UNITED STATES DISTRICT COURT
DISTRICT OF NORTH DAKOTA
WESTERN DIVISION

Energy Transfer Equity, L.P., *et al.* Plaintiffs, v. Greenpeace International (aka "Stichting Greenpace Council"), *et al.* Defendants.	Case No. 1:17-cv-173 **MOTION TO DISMISS PURSUANT TO RULES 12(B)(6) AND 12(B)(2), AND MEMORANDUM IN SUPPORT**

BankTrack (aka Stichting BankTrack, hereinafter, "**BankTrack**") moves to dismiss the foregoing action filed against it by Energy Transfer Equity, LP, and Energy Transfer Partners, LP (hereinafter collectively, "**Energy Transfer**"), under Rule 12(b)(6) of the Federal Rules of Civil Procedure for failure to state a claim upon which relief can be granted and Rule 12(b)(2) of the Federal Rules of Civil Procedure for lack of personal jurisdiction.

Introduction

This lawsuit is an attack on the fundamental First Amendment rights of citizens and nonprofit organizations engaged in public policy advocacy work. Unfortunately for Energy Transfer, a voluminous complaint cannot make up for its lack of merit. Stripped of its hyperbole, the Complaint is nothing more than an attempt to punish BankTrack for its justifiable (and more importantly, First Amendment protected) opposition to the Dakota Access Pipeline ("**DAPL**").

This is not the first time that a company has tried to quell its critics with a bogus lawsuit. (And it is not the first time Plaintiffs' counsel have led such a charge.) But as shown by the recent dismissal of a nearly identical case, our courts were not established to enable such patently abusive tactics. *See Resolute Forest Prods. v. Greenpeace Int'l*, No. 17-cv-02824, 2017 U.S. Dist. LEXIS 170927 (N.D. Cal. Oct.

16, 2017) (dismissing RICO and defamation claims against Greenpeace entities).

BankTrack joins the arguments advanced by its co-defendants Greenpeace and Greenpeace International, which persuasively demonstrate that Energy Transfer's case lacks merit and should be dismissed in its entirety. But the claims brought against BankTrack are frivolous and should be dismissed for several additional reasons.

Cutting through the morass of the Complaint, there are an extremely limited number of actual factual allegations against BankTrack. In effect, Energy Transfer wants a North Dakota court to order BankTrack, a Dutch non-profit, to pay hundreds of millions of dollars for sending letters to a number of financial institutions. That is all this case is about.

At the threshold, this Court lacks personal jurisdiction over such a case. BankTrack has not acted in North Dakota. None of the letters were sent to financial institutions based in North Dakota (only two of which are headquartered in the United States at all). And none of those institutions are even alleged to have cancelled or altered the terms of any loan commitments for DAPL. Courts may exercise personal jurisdiction over nonresident defendants only if that defendant purposefully established "minimum contacts" in the forum state. BankTrack has no such minimum contacts.

Even if this Court had jurisdiction, the case should be dismissed because BankTrack's conduct is protected under the First Amendment. While Energy Transfer may believe that BankTrack's letters contain falsehoods – they do not – the First Amendment requires a much higher pleading burden when matters of public controversy are at issue: Plaintiffs must plausibly allege actual malice (and/or intentional falsehood). Nothing in the Complaint suggests that BankTrack had such intent. There are no factual allegations that suggest BankTrack did not believe what it was saying or that it was recklessly indifferent to the truth.

Perhaps because the allegations against BankTrack are so weak, Energy Transfer attempts to weave them into an amorphous and ill-defined criminal enterprise. The First Amendment also bars

that attempt. "Civil liability may not be imposed merely because an individual belong[s] to a group, some members of which committed acts of violence. For liability to be imposed by reason of association alone, it is necessary to establish that the group itself possessed unlawful goals and that the individual held a specific intent to further those illegal aims." *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 920 (1982). Energy Transfer's complaint fails to plausibly allege the existence of a group that "possessed unlawful goals" or that BankTrack "specific[ally] inten[ded] to further those illegal aims." *Id.*

