STATE OF MINNESOTA **DISTRICT COURT**

COUNTY OF RAMSEY **SECOND JUDICIAL DISTRICT**

State of Minnesota, by its Attorney General, Keith Ellison,

Plaintiff,

vs.

American Petroleum Institute, Exxon Mobil Corporation, ExxonMobil Oil Corporation, Koch Industries, Inc., Flint Hills Resources LP, and Flint Hills Resources Pine Bend,

Defendants.

Case Type: Other Civil
Court File No. 62-CV-20-3837
Judge: Reynaldo Aligada, Jr.

ORDER

Plaintiff the State of Minnesota ("State") has filed a Complaint against Defendants American Petroleum Institute ("API"), Exxon Mobil Corporation and ExxonMobil Oil Corporation (collectively, "ExxonMobil"), and Koch Industries, Inc., Flint Hills Resources, L.P., and Flint Hills Resources Pine Bend, LLC (collectively, "FHR"), asserting claims that allege violations of Minnesota's consumer protection statutes, failure to warn, and fraud and misrepresentation.

Defendants have filed motions to dismiss for lack of personal jurisdiction, failure to state a claim, and pursuant to Minnesota's anti-SLAPP statute. The Court heard oral argument on November 20, 2024. **IT IS HEREBY ORDERED** that

1. Defendant API's Motion to Dismiss Count I, alleging a violation of the Minnesota Consumer Fraud Act, is **GRANTED**.

2. Defendant ExxonMobil's Motion to Dismiss Count I, alleging a violation of the Minnesota Consumer Fraud Act, is **GRANTED**.
3. Defendant FHR's Motion to Dismiss Count I, alleging a violation of the Minnesota Consumer Fraud Act, is **GRANTED**.
4. Defendants' remaining motions to dismiss are **DENIED**.

The attached Memorandum is incorporated into this Order.

Dated: 2/14/2025

BY THE COURT:

Reynaldo A. Aligada, Jr.
Judge of District Court

MEMORANDUM

I. INTRODUCTION

Defendants have moved to dismiss all claims in State's Complaint, asserting several grounds for dismissal. For the reasons that follow, the Court grants each defendant's motion to dismiss Count I, which alleges a violation of the Minnesota Consumer Fraud Act. In all other respects, the Court denies Defendants' motions to dismiss.

II. PROCEDURAL HISTORY

A. Background

The State of Minnesota commenced this action on June 24, 2020, alleging that Defendants engaged in a deceptive campaign designed to mislead Minnesota consumers and the general public about "scientists' certainty regarding climate change, the role of fossil fuels in creating the problem, the potential consequences of climate change, and the urgency of the need to take action . . . because they understood that an accurate understanding of climate change would affect their ability to continue to earn profits[.]" Compl. ¶ 92.

B. Parties

1. Plaintiff State of Minnesota

The Plaintiff is the State of Minnesota ("the State"), who brings this action through its Attorney General, Keith Ellison, pursuant to his authority in Minnesota Statutes Chapter 8 to sue for injunctive relief, equitable relief, civil penalties, and damages, as well as costs and disbursements, including costs of investigation and reasonable attorney fees, for alleged violations of Minnesota law respecting unfair, discriminatory, and other unlawful practices in business, commerce, or trade. Compl. ¶ 12. The Attorney General also has common law authority, including *parens patriae* authority, to bring an action to enforce Minnesota's laws, to

vindicate the State's sovereign and quasi-sovereign interests, and to remediate all harm arising out of—and provide full relief for—alleged violations of Minnesota's laws. *Id.*

2. Defendant American Petroleum Institute

Defendant American Petroleum Institute ("API") is a nonprofit corporation registered to do business in Minnesota. *Id.* ¶ 13. The American Petroleum Institute was created in 1919 to represent the American petroleum industry as a whole. *Id.* With more than 600 members, API is the country's largest oil trade association. *Id.* API's "stated mission includes 'influenc[ing] public policy in support of a strong, viable U.S. oil and natural gas industry[.]'" *Id.* ¶ 16 (quoting American Petroleum Institute, About API, https://www.api.org/about).

According to the complaint, API "speak[s] for the oil and gas industry to the public, Congress and the Executive Branch, state governments and the media." *Id.* ¶ 13 (quoting American Petroleum Institute, About API, https://www.api.org/about). API "negotiate[s] with regulatory agencies, represent[s] the industry in legal proceedings, participate[s] in coalitions and work[s] in partnership with other associations to achieve [its] members' public policy goals." *Id.* The State alleges that "API's purpose is to advance the individual members' collective business interests, which includes increasing consumers' consumption of oil and gas to Defendants' financial benefit" and that "API coordinates among members of the petroleum industry and gathers information of interest to the industry and disseminates that information to its members." *Id.*

3. Defendant Exxon Entities – Exxon Mobil Corporation and ExxonMobil Oil Corporation

Defendant Exxon Mobil Corporation is a multinational, vertically integrated energy and chemicals company incorporated in the State of New Jersey with a principal place of business in Irving, Texas. Compl. ¶ 17. Exxon Mobil Corporation is the ultimate parent company for

numerous subsidiaries. *Id.* ¶ 18. Exxon Mobil Corporation is the corporation formed on November 30, 1999 by the merger of Exxon (formerly the Standard Oil Company of New Jersey) and Mobil (formerly the Standard Oil Company of New York). *Id.* Exxon Mobil Corporation was formerly known as, did or does business as, and/or is the successor in liability to ExxonMobil Refining and Supply Company, Exxon Chemical U.S.A., ExxonMobil Chemical Corporation, ExxonMobil Chemical U.S.A., ExxonMobil Refining & Supply Corporation, Exxon Company, U.S.A., Exxon Corporation, and Mobil Corporation. *Id.*

Defendant ExxonMobil Oil Corporation is a wholly owned subsidiary of Exxon Mobil Corporation, acts on Exxon Mobil Corporation's behalf, and is subject to Exxon Mobil Corporation's control. *Id.* ¶ 19. ExxonMobil Oil Corporation is incorporated in the state of New York with its principal place of business in Irving, Texas. *Id.* ExxonMobil Oil Corporation was formerly known as, did or does business as, and/or is the successor in liability to Mobil Oil Corporation. *Id.*

Exxon Mobil Corporation and ExxonMobil Oil Corporation are registered to do business in Minnesota as foreign business corporations and maintain a registered agent for service of process in Minnesota. *Id.* ¶ 23. ExxonMobil Oil Corporation is a licensed distributor of petroleum products in Minnesota. *Id.* As used in this order, "Exxon" or "ExxonMobil" collectively refers to Defendants Exxon Mobil Corporation and ExxonMobil Oil Corporation and their predecessors, successors, parents, subsidiaries, affiliates, and divisions.

4. Defendant Koch Entities – Koch Industries, Inc., Flint Hills Resources LP, and Flint Hills Resources Pine Bend, LLC

Defendant Koch Industries, Inc. is an American multinational corporation based in Wichita, Kansas. *Compl.* ¶ 28. Koch is the ultimate parent company for numerous subsidiaries involved in the manufacturing, refining, and distribution of petroleum products. *Id.* ¶ 29. Koch,

along with many of its subsidiaries and affiliates, is registered to do business in Minnesota. *Id.* ¶ 31. Defendants Flint Hills Resources LP and Flint Hills Resources Pine Bend, LLC (both subsidiaries of Koch) are licensed distributors of petroleum products in Minnesota. *Id.* Koch subsidiaries (Koch Pipe Lines and Minnesota Pipe Line Company LLC) import crude oil from Canada to a terminal in Clearbrook, Minnesota, which is owned and operated by Koch. *Id.* ¶ 32. From there, the oil is piped to the Flint Hills Resources Pine Bend Refinery via other Koch-Industries-owned pipelines. *Id.* Koch's Flint Hills Resources' Pine Bend Refinery is located in Minnesota. *Id.* ¶ 33. As used in this order, "FHR" collectively refers to Defendants Koch Industries, Inc., Flint Hills Resources, LP, and Flint Hills Resources Pine Bend, LLC, as well as their predecessors, successors, parents, subsidiaries, affiliates, and divisions.

C. Facts Alleged in Complaint

For the purpose of determining the motions to dismiss for failure to state a claim under Minnesota Rules of Civil Procedure Rule 12.02, the Court must "consider only the facts alleged in the complaint," "accept those facts as true[,] and construe all reasonable inferences in favor of" the plaintiff as the nonmoving party. *Hardin Cnty. Sav. Bank v. Hous. & Redevelopment Auth. of City of Brainerd*, 821 N.W.2d 184, 191 (Minn. 2012).

1. Causes of Action and Relief Sought

Through its Complaint, the State of Minnesota initiated five causes of action against the Defendants for violations of Minnesota common law and consumer protection statutes:

Count I: Prevention of Consumer Fraud Act Violation (against all Defendants)

Count II: Failure to Warn – Strict and Negligent Liability (against all Defendants except API)

Count III: Fraud and Misrepresentation (against all Defendants)

Count IV: Deceptive Trade Practices (against all Defendants)

Count V: Violation of False Statement in Advertising Act (against all Defendants) Compl. ¶¶ 184–248.

The State alleges that Defendants knew the dangers of burning fossil fuels and their harmful impact on climate change, and despite that knowledge, engaged in a campaign of deception to mislead Minnesota consumers and the general public by downplaying the scientific consensus linking fossil fuels with the harmful consequences of climate change. Compl. ¶¶ 2–8. The State of Minnesota seeks injunctive relief, equitable relief, civil penalties, and damages, together with costs and disbursements including costs of investigation and reasonable attorney fees. *Id.* ¶ 12.

The State of Minnesota requests that this Court award judgment against Defendants as follows: Determine that Defendants' acts constitute common law fraud, strict and negligent failure to warn, and multiple separate violations of Minnesota Statutes sections 325D.44, 325F.67, and 325F.69, and enjoin Defendants from engaging in conduct that violates these statutes; order Defendants to disclose, disseminate, and publish all research previously conducted directly or indirectly by themselves or their respective agents, affiliates, servants, officers, directors, employees, and all persons acting in concert with them that relates to the issue of climate change; order Defendants to fund a corrective public education campaign in Minnesota relating to the issue of climate change, administered and controlled by an independent third party; award judgment against Defendants for maximum civil penalties pursuant to Minnesota Statutes section 8.31, subdivision 3 for each separate violation of Minnesota law, and award judgment against Defendants for restitution pursuant to Minnesota Statutes section 8.31, Minnesota common law, the *parens patriae* doctrine, and the general equitable powers of the Court; order ExxonMobil and Koch to disgorge all profits made as a result of unlawful conduct;

award Minnesota the costs of investigation and this action, attorneys' fees, expert consultant and expert witness fees, and all other costs and disbursements as authorized by Minnesota Statute section 8.31, subd. 3a. Minnesota also requests the Defendants be held jointly and severally liable based on conspiratorial conduct and resulting harm suffered by the State. Compl. ¶¶ 243–50.

2. Fossil Fuels and Climate Change

The Complaint alleges that as early as the 1950s, scientists began to understand that the burning of fossil fuels releases greenhouse gases, driving up the atmospheric concentration. Compl. ¶ 55. Scientists also began making the connection between the growing concentration of greenhouse gases in the atmosphere, in particular CO_2, and a changing climate. *Id.* ¶ 56. The State alleges that Defendants were privy to these scientific findings and were involved in research, including how fossil fuel products impacted the environment and contributed to global warming. *Id.* ¶¶ 60–65. The State alleges that by 1965, Defendants and their predecessors-in-interest were aware that continued widespread use of their fossil fuel products would cause global warming by the end of the century and would have wide-ranging and costly consequences. *Id.* ¶ 60. Throughout the 1970s, industry scientists and executives were discussing the increasingly clear link between fossil fuel combustion and climate change, and the need to act quickly to mitigate impacts. *Id.* ¶¶ 65–69. The Complaint alleges that during that same period, Defendants were also considering strategies for their business models in light of research showing that fossil fuels were linked to the threat of climate change. *Id.*¶¶ 68–69. In 1979, API and its members, including Defendants, convened a Task Force to monitor and share climate research among the oil industry, and to evaluate the scientific research's implications for the industry. *Id.* ¶¶ 70, 79. The State alleges that by the 1980s, a consensus developed among scientists and within the fossil fuel industry that the burning of fossil fuels was contributing to

the growing and dangerous concentrations of atmospheric CO_2, and would lead to significant and potentially catastrophic changes to the earth's climate. *Id.* ¶¶ 73–75.

3. Defendants' Alleged Misinformation Campaign

The State alleges that, as public awareness and understanding of the connection between fossil fuel combustion and climate change, "Defendants worked to undermine the public's perception of the growing scientific consensus around climate change" by engaging in a "purposeful, coordinated public-relations campaign to magnify and exaggerate the scientific uncertainly surrounding climate science, [and] to dissuade mitigation efforts." Compl. ¶ 82–83. The complaint alleges:

> Despite their superior understanding of climate change science, the potentially catastrophic impacts of climate change, and the need to act swiftly, Defendants did not disseminate this information to the public or consumers. Instead, they engaged in a conspiracy to misrepresent the scientific understanding of climate change, the role of Defendants' products in causing climate change, the potential harmful consequences of climate change, and the urgency of action required to mitigate climate change. This conspiracy was intended to, and did, target and influence the public and consumers, including in Minnesota.

Compl. ¶ 84. The State alleges that "Defendants have spent millions of dollars on advertising and public relations campaigns, including in Minnesota," to mislead the public about the scientific consensus linking the use of Defendants' fossil fuel products with climate change, the potential harms, and the urgency required to address the problem. *Id.* ¶ 92. The State further alleges that Defendants' misleading statements, including information on Defendants' websites, were part of a conspiracy to defraud consumers and the general public in Minnesota and elsewhere, with the intention that consumers would rely on their statements in their decision-making about the purchase and use of Defendants' fossil fuel products. *Id.* ¶¶ 93–95.

D. Removal and Remand

The State of Minnesota filed the instant complaint in Ramsey County District Court on June 24, 2020. On July 27, 2020, Defendants filed a notice of removal to the United States District Court for the District of Minnesota pursuant to 28 U.S.C. §§ 1331, 1332(a), 1332(d), 1441(a), 1442(a), and 1453(b), and 43 U.S.C. § 1349(b)(1). Notice of Removal, July 27, 2020, Docket No. 1. Plaintiff filed a motion to remand to state court and the federal district court granted the motion. Mot. Remand, Aug. 26, 2020, Docket No. 32; Mem. Op. and Order, March 31, 2021, Docket No. 76. The Defendants jointly appealed the remand order to the U.S. Court of Appeals for the Eighth Circuit, and the federal district court granted Defendants' joint emergency motion to stay the execution of the remand order pending the appeal. Notice of Appeal to 8th Circuit, April 1, 2021, Docket No. 81; Mem. Op. and Order, August 20, 2021, Docket No. 116. The Court of Appeals affirmed the federal district court's order to remand the case to state court. *Minnesota by Ellison v. Am. Petroleum Inst*., 63 F.4th 703, 717 (8th Cir. 2023), *cert. denied sub nom. Am. Petroleum Inst. v. Minnesota*, 144 S. Ct. 620 (Jan. 8, 2024). The Defendants jointly petitioned for a writ of certiorari to the U.S. Supreme Court, which was denied on January 9, 2024. *Id*. The federal district court issued an Order Lifting Stay and Remanding Case back to Ramsey County District Court on January 24, 2024. Docket No. 137. This case was assigned to the undersigned judge on March 6, 2024. The Defendants brought the instant motions, which were argued before the Court on November 20, 2024.

