

Douglas J. Raab, OSB #934017
draab@brownsteinrask.com
Scott L. Jensen, OSB #862121
sjensen@brownsteinrask.com
BROWNSTEIN RASK LLP
1 SW Columbia Street, Suite 900
Portland, Oregon 97204
Telephone: (503) 221-1772
Fax: (503) 221-1074
Attorneys for Defendant Space Age Fuel, Inc.

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

COUNTY OF MULTNOMAH,

Plaintiff,

v.

EXXON MOBIL CORP., SHELL PLC F.K.A.
ROYAL DUTCH SHELL PLC,
SHELL U.S.A., INC., EQUILON
ENTERPRISES LLC DBA SHELL OIL
PRODUCTS US, BP PLC, BP AMERICA,
INC., BP PRODUCTS NORTH AMERICA,
INC., CHEVRON CORP., CHEVRON U.S.A.,
INC., CONOCOPHILLIPS, MOTIVA
ENTERPRISES, LLC, OCCIDENTAL
PETROLEUM F.K.A. ANADARKO
PETROLEUM CORP., SPACE AGE FUEL,
INC., VALERO ENERGY CORP.,
TOTALENERGIES, S.E. F.K.A. TOTAL
S.A., TOTALENERGIES MARKETING USA
F.K.A. TOTAL SPECIALTIES USA, INC.,
MARATHON OIL COMPANY,
MARATHON OIL CORP., MARATHON
PETROLEUM CORP., PEABODY ENERGY
CORP., KOCH INDUSTRIES, INC.,
AMERICAN PETROLEUM INSTITUTE,

) Case No. 3:23-cv-01213-YY
)
)
)

) **DEFENDANT SPACE AGE FUEL,**
) **INC.’S RESPONSE IN OPPOSITION**
) **TO PLAINTIFF’S MOTION TO**
) **REMAND**

WESTERN STATES PETROLEUM)
ASSOCIATION, MCKINSEY & COMPANY,)
INC., MCKINSEY HOLDINGS, INC., and)
DOES 1-250 INCLUSIVE,)
))
Defendants.)
_____)

Defendant Space Age Fuel, Inc. (“Space Age”) submits this memorandum in opposition to Plaintiff’s Motion to Remand (“Motion”).¹

I. INTRODUCTION

Space Age fully joins in Defendants’ Joint Opposition to Plaintiff’s Motion to Remand, but submits this separate response in opposition to emphasize the fundamental unfairness and absurdity of Plaintiff’s claims against Space Age. Plaintiff names Space Age as a Defendant despite failing to allege any conduct by Space Age that could possibly subject it to liability under Plaintiff’s own theory of its case. Space Age finds itself hauled into court merely so that Plaintiff may evade the jurisdiction of the federal courts. However, under the doctrine of fraudulent joinder, this Court is permitted to confront Plaintiff’s jurisdictional manipulation and disregard Space Age.

II. BACKGROUND

A. Space Age Is A Small, Family-Owned Business That Has Never Made Any Statement About Climate Change

Hal and Jim Pliska, father and son, started Space Age in 1982. Pliska Decl. ¶ 4, Ex. 1 (Certificate of Incorporation). Space Age is an independent marketer and seller of fossil fuel products with the wholesale purchase of fuel products from third-party petroleum manufacturers,

¹ Space Age files this memorandum with permission from this Court granted November 3, 2023. Order, Nov. 3, 2023, ECF No. 128. Space Age appears only for purposes of opposing Plaintiff’s Motion to Remand and does not waive any objections or defenses.

and subsequent resale of those fuel products in Oregon and Washington on a wholesale and retail basis. *Id.* ¶ 5. It has never had any involvement in production, extraction, or refining of fossil fuels. *Id.* ¶ 7. Space Age is fully licensed in the State of Oregon and County of Multnomah as a Motor Vehicle and Aircraft Fuel Dealer, and in the State of Oregon as a Use Fuel Seller, in compliance with Or. Rev. Stat. § 319.010 *et seq.* (regulating motor vehicle fuels dealers) and Multnomah County, Or., Code § 11.200 *et seq.* (same). *Id.* ¶ 6, Ex. 2 (Current Fuels Tax Licensees).

Space Age has never made any form of statement, much less any misrepresentation, related to climate change. As relevant here, Space Age has never done any of the following: (1) engaged in any marketing campaign relating to greenhouse gases, climate change, or other science of climate change, Pliska Decl. ¶ 8; (2) engaged in any lobbying or advocacy campaign relating to greenhouse gases, climate change, or the science of climate change, *id.* ¶ 9; (3) released or made any public statement about the causes or science of climate change, the impact of Space Age’s products or fossil fuel products generally on climate change, or the effects of climate change, *id.* ¶ 10; (4) conducted any research relating to greenhouse gases, climate change, or the science of climate change, *id.* ¶ 11; nor (5) obtained any information about greenhouse gases, climate change, or the science of climate change, beyond what information has been available to the general public, *id.* ¶ 12.

