intense 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."). Plaintiffs seek to compel Chevron to pay damages for these allegedly climate change-related harms. *E.g.*, *id.* ¶ 233 (identifying numerous "harms" from climate change).

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B. Plaintiffs Attack Defendants' Political Speech and Petitioning on a Public Issue

In an attempt to make this case about something other than emissions, Plaintiffs attack Defendants' (and others') purported participation in the public debate on climate change and the regulation of greenhouse gas emissions, arguing that Defendants are liable for the greenhouse gas emissions of all of humanity because Defendants allegedly launched a "disinformation campaign[]" to "affect[] public opinion" about "climate change and their products' contribution to it" in order to thwart government efforts to "regulate the fossil fuel industry." Compl. ¶¶ 6, 103, 111, 129. According to Plaintiffs, Defendants led a decades-long "campaign" designed to "discredit the scientific consensus on climate change" and "create doubt in the minds of consumers, the media, teachers, policymakers, and the public about the climate change impacts of burning fossil fuels." *Id.* ¶ 1. Plaintiffs vaguely claim all "Defendants" engaged in this "campaign," but do not identify *any* statement allegedly made by Chevron in the "campaign." *Id.* ¶¶ 97–142.

Plaintiffs attack core First Amendment speech by Defendants, including political speech on matters of public concern. Plaintiffs allege that Defendants engaged in speech that was intended to "turn public opinion against" the need to set "stricter standards" and to "change public opinion and consumer perceptions of climate risk," and that Defendants did this by "claim[ing] that such standards would 'hurt consumers and threaten to reverse America's energy renaissance.'" *Id.* ¶¶ 108, 199, 103. For example, Plaintiffs denounce a 1994 (non-Chevron) report advocating against "policies to curb greenhouse gas emissions beyond 'no regrets' measures." *Id.* ¶ 106. Similarly, Plaintiffs criticize a 1996 (non-Chevron) book stating that "[s]evere reduction in greenhouse gas emissions by the United States or even all developed countries would impose large costs on countries but yield little in the way of benefits—even under drastic climate change scenarios." *Id.* ¶ 154(d). The Complaint also includes images of (non-Chevron) print advertisements discussing "global warming." *Id.* ¶ 109. But although Plaintiffs allege these public statements were intended to "turn

public opinion" against regulation, *id.* ¶ 199, they say nothing about whether or how these public statements affected the robust and uninhibited public discourse about energy policy that the First Amendment protects—a telling omission considering that views *contrary* to those recited in the Complaint received extensive media coverage, including on the front pages of major national newspapers.

Plaintiffs allege that Defendants supported trade organizations that organized campaigns to oppose energy regulation, but these campaigns likewise focused on what are indisputably issues of public concern. For example, Plaintiffs allege that Defendants "employed and financed several industry associations" including "front groups" which then assisted in implementing "public advertising and outreach campaigns to discredit climate science," *id.* ¶ 32, and that Defendants were connected to the American Petroleum Institute (API), which "participated in and led several coalitions, front groups, and organizations that have promoted disinformation about the climate impacts of fossil fuel products." *Id.* ¶ 30(b).

C. Plaintiffs Attack Truthful Statements Supporting Renewable Energy

After numerous (non-Chevron) allegations about the alleged campaign to oppose fossil fuel regulation, the Complaint shifts to describing what it calls a "greenwashing" campaign in which Chevron publicized its support for renewable energy. *See* Compl. ¶¶ 185–92. But Plaintiffs do not explain how the few purported "greenwashing" statements they identify constitute a recognized tort or violate the Consumer Fraud Act. The "greenwashing" allegations are therefore irrelevant to Plaintiffs' claims of injury.

Regardless, Plaintiffs do not identify any allegedly false statement by Chevron. Instead, Plaintiffs attack *truthful* statements, such as Chevron's accurate representation that it has spent "millions" on renewables, on the ground that it is somehow misleading because Chevron spent *more* on fossil fuels. *Id.* ¶¶ 190–91. The few other "greenwashing" allegations Plaintiffs make

about Chevron likewise attack indisputably true statements. *See infra* at 21–22.