III. LEGAL STANDARD

Under Minn. R. Civ. P. 12.02(e), a defendant may move to dismiss a complaint for "failure to state a claim upon which relief can be granted." Minnesota's notice-pleading standard allows "short and general statements of fact and does not ask for detailed factual allegations." Demskie v. U.S. Bank Nat'l Ass'n, 7 N.W.3d 382, 387 (Minn. 2024) (quotation omitted). "A

claim survives a Rule 12.02(e) motion to dismiss if it is possible on any evidence which might be produced, consistent with the pleader's theory, to grant the relief demanded." Sterry v. Minn. Dep't of Corr., 8 N.W.3d 224, 235 (Minn. 2024) (quotation omitted). A complaint "will be dismissed only if it appears to a certainty that no facts, which could be introduced consistent with the pleading, exist which would support granting the relief demanded." *DeRosa v. McKenzie*, 936 N.W.2d 342, 346 (Minn. 2019) (quotation omitted). The Court must "look only to the facts alleged in the complaint, accepting those facts as true." *Hansen v. U.S. Bank Nat'l Ass'n*, 934 N.W.2d 319, 325 (Minn. 2019) (citation omitted). In doing so, a court must "construe all reasonable inferences from the facts in favor of the plaintiff." *Id.* (citation omitted).

IV. LEGAL ANALYSIS

A. API's motion to dismiss for lack of personal jurisdiction

API argues that Minnesota lacks personal jurisdiction over it because it is a nonresident trade association that does not sell fossil fuel products in Minnesota. Personal jurisdiction is a court's ability to exercise control of the parties in a case. *Gopher Mats, LLC v. Kalesnikoff Lumber Co., Ltd*., --- N.W.3d ----, No. A24-1122, 2025 WL 77752, at *4 (Minn. Ct. App. Jan. 13, 2025) (citing *Leroy v. Great W. United Corp*., 443 U.S. 173, 180 (1979)). There are two types of personal jurisdiction: general personal jurisdiction and specific personal jurisdiction. *Gopher Mats,* 2025 WL 77752, at *4 (citing *Domtar, Inc. v. Niagara Fire Ins. Co*., 533 N.W.2d 25, 30 (Minn. 1995)). "General personal jurisdiction relates to contacts unrelated to the litigation including domicile or continuous and systemic contacts with the forum state." *Husky Constr., Inc. v. Gestion G. Thibault, Inc.*, 983 N.W.2d 101, 107 (Minn. Ct. App. 2022) (quotation omitted), *rev. denied* (Minn. Mar. 14, 2023). Specific personal jurisdiction focuses on "the relationship among the defendant, the forum, and the litigation, and the defendant's suit-related conduct must create a substantial connection with the forum state such that the litigation results

from alleged harms that arise out of or relate to the defendant's contacts with the forum." *Rilley v. MoneyMutual, LLC*, 884 N.W.2d 321, 327 (Minn. 2016) (quotations and citation omitted). A district court may exercise jurisdiction over a defendant if either general personal jurisdiction or specific personal jurisdiction is satisfied. *See Domtar, Inc*., 533 N.W.2d at 30.

"Once jurisdiction has been challenged by the defendant, the burden is on the plaintiff to prove that sufficient contacts exist with the forum state." *Juelich v. Yamazaki Mazak Optonics Corp*., 682 N.W.2d 565, 569–70 (Minn. 2004) (citation omitted). "At the pretrial stage, however, the plaintiff's allegations and supporting evidence are to be taken as true." *Id*. (citation omitted). When deciding a motion to dismiss for lack of personal jurisdiction, a court must "view the facts in the light most favorable to the plaintiff[.]" *State by Ellison v. HavenBrook Homes, LLC*, 996 N.W.2d 12, 22 (Minn. Ct. App. 2023), *rev. denied* (Jan. 16, 2024) (citing *Fastpath, Inc. v. Arbela Techs. Corp*., 760 F.3d 816, 820 (8th Cir. 2014)). In a close case, all doubts should be resolved in favor of retaining jurisdiction. *Bandemer v. Ford Motor Co*., 931 N.W.2d 744, 749 (Minn. 2019), *aff'd sub nom. Ford Motor Co. v. Montana Eighth Jud. Dist. Ct*., 592 U.S. 351 (2021) (citing *Hardrives, Inc. v. City of LaCrosse*, 307 Minn. 290, 240 N.W.2d 814, 818 (1976)).

1. General jurisdiction

API argues that it is not subject to general jurisdiction in Minnesota because the State does not allege that API has headquarters, incorporation, or any substantial presence in Minnesota. API also argues that its registration to do business in Minnesota does not trigger general personal jurisdiction. The State responds that because API is registered in Minnesota, it has consented to general jurisdiction in Minnesota. Compl. ¶ 13.

"No foreign corporation shall transact business in this state unless it holds a certificate of authority so to do." Minn. Stat. § 303.03. A foreign corporation is required to "have a registered office and . . . a registered agent." Minn. Stat. § 303.10. A foreign corporation must set forth that

it "irrevocably consents to the service of process," Minn. Stat § 303.06(4), and "shall be subject to service of process . . . by service on its registered agent . . . ," Minn. Stat. § 303.13. Once a foreign corporation has satisfied application requirements, the Minnesota Secretary of State will issue a certificate of authority to transact business in Minnesota. Minn. Stat. § 303.08. With a certificate of authority, "the corporation shall possess . . . the same rights and privileges that a domestic corporation would possess if organized for the purposes set forth in the articles of incorporation of such foreign corporation pursuant to which its certificate of authority is issued, and shall be subject to the laws of this state." Minn. Stat. § 303.09.

The Minnesota Supreme Court has held that business entities that register and have an agent for service of process in Minnesota have consented to general jurisdiction in this state. *Rykoff-Sexton, Inc. v. Am. Appraisal Assocs., Inc*., 469 N.W.2d 88, 90–91 (Minn. 1991) ("For our part, we find no constitutional defect in the assertion of jurisdiction based on consent to service of process.") However, API argues that *Mallory v. Norfolk Southern Railway* Co., 600 U.S. 122 (2023), requires that any consent requirement in a business registration statute must be explicit, and Minnesota's statute is not sufficient to establish general jurisdiction.

The State argues that after *Mallory*, *Rykoff-Sexton* is still valid, so out-of-state corporations that register to do business in Minnesota are subject to general personal jurisdiction in Minnesota. The State argues that *Mallory* did not require explicit consent, but in any event, *Rykoff-Sexton* shows that Minnesota's registration statute is clear enough to establish consent. The State argues that Minnesota's registration statute closely resembles the Pennsylvania statute at issue in *Mallory* because both statutes require registration to do business in the state, and maintenance of a registered agent for the service of process, and both confer "the same rights and

privileges" on out-of-state corporations as domestic corporations. The Court agrees with the State.

In *Mallory*, the Supreme Court held that "[o]ur precedents have recognized, too, that 'express or implied consent' can continue to ground personal jurisdiction—and consent may be manifested in various ways by word or deed." *Mallory*, 600 U.S. at 138 (citations omitted). While the *Mallory* Court described a feature of the Pennsylvania registration statute as "explicit," nothing in the decision's language suggests that it overruled its prior precedent allowing for implied consent. It is true that Minnesota's business registration statute does not contain language identical to Pennsylvania's statute, which provides explicit notice that registration enables general personal jurisdiction. *See* 15 Pa. Const. Stat. §§ 402(d), 411. But the language of Minnesota's statute provides for implicit consent: it requires a business to "irrevocably consent[] to the service of process[.]," Minn. Stat § 303.06(4). Further, since *Mallory* was decided, no Minnesota appellate court addressing personal jurisdiction has ruled that *Rykoff-Sexton* is no longer good law. Finally, decisions in similar litigation across the country have ruled that defendants consented to jurisdiction by registering their businesses in forum state, which the Court finds persuasive. *State v. Exxon Mobil Corp*., No. HHDCV206132568S, 2024 WL 3580377, at *9 (Conn. Super. Ct. July 23, 2024) ("by obtaining a certificate of authority and appointing a registered agent for service of process the defendant voluntarily consented to jurisdiction in Connecticut").

API also argues that conditioning a nonresident's right to do business on consent to general jurisdiction violates the dormant Commerce Clause. The State argues that API's dormant Commerce Clause argument fails because that issue was not before the Supreme Court in *Mallory*. The State argues that Minnesota's registration statute puts domestic and foreign

corporations on equal footing. The Court agrees with the State that API's argument is based on Justice Alito's concurrence, which does not represent the opinion of the Court. Further, the Court agrees that there can be no dormant Commerce Clause violation because the express language of the business registration statute provides that "the corporation shall possess . . . the same rights and privileges that a domestic corporation would possess[.]" Minn. Stat. § 303.09.

2. Specific jurisdiction

API argues that the State cannot establish specific jurisdiction because its claims do not arise out of activities that API purposely directed at Minnesota. "Minnesota's long-arm statute prevents personal jurisdiction over a nonresident defendant if it would 'violate fairness and substantial justice.'" *Bandemer v. Ford Motor Co*., 931 N.W.2d 744, 749 (Minn. 2019), *aff'd sub nom. Ford Motor Co. v. Montana Eighth Jud. Dist. Ct*., 592 U.S. 351 (2021) (quoting Minn. Stat. § 543.19, subd. 1 (4)(ii) (2018)). The long-arm statute "extend[s] the personal jurisdiction of Minnesota courts as far as the Due Process Clause of the federal constitution allows." *Valspar Corp. v. Lukken Color Corp*., 495 N.W.2d 408, 410 (Minn. 1992).

A state may not exercise personal jurisdiction over a nonresident defendant unless the defendant has "minimum contacts" with the state, and maintenance of the action "does not offend traditional notions of fair play and substantial justice." *Int'l Shoe Co. v. Wash., Off. of Unemployment Comp. & Placement*, 326 U.S. 310, 316 (1945) (quotation omitted). "A nonresident defendant has the requisite 'minimum contacts' with Minnesota if it 'purposefully availed' itself of the privilege of conducting business in Minnesota such that it 'should reasonably anticipate being haled into court there.'" *Gopher Mats,* 2025 WL 77752, at *4 (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474–75 (1985)).

To support specific personal jurisdiction over the defendant, the necessary minimum contacts "must focus on the relationship among the defendant, the forum, and the litigation, and

the defendant's suit-related conduct must create a substantial connection with the forum state . . . such that the litigation results from alleged harms that arise out of or relate to the defendant's contacts with the forum." *Rilley v. MoneyMutual*, LLC, 884 N.W.2d 321, 327 (Minn. 2016) (internal quotations and citations omitted). A court must "look to the defendant's contacts with the forum State itself and not [a nonresident] defendant's random, fortuitous, or attenuated contacts with persons affiliated with the State or persons who reside there." *Bandemer*, 931 N.W.2d at 750 (quotations omitted).

If minimum contacts are established, a court must consider the "reasonableness" of personal jurisdiction according to traditional notions of "fair play and substantial justice," weighing factors such as the convenience of the parties and the interests of the forum state. *Rilley v. MoneyMutual, LLC*, 884 N.W.2d 321, 328 (Minn. 2016) (citing *Burger King*, 471 U.S. at 476–77). A court analyzes five factors in evaluating whether the exercise of specific personal jurisdiction is consistent with the constitutional due-process guarantee: "(1) the quantity of contacts with the forum state; (2) the nature and quality of those contacts; (3) the connection of the cause of action with these contacts; (4) the interest of the state in providing a forum; and (5) the convenience of the parties." *Gopher Mats*, 2025 WL 77752, at *4 (quotation omitted). The first three factors relate to whether a nonresident defendant has sufficient "minimum contacts" with Minnesota, and the last two factors establish the reasonableness of jurisdiction under the concepts of "fair play and substantial justice." *Id*. (quoting *Juelich*, 682 N.W.2d at 570). "The first three factors are the primary factors, with the last two deserving lesser consideration." *Dent-Air, Inc. v. Beech Mountain Air Serv., Inc*., 332 N.W.2d 904, 907 (Minn. 1983).

API argues that the 1996 report concerning carbon dioxide buildup (Compl. ¶ 90 & n.64) and the 1997 Washington Post op-ed (Compl. ¶ 106) were in nationally distributed publications

and were not alleged to have been written in or for Minnesota in particular. The activities alleged in the Complaint, according to API, are purely national and did not target Minnesota specifically, therefore, there is no personal jurisdiction in Minnesota. API argues that the alleged injuries caused by global climate change do not arise out of or relate to any business transacted in Minnesota. Additionally, API asserts that it does not extract, transport, refine, or sell fossil fuels, in Minnesota or elsewhere, so it was not on notice of potential claims in Minnesota.

The State points to allegations in the Complaint that API disseminated misleading messaging regarding climate change in Minnesota to target Minnesota consumers. Compl. ¶¶ 13, 16. In the Complaint, the State alleges that API advertised in Minnesota. Compl. ¶ 16. Therefore, the State argues this is a relevant forum contact, giving rise to the State's claims and creating a direct connection between its claims and API's in-state activities. Even though the Complaint alleges that API engaged in deceptive conduct in other states, the State argues that API targeted Minnesota consumers with deceptive advertising and public relations campaigns to assist the other Defendants in selling products.

The Court concludes that API has purposely availed itself of the privilege of conducting business in Minnesota. It is not disputed that API registered to do business in Minnesota. The Complaint, which the Court must treat as true, alleges that API "disseminated misleading messaging regarding climate change to further their shared goal of influencing consumer demand, including in Minnesota[.]" Compl. ¶ 16. Further, the Complaint alleges that advertising and communications campaigns were directed at Minnesota and targeted Minnesota consumers. *Id*. If treated as true, the Complaint alleges fraud arising out of API's statements directed at Minnesota, and not random, fortuitous, or attenuated contacts with Minnesota residents. *Bandemer*, 931 N.W.2d at 750. That alleged dissemination, advertising, and communication also

demonstrates a substantial connection between the conduct—alleged fraud—and Minnesota, as the Complaint alleges a direct connection between the two. The Court's conclusion is also consistent with an analysis of the three "minimum contacts" factors.

Quantity of contacts with the forum state

As to quantity of contacts, "[n]o threshold number of contacts is necessary to exercise personal jurisdiction over an out-of-state party[.]" *Gopher Mats*, 2025 WL 77752. The Complaint alleges a decades-long campaign to direct messages to Minnesota and deceive consumers. The Court concludes the quantity of contacts favors the exercise of jurisdiction.

Nature and quality of those contacts

Courts analyzing this factor are concerned with whether a party had fair warning of being sued in the forum state. Purposefully directing activities to the residents of a forum and causing injuries to arise from those alleged activities is considered fair warning. *Real Props., Inc. v. Mission Ins. Co*., 427 N.W.2d 665, 668 (Minn. 1988). As discussed above, the Complaint alleges API directed advertisements and communications to Minnesota, and that the alleged injuries arose from those activities. Accepting the facts alleged in the Complaint as true, this factor weighs in favor of personal jurisdiction.

Connection of the cause of action with these contacts

As discussed above, the alleged contacts with this forum—communications and advertisements targeted at Minnesota—are the basis for each of the causes of action against API. The Court concludes that the connection of the causes of action to API's minimum contact with Minnesota supports the exercise of specific personal jurisdiction. Construing the record in the light most favorable to the State, the first three factors in the personal jurisdiction analysis favor

the exercise of specific personal jurisdiction over API because it has sufficient minimum contacts with Minnesota.

Interest of the state in providing a forum

The Complaint alleges that API engaged in fraud and that Minnesota residents were harmed. Case law has long recognized that Minnesota has an interest in providing a forum for its residents when an injury has been alleged. *See Dent-Air*, 332 N.W.2d at 908 ("Minnesota does have an interest in providing a forum for its residents who have allegedly been wronged"); *C.H. Robinson Worldwide, Inc. v. FLS Transp., Inc.*, 772 N.W.2d 528, 538 (Minn. Ct. App. 2009) ("[T]his case involves an alleged injury to a Minnesota resident, and both respondent and Minnesota therefore have an interest in resolving the dispute here."). This factor favors jurisdiction.