B. Plaintiff’s Suit Targets Large Energy Companies For An Alleged Campaign of Global Climate Deception—And Space Age

Plaintiff brought this lawsuit against, in Plaintiff’s words, some of the world’s largest energy companies. For example, “Exxon is the largest non-government owned company in the energy industry,” Dick Decl. Ex. 1 (First Amended Complaint) (“Compl.”) ¶ 30, ECF No. 2-1, 2-

2, and “Chevron is one of the world’s largest oil companies,” *id.* ¶ 63.² These entities are “engaged in every aspect of the oil industry, including hydrocarbon exploration and production, refining, marketing, and transport; chemicals manufacturing and retail sales; plastics from petrochemicals and power generation.” *Id.* ¶ 61 (referring to Exxon, Shell, and Chevron). Plaintiff also brought this lawsuit against the country’s “largest oil trade association,” *id.* ¶ 189 (API), and “one of the world’s largest and most influential consulting companies,” *id.* ¶ 200 (McKinsey).

Plaintiff has accused the Defendants of an alleged campaign of global climate deception stretching back decades. *Id.* ¶¶ 5, 10. Defendants allegedly executed “a scheme to rapaciously sell fossil fuel products and deceptively promote them as harmless to the environment, while they knew” about the asserted negative consequences of these products. *Id.* ¶ 1; *see id.* ¶ 10 (Defendants “lied and cynically sought to sow ‘scientific’ and public doubt” about fossil fuel pollution.), ¶ 11 (Defendants “lied publicly and repeatedly about the harm their pollution was causing and the calamities it would cause.”), ¶ 13 (Defendants sought to “undermine the consensus” about climate change “with pseudo-science, fabricated doubt, and a well-funded, sustained public relations campaign to promote their spin.”).

² The remaining Fossil Fuel Defendants are no less significant in their industries. *See* Compl. ¶ 45 (“Shell has operations in over 70 countries”), ¶ 76 (“BP is one of the world’s seven oil and gas ‘supermajors’”), ¶ 89 (“ConocoPhillips is the world’s largest independent pure-play exploration and production company”), ¶ 114 (“[Andarko] has holdings in Algeria, Ghana, Mozambique, Columbia, and The Ivory Coast, among others.”); ¶ 121 (“Valero Energy Corporation is the world’s largest independent petroleum refiner.”), ¶ 137 (“Defendant TotalEnergies, S.E. is a French multinational energy and petroleum company”), ¶ 167 (“[Peabody] is a multi-national energy company”); *cf. id.* ¶ 127 (“Koch is the second largest privately held company in the United States”), ¶ 148 (“Marathon Petroleum Corporation operates the nation’s largest refining system”).

And yet, Plaintiff has also named Space Age as a Defendant—a company vastly smaller in size and scope that has never engaged in any of this alleged behavior or participated in any such alleged scheme. Plaintiff sued Space Age purely to seek to keep this case out of federal court. But under the doctrine of fraudulent joinder, Plaintiff’s cynical tactic is impermissible.

III. ARGUMENT

A. Fraudulent Joinder Protects Sham Defendants Against Baseless Claims

Fraudulent joinder permits the district court to “disregard the citizenship of a non-diverse defendant who has been fraudulently joined.” *Grancare, LLC v. Thrower by and through Mills*, 889 F.3d 543, 548 (9th Cir. 2018). “The removal process was created by Congress to protect defendants.” *Legg v. Wyeth*, 428 F.3d 1317, 1325 (11th Cir. 2005). Fraudulent joinder, in particular, helps to protect “sham” defendants, *McCabe v. General Foods Corp.*, 811 F.2d 1336, 1339 (9th Cir. 1987), that have “no real connection with the controversy,” *Wilson v. Republic Iron & Steel Co.*, 257 U.S. 92, 97 (1921). Fraudulent joinder may be found “[i]f a plaintiff fails to state a cause of action against a resident defendant, and the failure is obvious according to the well-settled rules of the state.” *United Computer Systems, Inc. v. AT&T Corp.*, 298 F.3d 756, 761 (9th Cir. 2002).