Beyond these threshold failures, the Complaint does not plausibly state a claim under RICO or North Dakota law. As more fully argued by BankTrack's co-defendants (arguments which BankTrack joins), Energy Transfer does not have standing to bring a RICO claim and has not plausibly pled the requisite enterprise. However, even if it had, BankTrack is only liable if it exercises "some degree of control over the operation or management" over an enterprise. *Dahlgren v. First Nat'l Bank*, 533 F.3d 681, 689-90 (8th Cir. 2008). No such control is alleged. Moreover, "all of the substantive RICO offenses require pleading and proof that the defendant engaged in a 'pattern of racketeering activity.'" *Baker v. Patterson*, No. 4:16-CV-00181, 2017 U.S. Dist. LEXIS 172748, at *15-16 (D. Idaho Apr. 20, 2017). Energy Transfer failed to plausibly plead (much less plead with particularity) the basic level of fraudulent intent necessary for the predicate acts of fraud and extortion it alleges.

Energy Transfer's state law claims fare no better. Even if BankTrack were not protected by the First Amendment, the letters at issue contain the type of fair comment and criticism that is immune from civil liability under defamation law.

While the allegations in the Complaint are fanciful, the ramifications of this lawsuit – not only for the defendants – are incredibly serious. If a company can walk into the courthouse with no real injury and nothing more than conclusory and implausible allegations, these cases will proliferate. Organizations and individuals will be chilled and the First Amendment imperiled.

Statement of Facts

BankTrack is a small nonprofit organization based in Nijmegen, the Netherlands. Its sole office is in the Netherlands and it does not maintain operations in any other locations. It is being sued by Energy Transfer because it engaged in lawful activities that Energy Transfer does not like. That activity consisted of exercising free speech and engaging in public advocacy work in opposition to certain fossil fuel infrastructure projects, which included DAPL. BankTrack's stated mission is to promote fundamental changes in the operations of banks so that, while conducting their business in a fully transparent and accountable manner, they contribute to the ecological wellbeing of the planet, and offer a decent life free of poverty for all people.[1] In short, BankTrack is engaged in classic corporate social responsibility ("**CSR**") advocacy work.

In conducting its work, BankTrack follows the involvement of banks in financing business activities with a negative impact on people and our environment, so as to make information available in the public domain. It also campaigns to convince banks to cease financing specific projects, companies, and high impact sectors, and to bring about ambitious and effective sustainability commitments from banks. In doing that work, BankTrack works with others on CSR efforts and supports other non-governmental organizations ("**NGOs**") and community organizations that engage with banks in their own work.

An objective review of Energy Transfer's complaint – ignoring unsubstantiated fantasy and hyperbole – reveals that BankTrack has been sued because it wrote letters on three dates, and posted information on its website. All of this activity occurred well after DAPL became front-page news across the country, when allegations about the project and the protests were everywhere in the media, and when the controversy had already wound up in this Court. BankTrack merely repeated those well-

[1] See https://www.banktrack.org/page/about_banktrack. To the extent necessary, the Court can take judicial notice of BankTrack's public statements and other public materials cited below.

publicized allegations to the private banks that are its advocacy target.

The first letter cited in Energy Transfer's complaint is an open letter sent by BankTrack on November 7, 2016 (Compl. ¶¶ 119, *et seq*.) to the Equator Principles Association[2]. A copy of the letter is attached hereto as **Exhibit A**. The November 7, 2016 letter requested that the association members strengthen their climate commitments, and expressed concern that a number of member institutions were involved in financing DAPL, specifically citing a November 1, 2016 article in the Washington Post that quoted protesters against DAPL who alleged they had been detained in dog kennels.[3]

The second letter from BankTrack referenced in Energy Transfer's complaint was addressed to BBVA, a Spanish bank, on November 28, 2017 (Compl. ¶ 245). A copy of the letter to BBVA is attached as **Exhibit B**. In citing public media sources about the unfolding protests, BankTrack requested that BBVA (a) cease further loan disbursements to DAPL, (b) demand that Energy Transfer cease construction until all issues concerning its project were resolved to the full satisfaction of the Standing Rock Sioux Tribe, (c) withdraw from its loan commitment in the event the Tribe's concerns were not resolved, and (d) make a public statement as to how BBVA would act on these matters. Nowhere in Energy Transfer's complaint is it alleged that BBVA ceased lending activity or withdrew from any loan commitments to DAPL as a result of BankTrack's letter.