Convenience of the parties

No party addressed this factor in its briefing, so there is little information about the possibility of inconvenience related to litigation for API. There is a strong presumption in favor of the plaintiff's choice of forum. *Bergquist v. Medtronic, Inc*., 379 N.W.2d 508, 511 (Minn. 1986). The Court concludes this factor is neutral. To summarize, after considering the five personal jurisdiction factors, the Court concludes that the exercise of specific personal jurisdiction over API is consistent with the notion of fair play and substantial justice. The Court therefore denies API's Motion to Dismiss for lack of personal jurisdiction.

B. ExxonMobil's motion to dismiss for lack of personal jurisdiction

1. General jurisdiction

Similar to API's argument, ExxonMobil argues that the Court does not have general jurisdiction because the ExxonMobil defendants are New Jersey and New York corporations, respectively, each with their principal place of business in Texas. Compl. ¶¶ 17, 19. ExxonMobil

argues that the Complaint does not allege that either company has the kind of continuous and systematic contacts with Minnesota that would render them "at home" in Minnesota. Like API, ExxonMobil argues that *Rykoff-Sexton*'s holding is not consistent with the holding in *Mallory*. ExxonMobil argues that Minnesota's business registration statute discriminates against out-of-state companies because it does not place a reciprocal burden on Minnesota companies that operate in other states and it violates the Commerce Clause. ExxonMobil also argues that Minnesota's registration-based jurisdiction law does not comply with the Commerce Clause.

Similar to API, the State argues that ExxonMobil consented to general personal jurisdiction by registering to do business in Minnesota. As with API, the Court concludes that ExxonMobil has consented to general jurisdiction by registering in Minnesota. Minnesota's business registration statute is similar to Pennsylvania's and operates in a manner so that any registering business provides implicit consent to general jurisdiction by irrevocably consenting to service of process in Minnesota. Further, the Court concludes that the holding in *Rykoff-Sexton* is consistent with that of *Mallory* and remains good law. ExxonMobil has consented to general jurisdiction in Minnesota, and therefore, this Court may exercise personal jurisdiction over it.

2. Specific jurisdiction

ExxonMobil argues that Minnesota's long-arm statute does not provide a basis for specific personal jurisdiction because the State's claims do not "arise out of or relate to" activities that ExxonMobil purposefully directed at Minnesota. ExxonMobil argues that none of the challenged statements attributed to ExxonMobil were made in or otherwise targeted Minnesota, so they cannot provide a basis for specific personal jurisdiction. As alleged, those statements were made in internal ExxonMobil publications, nationally distributed newspapers, speeches delivered in Texas and China, or on ExxonMobil's globally accessible website. Compl. ¶¶ 89, 90. As to statements in newspapers or on its website, ExxonMobil argues, citing *Rilley*,

that national advertising cannot support personal jurisdiction unless it specifically targeted Minnesota.

ExxonMobil argues that even though the Complaint alleges various ways that ExxonMobil fossil fuel products are distributed in the State, those allegations do not support specific personal jurisdiction in this case because the State's claims do not "arise out of or relate to" any of those contacts. ExxonMobil argues that the injuries claimed by the State were caused by the effects of *global* climate change, and that some ExxonMobil products are never combusted, therefore they cannot be the cause of the State's alleged injuries. Because there is no plausible link between the State's alleged injuries and the sale and use of ExxonMobil's products in Minnesota, ExxonMobil asserts that there is no strong relationship among the defendant, the forum, and the litigation sufficient to establish jurisdiction.

The State argues that ExxonMobil is subject to specific jurisdiction under Minnesota's long-arm statute, and that every court that has considered its objections to personal jurisdiction in a climate deception case has rejected them. The State points to allegations in the Complaint that ExxonMobil "conducts and controls . . . fossil-fuel sales at over 80 gas station locations throughout Minnesota," where it "promotes, markets, and advertises its fossil-fuel products under its Exxon and/or Mobil brand names[,]" Compl. ¶ 27, and that ExxonMobil has "directed its fossil-fuel product advertising, marketing, and promotional campaigns to Minnesotans[,]" *Id*. In addition, the State points to alleged point-of-sale advertising, which it asserts is a relevant forum contact and is conduct that gives rise to the State's claims. The State argues that ExxonMobil's argument that the State cannot identify which specific emissions molecules caused injury fails pursuant to the Supreme Court's decision in *Ford*. The Court now analyzes

the five factors to evaluate whether the exercise of specific personal jurisdiction is consistent with the constitutional due-process guarantee.

Quantity of contacts with the forum state

According to the Complaint, ExxonMobil has had a large quantity of contacts with Minnesota. Compl. ¶¶ 23 & n.9, 26–27. That includes the distribution and marketing of fossil fuel products in Minnesota and conducting and controlling retail fossil fuel sales at gas stations throughout Minnesota. This factor weighs in favor of the Court exercising jurisdiction.

Nature and quality of those contacts

The Court concludes that ExxonMobil had "fair warning" of being sued in Minnesota given the nature and quality of its contacts. Fair warning is given by purposeful direction of activities to the residents of a forum. *Real Props.*, 427 N.W.2d at 668. The Court concludes that the allegations referenced above—continuously distributing, selling, marketing fossil fuels—are significant enough contacts with the State of Minnesota, considering their nature and quality, to give ExxonMobil fair warning that it may be sued in Minnesota. This factor weighs in favor of exercising jurisdiction.

Connection of the cause of action with these contacts

The State argues in the Complaint that some of ExxonMobil's contacts with Minnesota are connected to the conduct at issue in the State's claims. The Court agrees. ExxonMobil's point-of-sale advertising within Minnesota, *see* Compl. ¶ 27, gives rise to the statutory consumer fraud claims. The Court is not persuaded by ExxonMobil's argument that the State cannot identify which molecules of emissions caused its injuries, because it amounts to a causation argument that has been rejected by the United States Supreme Court. *See Ford*, 592 U.S. at 362

("[W]e have never framed the specific jurisdiction inquiry as always requiring proof of causation . . . .") This factor weighs in favor of exercising jurisdiction.

Interest of the state in providing a forum

As discussed above, considering the counts alleged in the Complaint, Minnesota has an interest in providing a forum for its residents when an injury has been alleged. This factor favors jurisdiction.

Convenience of the parties

No party addressed this factor in its briefing, so there is little information about the possibility of inconvenience related to litigation for ExxonMobil. However, based on the allegations in the Complaint, the Court concludes that ExxonMobil "is a large company who can manage the inconvenience of litigating elsewhere[.]" *Gopher Mats*, 2025 WL 77752, at *9; see also Compl. ¶ 17. This factor weighs in favor of the Court exercising jurisdiction.

After considering the five personal jurisdiction factors, the Court concludes that the exercise of specific personal jurisdiction over ExxonMobil is consistent with the notion of fair play and substantial justice. The Court therefore denies ExxonMobil's Motion to Dismiss for lack of personal jurisdiction.

C. Defendants' motions to dismiss

1. The State's claims are not preempted.

At the outset, the Court notes that the parties make preliminary arguments to frame the legal issues in the Complaint. Defendants argue that the State is seeking to recover for harms caused by interstate emissions. The State responds that the Complaint does not request relief that would restrict emissions or limit the production and sale of fossil fuels.

The Court is persuaded by the State's arguments on framing the litigation. As the State argues, all of its claims allege deception or failure to warn. Because the source of the State's

alleged injuries are claims that do not seek to restrict emissions or limit the sale of fossil fuels, the Court concludes that the State is not seeking to recover for harms caused by interstate emissions. *See City & Cnty. of Honolulu v. Sunoco LP*, 153 Haw. 326, 354, 537 P.3d 1173, 1201 (2023), *cert. denied sub nom. Shell PLC v. Honolulu*, No. 23-952, 2025 WL 76704 (U.S. Jan. 13, 2025), and *cert. denied sub nom. Sunoco LP v. Honolulu*, No. 23-947, 2025 WL 76706 (U.S. Jan. 13, 2025) ("The source of Plaintiffs' alleged injury is Defendants' alleged failure to warn and deceptive promotion.").

At the motion to dismiss stage, the Court must draw inferences in favor of the State, including those that relate to its theory of liability. *Walsh v. U.S. Bank*, N.A., 851 N.W.2d 598, 603 (Minn. 2014) ("A claim is sufficient against a motion to dismiss for failure to state a claim if it is possible on any evidence which might be produced, consistent with the pleader's theory, to grant the relief demanded."); *see also, e.g., Honolulu*, 537 P.3d at 1201 ("Simply put, the source of Plaintiffs' alleged injury is Defendants' allegedly tortious marketing conduct, not pollution traveling from one state to another."); *see also Minnesota v. Am. Petroleum Inst*., No. CV 20-1636 (JRT/HB), 2021 WL 1215656, at *13 (D. Minn. Mar. 31, 2021), *aff'd sub nom. Minnesota by Ellison v. Am. Petroleum Inst*., 63 F.4th 703 (8th Cir. 2023) ("States have both the clear authority and primary competence to adjudicate alleged violations of state common law and consumer protection statutes, and a complex injury does not a federal action make.")

All Defendants argue that each of the State's claims are preempted by federal law. First, they argue that because the State's claims are dependent on interstate emissions, federal common law preempts the State's claims. Next, they argue that the Clean Air Act preempts the State's claims because the State is attempting to use state law to regulate greenhouse emissions. The Court finds both arguments unpersuasive.

a) Federal common law has been displaced.

Defendants argue that federal law preempts the State's claims because they are dependent on interstate emissions. Defendants argue that the basic scheme of the Constitution preempts the State's claims and that, for over a century, federal common law applied to disputes over interstate air or water pollution. They acknowledge that Congress's passing of the Clean Air Act ("CAA") and Clean Water Act ("CWA") displaced federal common law, but they argue federal common law—both before and after the enactment of the CAA—governs tort claims based on the common law of an affected state targeting conduct in another state.

The State argues that when Congress passed the CAA, it displaced federal common law governing claims regarding interstate air pollution, and after displacement, federal common law cannot preempt state law. The State argues that even if that body of law still existed, it would not preempt the State's claims because the Supreme Court only recognized a limited cause of action for federal common law nuisance regarding out-of-state pollution. The Court concludes that Defendants' arguments regarding federal common law are unpersuasive.

"There is no federal general common law[.]" *Am. Elec. Power Co. v. Connecticut*, 564 U.S. 410, 420 (2011) ("*AEP*") (quoting *Erie R. Co. v. Tompkins*, 304 U.S. 64, 78 (1938)). "Instead, only limited areas exist in which federal judges may appropriately craft the rule of decision." *Rodriguez v. FDIC*, 589 U.S. 132, 136 (2020) (citation omitted). Limited areas of "specialized federal common law" remain where the United States Supreme Court has "approved federal common-law suits brought by one State to abate pollution emanating from another State." *AEP*, 564 U.S. at 421.

Congress displaced federal common law governing cross-boundary tort claims associated with air pollution when it passed the CAA. *AEP*, 564 U.S. at 424. As a result, the federal common law of nuisance that formerly governed transboundary pollution suits "no longer exists"

after the CAA. *Honolulu*, 537 P.3d at 1195 (quoting *Boulder*, 25 F.4th at 1260 and citing *AEP*, 564 U.S. at 421). Thus, there is no longer federal common law governing interstate pollution cases after the CAA. For that reason, this Court's task is to consider "the availability *vel non* of a state lawsuit" in light of "the preemptive effect of the federal Act." *AEP*, 564 U.S. at 429. Therefore, the Court rejects Defendants' argument that federal common law preempts the State's claims.

The Court also concludes that federal common law, even if it still existed, would not preempt the State's claims because those claims do not aim to restrain pollution or regulate emissions. Within the claims in the Complaint, there is no attempt to regulate transboundary pollution. Rather, they allege state law consumer deception and failure-to-warn claims that have never been subject to federal common law. Thus, the federal common law that Defendants argue should apply does not govern the State's claims, even if it still existed. In a related argument, Defendants argue that "[t]he structure of the Constitution requires alleged harms caused by interstate and international emissions to be addressed under federal law, including federal common law." Defs.' Joint Mem. in Supp. Mot. to Dismiss, at 1. But other than a separate argument regarding the dormant Commerce Clause, the Defendants do not cite a specific provision of the Constitution as authority to support federal preemption. Because the federal common law was displaced, and no other provision of the Constitution applies, the Court concludes that Defendants' "structure of the Constitution" argument is not persuasive. To the extent that the Defendants rely on cases where courts have ruled that state claims are preempted by federal law, this Court disagrees with the preemption analysis of those decisions. *See City of New York v. Chevron Corp.,* 993 F.3d 81, 91 (2d Cir. 2021); *City of Annapolis v. BP PLC*, et al., No. C-02-CV-21-250 & *Anne Arundel Cnty. v. BP PLC*, et al., No. C-02-CV-21-56, Mem. Op.

and Order (Md. Cir. Ct. Jan. 23, 2025); *State ex rel. Jennings v. BP Am. Inc*., 2024 WL 98888, at *24 (Del. Super. Ct. Jan. 9, 2024).

b) The Clean Air Act does not preempt the State's claims.

Defendants argue that the claims brought by the State are preempted by the CAA. They rely on *Jennings* and *Int'l Paper Co. v. Ouellette*, 479 U.S. 481, 500 (1987) to argue that state claims seeking damages for out-of-state global greenhouse gas emissions are preempted by the CAA. Defendants point to the source of pollution as dispositive, and they argue it requires dismissal of the State's claims as preempted by the CAA.

"Federal law can preempt state law in three ways: through (1) field preemption, (2) express preemption, and (3) conflict preemption[.]" *Hous. & Redev. Auth. of Duluth v. Lee*, 852 N.W.2d 683, 687 (Minn. 2014) (citing *Fid. Fed. Sav. & Loan Ass'n v. de la Cuesta*, 458 U.S. 141, 152–54 (1982)). Defendants rely only on conflict preemption. Conflict preemption occurs in two different ways. "First, a state law is preempted by means of conflict preemption if a party cannot simultaneously comply with both state and federal law." *Hous. & Redev. Auth. of Duluth*, 852 N.W.2d at 687 (citations omitted). Second, a state law is conflict preempted if the state law is an obstacle to achieving the purpose of a federal law. *Id*. State laws in conflict with federal law are "without effect." *United States v. Iowa*, --- F.4th ----, No. 24-2265, 2025 WL 287401, at *4 (8th Cir. Jan. 24, 2025) (quoting *Mutual Pharmaceutical Co., Inc. v. Bartlett*, 570 U.S. 472, 479–80 (2013)).

Obstacle preemption applies when state law claims "stand[] as an obstacle to the accomplishment and execution of the full purposes and objective of Congress." *Honolulu*, 537 P.3d at 1204 (quoting *Arizona*, 567 U.S. at 399). Obstacle preemption cannot arise from the mere "possibility that federal enforcement priorities might be upset" by the operation of state law or on an "overlap" in subject matter. *Kansas v. Garcia*, 589 U.S. 191, 212 (2020).

An asserted preemption defense "does not justify a freewheeling judicial inquiry into whether a state statute is in tension with federal objectives," because "it is Congress rather than the courts that pre-empts state law." *Chamber of Com. of U.S. v. Whiting*, 563 U.S. 582, 607 (2011) (quotations omitted). Rather, "a high threshold must be met if a state law is to be preempted for conflicting with the purposes of a federal Act." *Id*. (quotation omitted). Whichever of those theories a defendant pursues, "the purpose of Congress is the ultimate touchstone in every pre-emption case." *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996) (cleaned up).