D. Plaintiffs Concede Their Complaint Targets Political Speech

Defendants removed this case to federal court, arguing that the Complaint "arises under federal laws and treaties" and "presents substantial federal questions" because it seeks to hold Defendants liable for the nationwide and international emissions of greenhouse gases. Dkt. 1 at 1–2.[5] In response, Plaintiffs argued that their claims were not based on emissions but rather on Defendants' *speech* opposing regulation. In their motion to remand the case to this Court, "Plaintiffs allege that Defendants misled the public for decades concerning the climatic harms their products cause. Dkt. 87 at 2. Plaintiffs asserted that "there is no connection between the actions Defendants allegedly took under federal supervision and the misconduct alleged in the Complaint—i.e., Defendants' campaign to deceive the public about the climatic risks of fossil fuels." *Id.* at 11. And Plaintiffs argued that their "Complaint hinges liability on Defendants' failure to warn, and their 'massive disinformation campaign' to 'concea[l] and misrepresent[t] the dangers of fossil fuels'" were the *sole basis* for Plaintiffs' claims. *Id.* at 23.[6]

The federal district court credited Plaintiffs' framing of its Complaint and remanded the case. *See* Dkts. 93, 94. In its remand order, the district court adopted Plaintiffs' argument that their claims are based *solely* on speech—i.e., the Court stated Plaintiffs "seek[] to hold energy companies responsible for their alleged misrepresentations about the effects consuming energy products has on the global climate and, in turn, the states' residents." Dkt. 93 at 2.

III. LEGAL STANDARDS

New Jersey has adopted the choice-of-law approach outlined in the Restatement (Second)

[5] Unless otherwise indicated, citations to "Dkt." are to filings on the federal district court docket in *Matthew J. Platkin, et al. v. Exxon Mobil Corp., et al.,* No. 20-CV-06733-ZNQ-RLS (D.N.J.).

[6] Although Plaintiffs vaguely invoke language used in the context of product advertising, its Complaint does not identify *any* product advertisement by Chevron. *Cf.* Compl. ¶¶ 97–142.

of Conflict of Laws. *P.V. ex rel. T.V. v. Camp Jaycee*, 197 N.J. 132 (2008). Under this approach, a court conducts a two-part inquiry. First, the court determines if "an actual conflict exists" by evaluating whether "the application of one or another state's law may alter the outcome of the case." *In re Accutane Litig.*, 235 N.J. 229, 254 (2018) (citing *McCarrell v. Hoffmann-La Roche, Inc.*, 227 N.J. 569, 584 (2017)). Second, 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 dispute. *Id.* at 257–63; *see also Camp Jaycee*, 197 N.J. at 135–36. This analysis "requires consideration of 'certain contacts' to determine which state 'has the most significant relationship to the occurrence and the parties under the principles stated in § 6.'" *Calabotta v. Phibro Animal Health Corp.*, 460 N.J. Super. 38, 57 (App. Div. 2019) (quoting Restatement (Second) of Conflict of Laws § 145).[7] 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." *Id*. at 898.

However, the relevance or importance of any particular factor varies depending on the choice-of-law inquiry at hand: "[T]he contacts 'are to be evaluated according to their relative importance with respect to the particular issue.'" *Fairfax Fin. Holdings Ltd. v. S.A.C. Cap. Mgmt., L.L.C.*, 450 N.J. Super. 1, 51 (App. Div. 2017). New Jersey's choice-of-law principles dictate that the court must decide choice-of-law questions on an "issue-by-issue" basis. *Id.*

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[7] The principles stated in Restatement (Second) of Conflict of Laws § 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.

IV. ARGUMENT

As a California-domiciled corporation, Chevron is protected by California's anti-SLAPP law. Because Plaintiffs cannot show that their claims are subject to any of the narrow exemptions from California's law, they bear the burden to show a probability that they will prevail on those claims. Plaintiffs cannot carry that burden because (1) Plaintiffs have failed to allege facts sufficient to hold Chevron liable for the speech they complain of, and (2) the First Amendment bars tort liability based on speech attempting to influence public support for climate policies.