B. Because Plaintiff’s Claims Concern Deception, Plaintiff Must Allege Deception By Space Age

By its own characterization, in both the First Amended Complaint (“Complaint”) and the Motion, Plaintiff’s claims concern deception and misrepresentation. *See, e.g.*, Compl. ¶¶ 1, 10, 11, 13 (quoted above); *see also, e.g., id.* ¶¶ 12, 14, 15, 16, 178, 191, 195, 333, 339, 346, 355, 467. The public nuisance claim is premised on Defendants’ alleged “deceitful promotion of fossil fuels” and “deception of the damage” from their products. *Id.* ¶ 508. The negligence claim

alleges that Defendants “concealed” their products’ harms and marketed them in “a manner designed to conceal, downplay, or obfuscate” those harms. *Id.* ¶ 516. The fraud count is based on Defendants’ purported “misrepresentations, fraudulent statements, and deceptive statements,” and a decades-long “marketing campaign and civil conspiracy with the purpose and intent to make material misrepresentations that were false.” *Id.* ¶¶ 520, 523.

Moreover, in the Motion to Remand, Plaintiff asserts that its claims “hinge on Defendants’ culpable conduct in deceptively promoting and concealing the dangers of fossil fuel use,” and that their alleged “fraudulent marketing, misleading representations, and deliberate concealment . . . gave rise to Plaintiff’s claims.” Pls.’ Mot. to Remand (“Mot.”) at 25, 26, ECF No. 98. Indeed, the second sentence of Plaintiff’s argument confirms that its theory of liability is that Defendants contributed to climate change “*while deceiving consumers and the public about dangers associated with those products.*” *Id.* at 1 (emphasis added).

Accordingly, for its claims against Space Age to have any chance of success under Oregon law, Plaintiff must allege some act of deception by Space Age. But Plaintiff has not alleged any such act of deception. Therefore, its claims against Space Age must fail.

C. Space Age Has Never Engaged, And Is Not Alleged To Have Engaged, In Any Climate Deception

Nowhere in the Complaint does Plaintiff allege or assert any act or example of deception on the part of Space Age. The Complaint does not allege any “representation” by Space Age at all. The Complaint does not allege any statement or communication, much less a false or deceptive communication, by Space Age. The Complaint does not allege any participation by Space Age in Defendants’ alleged “scheme” or “campaign.” *Id.* ¶¶ 1, 13. The Complaint does not allege that Space Age was a member of the Global Climate Coalition, the American Petroleum

Institute, or any other organization or entity involved in the purported global “misinformation campaign.” Mot. at 8; *see* Compl. ¶¶ 187, 192, 347, 350; *see also* Pliska Decl. ¶ 13. The Complaint does not allege that Space Age had concealed knowledge about greenhouse gases, climate change, or the science of climate change.

This complete lack of any allegation makes sense, given that—as reflected in the declaration of James C. Pliska—Space Age has never engaged in any advocacy or marketing related to climate change, participated in the work of any trade association, or otherwise engaged in any of the behavior alleged in the Complaint about the other Defendants. As noted, Space Age has

- never engaged in any marketing campaign relating to greenhouse gases, climate change, or the science of climate change. *Id.* ¶ 8.
- never engaged in any lobbying or advocacy campaign relating to greenhouse gases, climate change, or the science of climate change. *Id.* ¶ 9.
- never released or made any public statement about the causes or science of climate change, the impact of Space Age’s products or fossil fuel products generally on climate change, or the effects of climate change. *Id.* ¶ 10.
- never been a member of API, the GCC, the Western States Petroleum Association, or the Heartland Institute. *Id.* ¶ 13.
- never participated in a meeting of any of these organizations, received any information from these organizations, taken any action on behalf of these organizations, or played any role in any alleged campaign of deception by these organizations. *Id.*

D. The Only Allegations Against Space Age Cannot Support Plaintiff’s Claims

The only allegations made by Plaintiff against Space Age cannot support Plaintiff’s claims, which all involve a supposed campaign of deception about climate change. The only allegations relating to Space Age are simply generic descriptions of its business, which cannot support a deception claim. For example, the Complaint alleges that Space Age is a “fossil fuel

marketer, and retail distributor.” Compl. ¶ 159. The Complaint alleges that Space Age “owns a retail chain of fuel and convenience stores,” operates twenty-one locations and nine “truck and trailers,” and “has experienced rapid growth.” *Id.* ¶¶ 160–63. But simply describing Space Age’s lawful, licensed business, without alleging any acts of deception or misrepresentation, or even any communications at all, cannot provide the basis for Plaintiff’s deception claims.