Defendants argue that conflict preemption applies here because the State's claims are an obstacle to Congress's objectives—regulating interstate emissions. Defendants also argue that the State's claims are preempted even if the impacts of out-of-state emissions are experienced in-state because the State's claims are an obstacle to the full implementation of the CAA and interfere with methods of regulating pollution under the CAA. The State argues that there is no conflict preemption because it would not be impossible for Defendants to comply with an order of this Court and the CAA, and because marketing practices are not a concern of the CAA. Further, the State argues that it does not seek regulation of emissions or the reduction of emissions. Even if there was some overlap between state and federal laws, the State asserts that such overlap is not federal preemption.

The Court concludes that the State's claims are not preempted under conflict preemption. The CAA does not preempt the State's claims through obstacle preemption because all claims arise from Defendants' alleged failure to warn and deceptive marketing conduct, not emissions-producing activities regulated by the CAA. Defendants have not shown how the claims asserted by the State interfere with Congress's objective of federal regulation of air pollution. The Court finds Defendants' reliance on *Ouellette* unpersuasive. In *Int'l Paper Co. v. Ouellette*, 479 U.S.

481, 500 (1987), the United States Supreme Court considered whether the CWA preempted a Vermont state court common-law nuisance claim when the source of the alleged injury was in New York. *Id*. at 483. The Supreme Court ruled that the CWA preempted state law: "The application of affected-state laws would be incompatible with the Act's delegation of authority and its comprehensive regulation of water pollution." *Id*. at 500. This Court agrees with the *Honolulu* court that:

> [T]he rationale motivating the *Ouellette* court in preempting affected-state common law claims does not apply to Plaintiffs' state tort claims. This is because Plaintiffs' claims require "additional tortious conduct" to succeed. Here, that additional tortious conduct is Defendants' alleged deceptive marketing and failure to warn about the dangers of using their products – the source of Plaintiffs' alleged injury is not emissions but the additional alleged torts.

Honolulu, 537 P.3d at 1206. As in *Honolulu,* the claims in the Complaint involve deceptive marketing practices and failure to warn.

The Court also concludes that case law relied upon by the defendants, including *City of New York* and *Baltimore*, were wrongly decided, because they did not draw inferences in favor of the plaintiff, including those that relate to its theory of liability, which this Court must do. *Walsh*, 851 N.W.2d at 603. The Court concludes that the CAA does not preempt the State's claims.

c) The foreign affairs doctrine does not preempt the State's claims.

The Defendants argue that the State's claims are barred by the foreign affairs doctrine.

> Under the foreign-affairs doctrine, state laws that intrude on this exclusively federal power are constitutionally preempted. This is so because the power to conduct international affairs is solely vested with the federal government, not the States. The foreign-affairs doctrine may constitutionally preempt state laws through conflict preemption or field preemption. For a state law to give way under conflict preemption, there must be a "sufficiently clear conflict" between the state law and an express foreign policy.

Mayor & City Council of Baltimore v. BP P.L.C., 31 F.4th 178, 213 (4th Cir. 2022) (cleaned up).

The Defendants argue that because the State's claims relate to global climate change, they are necessarily based on foreign emissions. The Defendants assert that the United States has pursued policies that address worldwide and domestic carbon emissions, including seeking emissions reductions from other nations through diplomatic negotiations. They argue that a ruling in the State's favor would undermine these foreign policy activities. The Defendants argue that the State's claims are preempted because they undermine foreign policy objectives, even if they do not directly conflict with the government's policy.

The State argues that the Defendants do not identify any concrete foreign policy that conflicts with the State's claims. The State argues that its lawsuit aligns with the United States' "opposition to corporate amnesty for deceptive conduct." Pl.'s Mem. in Opp. To Defs.' Joint Mot. to Dismiss, at 27–28. The State argues that the Congressional and executive action Defendants rely on does not actually express the foreign policy of the federal government, and Defendants do not describe any conflict between that policy and the State's claims.

The Court concludes that the foreign affairs doctrine does not preempt the State's claims. Application of this doctrine is, as a practical matter, a separate avenue to assert conflict or field preemption. *Mayor & City Council of Baltimore, v. BP P.L.C.*, 31 F.4th at 213 ("The foreign-affairs doctrine may constitutionally preempt state laws through conflict preemption or field preemption.") The Court finds unpersuasive Defendants' generalized argument that the State's case would undermine negotiations with other nations on emissions reductions because they do not identify an express foreign policy, and even if they did, Defendants have not identified a "sufficiently clear conflict" between that policy and state law. *Id*. The Court concludes that Defendants "do not establish that [Minnesota] common law, or even the common law of States

generally, is an obstacle to the federal government's dealings with foreign nations." *Id*. The foreign affairs doctrine does not preempt the State's claims.

d) This case does not present nonjusticiable political questions.

The Defendants argue that the State's claims must be dismissed because they present nonjusticiable political questions. "Under separation-of-powers principles, the judiciary cannot 'exercise any of the powers properly belonging' to the Legislature unless 'expressly provided' in the Minnesota Constitution." *Cruz-Guzman v. State*, 916 N.W.2d 1, 8 (Minn. 2018) (quoting Minn. Const. art. III, § 1). A nonjusticiable political question is "'a matter which is to be exercised by the people in their primary political capacity,' or a matter that 'has been specifically delegated to some other department or particular officer of the government, with discretionary power to act.'" *Id*. (quoting *In McConaughy*, 119 N.W. 408, 417 (Minn. 1909)).

Defendants argue that regulating fossil fuels and emissions involves national and international policy questions for the political branches of government, not the judiciary. The Minnesota Constitution, Defendants assert, precludes the judiciary from legislative policymaking. The Defendants argue that the State is attempting to change their behavior on a global scale and to set national energy policy. They argue that the Minnesota Legislature has set greenhouse gas emissions reduction goals, *see* Minn. Stat. § 216H.02, and the State's claims would override the Legislature's judgment.

The State responds that "[n]o decision from any court of this State has held that a civil action brought by the Attorney General against a private defendant is nonjusticiable on political question grounds[.]" Pl.'s Mem. in Opp. To Defs.' Joint Mot. to Dismiss, at 32. The State argues that its claims ask the Court to address judicial questions regarding statutory and common law duties and do not ask the Court to exercise executive or legislative branch powers.

The Court concludes that the claims in the Complaint will require litigation and adjudication pursuant to standard judicial processes and will not violate either separation of powers or political question principles. All of the State's claims will require pretrial litigation followed by a factfinder deciding each claim. The claims will be decided based on statutory and common law principles, as well as jury instructions, and will not require policy determinations better suited for the legislative and executive branches. The State's claims do not present nonjusticiable political questions.

e) The State's claims and requested relief would not violate the Commerce Clause.

he Defendants argue that the State violates the dormant Commerce Clause because it "project[s] its own policy preferences onto indisputably interstate commerce." Defs.' Joint Mem. in Supp. Mot. to Dismiss, at 26. According to the Defendants, because the State does not allege that any statement of the Defendants occurred in Minnesota or was targeted at Minnesotans, and there are no allegations of reliance by any Minnesotan on any statement, this lawsuit "is an attempt to regulate the marketing, sale, and use of fossil fuels in interstate commerce, outside of Minnesota, for the purpose of mitigating alleged harms in the state that the State alleges were caused by the global phenomenon of climate change." *Id*. The Defendants argue that the State may not attempt to regulate locally to control their conduct outside of Minnesota because it violates the Commerce Clause.

The State responds that under Supreme Court precedent, Commerce Clause violations occur when a state discriminates against interstate commerce, and when a state imposes undue burdens on interstate commerce. The State argues that the Commerce Clause prohibits enforcement of state laws that have the practical effect of controlling commerce outside of the state, and that Defendants have not argued that Minnesota discriminated against out-of-state

commerce. The State argues that "there is nothing unusual or uncommon about a state applying its laws in a case involving conduct in multiple states." Pl.'s Mem. in Opp. To Defs.' Joint Mot. to Dismiss, at 39.

The Court concludes that the State's claims are not precluded by the dormant Commerce Clause. The Commerce Clause gives Congress the power to regulate interstate commerce. U.S. Const. art. I, § 8, cl. 3. This grant of power to Congress also "contains a further, negative command, one effectively forbidding the enforcement of certain state economic regulations even when Congress has failed to legislate on the subject." *Nat'l Pork Producers Council v. Ross*, 598 U.S. 356, 368 (2023) (cleaned up). This negative command—the dormant Commerce Clause—prohibits states from directly regulating out-of-state transactions. *Id*. at 376 n.1. In *Pork Producers*, the Supreme Court described a key principle of its dormant commerce clause jurisprudence: "antidiscrimination ... lies at the very core of [the Court's] dormant Commerce Clause jurisprudence." *Id*. at 369 (cleaned up). The Supreme Court rejected an argument that there was an "almost per se rule forbidding enforcement of state laws that have the practical effect of controlling commerce outside the State, even when those laws do not purposely discriminate against out-of-state economic interests." *Id*. at 371 (cleaned up). This is effectively the same rule that Defendants argue for in challenging the Complaint. They claim that the State's lawsuit will have an impact on commerce related to fossil fuels in other states. But nothing in the Complaint or its claims seeks to discriminate against out-of-state economic interests. Further, as a practical matter, Defendants argue that because the State seeks a remedy that would have the effect of controlling commerce outside of the State, the dormant Commerce Clause should require its dismissal. Because *Pork Producers* rejected that argument in its holding, this Court

rejects Defendants' dormant Commerce Clause argument. The State's claims are not preempted by federal law.

f) The State's claims are not barred by the First Amendment

All Defendants argue that the State's claims violate their constitutional free speech rights. API argues that the Complaint attempts to suppress its speech in violation of the First Amendment because its policy campaigns are noncommercial, and because the Complaint does not identify a commercial transaction proposed by API. In the alternative, API argues that even if the speech is commercial, the State's claims seek content-based restrictions, therefore, strict scrutiny applies. API argues that the State's claims should be dismissed immediately because allowing them to proceed would create a chilling effect on public policy advocacy. ExxonMobil argues that the State's claims—that it failed to warn consumers—seek relief that would force ExxonMobil to engage in compelled speech. API and FHR argue that the Complaint violates the *Noerr-Pennington* doctrine, which protects their right to petition the government regarding energy policy and climate change. FHR argues that the speech attributed to David Koch in the Complaint was on a matter of public concern published in a public place, and so the speech is entitled to protection from liability by the First Amendment.

The First Amendment prohibits the government from regulating speech "based on hostility—or favoritism—toward the underlying message expressed." *R.A.V. v. City of St. Paul*, 505 U.S. 377, 386 (1992). "The Constitution [] accords a lesser protection to commercial speech than to other constitutionally guaranteed expression." *Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n of New York*, 447 U.S. 557, 562–63 (1980).

"Generally, the *Noerr-Pennington* doctrine protects a citizen's First Amendment right to 'petition the Government for redress of grievances,' by immunizing individuals from liability for injuries allegedly caused by their petitioning of the government or participating in public

processes in order to influence governmental decisions." *Kellar v. VonHoltum*, 568 N.W.2d 186, 192–93 (Minn. Ct. App. 1997) (citing *E. R. R. Presidents Conf. v. Noerr Motor Freight, Inc*., 365 U.S. 127, 138 (1961)).

As to all defendants, the State responds that the Defendants' speech is both deceptive and commercial and therefore not protected by the First Amendment. The State argues that the *Noerr-Pennington* doctrine does not protect FHR's conduct because the Complaint alleges that FHR engaged in commercial activity that cannot be fairly described as protected petitioning activity. Just because commercial activity has political impact, the State argues, does not mean that deceptive commercial activities are protected.

The Court concludes that the claims as alleged in the Complaint do not violate the First Amendment. At the pleading stage, the Complaint alleges that the Defendants' speech, including that of David Koch, was misleading and fraudulent. As alleged, this speech is not protected by the First Amendment. "For commercial speech to come within [the First Amendment], it at least must concern lawful activity and not be misleading." *Cent. Hudson*, 447 U.S. at 566; *see also Zauderer v. Off. of Disciplinary Couns. of Sup. Ct. of Ohio*, 471 U.S. 626, 638 (1985) (states "are free to prevent the dissemination of commercial speech that is false, deceptive, or misleading"). Further the *Noerr-Pennington* doctrine does not apply based on the allegations in the Complaint. "[N]either the *Noerr–Pennington* doctrine nor the First Amendment more generally protects petitions predicated on fraud or deliberate misrepresentation." *United States v. Philip Morris USA Inc*., 566 F.3d 1095, 1123 (D.C. Cir. 2009) (quotation omitted). Thus, a claim against Defendants for allegedly misleading speech does not violate the First Amendment. *See also Bd. of County Comm'rs of Boulder County v. Suncor Energy* (U.S.A.), Inc., No. 2018CV30349, 2024

WL 3204275, at *30 (Colo. Dist. Ct. June 21, 2024) (denying motion to dismiss based on First Amendment arguments).

2. Defendants' motions to dismiss for failure to state a claim

The Defendants' motions to dismiss are based on several arguments, some of which apply to all claims, and some of which apply to only some claims. The Court will address the motions based on the legal issue raised by the movant.

a) The State's claims are not time-barred.

All defendants argue that all claims must be dismissed because they are time-barred. The parties do not dispute that Minnesota law establishes a six-year statute of limitations for the State's consumer protection and fraud claims, and a four-year statute of limitations for its failure to warn claim. Minn. Stat. § 541.05 subd. 1(2), subd. 2. Each defendant argues that the State's claims accrued more than six years before the filing of the Complaint.

The statute of limitations begins to run when a cause of action accrues. *Frederick v. Wallerich*, 907 N.W.2d 167, 173 (Minn. 2018); Minn. Stat. § 541.01. "Accrual" refers to "the point in time when a plaintiff can allege sufficient facts to survive a motion to dismiss for failure to state a claim upon which relief can be granted." *Sec. Bank & Tr. Co. v. Larkin, Hoffman, Daly & Lindgren, Ltd*., 916 N.W.2d 491, 496 (Minn. 2018) (citation omitted) (internal quotation marks omitted). Consequently, the "[a]ccrual of a cause of action requires the existence of operative facts supporting each element of the claim." *Id*. Stated another way, a cause of action accrues when all of the elements of the action have occurred, such that the cause of action could be brought and would survive a motion to dismiss for failure to state a claim. *Park Nicollet Clinic v. Hamann*, 808 N.W.2d 828, 832 (Minn. 2011) (citation omitted).

A court's task in analyzing a motion to dismiss based on the running of a statute of limitations is as follows: "look to the facts alleged in the complaint, accept those facts as true,

and construe inferences from those facts in favor of the plaintiff." *Hansen v. U. S. Bank Nat'l Ass'n*, 934 N.W.2d 319, 325 (Minn. 2019) (citing *Park Nicollet Clinic*, 808 N.W.2d at 833–34).

> An assertion that the statute of limitations bars a cause of action is an affirmative defense and 'the party asserting the defense has the burden of establishing each of the elements.' In that context, a motion to dismiss should be granted only when it is clear from the stated allegations in the complaint that the statute of limitations has run. We will not make inferential leaps in favor of the defendant to conclude that a lawsuit is time-barred.

Hansen, 934 N.W.2d at 326 (quoting *MacRae v. Grp. Health Plan, Inc*., 753 N.W.2d 711, 716 (Minn. 2008) (footnote omitted)). Thus, there are circumstances when factual determinations are necessary to determine when a cause of action accrues. *328 Barry Ave., LLC v. Nolan Properties Grp*., LLC, 871 N.W.2d 745, 752 (Minn. 2015) ("[W]e therefore conclude that there is a genuine issue of material fact concerning when 328 LLC discovered the injury."). The parties' arguments address doctrines specific to fraud causes of action: the discovery rule and fraudulent concealment.