A. Chevron Is Protected by California's Anti-SLAPP Law

The first part of New Jersey's choice-of-law inquiry asks whether "the application of one or another state's law may alter the outcome of the case." *In re Accutane Litig.*, 235 N.J. at 254. Here, the answer is clearly "yes." Although New Jersey enacted an anti-SLAPP law on September 7, 2023, that law does not apply to actions, like this one, that were filed before its effective date. *See* S.B. 2802 § 14, https://pub.njleg.gov/Bills/2022/S3000/2802_R1.HTM ("This act shall take effect on the 30th day after enactment and shall apply to a civil action filed or cause of action asserted in a civil action on or after the effective date."). On the other hand, California provides broad immunity to *any* suit based on speech on matters of public concern, *see* Cal. Civ. Proc. Code § 425.16(b)(1), (e)(1), which includes the instant action.

Because the outcome of the case is affected by the choice of law, the Court must proceed to the second part of New Jersey's choice-of-law inquiry. The second part asks which state has the most significant interest in applying its law. The test is *issue specific*, meaning that different jurisdictions' laws can apply to different issues in the case, including anti-SLAPP immunity and the merits. *See Fairfax*, 450 N.J. Super. at 51 ("[C]hoice-of-law decisions are made not only issue-by-issue, but also, at times, party-by-party." (citations omitted)). Thus, the Court must consider which state has the most significant interest in this specific issue—an anti-SLAPP motion—because the

"most significant relationship" test is applied "on an issue-by-issue basis." *Camp Jaycee*, 197 N.J. at 143; *accord Ginsberg ex rel. Ginsberg v. Quest Diagnostics, Inc.*, 441 N.J. Super. 198, 230 (App. Div. 2015). And the 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. *Ginsberg*, 441 N.J. Super. at 227.

As numerous courts have held when conducting a similar issue-specific choice-of-law analysis, the defendant's home state generally has the strongest interest in seeing its anti-SLAPP law applied to claims based on its citizens' speech. *E.g.*, *Diamond Ranch*, 117 F. Supp. 3d at 1323–24; *Underground Sols., Inc. v. Palermo*, 41 F. Supp. 3d 720, 726 (N.D. Ill. 2014); *O'Gara v. Binkley*, 384 F. Supp. 3d 674, 682 (N.D. Tex. 2019). Accordingly, the defendant's domicile is given heavy—and often dispositive—weight in anti-SLAPP choice-of-law analyses. In fact, the U.S. Court of Appeals for the Ninth Circuit applied New Jersey choice-of-law principles to hold that California's anti-SLAPP law governed tort claims originally filed in New Jersey against a California defendant: "Whereas California would appear to object strongly to the absence of a robust anti-SLAPP regime, New Jersey's interests would be less harmed by the use of California law." *Sarver*, 813 F.3d at 899–900. This Court should adhere to the Ninth Circuit's well-reasoned decision in that case and apply California's anti-SLAPP law to Chevron.

1. California's Anti-SLAPP Law Provides Broad Immunity for Speech on Issues of Public Concern

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, 1015 (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" based on speech. *City of Montebello v. Vasquez*, 1 Cal. 5th 409, 416 (2016).

California's anti-SLAPP "special motion to strike" may target any cause of action that "aris[es] from any act" 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. Code § 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." *Id.* § 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. California Has the Most Significant Interest in Applying Its Anti-SLAPP Law to Speech-Based Claims Against Its Domiciliaries