Nor can the Complaint’s allegation of greenhouse gas emissions on the part of Space Age support Plaintiff’s deception claims. Plaintiff alleges emissions on the part of Space Age, citing the company’s self-reported emissions to the State of Oregon. *Id.* ¶¶ 165–66. But the release of emissions—in and of itself—cannot support liability and, in any event, is not the stated basis of Plaintiff’s claims. While Plaintiff’s asserted injuries are based on emissions, the source of the claimed tort liability is not based on the release of emissions, but rather on alleged deception about the effect of those emissions. *See, e.g., id.* ¶¶ 1, 10, 11, 13; Mot. at 25, 26. Accordingly, the alleged fact of emissions, even if taken as true, cannot subject Space Age to liability under Plaintiff’s theory of the case. Anything else would lead to absurd results and subject everyone in the world to liability—including Plaintiff, under this same theory.

Moreover, Space Age’s fully authorized, lawful business operations, without more, cannot be the basis for tort liability. Space Age is duly licensed in Oregon for its sale of fuel products, and operates its business in compliance with applicable Oregon law, including the Multnomah County Code. Pliska Decl. ¶ 6; *see also* Or. Rev. Stat. § 319.010 *et seq.*; Multnomah County, Or., Code § 11.200 *et seq.* Space Age’s business activities, as alleged in the Complaint, are fully authorized by the State of Oregon and carried out pursuant to this authorization. *See* Compl. ¶¶ 158–66. Space Age’s simple act of performing its lawful, authorized business operations cannot—without some additional alleged conduct or action by the company—be the

basis for imposing tort liability on Space Age. After all, “conduct that is fully authorized by statute, ordinance or administrative regulation does not subject the actor to tort liability,” even if “it would be a nuisance at common law.” Restatement (Second) of Torts § 821B cmt. f (Am. L. Inst. 1979); *see also* *McLane v. Northwest Natural Gas Co.*, 255 Or. 324, 336 (1970) (noting that state regulations “usurp[ing] a field of liability” may inform the “duty of care owed by the defendant to others”).

Finally, Space Age’s 2020 lawsuit—the only additional action on the part of Space Age, which is mentioned only in Plaintiff’s motion—also cannot be a basis for liability. This lawsuit was not any kind of climate advocacy as falsely alleged by Plaintiff, but was rather solely a challenge to Governor Brown’s actions on the basis of concerns about the separation of powers, and that her actions could harm businesses like Space Age. Pliska Decl. ¶¶ 14, 15. The sole issue was whether Governor Brown’s executive order exceeded her constitutional powers, and the lawsuit contained no allegations about climate change, its causes, or its effects. *Id.* ¶ 16; Compl., *Space Age Fuel, Inc. v. Brown*, No. 20CV26872 (Or. Cir. Ct.). Space Age did not join in the 2020 lawsuit on the basis of any information about climate change; Space Age did not make any public statements about the causes, science, or effects of climate change as part of this lawsuit; and Space Age did not have any interaction with API, the GCC, the WSPA, or the Heartland Institute in connection with this lawsuit. Pliska Decl. ¶¶ 17-19. Consequently, this lawsuit has nothing to do with any act of deception and cannot support any of Plaintiff’s claims against Space Age.

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IV. CONCLUSION

For the foregoing reasons, as well as those articulated in Defendants' Joint Opposition to Plaintiff's Motion to Remand and Defendants Chevron Corporation's and Chevron U.S.A., Inc.'s Notice of Removal (ECF No. 1), this Court should deny Plaintiff's Motion Remand.

DATED this 16th day of November 2023.

BROWNSTEIN RASK, LLP

By: /s/ Douglas J. Raab
Douglas J. Raab, OSB #934017
draab@brownsteinrask.com
Scott L. Jensen, OSB #862121
sjensen@brownsteinrask.com
1 SW Columbia Street, Suite 900
Portland, OR 97204
Telephone: (503) 221-1772
Fax: (503) 221-1074
Attorneys for Defendant Space Age Fuel, Inc.

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing **DEFENDANT SPACE AGE FUEL, INC.’S RESPONSE IN OPPOSITION TO PLAINTIFF’S MOTION TO REMAND** with the Clerk of the Court using the CM/ECF system which in turn automatically generated a Notice of Electronic Filing to all parties in the case who are registered users of the CM/ECF system.

DATED this 16th day of November 2023.

BROWNSTEIN RASK, LLP

By: /s/ Douglas J. Raab
Douglas J. Raab, OSB #934017
draab@brownsteinrask.com
Scott L. Jensen, OSB #862121
sjensen@brownsteinrask.com
1 SW Columbia Street, Suite 900
Portland, OR 97204
Telephone: (503) 221-1772
Fax: (503) 221-1074
Attorneys for Defendant Space Age Fuel, Inc.