In general, a fraud claim accrues when the facts amounting to fraud could have been discovered by a plaintiff using reasonable diligence. *Bustad v. Bustad*, 116 N.W.2d 552, 555 (Minn. 1962). Under the discovery rule, the limitations period for common-law fraud claims begins to run "when the fraud is discovered or, in the exercise of reasonable diligence, should have been discovered." *Cohen v. Appert*, 463 N.W.2d 787, 790 (Minn. Ct. App. 1990) (citing *Toombs v. Daniels*, 361 N.W.2d 801, 809 (Minn. 1985)).

For the State's statutory claims, the statute of limitations begins to run "when the alleged violations of the[ ] consumer statutes occurred." *Tuttle v. Lorillard Tobacco Co*., 377 F.3d 917, 926 (8th Cir. 2004). Limitations periods for statutory claims are not tolled by the failure of a party to discover the action. *Id*. at 926. The *Tuttle* court held that with regard to Minn. Stat. § 541.05, subd. 1(2), "[t]his provision does not include a discovery allowance as does the statute of

limitations applicable to fraud claims." *Id*. (quoting *Klehr v. A.O. Smith Corp*., 875 F.Supp. 1342, 1352 (D. Minn. 1995); s*ee also Thunander v. Uponor, Inc*., 887 F. Supp. 2d 850, 876 (D. Minn. 2012) ("The six year limitations period begins to run on the date of sale and Minn. Stat. § 541.05 is not delayed based on the discovery of a potential claim.")

Under the doctrine of fraudulent concealment, the statute of limitations does not run while the defendant "fraudulently conceals from the plaintiff the facts constituting a cause of action[.]" *Minn. Laborers Health & Welfare Fund v. Granite Re, Inc*., 844 N.W.2d 509, 514 (Minn. 2014) (quotation omitted). To establish that a defendant's fraudulent concealment has tolled a limitations period, a plaintiff must prove: (1) the defendant's affirmative act or statement concealed a potential cause of action; (2) the defendant's statement was known to be false or was made in reckless disregard of its truth or falsity; and (3) the defendant's concealment could not have been discovered by plaintiff's reasonable diligence. *Haberle v. Buchwald*, 480 N.W.2d 351, 357 (Minn. Ct. App. 1992), *rev. denied* (Minn. Aug. 4, 1992). "The time when fraud reasonably should have been discovered is a question of fact." *Cohen*, 463 N.W.2d at 790. Courts have applied the fraudulent concealment doctrine to statutory fraud claims. *See e.g. Klehr v. A.O. Smith Corp*., 875 F. Supp. 1342, 1351 (D. Minn. 1995), *aff'd*, 87 F.3d 231 (8th Cir. 1996), *aff'd*, 521 U.S. 179 (1997).

API argues that the State's claims are time-barred because the most recent alleged misrepresentation by API occurred in 1997, nearly 17 years before the limitations period began in 2014. The State responds that its Complaint alleges that API has continued to engage in deceptive conduct during the limitations period, and that as a co-conspirator of ExxonMobil, API made specific misrepresentations and omissions during the limitations period. As to the common-law fraud claim against API, the State argues that this claim is timely because of the

discovery rule and the fraudulent concealment doctrine. The State alleges that API intentionally concealed its role in Defendants' deception efforts by relying heavily on front groups, sham scientists, and others to disseminate disinformation on its behalf. *See* Compl. ¶¶ 98–131. The State alleges that API's fraud began surfacing in 2015, and that API and others spent millions of dollars funding scientists "to produce research that supported their campaign of deception" and contradicted the scientific consensus on climate change. *See id*. ¶¶ 125–26, 130–31.

Citing *Native Village of Kivalina v. ExxonMobil Corp*., 696 F.3d 849 (9th Cir. 2012), API asserts that the State cannot argue it lacked notice of its claims because public awareness led other plaintiffs to bring a similar claim over a decade before the State's Complaint. The Court finds this argument unpersuasive, because adopting it would require the Court to consider information outside of the Complaint. Further, this Court "cannot determine as a matter of law at the pleadings stage that the *Kivalina* complaint, brought in federal district court in Northern California, definitively put [Minnesota] consumers on inquiry notice of Defendants' alleged deceptive conduct such that the limitations period for any potential claims began to run in 2008." *State of Vermont v. Exxon Mobil Corp*., No. 21-CV-02778, 2024 WL 5189025, at *7 (Vt. Super. Dec. 11, 2024).

The Court declines to follow the holdings of *State ex rel. Jennings v. BP Am. Inc*., No. N20C-09-097 MMJ CCLD, 2024 WL 98888, at *19 (Del. Super. Ct. Jan. 9, 2024) and *Mayor and City Council of Baltimore v. BP P.L.C*., No. 24-C-18-004219, 2024 WL 3678699, at *15 (Md. Cir. Ct. July 10, 2024), which concluded that claims against the defendants in those cases were time-barred. The Court finds these cases unpersuasive because they address public awareness at the pleadings stage, which this Court concludes is an issue for the factfinder. *See,*

e.g. Cohen, 463 N.W.2d at 790 ("The time when fraud reasonably should have been discovered is a question of fact.")

The facts alleged in the Complaint, when the Court accepts them as true, present a fact question as to whether API made statements which concealed alleged deception by API and the other defendants. Further, the Court finds that there is a fact question regarding when the public and the State could have discovered API's alleged concealment through reasonable diligence. Similarly, as to the discovery rule, there is a fact question as to when the fraud was discovered by the State or, in the exercise of reasonable diligence, should have been discovered.

As to API's statutory claims, the State argues that the fraudulent concealment doctrine tolls the limitations period. For the same reasons discussed above, the Court concludes that fact issues preclude granting API's motion to dismiss because the Complaint alleges sufficient facts to create a fact a fact question as to whether API made statements which concealed alleged deception.

The Court also concludes that the continuing violation doctrine is applicable. "The continuing violation doctrine is most commonly applied in discrimination cases involving wrongful acts that manifest over a period of time, rather than in a series of discrete acts." *Davies v. West Publ'g Co*., 622 N.W.2d 836, 841 (Minn. Ct. App. 2001), *rev. denied* (Minn. May 29, 2001). But "the doctrine has been applied outside the employment discrimination context." *Id*. (citing cases involving trespass and workers compensation coverage). The doctrine allows a plaintiff's claims to be considered despite the expiration of the applicable statute of limitations when the alleged acts were continuing in nature and manifested over time rather than as a series of discrete acts. *Giuliani v. Stuart Corp*., 512 N.W.2d 589, 595 (Minn. Ct. App. 1994). "When the doctrine is applied, the final act is used to determine when the statute-of-limitations period begins for the entire course of conduct." *Davies*, 622 N.W. 2d at 841 (citation omitted).

The Court concludes that, accepting the facts in the Complaint as true, the State has adequately pled that API engaged with other defendants in a pattern of conduct that continues to allegedly violate the CFA, DTPA, and FSAA. Specifically, the Complaint alleges that "API continues to participate and/or direct misleading campaigns about the dangers of fossil fuels intended to reach consumers," Compl. ¶ 16, and that API's website contains misleading statements related to climate science, fossil-fuel products and climate change. *Id*. ¶ 94. Those allegations make clear that the State is alleging ongoing conduct by API that took place within the limitations period. The Court cannot conclude that it is clear from the stated allegations in the Complaint that the statute of limitations has run as to API's claims, thus, the State's claims against API are not time-barred.

ExxonMobil argues that statements it made before 2014 are time-barred, asserting that, with one exception, the Complaint focuses on statements it made between 1996 and 2004. It also argues that it is irrelevant that the State alleges it was unaware of ExxonMobil's internal understanding of climate change until 2015, because statutory claims accrue when the statement is made. With regard to the common-law fraud claims, ExxonMobil argues that the Complaint alleges that its false or misleading statements occurred after public awareness of climate change, and therefore the State was on notice of the claimed inconsistency between ExxonMobil's statements and scientific consensus regarding climate change.

The State argues that ExxonMobil has conceded that the State has alleged timely claims as to ExxonMobil's omissions and failure to warn. ExxonMobil has never adequately warned of the dangers of its fossil-fuel products, the State asserts, and therefore the State's claims are timely because they rest on ExxonMobil's omissions and failure to warn. According to the State, its common-law fraud claim is timely because of the discovery rule and fraudulent concealment

doctrine. The State alleges that ExxonMobil intentionally concealed its role in deception efforts by relying on others to disseminate climate disinformation. *See* Compl. ¶¶ 98–131. As to ExxonMobil, the State asserts it could not have sued before 2014 because it did not discover facts supporting the scienter element of its common-law fraud claim until an investigation revealed ExxonMobil's knowledge and deceit. As to fraudulent concealment, the State claims ExxonMobil concealed its own knowledge of climate-related harms of its fossil-fuel products by launching a climate science denial program and deploying disinformation through others before investigative reporting revealed facts in 2015. The State argues that there is a fact question as to whether it could have discovered ExxonMobil's fraud sooner.

Regarding ExxonMobil, the Complaint alleges that Exxon made misleading public statements about climate change in 2018, Compl. ¶ 90, and that Exxon's and other Defendants' "websites contain misleading statements about climate science, the role of fossil-fuel products in contributing to climate change," and the likely impacts of climate change. Compl. ¶ 94. The Complaint also alleges that ExxonMobil's "statements in and outside of Minnesota were made in furtherance of its campaign of deception and denial, and its chronic failure to warn consumers of global-warming-related hazards when it marketed, advertised, and sold its products both in and outside of Minnesota, were intended to conceal and mislead the public, including the State and its residents, about the serious adverse consequences from continued use of ExxonMobil's products." Compl. ¶ 26. The Complaint also alleges that "Defendants did not warn consumers of the harms Defendants knew their fossil fuel products posed, and instead misled consumers regarding those harms and their causes." Compl. ¶ 97.

As to the failure to warn claim, ExxonMobil has not argued that this claim is time-barred. As to the statutory and common-law fraud claims against ExxonMobil, the Court concludes that

the fraudulent concealment doctrine applies. The Complaint alleges that ExxonMobil prevented the State from learning the basis of its claims. This creates a fact question regarding what the State learned and when it learned the information.

As to the common-law fraud claim, the Court concludes that the discovery rule similarly creates a fact question because the Complaint alleges that the fraud became discoverable after internal documents were publicized in 2015. As stated above, the Complaint alleges that facts supporting the scienter element of common-law fraud were not discovered until 2015. ExxonMobil argues that it is irrelevant that the State claims it did not know ExxonMobil's internal understanding of climate change until 2015. The Court agrees with the State that this is incorrect. As ExxonMobil acknowledges, accrual occurred on the date the State knew or should have known that ExxonMobil's statements were allegedly false or misleading. ExxonMobil argues that because the Complaint alleges that those statements were made after the public became aware of climate change and its consequences, the State was already on notice of the alleged inconsistency between ExxonMobil's statements and scientific consensus following the *Kivalina* decision in 2008. As the State argues, it will have to establish an element showing that ExxonMobil knew its statements were false at the time it made them, so ExxonMobil's knowledge about climate change is relevant. *Hoyt Properties, Inc. v. Prod. Res. Grp*., L.L.C., 736 N.W.2d 313, 320 (Minn. 2007) ("The record is sufficient for us to conclude that there are also genuine issues of material fact for trial as to whether PRG's attorney made the representations at issue without knowing whether they were true or false."). What ExxonMobil knew and when the State reasonably could have discovered the facts relevant to the scienter element as to ExxonMobil are fact questions that preclude granting a motion to dismiss. *Hoyt*, 736 N.W.2d at 320 ("As such, there is a genuine issue of material fact for trial as to whether he

made the representations "without knowing whether [they were] true or false.") Further, as discussed above, whether *Kivalina* put the State and Minnesota consumers on notice of Defendants' alleged deceptive conduct is a fact question this Court cannot resolve at this early stage of litigation.

As discussed above, the Court concludes that the continuing violation is applicable, and that it applies to the claims against ExxonMobil. The Court concludes the State has adequately pled that ExxonMobil and other defendants engaged in a pattern of conduct that constitute a continuing violation. The Court concludes that the claims against ExxonMobil are not time-barred.

FHR argues that the Complaint is based on alleged FHR conduct from July 2010, which is outside of the limitations period. Compl. ¶ 90. FHR cites *Jennings* and *Kivalina* to argue that the general public had knowledge of disputes regarding the existence of climate change decades prior to the expiration the limitations period. FHR also argues that Complaint shows that the State did or could have discovered the facts upon which brings its fraud claim because the Complaint alleges that the misrepresentations were part of a public campaign. As discussed above as to both the statutory and common-law fraud claims, the Court concludes that the fraudulent concealment doctrine applies, which creates a fact question. As to the common-law fraud claim, the Court concludes that the discovery rule similarly creates a fact question. The Court concludes that at this stage, there are fact questions underlying FHR's statute of limitations defense, and so the Court cannot rule as a matter of law that the claims against it are time-barred.

FHR argues that the State's failure to warn claim is untimely because the Complaint alleges that some damage occurred decades ago, and therefore the claim lapsed decades ago. Minnesota follows the "some damage" rule of accrual. *Hansen*, 934 N.W.2d at 327. Under that

rule, a claim accrues upon the occurrence of "some damage," but does not require that the plaintiff was aware of all of the operative facts giving rise to a cause of action. *Sec. Bank & Tr. Co. v. Larkin, Hoffman, Daly & Lindgren, Ltd.*, 916 N.W.2d 491, 498 (Minn. 2018). The State responds that the timeliness of the failure to warn claim against FHR cannot be determined now, because the allegations in the Complaint do not establish when the State incurred sufficient climate injuries to sue, or FHR's role by failing to warn and engaging in deception. The Court concludes that the Complaint does not clearly establish when the State's alleged climate-related injuries occurred or when the alleged causal connection to FHR's conduct became cognizable. The Court therefore concludes that FHR cannot show as a matter of law that the State's failure to warn claim is time-barred.

The Court concludes that FHR's claims are not time-barred.

b) The State has sufficiently pled causation.

ExxonMobil and FHR argue that the State has failed to plead causation as to all counts in the Complaint. They point to statements of counsel during a hearing in federal district court following removal of this case, where an attorney for the State indicated that the State could not separate "how much climate change has worsened in Minnesota versus Wisconsin[.]" Schleicher Decl. Ex. 1 at 10:4–14. The State argues that this statement is not a concession because it was arguing that similar climate change harm occurs in Minnesota and neighboring states. ExxonMobil and FHR assert that the Complaint alleges an attenuated causal chain that cannot amount to proximate causation. As to the statutory claims, the State asserts that it need only prove a legal or causal nexus between the Defendants' conduct and the harm suffered by the State and its citizens.

Generally, causation is a fact question for the jury, but where reasonable minds can arrive at only one conclusion, causation is a question of law. *Lubbers v. Anderso*n, 539 N.W.2d 398,

402 (Minn. 1995). But testimony "which does nothing more than show a mere possibility, suspicion or conjecture that such a causal connection exists" generally does not meet the plaintiff's burden to show causation. *Bernloehr v. Cent. Livestock Ord. Buying Co*., 208 N.W.2d 753, 755 (Minn. 1973).

The Court concludes that the State has adequately pled its claims as to causation. The Complaint alleges a nexus between the alleged conduct of ExxonMobil and FHR. The Complaint alleges that they failed to warn consumers about the dangers of their products in causing climate change, and deceived Minnesota consumers, which inflated the market for those products, exacerbating climate change. Compl. ¶¶ 2–3, 54, 83–96, 98, 104–14, 125–31, 172–83. Treating the allegations in the Complaint as true, the Court concludes that the State has alleged that Defendants deceived consumers, and that as a result of that deception, climate-related harm has occurred in Minnesota. These allegations are sufficient to plead causation.

c) The State has sufficiently pled duty to warn.