As New Jersey courts have explained (*see supra* at 10–11), 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 an anti-SLAPP law. Although 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 of little, if any, relevance in determining what law governs the *defendant's anti-SLAPP immunity. See Diamond Ranch*, 117 F. Supp. 3d at 1323 ("[T]he place where the injury occurred … [has] little, if any, relevance in this area of law."); *Palermo*, 41 F. Supp. 3d at 726 ("'[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 law to claims based on the defendant's speech. In *Diamond Ranch*, for example, 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, reasoning that "[t]he 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." 117 F. Supp. 3d at 1323 (quotations omitted). This is consistent with the Restatement (Second) of Conflict of Laws, under which "the needs of the interstate … system[]," "the protection of justified expectations" of speakers, and the interest in "certainty, predictability and uniformity of result" all point to application of the anti-SLAPP law of the speaker's domicile, rather than the anti-SLAPP law of whatever state a plaintiff happens to sue in. Restatement (Second) of Conflicts of Laws § 6(2)(a), (d), (f). The U.S. Court

of Appeals for the Ninth Circuit applied New Jersey's choice-of-law analysis in nearly identical circumstances to those presented here, concluding that California's anti-SLAPP law governed claims originally brought in New Jersey court against a California defendant. *Sarver*, 813 F.3d at 900.

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*, 384 F. Supp. 3d at 682 ("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 (holding that, without contrary evidence, speech "likely originated" from plaintiff's home state of California, and that this "weigh[ed] strongly in favor of applying California's . . . anti-SLAPP law"); *Palermo*, 41 F. Supp. 3d at 725 (reasoning that, although defendant made statements in "multiple other states," 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. ¶ 26(a), and "controls and has controlled companywide decisions … related to … climate change[] and greenhouse gas emissions from its fossil fuel products," *id.* ¶ 26(d). Likewise, Chevron U.S.A. Inc. is alleged to have "its principal place of business in San Ramon, California." *Id.* ¶ 26(e). 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.

New Jersey has no obvious interest in applying its own lack of anti-SLAPP law to California speakers. *Cf.* Restatement (Second) of Conflicts of Laws § 6(2)(b) (choice-of-law analysis considers "the relevant policies of the forum"). Quite the opposite: the New Jersey Legislature recently enacted its own anti-SLAPP statute, which took effect on October 7, 2023, rebutting any contention that applying California's law would contravene New Jersey public policy.[8] *See Governor Murphy Signs Bipartisan Bill Protecting Against Lawsuits Designed to Suppress Free Speech* (Sept. 7, 2023), https://tinyurl.com/yc6sxnu2. And because 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, 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." *Id.* § 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. Chevron Is Immune From Plaintiffs' Claims Under California's Anti-SLAPP Law

1. Plaintiffs' 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

[8] Indeed, New Jersey became only "the sixth state to specifically enact particularly strong protections based on the Uniform Law Commission's 'Uniform Public Expression Protection Act.'" *Governor Murphy Signs Bipartisan Bill Protecting Against Lawsuits Designed to Suppress Free Speech* (Sept. 7, 2023), https://tinyurl.com/yc6sxnu2.

both on speech and activity if the speech is not "merely incidental" to the claim. *Baral*, 1 Cal. 5th at 394. Here, there is no dispute that fossil fuel emissions, energy regulation, and climate change are all "issue[s] of public interest." Indeed, "[g]lobal warming is one of the greatest challenges facing humanity today." *City of New York v. Chevron Corp.*, 993 F.3d 81, 86 (2d Cir. 2021); *see also Nat'l Review, Inc. v. Mann*, 140 S. Ct. 344, 347, 348 (2019 (Alito, J., dissenting from denial of certiorari) (noting that climate change "has staked a place at the very center of this Nation's discourse" as "one of the most hotly debated issues of the day").

The speech on which Plaintiffs say their claims are based addresses *both* matters of public interest *and* the subject of extensive consideration and review by public bodies. When Plaintiffs say that each of the Complaint's causes of action is based on "Defendants' wrongful conduct," they expressly point to Defendants' alleged "'successful climate deception campaign' to 'discredit the scientific consensus on climate change' and 'create doubt … about the climate change impacts of burning fossil fuels.'" Dkt. 87 at 24 n.10 (citing Compl. ¶ 1). Notably, the Complaint points to Defendants' alleged "coordinated campaigns of disinformation and deception" seeking to "deceive consumers and the public about the weight of climate science," Compl. ¶¶ 158–59, and emphasizes that the alleged "disinformation and deception" sought to "turn public opinion against" the need to set "stricter standards" and to "change public opinion and consumer perceptions of climate risk," by "claim[ing] that such standards would 'hurt consumers and threaten to reverse America's energy renaissance.'" *Id.* ¶¶ 108, 199, 103; *see Am. Elec. Power Co., Inc. v. Connecticut*, 564 U.S. 410, 427 (2011) (Ginsburg, J.) ("The appropriate amount of regulation in any particular greenhouse gas producing sector *cannot be prescribed in a vacuum*: As with other questions of national or international policy, *informed assessment of competing interests is required*. Along with the environmen-