Third, Energy Transfer alleges that on November 30, 2016, BankTrack sent identical letters (identical to its November 28, 2016 letter to BBVA) to sixteen financial institutions including: Bank of Tokyo Mitsubishi UFJ (Japan), BayernLB (Germany), BNP Paribas (France), Citigroup (United States), Wells Fargo (United States), TD Bank (Canada), SMBC (Japan), Société Générale (France),

[2] The Equator Principles Association is a voluntary membership-based association of approximately 91 international financial institutions, who have voluntarily adopted the "Equator Principles", a risk management framework for determining, assessing and managing environmental and social risk in projects. http://www.equator-principles.com/

[3] Washington Post, "Dakota Access protesters accuse police of putting them in 'dog kennels,' marking them with numbers," November 1, 2017. https://www.washingtonpost.com/news/morning-mix/wp/2016/11/01/dakota-access-protesters-accuse-police-of-putting-them-in-dog-kennels-marking-them-with-numbers

Natixis (France), Mizuho Bank (Japan), Intesa Sanpaolo (Italy), ING (Netherlands), ICBC (China), DNB Norway (Norway), and Credit Agricole (France). (Compl. ¶ 246).

Finally, Energy Transfer references that BankTrack posted links to the foregoing letters on its website (Compl. ¶ 247), and that it posted information concerning responses received from financial institutions and information about DAPL on its website (Compl. ¶¶ 252, 255, 261, 262, 263, 270, 275).

In short, the sum of Energy Transfer's complaints about BankTrack are that it wrote one letter to an international association of banks, a series of identical letters to a number of lenders (only two of which, Citigroup and Wells Fargo, were located in the United States – in New York and California, respectively), and that it informed the public about the following matters on its web site:

- On December 2, 2016, BNP Paribas responded to BankTrack's letter citing that DAPL's lending syndicate had engaged the Foley Hoag law firm to engage in a review of the project. (Compl. ¶ 252).

- On December 9, 2016, Citibank responded to BankTrack's letter stating that it would be taking a leadership role in the Foley Hoag review. (Compl. ¶ 252).

- On December 21, 2016, Intesa Sanpaolo responded to BankTrack's letter indicating that disbursements of loans to DAPL would occur only when "inherent permits are consistent and effective." (Compl. ¶ 252).

- An announcement on February 2, 2017, welcoming a statement from Dutch lender ABN AMRO that it was considering halting financing of Energy Transfer's projects if DAPL was constructed without the consent of the Standing Rock Sioux Tribe, and calling on other lenders to do likewise. (Compl. ¶ 261).

- Also on February 2, 2017, a statement that 700,000 people signed petitions to financial institutions expressing their concern about DAPL. (Compl. ¶ 262).

- On February 22, 2017, a factual statement that the reputation of the Equator Principles has suffered as a result of DAPL, noting that banks should learn lessons from these events when considering other projects. (Compl. ¶ 270).

- A March 21, 2017, statement from BankTrack commending ING for the sale of its $120 million share of DAPL's $2.5 billion credit facility to a third-party. (Compl. ¶ 275).

- Undated website posts simply reciting the fact that activists were increasing pressure

> on banks (Compl. ¶ 255), and referencing allegations made concerning human rights issues that had been published in public media sources and, for that matter, alleged by plaintiffs in *Dundon, et al. v. Kirchmeier, et al.*, Case No. 1:16-cv-406, a case currently pending before this Court. (Compl., Appendix D, p. 10).

Despite the voluminous nature of Energy Transfer's complaint, it contains no facts or plausible allegations that BankTrack did anything other than write letters to financial institutions and post information on its website. Those activities are protected by the First Amendment, and fail to create the minimum contacts necessary to establish jurisdiction before this Court.

Argument

A. Pleading Standards.

Energy Transfer's complaint should be dismissed for failure to state a claim upon which relief can be based. Fed. R. Civ. Proc. 12(b)(6). "Rule 12(b)(6) serves to eliminate actions which are fatally flawed in their legal premises and designed to fail, thereby sparing litigants the burden of unnecessary pretrial and trial activity." *Young v. City of St. Charles*, 244 F.3d 623, 627 (8th Cir. 2001). "A complaint must allege facts sufficient to state a claim . . . and not merely legal conclusions." *Id.*