ExxonMobil and FHR argue that the State fails to state a claim in Count II because there is no duty to warn. Specifically, ExxonMobil and FHR argue that (1) there is no duty to warn of open and obvious risks; (2) the harms alleged in the Complaint are too remote from the alleged wrongful acts to create a legal duty; and (3) a legal duty to warn extends only to a product's end users, not to the general public.

"Whether a legal duty to warn exists is a question of law for the court." *Great N. Ins. Co. v. Honeywell Int'l, Inc*., 911 N.W.2d 510, 519 (Minn. 2018). As to the issue of obviousness, ExxonMobil and FHR argue that climate risks associated with fossil fuel consumption were broadly publicized, and the Complaint alleges that scientists have studied and published on these issues for decades. The State responds that consumers of fossil fuels are not users that have specialized professional knowledge, and so the danger it pleads in the Complaint is not, as a

matter of law, open and obvious. The State argues that the users of FHR's and Exxon's products were not climate scientists with professional knowledge, and therefore at the motion to dismiss stage, the Court cannot determine that the dangers were open and obvious. The State also argues that manufacturers and suppliers like ExxonMobil and FHR have superior knowledge of product dangers, and therefore they have a duty to warn.

"[A] manufacturer of a product has no duty to warn of dangers that are obvious to anyone using the product." *Mix v. MTD Prods., Inc*., 393 N.W.2d 18, 19 (Minn. Ct. App. 1986). Minnesota case law addressing open and obvious dangers typically involve circumstances where a danger is perceivable and physical injury is the result of the danger. For example, there is no duty to warn that "an axe will cut, a match will take fire, dynamite will explode, or a hammer may mash a finger." *Peppin v. W.H. Brady Co*., 372 N.W.2d 369, 375 (Minn. Ct. App. 1985) (quoting W. Prosser, Handbook of the Law of Torts, § 96 at 649 (4th ed. 1971)). Examples of these types of open and obvious dangers include: the dangers of aluminum conducting electricity, *Peppin*, 372 N.W.2d at 375; "hot coffee can cause burns," *Holowaty v. McDonald's Corp*., 10 F. Supp. 2d 1078, 1084 (D. Minn. 1998); the danger of cleaning an operating blender, *Knott v. AMFEC, Inc*., No. 09-CV-1098 PJS AJB, 2010 WL 4116602, at *5 (D. Minn. Oct. 18, 2010), aff'd, 471 F. App'x 561 (8th Cir. 2012); and the danger of fixing a lawn mower motor while the engine is running, *Mix*, 393 N.W.2d at 20.

The danger and harm alleged in the Complaint is distinguishable from the dangers cited in Minnesota case law. The Complaint alleges that scientists connected burning fossil fuels with greenhouse gasses, global temperature increases and climate change. Compl. ¶¶ 56–58; 81–82. However, the Court concludes while these allegations discuss an awareness among scientists of the Defendants' products leading to climate change, the Complaint does not plead facts that

show that these alleged dangers were "obvious to anyone using the product." *Mix*, 393 N.W.2d at 19. Further, at this stage of the litigation, the Court must draw reasonable inferences in favor of the State. Taking the allegations in the Complaint as true, on the record before it, the Court cannot conclude that the danger of consumption of fossil fuels was open and obvious as a matter of law.

As to the arguments of ExxonMobil and FHR regarding remoteness of the wrongful acts, the legal issue they address is foreseeability. A manufacturer has a duty to warn of a risk posed by its product when the risk is "direct and is the type of occurrence that was or should have been reasonably foreseeable," but not when the risk is "too remote." *Germann v. F.L. Smithe Mach. Co*., 395 N.W.2d 922, 924 (Minn. 1986). ExxonMobil and FHR argue that they did not have a duty to warn Minnesota consumers that using fossil fuel products in Minnesota could contribute to worldwide emissions. In particular, they argue that it is not possible to trace global warming to any particular source of emissions. "In determining whether the duty exists, the court goes to the event causing the damage and looks back to the alleged negligent act. If the connection is too remote to impose liability as a matter of public policy, the courts then hold there is no duty, and consequently no liability." *Id*.

The State responds that foreseeability is typically a question for the jury. The Court agrees. "Although duty is generally a legal question for the court to decide, it is well established that foreseeability is a question for the jury if there is a specific factual dispute concerning a manufacturer's awareness of a risk." *Montemayor v. Sebright Prods*., Inc., 898 N.W.2d 623, 629 (Minn. 2017) (cleaned up). Broadly, the Complaint alleges that ExxonMobil and FHR failed to warn of harms to the climate, and those harms were foreseeable. Compl. ¶¶ 202–208. The Defendants' arguments regarding the traceability of emissions sources and their impact on global

warming is fact-specific, and at the pleading stage of this case, it is not appropriate to make a legal determination regarding the existence of a duty based on an undeveloped factual record. *Montemayor*, 898 N.W.2d at 629. The Court must accept those allegations as true and not weigh evidence underlying disputed facts.

With regard to the arguments of ExxonMobil and FHR that the duty to warn extends only to a product's end users, the Defendants argue that a product supplier has a duty to warn only those for whom the product is supplied. Specifically, ExxonMobil argues that it does not have a duty to warn the public of climate change, and FHR argues that the State has not pled that it sells directly to individual consumers. The State responds that Minnesota case law holds that a product manufacturer's duty extends beyond end users, and requires a duty to warn for anyone likely to be exposed to the danger of the use of a product. The State argues that this issue may not be decided at the motion to dismiss stage because, as to FHR, the Complaint does not allege facts sufficient to determine if a sophisticated end user defense applies, and FHR's argument is really about reasonable foreseeability, which is an issue for the jury.

"In general, a supplier has a duty to warn end users of a dangerous product if it is reasonably foreseeable that an injury could occur in its use." *Gray v. Badger Min. Corp*., 676 N.W.2d 268, 274 (Minn. 2004) (citation omitted). The Court concludes that the question presented by the parties' dispute regarding end users versus those who may be exposed to the danger of fossil fuels is ultimately a question about foreseeability. *See Whiteford by Whiteford v. Yamaha Motor Corp., U.S.A*., 582 N.W.2d 916, 919 (Minn. 1998) ("Yamaha's duty was to protect the Snoscoot's users, along with those who might be injured by its use or misuse, from foreseeable danger.") As discussed above, when foreseeability is at issue, this Court should not

engage in factfinding when addressing a motion to dismiss. Whether ExxonMobil and FHR owed a duty to users and consumers is dependent on the foreseeability of the exposure to danger.

The State asserts that the arguments of ExxonMobil and FHR that harm to Minnesota residents must have been caused solely by its failure to warn in Minnesota is contrary to established case law. The State argues that longstanding Minnesota case law holds that both defendants may be held accountable for out-of-state conduct that causes in-state injuries. The Court agrees. *Young v. Masci*, 289 U.S. 253, 258–59 (1933) ("A person who sets in motion in one state the means by which injury is inflicted in another may, consistently with the due process clause, be made liable for that injury whether the means employed be a responsible agent or an irresponsible instrument.")

The Court denies the motions to dismiss of ExxonMobil and FHR as to the duty-to-warn count.

d) Particularity

API and FHR argue that the State has failed to adequately plead all fraud claims—both common law and statutory—because the Complaint fails to plead with particularity as required by Minn. R. Civ. P. 9.02. In addition, the Defendants make individualized arguments for dismissal based on their specific circumstances. API argues that the Complaint contains generalized group pleading, and the State fails to identify API's alleged individual acts of fraud or deceptive affirmative statements. Similarly, FHR argues that the Complaint fails to plead fraud with particularity because it lumps together all defendants, failing to plead particular details of each defendant's alleged conduct. FHR argues that the Complaint uses the term "Defendants" even when the allegations do not include FHR, and so Defendants do not have proper notice of the factual allegations against them.

As to the common-law claim for fraud and misrepresentation, the parties agree that a heightened pleading standard, requiring pleading with particularity, applies. Minnesota Rule of Civil Procedure 9.02 requires that "the circumstances constituting fraud or mistake . . . be stated with particularity." "To plead with particularity is to plead the ultimate facts or the facts constituting fraud." *Hardin Cnty. Sav. Bank v. Hous. & Redev. Auth. of Brainerd*, 821 N.W.2d 184, 191 (Minn. 2012) (citations and quotation marks omitted). A party must plead "facts underlying each element of the fraud claim." *Id*. Particularity is the "who, what, when, where, and how: the first paragraph of any newspaper story." *Baker v. Best Buy Stores, LP*, 812 N.W.2d 177, 184 (Minn. Ct. App. 2012) (quoting *Parnes v. Gateway 2000, Inc*., 122 F.3d 539, 549–50 (8th Cir. 1997)).

A claim for fraudulent misrepresentation has five elements: (1) the defendant made a false representation of a past or present material fact (2) with knowledge that the representation was false and (3) with the intention to induce reliance on the misrepresentation; (4) the representation caused such reliance by the plaintiff; and (5) the plaintiff suffered pecuniary damage as a result. *Hoyt Props., Inc. v. Prod. Res. Grp., LLC*, 736 N.W.2d 313, 318 (Minn. 2007).

Fraud also may be proved by concealing material facts that causes another party to act in reliance. "[N]ondisclosure may constitute fraud [if there is] a suppression of facts which one party is under a legal or equitable obligation to communicate to the other, and which the other party is entitled to have communicated to him." *Richfield Bank & Tr. Co. v. Sjogren*, 244 N.W.2d 648, 650 (Minn. 1976).

As to the statutory consumer protection claims, the parties dispute whether they must be pled with particularity. Defendants argue that *Baker v. Best Buy Stores, LP*, 812 N.W.2d 177,

182–84 (Minn. Ct. App. 2012), *rev. denied* (Minn. Apr. 25, 2012) requires the statutory consumer fraud claims to be pled with particularity. The State argues that *Graphic Commc'ns Loc. 1B Health & Welfare Fund A v. CVS Caremark Corp*., 850 N.W.2d 682, 689 (Minn. 2014) overruled *Baker*, and now only notice pleading is required. The State argues that even if particularity is required, the Complaint meets that standard.

As to API's arguments, the State responds that it has pled facts regarding API's role in alleged deception by helping Exxon develop a deceptive position for the petroleum industry on climate change and it convened a group to write the "victory" memorandum. The State also points to API's alleged funding of proxies who spread disinformation while conspiring with codefendants. The State argues that group pleading is proper under established case law and no Minnesota appellate decision has disapproved of it.

The Court concludes that the State has sufficiently pled its common-law fraud claim with particularity. The Complaint pleads the ultimate facts constituting each element of the alleged fraud, including the who, what, when, where and how. In particular, the Complaint alleges that in 1988, API participated in a "campaign of deception and half-truths" including "developing the petroleum industry position[.]" Compl. ¶ 89. The Complaint also alleges that in 1998, API participated in a plan to emphasize that "it is not known for sure whether (a) climate change actually is occurring, or (b) if it is, whether humans really have any influence on it." *Id.* Further, the Complaint alleges that a memo written by a team convened by API defined victory as "when average citizens and the media were convinced that uncertainties existed in climate science[.]" *Id*. Combined with the other allegations in the Complaint, these allegations are sufficient to meet all of the elements of common law fraud as alleged. The Court concludes that this information is sufficiently particular to meet the fraud pleading standard. The Court also concludes that the

group pleading contained in the Complaint is not prohibited by any rule or case with precedential authority.

As to FHR, the State argues that heightened pleading applies only to the common-law fraud and misrepresentation claim, and a relaxed particularity standard applies, citing *Hardin County Savings Bank*. The State argues that the Complaint's collective allegations are proper, and no case law says otherwise. The State also argues that the Complaint references collective action only where the State alleges Defendants engaged in the same wrongful conduct, and that the Complaint alleges individualized conduct. Further, the State asserts that FHR has been put on proper notice by the Complaint because it allows FHR to respond and prepare a defense. The State argues that the Complaint pleads that FHR has engaged in deceptive advertising and misrepresentation, and intended consumers to rely on the false statements and omissions to increase the consumption of fossil-fuel products. The State asserts that the Complaint alleges that FHR gave money to organizations that misrepresented the scientific consensus regarding the cause of climate change.

The Court concludes that the State has alleged fraud against FHR with sufficient particularity. The Complaint alleges that all defendants paid outside organizations to make misleading statements about climate change science. Compl. ¶ 97. The Complaint the provides a specific example regarding FHR's alleged conduct: "between 1997 and 2017, Koch-controlled foundations gave more than $127 million to groups that obfuscated climate science." Compl. ¶ 98. The Complaint also details funding provided by an FHR-related foundation to entities that made allegedly misleading statements. Comp. ¶ 110–14. The Complaint alleges that the Defendants funded fraudulent scientific research. Compl. ¶ 124. It then provides a specific example of an FHR-related foundation providing a scientist research finding. Compl. ¶ 125–26.

As to the common-fraud and misrepresentation claim, the Court concludes that these allegations meet the Rule 9.02 pleading standard because they provide both the facts constituting fraud, *Hardin*, 821 N.W.2d at 191, as well as the "who, what, when, where, and how." *Baker*, 812 N.W.2d at 184.

As to the parties' arguments regarding statutory claims, the Court concludes that it need not resolve the dispute about the pleading standard in the case law. With the exception of the MCFA claims discussed below, the Court concludes that the State has met a particularity pleading standard as to those claims.

e) The Complaint sufficiently pleads misrepresentations.

All Defendants argue that the fraud claims—both common law and statutory—must be dismissed because the State fails to plead a fraudulent misrepresentation. API argues that the only statements attributable to it in the Complaint are a 1996 report addressing carbon dioxide buildup and a 1997 *Washington Post* op-ed. API argues the statements are forward-looking conjecture and non-actionable opinion. Similarly, ExxonMobil argues that the statements attributed to it by the Complaint do not state a claim because they are opinions, conjecture about the future, or general, indefinite statements about climate change. FHR argues that the Complaint does not plead that FHR is liable for David Koch's single 2010 statement, and the statement cannot be false because it was his forward-looking opinion.

An essential element of a fraud claim is "a false representation by [the defendant] of a past or existing material fact susceptible of knowledge[.]" *Valspar Refinish, Inc. v. Gaylord's, Inc*., 764 N.W.2d 359, 368 (Minn. 2009). A future promise is generally not actionable as fraud, and representations or omissions concerning future events cannot be fraudulent unless there are additional allegations showing that "the party making the representation had no intention of performing when the promise was made." *Martens v. Minn. Min. & Mfg. Co*., 616 N.W.2d 732,

747 (Minn. 2000). "Fraud must relate to past or existing fact and cannot be predicated on statements of intention or opinion." *Dollar Travel Agency, Inc. v. N.W. Airlines, Inc.*, 354 N.W.2d 880, 883 (Minn. Ct. App. 1984). ExxonMobil cites *Fabian, May & Anderson, PLLP v. Vollkommer*, No. A10-1205, 2011 WL 1364423, at *4 (Minn. Ct. App. Apr. 12, 2011) for the proposition that expressing an opinion about the future does not constitute fraud.

The State argues that API's statements regarding conjecture, opinion and statements of intention fail because the Court must draw inferences in favor of the State and because the Complaint alleges that API misrepresented concrete facts that API knew were demonstrably false. As to ExxonMobil, the State responds that the Complaint alleges that ExxonMobil misrepresented concrete, ascertainable facts knowing they were demonstrably false. The State points to a 1997 *New York Times* advertisement stating "We still don't know what role man-made greenhouse gases might play in warming the planet." Compl. ¶ 90. The State argues that the Complaint alleges that Exxon knew the role of anthropogenic greenhouse gases in warming the planet, and knew their consumption would prove catastrophic. Compl. ¶¶ 67, 73. Even if ExxonMobil's statements qualify as opinions, conjecture, or are indefinite, the State argues that, as whole, the representations are misleading. As to FHR, the State argues that it alleges an agency relationship between Koch and David Koch, and David Koch's allegedly misleading statement was made while discussing fossil-fuel emissions of Koch Industries. The State argues that the existence of an agency relationship may not be decided at the motion to dismiss stage. The State also argues that David Koch's argument was false and misleading, and was a representation of fact, not mere opinionated conjecture.