tal benefit potentially achievable, *our Nation's energy needs and the possibility of economic disruption must weigh in the balance*." (emphasis added)).

Similarly, the Complaint points to (1) API's Global Climate Science Communications Team's alleged purpose to "deceive the public about the weight and veracity of the climate science consensus," *id.* ¶ 125, (2) Defendants' alleged strategy throughout the 1990s to "forestall a global shift away from burning fossil fuels for energy" by "emphasiz[ing] uncertainties in climate science, call[ing] for further research, and promot[ing] industry friendly policies that would leave the fossil fuel business intact," *id.* ¶ 118, and (3) a purported "campaign[] of climate disinformation," *id.* ¶ 256(d). Plaintiffs further allege that Defendants sought to "influence possible legislation on environmental controls" because "there is a good probability that legislation affecting [their] business will be passed." *Id.* ¶ 69. The allegations in the Complaint are demonstrably about matters of public import. Again, each of these alleged "deceptions" concern matters of intense public interest and extensive consideration and review by public bodies.

Because Plaintiffs have already successfully argued that its Complaint is based on speech on matters of public concern in their remand briefing, *see supra* at 8, Plaintiffs are judicially estopped from arguing otherwise now. *See Kress v. La Villa*, 335 N.J. Super. 400, 412 (App. Div. 2000) ("When a party successfully asserts a position in a prior legal proceeding, that party cannot assert a contrary position in subsequent litigation arising out of the same events."); *Kimball Int'l, Inc. v. Northfield Metal Prods.*, 334 N.J. Super. 596, 607 (App. Div. 2000).

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

Because Plaintiffs' claims arise from Defendants' speech, those claims are subject to strike and dismissal *unless* Plaintiffs can demonstrate that they fall within one of three narrow exemptions to California's anti-SLAPP law. *See Simpson Strong-Tie Co. v. Gore*, 49 Cal. 4th 12, 26 (2010). But Plaintiffs cannot carry this burden here. *See Montebello*, 1 Cal. 5th at 419–20.

One exemption, 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). Plaintiffs' suit does not qualify because it is brought in the name of the State of New Jersey. *See Montebello*, 1 Cal. 5th at 420 (holding that the enforcement exemption applies only to actions brought by California itself, and does not even apply to enforcement actions brought by California municipalities).

Plaintiffs suit also does not qualify for the "public interest" exemption for "private enforcement" lawsuits, another recognized exemption. Cal. Civ. Proc. Code § 425.17(b). By its terms, this exemption applies only to "[p]rivate" class actions and private-attorney-general suits. *Id.* § 425.17(b)(3); *see Tourgeman v. Nelson & Kennard*, 222 Cal. App. 4th 1447, 1459 (2014). Thus, although this suit has been brought by New Jersey's Attorney General, it *still* does not qualify for the public interest exemption because it is neither a *private* class action nor a *private* attorney-general suit.

Finally, the third exemption, the "commercial speech" exemption, also does not apply. *See* Cal. Civ. Proc. Code § 425.17(c). As the California Supreme Court has explained, this exemption applies to one narrow "subset of commercial speech": "comparative advertising" between competitors. *FilmOn.com Inc. v. DoubleVerify Inc.*, 7 Cal. 5th 133, 147 (2019). Thus, 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). Plaintiffs' claims are not based on this kind of comparative advertising. Rather, Plaintiffs' allegations focus on the speech of trade associations allegedly on behalf of the whole industry. *E.g.*, Compl. ¶ 103 ("[A] group of coal companies" formed the Information Council for the Environment ('ICE') and similar "industry and front groups" and through those groups "[f]unded, conceived,

planned, and carried out a sustained and widespread campaign of denial and disinformation about the existence of climate change and their products' contribution to it."); *id.* ¶ 111 (allegations about the speech of "API"); *id.* ¶ 119–20 (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).