"To survive a motion to dismiss for failure to state a claim, the complaint must show the plaintiff 'is entitled to relief,' ... by alleging 'sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.'" *In re Pre-Filled Propane Tank Antitrust Litigation*, 860 F.3d 1059, 1063 (8th Cir. 2017) (*en banc*) (quoting Fed. R. Civ. P. 8(a)(2) and *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009)). To avoid dismissal, "[a] plausible claim must plead 'factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.'" *Iqbal*, 556 U.S. at 678. A complaint must allege "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007). Courts "are not bound to accept as true a legal conclusion couched as a factual allegation," and "[f]actual allegations must be enough to raise a right to relief above the speculative level." *Id.*

Additionally, allegations of fraud are subject to a heightened pleading standard under Rule 9(b), which requires plaintiffs to "state with particularity the circumstances constituting fraud or mistake." Fed. R. Civ. P. 9(b). "This particularity requirements demands a higher degree of notice than that required for other claims. The claim must identify who, what, where, when, and how." *United States ex rel. Costner v. United States*, 317 F.3d 883, 888 (8th Cir. 2003).

"To survive a motion to dismiss [for lack of personal jurisdiction], the plaintiff must state sufficient facts in the complaint to support a reasonable inference that defendants may be subjected to jurisdiction in the forum state." *Steinbuch v. Cutler*, 518 F.3d 580, 585 (8th Cir. 2008). "[T]he party asserting jurisdiction bears the burden of establishing a prima facie case" of jurisdiction. *Id.*

B. Personal Jurisdiction over BankTrack is Nonexistent.

There are two types of personal jurisdiction: general jurisdiction and specific jurisdiction. *Creative Calling Solutions, Inc. v. LF Beauty Ltd.*, 799 F.3d 975, 979-80 (8th Cir. 2015). The burden of establishing either form of jurisdiction rests with Energy Transfer. *Viasystems, Inc. v. EBM-Pabst St. Georgen GmbH & Co., KG,* 64 F.3d 589, 592 (8th Cir 2011). This burden has not and cannot be met.

Specific jurisdiction is the only conceivable basis of jurisdiction in this case. *Cf. Daimler AG v. Bauman*, 134 S. Ct. 746, 761-62 (2014) (an entity is only subject to general jurisdiction where it is "essentially at home" – typically, where it is incorporated or has its principal place of business). There is no Constitutionally-permitted basis for specific personal jurisdiction under the federal RICO statute, or North Dakota's long arm-statue.

Energy Transfer cannot invoke this Court's nationwide jurisdiction under RICO. While Congress can extend the jurisdiction of federal courts beyond the boundaries of the state where they sit, it has not extended that jurisdiction to cover BankTrack under these circumstances. RICO allows federal courts to exercise nationwide jurisdiction only over US residents (which BankTrack is not) and only when the "ends of justice" require it (which they do not). 18 U.S.C. § 1965(b). Even if Energy

Transfer could invoke RICO's nationwide personal jurisdiction, its RICO allegations are patently deficient, and a plaintiff cannot rely on RICO to establish jurisdiction "if the RICO claim is dismissed." *BWP Media USA, Inc. v. Hollywood Fan Sites, LLC*, 69 F. Supp.3d 342, 352 (S.D.N.Y. 2014).

Without RICO jurisdiction, BankTrack must have had deliberate contacts with North Dakota, which satisfy the long-arm statute and the Due Process Clause of the Fourteenth Amendment. *See Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985). Moreover, "a nonresident's alleged participation in a conspiracy cannot serve as a constitutionally sufficient basis to exercise *in personam* jurisdiction over that individual in [a] situation which would otherwise fail the 'minimum contacts' approach." *Brown v. Kerkhoff*, 504 F. Supp. 2d 464, 518 (S.D. Iowa 2007).

The complaint alleges no BankTrack contacts with North Dakota, and there are none. BankTrack neither transacts business in North Dakota, nor does it employ or have an agent in the state. BankTrack and its employees are not even alleged to have undertaken a single act in, or ever visited North Dakota. Rather, BankTrack's actions involved sending letters from the Netherlands to financial institutions outside of North Dakota – nearly all of which were outside the United States. Capping it off, even the injuries alleged by Energy Transfer – if suffered at all – were not incurred in North Dakota. *Cf. Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 776-777 (1984) ("[t]he tort of libel is generally held to occur wherever the offending material is circulated"). Simply put, Banktrack lacks minimum contacts with North Dakota to justify this Court's exercise of jurisdiction.