The Court concludes that the State has sufficiently pled that the alleged representations for all three defendants were false. While the Minnesota case law on opinion and conjecture is

not robust, the case law is clear that, regardless of how a statement is generally characterized, representations about future events can be properly pled if the statement otherwise meets the criteria for the operative essential element: that it was "a false representation by [the defendant] of a past or existing material fact susceptible of knowledge[.]" *Valspar*, 764 N.W.2d at 368.

For each of the Defendants, the State pleads sufficient facts to meet the first essential element. As to API and FHR, as discussed above, the Court concludes that the Complaint pleads with particularity the fraud claims against it. As to all Defendants, regardless of any argument regarding conjecture or opinion, the Complaint alleges that the defendants made representations about a past or existing material fact susceptible of knowledge. The Complaint alleges that all defendants funded organizations that made intentionally misleading statements about greenhouse gasses and climate change. Compl. ¶ 90, 100–105. As to API, the Complaint specifically alleges that API's 1996 report was "false but clear[.]" With regard to ExxonMobil, the Complaint alleges that Exxon made misleading statements inconsistent with its own conclusions about climate change. Compl. ¶ 90. As to FHR, the Complaint pleads that "David Koch of Koch Industries" is an agent of FHR. Compl. ¶¶ 11, 90. Further, the Complaint alleges that Koch engaged in deceptive conduct by paying organizations and scientists to make misleading statements about climate change science. Compl. ¶ 98. The Court must treat the allegations in the Complaint as true. Therefore, as to all defendants, the Court concludes that State has sufficiently pled misrepresentation.

f) The Complaint properly pleads fraud by omission.

All Defendants allege that the Complaint's allegation of fraud by omission fails to state a claim. The Defendants argue that they had no duty to disclose, and that none of the exceptions which impose a duty to disclose apply in this case. The assert they did not have a confidential or fiduciary relationship with Minnesota consumers.

Fraud may be proved by concealment of material facts that causes another party to act in reliance. "[N]ondisclosure may constitute fraud [if there is] a suppression of facts which one party is under a legal or equitable obligation to communicate to the other, and which the other party is entitled to have communicated to him." *Richfield Bank & Tr. Co. v. Sjogren*, 244 N.W.2d 648, 650 (Minn. 1976). To adequately plead a claim under the MCFA, a plaintiff "must plead and prove not only an omission of material fact, but also special circumstances that trigger a duty to disclose. It is not enough that the plaintiff simply alleges that the defendant omitted material information in a transaction." *Graphic Commc'ns Local 1B Health & Welfare Fund A v. CVS Caremark Corp*., 850 N.W.2d 682, 696 (Minn. 2014). Examples of special circumstances include:

> (a) One who speaks must say enough to prevent his words from misleading the other party.
>
> (b) One who has special knowledge of material facts to which the other party does not have access may have a duty to disclose these facts to the other party.
>
> (c) One who stands in a confidential or fiduciary relation to the other party to a transaction must disclose material facts.

API argues that imposing such a duty would constitute "compelled speech" in violation of the First Amendment. Further, API argues that it was under no duty to disclose or correct any alleged misrepresentation concerning climate science because the State acknowledges that the link between fossil fuels and global climate change was "widely recognized and publicly discussed" by "[t]he late 1980s and early 1990s," well before the two API statements at issue. Compl. ¶ 81.

ExxonMobil argues that the alleged statements attributed to it are nonactionable opinions, conjecture, or general and indefinite statements—not statements of past or present facts—and thus create no duty to clarify. ExxonMobil argues that the State has not sufficiently alleged that

any specific disclosure was necessary to clarify an alleged prior statement. Similar to API, ExxonMobil argues that because the Complaint alleges that the link between fossil fuels and climate change was widely known years before any statements attributed to ExxonMobil were made, it had no duty to tell the public what had been publicly discussed. ExxonMobil argues that the "special knowledge" exception does not apply because it did not have actual knowledge of fraud by a third party. ExxonMobil further argues that having "superior knowledge" is not sufficient to create an affirmative duty to speak because under Minnesota law, the knowledge must have been uniquely available to ExxonMobil. FHR argues that Minnesota consumer protection statutes do not create a duty to disclose information and that the State has not alleged any speech by FHR relating to climate change. FHR argues that the State has not pled any special knowledge attributable to FHR.

As to API, the State responds that it has alleged that API acted fraudulently by (1) failing to disclose its knowledge about the role of fossil fuel products causing climate change; and (2) it had superior knowledge of these undisclosed, material facts. The State argues that API's argument about its statement being opinion is meritless because its statements were about current scientific knowledge. The State argues that the Complaint alleges that climate change was recognized and discussed in Congress and at the United Nations, not among consumers or the general public, and that the Court must accept the State's allegations in the Complaint as true. As to special knowledge, the State argues that this exception is not limited under Minnesota law to third party fraud, and API had special knowledge about Exxon's and API's alleged fraud. As to API's First Amendment arguments, the State responds that fraud is not protected by the First Amendment, and common law and statutes may therefore impose liability without running afoul of the Constitution.

As to ExxonMobil, the State argues that it has sufficiently pled its claim because the Complaint alleges that Exxon made statements about greenhouse gasses without disclosing its internal knowledge about the effects of fossil-fuel consumption. Compl. ¶ 90. Even if the public understood climate change, the State argues that this creates a factual dispute that cannot be resolved by a motion to dismiss because the Court must accept as true the State's allegations that Exxon engaged in a campaign to discredit climate science, and that the public had limited knowledge about climate change. The State argues that Minnesota case law does not limit the special knowledge requirement to third-party fraud.

As to FHR, the State argues that David Koch's statement alleged in the Complaint was "misleading because it described climate change as beneficial for food production, while omitting its disastrous impacts on agriculture, along with other dire climate-related environmental and societal effects." Pl.'s Mem. in Opp. To FHR's Mot. to Dismiss, at 19. The State argues that whether FHR had a duty to disclose these impacts is a question for a jury, because the question of special knowledge is a fact issue. The State responds that the Complaint sufficiently alleges that Koch had special knowledge of its products' climate risks to trigger a duty to disclose, and that FHR has notice of the claims against it. The State argues that it adequately alleges FHR's special knowledge about climate change, by stating that FHR "obscured its products' dangers, attacked emerging public climate science, and spread disinformation to portray these dangers as unproven." *See* Compl. ¶¶ 110, 111, 113–16, 124, 126–27.

The Court concludes that the State has adequately pled fraud by omission. The Court concludes that the Complaint alleges that each defendant had "special knowledge" that their customers and fossil-fuel users did not have. The Court is persuaded by the State's argument that

because all defendants are alleged to have engaged in deception about fossil-fuel products and their role in causing climate change, they had special knowledge which created a duty to disclose what they knew. The Court is persuaded that cases involving knowledge of a party's own products or information support the conclusion that special knowledge exists and creates a duty. *Consol. Foods Corp. v. Pearson*, 178 N.W.2d 223, 225–26 (Minn. 1970) ("The trial court correctly held that the failure to disclose that all or substantially all the assets listed on the financial statement had been pledged, assigned, mortgaged or otherwise encumbered as security for loans constituted a fraudulent concealment as a matter of law."); *Johnson v. Bobcat Co*., 175 F. Supp. 3d 1130, 1146 (D. Minn. 2016) (allegations sufficient where "Johnson alleges that Bobcat, as the manufacturer, was in "a superior position to know the true facts about their product…") A discussed above, the Complaint alleges that API and Exxon participated in developing a deceptive campaign described in internal strategy documents. Compl. ¶ 89. As to FHR, the Complaint alleges that it had knowledge of the connection between the sale of its fossil-fuel products and climate science. Compl. ¶ 80. As contemplated by the case law, this special knowledge alleged to have been possessed by each defendant creates a duty to disclose these material facts to the other party. *Richfield Bank & Tr. Co.,* 244 N.W.2d at 650; *Klein*, 196 N.W.2d at 622.

As to API's argument about forward-looking opinions, the Court has ruled that the State adequately pled that the statements at issue meet the definition of a misrepresentation. Therefore, the Court concludes that Complaint adequately pleads fraud by omission as to all parties.

g) Intent to deceive

FHR argues that the MCFA and fraud claims must be dismissed because the Complaint fails to allege any intent to deceive. FHR argues that the Complaint alleges only that Defendants intended for others to rely on their statements, not that they intended to deceive anyone, and

therefore the pleading standard has not been met. As discussed below, the Court grants FHR's motion to dismiss the MCFA claim, so the Court will address the common-law fraud claim.

The State responds that FHR misunderstands applicable law. The State argues that it is not necessary to plead the intent to deceive because it is not a separate element from intent to induce reliance. The Court agrees. The operative essential element of the fraudulent misrepresentation count is that the defendant made a statement with the intention to induce reliance on the misrepresentation. *Hoyt,* 736 N.W.2d at 318.

The Court concludes that the State has adequately pled scienter as to the common-law fraud count against FHR. The Complaint alleges that David Koch's statements were made in "media with substantial circulation to Minnesota" and "intended to, and did, reach and influence the public and consumers, including in Minnesota." Compl. ¶ 90. This allegation that David Koch's statement was intended to influence the public and consumers is sufficient to meet the common-law fraud standard. It alleges that David Koch made statements "with the intention to induce reliance on the misrepresentation" *Hoyt*, 736 N.W.2d at 318.

h) The fraud claim sufficiently pleads reliance.

All Defendants move to dismiss the common-law fraud claim, arguing that the State has failed to allege reliance. "To prevail on a claim of fraudulent misrepresentation, the complaining party must set forth evidence demonstrating both actual and reasonable reliance." *Hoyt*, 736 N.W.2d at 320–21 (Minn. 2007) (explaining that reliance is an element of a fraud claim). "Actual reliance means that the plaintiff took action, resulting in some detriment, that he would not have taken if the defendant had not made a misrepresentation, or that the plaintiff failed, to his detriment, to take action that he would have taken had the defendant been truthful." *Zimmerschied v. JP Morgan Chase Bank, N.A.*, 49 F. Supp. 3d 583, 594 (D. Minn. 2014) (quotation omitted). "Parties alleging fraud must plead reliance with sufficient particularity to

state a plausible claim of justifiable reliance." *Ambassador Press Inc. v. Durst Image Tech. U.S., LLC*, 949 F.3d 417, 423 (8th Cir. 2020) (quotation omitted). "Whether a party's reliance is reasonable is ordinarily a fact question for the jury unless the record reflects a complete failure of proof." *Hoyt*, 736 N.W.2d at 321.

Defendants argue that the Complaint does not allege that any Minnesota consumer relied on their statements or that the Defendants intended to induce reliance. Defendants argue that the Complaint makes vague and conclusory allegations and fails to identify any Minnesota consumer who encountered the statements or representations attributed to them, and does not identify any consumer who would not have purchased fossil fuels but for reliance on the statements.

The State responds that it has sufficiently alleged reliance. Specifically, the State argues that the Complaint alleges that the Defendants built advertising and public relations campaigns which focused on consumers and their perceptions of climate science, and that consumers relied on their deception. The State points to portions of the Complaint that allege details about the impact on consumer beliefs. *See* Compl. ¶ 73, 124. Specifically, the Complaint alleges that "Defendants intended that consumers, including Minnesotans, would rely on misleading statements by outside organizations[.]" *Id.* ¶ 122. The Complaint also states that a "A 2007 Yale University-Gallup poll found that while 71 percent of Americans personally believed global warming was happening, only 48 percent believed that there was a consensus among the scientific community, and 40 percent believed there was a lot of disagreement among scientists over whether global warming was occurring." Compl. ¶ 124.

Treating the allegations as true, the Court concludes that the Complaint sufficiently alleges reliance by Minnesota consumers on actions taken by the Defendants. Further, the Court has found no authority requiring that, at the pleading stage, the State is required to identify

specific individuals that relied on the misleading statements. The Court concludes that the State has adequately pled reliance.

i) The Complaint does not sufficiently plead the MCFA claim but does sufficiently plead MDTPA, and MFSAA claims.

All Defendants argue that the Complaint's statutory consumer fraud claims must be dismissed because the alleged statements were not connected to a consumer transaction or sale of goods. The Defendants argue that that the MCFA, MDTPA, and MFSAA all require a direct nexus between a misrepresentation and a consumer transaction or promotion, and none of the statements alleged in the Complaint occurred in the context of a consumer transaction between a seller and a buyer. API argues that it does not sell fossil fuels and its policy advocacy is not covered by the MCFA. ExxonMobil argues that the State's allegation that its statements were made in connection with the sale of fossil fuels is conclusory and contradicted by the Complaint's allegations that the statements were made in internal publications, in newspapers addressing public policy, and within the industry. FHR argues that the State has not alleged that it sells products to consumers or that David Koch's statement occurred in the context of a commercial transaction. The State argues that courts have interpreted consumer protection statutory language very broadly, and none of the consumer protection statutes are limited to statements made during a specific consumer transaction.

The Court begins with the operative statutory language of the statutory provisions at issue. The MCFA prohibits:

> "[t]he act, use or employment by any person of any fraud, unfair or unconscionable practice, false pretense, false promise, misrepresentation, misleading statement or deceptive practice, with the intent that others rely thereon in connection with the sale of any merchandise, whether or not any person has in fact been misled, deceived, or damaged thereby[.]"

Minn. Stat. § 325F.69. "'Merchandise' means any objects, wares, goods, commodities, intangibles, real estate, loans, or services." Minn. Stat. § 325F.68, subd. 2. "'Sale' means any sale, offer for sale, or attempt to sell any merchandise for any consideration." Minn. Stat. § 325F.68, subd. 4.

The MFSAA applies to "an advertisement of any sort regarding merchandise, securities, service, or anything so offered to the public, for use, consumption, purchase, or sale" made in any form, with intent "directly or indirectly . . . to increase the consumption thereof[.]" Minn. Stat. § 325F.67. The MDTPA prohibits deceptive trade practices "in the course of business, vocation, or occupation." Minn. Stat. § 325D.44, subd. 1. The portions of the statute cited in the state that deceptive trade practices occur when a person:

> (5) represents that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have;
>
> (7) represents that goods or services are of a particular standard, quality, or grade . . . if they are of another;
>
> (13) engages in any other conduct which similarly creates a likelihood of confusion or of misunderstanding.

Compl. ¶ 223.

With regard to the MCFA, the Court concludes that the State has not sufficiently alleged that Defendants' statements were made "in connection with the sale of any merchandise." Minn. Stat. § 325F.69. It is certainly true that fossil fuels constitute merchandise. It is also true that Complaint alleges that Defendants' statements were made to consumers. But the definition of "sale" contained in Minn. Stat. § 325F.68, subd. 2 strongly suggests that more specificity as to the sale must be alleged. The Complaint identifies no specific consumer or consumers who purchased merchandise or were the recipient of an "offer for sale" or an "attempt to sell."

Further, because no specific "sale" is identified in the Complaint, there is no substantive allegation of the "connection" between the Defendants' alleged statements and any sale.