Although Plaintiffs assert that Defendants are "greenwashing" by "employing false and misleading advertising campaigns promoting themselves as sustainable energy companies committed to finding solutions to climate change, including by investing in alternative energy," Compl. ¶¶ 159, 221, Plaintiffs do not identify any comparative product advertisement. Nor do Plaintiffs contend that their claims are actually based on the "greenwashing" they allege. Rather, Plaintiffs allege that the alleged decades-long "campaign" is the basis for liability. *Id.* ¶ 218. In short, the greenwashing allegations are irrelevant to Plaintiffs' actual claims.

C. Plaintiffs Cannot Carry Their Burden of Demonstrating a Probability That They Will Prevail on Their Claims

1. Plaintiffs Cannot Carry Their Burden

Because Plaintiffs are estopped from denying that their claims against Chevron arise from speech, the burden shifts to Plaintiffs to establish a probability that they will prevail on those claims. But Plaintiffs cannot carry this burden. In order to effectuate California's substantive immunity, Plaintiffs' claims must be stricken and dismissed under California's anti-SLAPP law if they would fail on the merits for *any* reason, *see supra* at 3–4, and here Plaintiffs' claims against Chevron suffer from several fatal deficiencies—including, but not limited to, those identified in the Motion to Dismiss. Although Plaintiffs pin their case on a purported decades-long speech "campaign," Plaintiffs have not identified *any* speech by Chevron that was actually part of this "campaign." *See id.* ¶¶ 97–

142 (not attributing *any* statement in the campaign to Chevron). For that reason alone, Plaintiffs' speech-based claims against Chevron—which, according to Plaintiffs, are *all* of its claims, *see supra* at 8—must be dismissed.

Furthermore, all of Plaintiffs' claims against Chevron are barred by the First Amendment for at least two reasons. First, although Plaintiffs presume that speech on matters of public concern can be punished when it allegedly is contrary to "the scientific consensus," the "First Amendment protects an individual's right to speak his mind regardless of whether the government considers his speech sensible and well intentioned or deeply misguided." *303 Creative LLC v. Elenis*, 600 U.S. at 586 (quotations omitted). Plaintiffs misunderstand both the fundamental principles governing our free society, as well as the First Amendment's truth-seeking function, which rejects suppressing alleged "error" in favor of creating space to challenge it with counter-speech. The mere fact that speech is unpopular or allegedly contrary to a scientific or professional "consensus"—however defined—does not make it punishable or a proper basis for tort liability. "Professionals might have a host of good-faith disagreements, both with each other and with the government, on many topics in their respective fields." *Nat'l Inst. of Fam. & Life Advocs. v. Becerra*, 138 S. Ct. 2361, 2374–75 (2018). "[U]nder the regime of [the First] Amendment 'we depend for … correction not on the conscience of judges and juries but on the competition of other ideas.'" *Brown v. Hartlage*, 456 U.S. 45, 61 (1982) (*quoting Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 339–40 (1974)); *see also United States v. Alvarez*, 567 U.S. 709, 752 (2012) (Alito, J., dissenting) ("Even where there is a wide scholarly consensus concerning a particular matter, the truth is served by allowing that consensus to be challenged without fear of reprisal."). "[T]he best test of truth is the power of the thought to get itself accepted in the competition of the market, and the people lose when the government is the one deciding which ideas should prevail." *Nat'l Inst. of Fam. & Life Advocs.*, 138

S. Ct. at 2375 (internal quotation marks and citation omitted). The subject of climate change is no exception. In fact, as Justice Ginsburg observed in *AEP*, conflicting views on practical tradeoffs are the essential building blocks of sound regulatory policy, not inconvenient expressions to be punished. 564 U.S. at 427 ("The appropriate amount of regulation in any particular greenhouse gas producing sector cannot be prescribed in a vacuum: As with other questions of national or international policy, informed assessment of competing interests is required.").