1. Rule 4 precludes jurisdiction over BankTrack.

Federal court jurisdiction is governed by Rule 4(k), which provides, in relevant part, for jurisdiction on the same bases that could be exercised by a court of general jurisdiction "in the state where the district court is located," Fed. R. Civ. P. 4(k)(1)(A), or when jurisdiction is "authorized by a federal statute," Fed. R. Civ. P. 4(k)(1)(C).

If Rule 4(k)(1)(A) is the basis for jurisdiction, Energy Transfer must satisfy the state's long-

arm statute and the Fourteenth Amendment's Due Process Clause. *Wallace v. Mathias*, 864 F. Supp. 2d 826, 833 (D. Neb. 2012). Under those circumstances, jurisdiction is constitutionally permissible only when the defendant has established "minimum contacts" with the state, and when jurisdiction is consistent with "traditional notions of fair play and substantial justice." *See World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291 (1980).

If Rule 4(k)(1)(C) is the basis, jurisdiction is limited by the terms of the statute and the Fifth Amendment's Due Process Clause. *Supra, Wallace*, 864 F. Supp.2d at 833 (service establishes jurisdiction when "**expressly** authorized by a federal statute" (emphasis in original)). The Fifth Amendment demands that the defendant have "minimum contacts" with the United States and for jurisdiction to be consistent with fair play and substantial justice. *Id.*

2. BankTrack is not subject to nationwide jurisdiction under RICO.

The federal RICO statute does not provide unqualified nationwide personal jurisdiction. *Butcher's Union Local No. 498 v. SDC Invest, Inc.*, 788 F.2d 535, 539 (9th Cir. 1986) ("the right to nationwide service in RICO suits is not unlimited"). There are three statutory limitations under 18 U.S.C. § 1965(b) that must be satisfied (in addition to the Due Process requirements imposed by the Fifth Amendment).[4] First, "the court must have personal jurisdiction over at least one of the alleged participants in the multidistrict conspiracy." *Id.* Second, any defendant – who would not be subject to personal jurisdiction in the forum based on its own contacts – must "resid[e]" in another district of the United States. 18 U.S.C. § 1965(b). And third, "the ends of justice" must demand joining that defendant in the suit. *Id.*

BankTrack takes no position as to whether any of its co-defendants are subject to jurisdiction

[4] "Although the Eighth Circuit Court of Appeals has yet to weigh in on the issue, seven federal circuit courts of appeals have held, and another, the Third Circuit Court of Appeals, has implied, that RICO § 1965(b) authorizes nationwide service of process." *Armstrong v. Am. Pallet Leasing Inc.*, 678 F. Supp. 2d 827, 849 (N.D. Iowa 2009). *See also PT United Can Co. v. Crown Cork & Seal Co.*, 138 F.3d 65, 71-72 (2d Cir. 1998) (holding that Section 1965(b), and not Section 1965(d), "provides for nationwide service and jurisdiction over "other parties" not residing in the district").

in North Dakota but, regardless, jurisdiction over BankTrack is lacking because it does not reside in any district of the United States and the "ends of justice" do not require its joinder.

i. *RICO does not provide a basis for obtaining jurisdiction over foreign entities.*

BankTrack is a nonprofit organization, formed as a "Stichting"[5] under Dutch law, and is headquartered in the Netherlands. Compl. ¶ 35. In other words, BankTrack does not "reside in any other district" of the United States. A foreign RICO defendant only "may be subjected to jurisdiction *in personam* under Rule 4(k)(1)(A), if it is amenable to jurisdiction in the forum state, or under Rule 4(k)(2), if it is not amendable to suit in any state but have sufficient contacts with the nation as a whole." *Nat'l Asbestos Workers Med. Fund v. Philip Morris, Inc.*, 86 F. Supp. 2d 137, 142 (E.D.N.Y. 2000). "[B]y its terms section 1965(b) does not apply to foreign defendants, as they do not 'reside in any other district.'" *Nocando Mem Holdings, Ltd. v. Credit Commer. de Fr., S.A.*, No. 01-CA-1194, 2004 U.S. Dist. LEXIS 22513, at *27-28 (W.D. Tex. Oct. 6, 2004).

The fact that BankTrack accepted service in the United States does not affect the jurisdictional analysis. The question under 4(k)(1)(C) is whether Congress "expressly authorized" jurisdiction. *Wallace*, 864 F. Supp. 2d at 833 (service establishes jurisdiction when "**expressly** authorized by a federal statute" (emphasis in original)). And if, as here, Congress authorized nationwide service only for a particular type of defendant – i.e., one who resides in the United States – extraterritorial jurisdiction is also so limited. *Philip Morris*, 86 F. Supp.2d at 142.