The Court recognizes that Minnesota courts have interpreted this statutory language "very broadly . . . to enhance consumer protection." *State v. Philip Morris Inc*., 551 N.W.2d 490, 496 (Minn. 1996). The Court also acknowledges that at least one court has concluded that a trade association's statements were sufficient to plead a MCFA claim as "in connection with the sale of merchandise." *Tuttle v. Lorillard Tobacco Co*., No. CIV991550PAM/JGL, 2001 WL 821831, at *7 (D. Minn. July 5, 2001). But the *Tuttle* case is distinguishable from the facts in this case in one important respect. That case involved an identified plaintiff who had participated in a sale. *See Id*. at *1 (noting that Plaintiff's deceased husband had used smokeless tobacco products). Because the State has not identified any sale, or the connection between Defendants' alleged statements and that sale, the Court grants Defendants' motions to dismiss as to the MCFA claim. To be clear, the Court has treated all the allegations in the Complaint as true and construed all inferences in favor of the State. Even applying those rules and using the notice pleading standard (not the particularity standard) the Court concludes that the State has not sufficiently alleged a necessary element of its MCFA claim—a connection with the sale of any merchandise.

As to the MDTPA, and MFSAA claims, the Court concludes that Plaintiff has sufficiently pled these claims against all defendants. The Court agrees with the State that the "in connection" is not a component of the FSAA or DTPA claims, and that "in connection with the sale of any merchandise" does not appear in either statute. The Court concludes that the Complaint does plead the necessary elements of the other two claims.

As to the MFSAA and MDTPA, the Complaint alleges that Defendants made deceptive and misleading statements, and that "[t]hese statements were intended to, and did, reach and

influence the public and consumers, including in Minnesota." Compl. ¶ 90. The Complaint also alleges that "Defendants supported, approved, and furthered these misleading advertisements because they were consistent with Defendants' goal of influencing consumer demand for their fossil-fuel products and assisted them in maintaining profits." Compl. ¶ 105. These allegations sufficiently allege that Defendants advertised regarding merchandise, and did so with intent "directly or indirectly . . . to increase the consumption thereof[.]" Minn. Stat. § 325F.67. These statements also sufficiently allege that the Defendants engaged in deceptive trade practices "in the course of business, vocation, or occupation." Minn. Stat. § 325D.44, subd. 1. Thus, with regard to the argument that the MFSAA and MDTPA claims fail to state a claim as to a connection with a consumer transaction, the Court denies Defendants' motions to dismiss.

j) The MDTPA states a claim as to the issue of confusion.

ExxonMobil argues that the State's allegation—that Defendants created a likelihood of confusion—fails as a matter of law to state a claim under subdivision 1(14) of the MDTPA. The subdivision in dispute is the MDTPA's catchall provision. "A person engages in a deceptive trade practice when, in the course of business, vocation, or occupation, the person: . . . (14) engages in any other conduct which similarly creates a likelihood of confusion or of misunderstanding." Minn. Stat. § 325.44, subd. 1(14).

The Complaint alleges that Defendants "created a likelihood of confusion or misunderstanding about their products[.]" Compl. ¶ 226. ExxonMobil argues that this provision is intended to prohibit sellers from creating confusion or leading consumers to be mistaken about the identity of a product or the essential aspects of one product for that of another product. ExxonMobil asserts that the State has not alleged that ExxonMobil was passing off its products for those of another company or that it caused consumers to mistake the identity or essential aspects of its products.

The State responds that the catchall provision applies to conduct which is broader than causing confusion between different products. Focusing the phrase "any other conduct" in subdivision 1(14), the State argues that the principles of statutory construction support its position because adopting ExxonMobil's reading of the statute would render the catchall provision redundant. That is because, the State claims, Minn. Stat. § 325D.44, subd. 1(1) defines a deceptive trade practice as "pass[ing] off goods or services as those of another[.]"

The Court agrees with the State. The language of subd. 1(14)—"any other conduct"—strongly suggests that the Legislature did not intend to limit the reach of the catchall provision only to confusion over another seller's product. The State is correct that a plain reading of subd. 1(1) would render subd. 1(14) redundant, as both provisions would cover the same conduct. Further, none of the case law cited by ExxonMobil purports to limit the catchall provision to confusion between products. The State has adequately pled its MDTPA claim against ExxonMobil.

k) The State has properly pled its MFSAA claim.

All Defendants argue that the MFSAA only reaches allegedly false statements in advertisements "made, published, disseminated, circulated, or placed before the public, in this state[.]" Minn. Stat. § 325F.67. API and FHR argue that none of the statements or advertisements attributable to them in the Complaint were disseminated in Minnesota and so the MFSAA claim must be dismissed.

As to API, the State responds that the Complaint alleges advertisement in Minnesota. *See* Compl. ¶ 16 ("API and its members disseminated misleading messaging regarding climate change to further their shared goal of influencing consumer demand, including in Minnesota, for fossil-fuel products through long-term advertising . . . ."). As to ExxonMobil, the State argues that the Complaint alleges that Exxon made numerous false advertising statements in Minnesota,

including in daily newspapers sold across the state: *The New York Times*, *The Washington Post*, and *The Wall Street Journal*. Compl. ¶¶ 90–91. As to FHR, the State argues that the Complaint alleges that Koch's statements were made in "media with substantial circulation to Minnesota" and "intended to, and did, reach and influence the public and consumers, including in Minnesota." Compl. ¶ 90. The State argues that the Court must draw reasonable inferences in the State's favor, and so the Complaint sufficiently alleges that these statements were disseminated or viewed in Minnesota.

The Court concludes that a comparison of the language in Minn. Stat. § 325F.67 to the allegations in the Complaint demonstrates that the State has properly pled that the allegedly false statements in advertisements were published, disseminated, and circulated in Minnesota. The Complaint clearly makes that allegation as to all defendants, through advertising or newspaper circulation in Minnesota. Further, no case law cited by the Defendants holds that the speaker of an allegedly false statement or the entity advertising has to be physically located in Minnesota or must originate the message within the State. The State has properly pled in its MFSAA claim that the alleged statements and advertisements were "made, published, disseminated, circulated, or placed before the public, in this state." Minn. Stat. § 325F.67.

l) The State has sufficiently alleged a conspiracy.

All defendants argue that the State has failed to plead a civil conspiracy because the Complaint does not allege an agreement between the Defendants or the individuals and organizations with whom the State alleges were co-conspirators. The State responds that it has properly pleaded a conspiracy because it has met the notice-pleading standard to allege facts from which a civil conspiracy may be identified, including that the defendants collaborated in their efforts to deceive. The State points to paragraphs 15, 89, 98–99, 110–17 of the Complaint. The State argues that all Defendants were involved in the GCC, which the Complaint alleges

spearheaded deception efforts starting in the 1990s. Compl. ¶¶ 100–07. The State asserts that it has alleged that all Defendants coordinated their conduct, which sufficiently alleges a civil conspiracy.

To establish a civil conspiracy, a plaintiff must show that two or more people worked together to accomplish (1) an unlawful purpose or (2) a lawful act by unlawful means. *Harding v. Ohio Cas. Ins. Co. of Hamilton, Ohio*, 41 N.W.2d 818, 824 (Minn. 1950). Civil conspiracy requires the conspirators to have a meeting of the minds as to the plan or purpose of an action to achieve a certain result. *Bukowski v. Juranek*, 35 N.W.2d 427, 429 (Minn. 1948). "To establish a conspiracy[,] no formal agreement is necessary. Rather, it may be found in a course of dealings or other circumstance as well as in an exchange of words." *Metro. Transportation Network, Inc. v. Collaborative Student Transportation of Minnesota*, LLC, 6 N.W.3d 771, 785 (Minn. Ct. App. 2024), *rev. denied* (July 23, 2024) (cleaned up).

The Court concludes that the State has adequately alleged a civil conspiracy. Paragraph 99 of the Complaint specifically alleges that the defendants "engaged in a conspiracy." Further, the Complaint paragraphs cited above by the State use phrasing that alleges that the Defendants worked together to mislead consumers. *See e.g.* Compl. ¶ 100 ("Defendants funded and orchestrated the GCC's operations . . ."); Compl. ¶ 101 (alleging that Defendants had a "long-term campaign to influence consumers' demand for oil and gas through mass disinformation."). The State has adequately alleged that all three defendants had a meeting of the minds and worked together to accomplish an unlawful purpose. The Complaint adequately pleads civil conspiracy among the Defendants, and so Defendants' motions are denied.

3. The State's lawsuit is not barred by Minnesota's Anti-SLAPP statute.

API and FHR argue that Minnesota's anti-SLAPP statute bars the claims against them. This statute Minnesota's protects parties from "strategic lawsuits against public participation"

and provides that "[l]awful conduct or speech that is genuinely aimed in whole or in part at procuring favorable government action is immune from liability, unless the conduct or speech constitutes a tort or a violation of a person's constitutional rights." Minn. Stat. § 554.03 (2018). It applies "to any motion in a judicial proceeding to dispose of a judicial claim on the grounds that the claim materially relates to an act of the moving party that involves public participation." Minn. Stat. § 554.02, subd. 1 (2018). "Public participation" is defined as "speech or lawful conduct that is genuinely aimed in whole or in part at procuring favorable government action." Minn. Stat. § 554.01, subd. 6 (2018).

The Legislature recently repealed the anti-SLAPP statute and replaced it with the Uniform Public Expression Protection Act ("UPEPA"), a model law developed by the Uniform Law Commission. *See* UPEPA, ch. 123, art. 18, § 16 (eff. May 25, 2024). The parties agree that the Legislature preserved the ability to bring a motion under the previous anti-SLAPP statute against claims asserted before the UPEPA's effective date. *See id*. § 13 (codified at Minn. Stat. § 554.19).

If a "moving party" brings a proper anti-SLAPP motion, the "responding party" must demonstrate to the court by "clear and convincing evidence that the acts of the moving party are not immunized from liability." Minn. Stat. § 554.02, subd. 1, 2(3). The statute suspends discovery "pending the final disposition of the motion, including any appeal," with "specified and limited discovery" available "for good cause shown." *Id*. subd. 2(1). If the responding party does not meet its burden, "the court shall grant the motion and dismiss the judicial claim[.]" *Id*. The Minnesota Supreme Court has held that the anti-SLAPP statute is unconstitutional when a case has a claim that requires a jury trial because it improperly "interpose[s] the district court as

the fact-finder in actions at law." *Leiendecker v. Asian Women United of Minn*. (*Leiendecker II*), 895 N.W.2d 623, 637 (Minn. 2017).

API and FHR assert that because the State targets their speech relating to the benefits of fossil fuels, the claims materially relate to their public participation on issues of public significance. They argue that the State seeks to regulate their speech based on content and viewpoint, and silence their statements about climate change policy. API and FHR argue that the anti-SLAPP statute applies to all of the State's claims against them. They argue that, although the Minnesota Supreme Court has held that the anti-SLAPP statutes are unconstitutional as applied to "claims at law," the statutes apply to the AG's claims in this case because the AG brings claims in equity that afford no jury trial right. API and FHR argue that the State does not pursue legal damages, and so no jury trial right applies because the Complaint only seeks equitable relief. API and FHR argue that even if the State requested some damages, the anti-SLAPP statute applies because all claims seek a mix of equitable and legal relief. API and FHR argue that the Court may decide their anti-SLAPP motions without weighing evidence or factfinding because the State's claims do not meet the pleading standard, and no party's right to jury trial would be violated.

The State argues that the anti-SLAPP statute does not apply to enforcement actions brought by the Attorney General. Minn. Stat. § 645.27 states that "[t]he state is not bound by the passage of a law unless named therein, or unless the words of the act are so plain, clear, and unmistakable as to leave no doubt as to the intention of the legislature." The State reasons that the anti-SLAPP statute does not expressly name the state or the Attorney General as a "[r]esponding party" against whom an anti-SLAPP motion can be asserted. Minn. Stat. § 645.27; Minn. Stat. § 554.01, subd. 7 (definition of "Responding party"). The State contends that the

anti-SLAPP statute's definition of "responding party" is not broad enough to include the State, because it references "any person." Minn. Stat. § 554.01, subd. 7 (emphasis added). The State argues that "person" does not include the State for purposes of § 645.27.

For support, the State cites *Berrier v. Minnesota State Patrol*, 9 N.W.3d 368, 371 (Minn. 2024). "[T]o determine whether a statute binds the State when it is not expressly named, [a court] look[s] to (1) whether the classification of the category of potential defendants is sufficiently broad to include the State; and (2) whether the public policy interests underlying the statute at issue imply that the Legislature intended to include the State thereunder." *Berrier*, 9 N.W.3d at 375.

Based on both the applicable language of the anti-SLAPP statutory scheme and Minn. Stat. § 645.27, the Court concludes that the statute does not apply to enforcement actions brought by the Attorney General. The anti-SLAPP statute does not expressly name the state or the Attorney General as a "[r]esponding party" against whom an anti-SLAPP motion can be asserted. Minn. Stat. § 554.01, subd. 7 ("'Responding party" means any person against whom a motion described in section 554.02, subdivision 1, is filed."). Minn. Stat. § 554.01, subd. 7 does not define the term "person."

In *Smallwood v. Department of Human Services*, the Court of Appeals held that the term "person," did not include the State for purposes of § 645.27. 966 N.W.2d 257, 264 (Minn. Ct. App. 2021) ("Smallwood would have us conclude that DHS as a state entity is a 'person' under the statute, but that construction is certainly not intuitive."). *Smallwood* relied on *Nichols v. State*, 858 N.W.2d 773, 776–77 (Minn. 2015), where the Minnesota Supreme Court held that the phrase "any person, partnership, company, corporation, association, or organization of any kind"

did not include the State for purposes of § 645.27. This Court considers these two decisions to be binding precedent.

Although API and FHR cite to *Berrier*, the Court finds that it is distinguishable for purposes of the anti-SLAPP statutory scheme. In *Berrier*, 9 N.W.3d 368, 371 (Minn. 2024), a car dealership employee sued the Minnesota State Patrol because a police dog allegedly attacked her unprovoked when a trooper brought his patrol vehicle in for service. *Id.* at 371. The plaintiff invoked Minnesota's dog-bite statute, which imposes absolute liability on "the owner of [a] dog" if it, "without provocation, attacks or injures any person who is acting peaceably in any place where the person may lawfully be." Minn. Stat. § 347.22. The Minnesota Supreme Court granted review of whether the dog-bite statute applied to the State Patrol. *Berrier*, 9 N.W.3d at 372. The Court concluded that "any potential dog owner, including the State, is bound by the statute." *Id.* at 378. *Berrier* is distinguishable for purposes of analyzing the anti-SLAPP context because that decision was interpreting the statutory term "owner," while *Smallwood* and *Nichos* were interpreting the identical term used in Minn. Stat. § 554.01, subd. 7: "person." Because the State is not a "person," the State is not a "responding party." The Court also agrees with the State that the public policy interests underlying the anti-SLAPP statute weigh against its use in an enforcement action brought by the Attorney General. *Leiendecker v. Asian Women United of Minn*. (*Leiendecker I*), 848 N.W.2d 224, 228 (Minn.), *as modified* (Sept. 3, 2014), *reh'g granted, opinion modified*, 855 N.W.2d 233 (Minn. 2014) (purpose of anti-SLAPP statute is "[t]o deter vexatious litigation and protect participation rights in government"). Therefore, the anti-SLAPP statute does not apply to the Attorney General and the Court denies the anti-SLAPP motions of API and FHR. Because the Court denies API's motion, API is not entitled to move for attorney fees.

V. CONCLUSION

API's Motion to Dismiss Count I is granted. ExxonMobil's Motion to Dismiss Count I is granted. FHR's Motion to Dismiss Count I is granted. In all other respects, Defendants' remaining motions to dismiss are denied.

Dated: 2/14/2025

BY THE COURT:

Aligada, Reynaldo (Judge)
Feb 14, 2025 4:29 PM

Reynaldo A. Aligada, Jr.
Judge of District Court