Second, the First Amendment bars Plaintiffs' claims against Chevron because Plaintiffs have not alleged that Chevron made knowingly false misstatements. 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); *see also 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). This requirement of "a culpable mental state" is designed to ensure that citizens do not engage in "'self-censorship' of speech that could not be proscribed." *Counterman*, 2023 WL 4187751, at *4. Even if Plaintiffs could show that *some* speech they attack is not protected by the First Amendment, they must plead and prove that they are basing their claims *only* on that unprotected speech. *See 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). They 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. *See Santopietro v. Howell*, 73 F.4th 1016, 1025–26 (9th Cir. 2023) (under *Claiborne*, plaintiffs cannot allege the defendant is responsible for a group's conduct); *TEVA Pharm. USA, Inc. v. Stop Huntingdon Animal Cruelty USA*, 2005 WL 1010454, at *11 (N.J. Super. Ct. Ch. Div. Apr. 1, 2005) (same).

Here, Plaintiffs do not allege *any false statement* by Chevron, much less a knowingly false statement. Although the Complaint includes over 45 paragraphs of allegations about the purported speech "campaign," *see* Compl. ¶¶ 97–142, *none* involves any statement by Chevron—and only four paragraphs *mention* Chevron at all, *see id.* ¶¶ 118, 119, 125, 127. In those paragraphs, Plaintiffs merely allege affiliations between Chevron and organizations including GCC (*id.* ¶¶ 119) and API (*id.* ¶¶ 118, 125, 127), and allege that Chevron and other Defendants sought to "plant doubt about the reality of climate change," *id.* ¶ 127. But even if Chevron could be held liable for being associated with a "group" that engaged in speech, the alleged speech was on an issue of public concern—uncertainties in climate science as of 1998—and not, therefore, actionable. *Nat'l Inst. of Fam. & Life Advocs.*, 138 S. Ct. at 2375.

Aside from this "campaign," Plaintiffs also allege that Chevron engaged in "greenwashing"—but again, Plaintiffs do not identify any false statement by Chevron. Instead, they attack anodyne and admittedly truthful statements about Chevron's support for renewable energy. Plaintiffs complain that Chevron states "We agree" and "It's time oil companies get behind the development of renewable energy." Compl. ¶ 190. Plaintiffs do not contend that this statement of opinion is factually false, but rather claim that "just 0.2% of [Chevron's] total capital [spending from 2010 to 2018 was in] low-carbon energy sources." *Id*. ¶ 161. Plaintiffs admit that Chevron has invested in renewable energy sources. Plaintiffs' chief complaint seems to be that Chevron has not invested *enough* according to Plaintiffs' standards. This does not demonstrate untruthfulness, but rather a difference of opinion.

Similarly, Plaintiffs complain that Chevron says that its Techron fuel is "up to 50% cleaner" and "reduce[s] emissions." *Id.* ¶¶ 217(b)–(c). But Plaintiffs do not allege these statements are

false—because they are indisputably true. Rather, Plaintiffs complain that Chevron does not accompany every statement about its products with some vague and undescribed disclosure that discusses "the key role fossil fuels play in causing climate change." *Id.* ¶ 217(d). There is no law that requires a fossil fuel company to make statements about climate change whenever it makes truthful statements about its products. Indeed, a forced disclaimer—like the one Plaintiffs demand—is *unconstitutional*, unless it requires only the disclosure of "purely factual and uncontroversial information about the terms under which ... services will be available." *Nat'l Inst. of Fam. & Life Advocs*., 138 S. Ct. at 2372. But Plaintiffs' desired disclaimer has nothing to do with factual, uncontroversial statements about the "terms" of "services." *Id.* Plaintiffs want Chevron to be forced—whenever it makes *any* statement about its business or products—to give a vague, self-denigrating statement about "the key role fossil fuels play in causing climate change." Compl. ¶ 217(d). "Requiring a company to publicly condemn itself is undoubtedly a more 'effective' way for the government to stigmatize and shape behavior …, but that makes the requirement more constitutionally offensive, not less so." *Nat'l Ass'n of Manufacturers v. S.E.C.*, 800 F.3d 518, 530 (D.C. Cir. 2015); *Kimberly–Clark Corp. v. District of Columbia*, 286 F. Supp. 3d 128, 141 (D.D.C. 2017) (government "could not compel companies to state that their products are not 'environmentally sustainable'" (internal quotation marks omitted)). The government has no right to compel private actors to communicate the government's preferred messaging.

Simply put, the *only* statements in the Complaint that are actually attributed to Chevron are indisputably true, *and* imposing a forced disclosure requirement on Chevron—as Plaintiffs demand—is flatly unconstitutional. Plaintiffs' claims are legally barred. *See Philadelphia Newspapers*, 475 U.S. at 776.

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

Even if Plaintiffs could allege that Chevron engaged in the purported publicity "campaign"

and made knowingly false statements, Plaintiffs' claims would *still* be subject to dismissal. Plaintiffs argue that the Complaint targets "decades of deceptions" wherein Defendants allegedly launched a "disinformation campaign[]" to "affect[] public opinion" about "climate change and their products' contribution to it" in order to reduce moves to "regulate the fossil fuel industry." Compl. ¶¶ 103, 111, 129. 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. Plaintiffs' speech-based claims are legally barred and should be dismissed.

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 that 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 129–30. 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 cannot be liable for "a concerted effort to influence public officials." *United Mine Workers of America v. Pennington*, 381 U.S. 657, 669–70 (1965).

Although *Noerr* and *Pennington* dealt with antitrust claims under the Sherman Act, later decisions have clarified that the doctrine they announced is a constitutional rule that applies to *all* claims—including the state-law claims that Plaintiffs bring in this case. *See Main St. at Woolwich, LLC v. Ammons Supermarket, Inc.*, 451 N.J. Super. 135, 144 (App. Div. 2017) (stating that the *Noerr-Pennington* doctrine has been "extended to include common-law torts such as malicious prosecution and abuse of process"); *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, Plaintiffs 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, Plaintiffs repeatedly describe the speech they attack as a publicity campaign aimed at influencing public opinion and regulators.[9] This is precisely the sort of "publicity campaign directed at the general public and seeking government action" that the *Noerr-Pennington* doctrine protects. *Manistee*, 227 F.3d at 1092; *see also Noerr*, 365 U.S. at 129–30.

Plaintiffs' allegations that the campaign was "false" or "misleading," *e.g.* Compl. ¶ 306(f), or purportedly conducted through "front groups," *e.g. id.* ¶ 30(b), are irrelevant under *Noerr-Pennington*. 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. *Cal. 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*

[9] *See*, e.g., Compl. ¶ 1 (Defendants allegedly led a decades-long "campaign" designed to "discredit the scientific consensus on climate change" and "create doubt in the minds of consumers, the media, teachers, policymakers, and the public about the climate change impacts of burning fossil fuels"); *id*. ¶ 2 ("damages to the State of New Jersey … and to its residents, infrastructure, lands, as-sets, and natural resources caused by Defendants' decades-long campaign"); *id*. ¶¶ 103, 111, 129 (Defendants allegedly launched a "disinformation campaign[]" to "affect[] public opinion" about "climate change and their products' contribution to it" in order to reduce moves to "regulate the fossil fuel industry"); *id*. ¶ 199 (Defendants engaged in speech to "turn public opinion against stricter standards"; and *id*. ¶¶ 218, 221 (Defendants' "sustained and widespread campaign" allowed Defendants to "sell[] more of the very same fossil fuel products driving climate change"); and *id*. 128(b) (campaign sought to turn "government regulators" against "regulation" of "their fossil fuel products").

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.*

The speech Plaintiffs allege described the costs of regulation and advocated that voters, legislators, and regulators weigh those costs against the risk of climate change. Plaintiffs may disagree with this advocacy, but they cannot hold Defendants liable for advocating their views. The First Amendment does not permit plaintiffs to seek judicial remedies for allegedly false political speech.

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.

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Florham Park, New Jersey

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