In short, because BankTrack is not a US resident, RICO does not provide a basis for extraterritorial jurisdiction under 4(k)(1)(C).

ii. Jurisdiction over BankTrack does not serve the "ends of justice."

Even if BankTrack were a US resident, RICO could still not be a basis for nationwide jurisdiction. "[M]erely naming persons in a RICO complaint does not, in itself, make them subject to

[5] A "Stichting" (foundation) is a legal entity under Dutch law with limited liability, but with no members or shared capital.

section 1965(b)'s nationwide service provisions," *Butcher's Union Local No. 498*, 788 F.2d at 539. Exercising jurisdiction over an out-of-state defendant must still serve the "ends of justice." 18 U.S.C. § 1965(b).

The limited extraterritorial jurisdiction provided under section 1965(b) was not included to permit out-of-state defendants to be sued in far-off courts on a plaintiff's whim. *See PT United Can Co. v. Crown Cork & Seal Co.*, 138 F.3d 65, 71-72 (2d Cir. 1998) ("Congress has expressed a preference in § 1965 to avoid, where possible haling defendants into far flung flora."). "[P]laintiffs must show that there is no other district in which a court will have personal jurisdiction over all of the alleged co-conspirators." *Butcher's Union*, 788 F.2d at 539. *See also, PT United Can Co.*, 138 F.3d at 71 ("There is no impediment to prosecution of a civil RICO action in a court foreign to some defendants if it is necessary, but the first preference, as set forth in § 1965(a), is to bring the action where suits are normally expected to be brought."). Nationwide jurisdiction was provided to aid a plaintiff that could not find a single forum where they could litigate their case, not to aid a forum-shopping plaintiff by inconveniencing out-of-state defendants with no forum contacts. Plaintiffs have not shown that there is no other forum where all the defendants would be subject to jurisdiction.[6]

If this Court were to ignore the fact that Plaintiffs have not shown that all the defendants could not have been sued in another district (the majority rule)[7], and look at the totality of the circumstances, jurisdiction over BankTrack would still not serve "the ends of justice." First, "cases are unanimous that a bare allegation of conspiracy between the defendant and a person within the personal jurisdiction of the court is not enough." *Stauffacher v. Bennett*, 969 F.2d 455, 460 (7th Cir.

[6] BankTrack has few contacts with the United States. The only two states where BankTrack directed *any* relevant activity are California and New York, where two of the allegedly defamatory letters were sent.

[7] While the Tenth Circuit has held open the possibility that the "ends of justice" could be satisfied even where all defendants are subject to jurisdiction in another forum, this is an outlier position among the other circuits. (The Eighth Circuit has not considered the question). *See Hallmark Cards, Inc. v. Monitor Clipper Partners, LLC*, 757 F. Supp. 2d 904, 914 (W.D. Mo. 2010).

1992). While it is difficult to understand the objective and scope of the conspiracy alleged[8], "simple statements … that Defendants are involved in a conspiracy, without supporting facts, are insufficient to justify nationwide service and jurisdiction under RICO." *Dymits v. Am. Brands, Inc.*, No. 96-1897, 1996 U.S. Dist. LEXIS 19742 at *18-19 (N.D. Cal. Dec. 31, 1996).[9] It would not serve the "ends of justice" to force BankTrack to litigate here on so bare an allegation of conspiracy. Second, neither Plaintiff nor any Defendant resides in North Dakota. Plaintiffs should not be heard to complain about having to litigate in a *different* foreign forum. Third, BankTrack has never been in North Dakota, and required travel from the Netherlands to North Dakota would be a burden – particularly for a small nonprofit organization. Fourth, many, if not most, of the relevant witnesses – including the financial institutions (that BankTrack is falsely alleged to have misled) and other putative "enterprise" members – reside outside this Court's jurisdiction.

In sum, Plaintiffs have demonstrated no overriding need for forcing BankTrack to litigate in a forum where it has *no* contacts, as there are likely alternative fora where all Defendants could be sued. Nor are there identifiable efficiency or equity interests demonstrating why nationwide jurisdiction is justified.

3. Jurisdiction is improper under Rule 4(k)(1) because BankTrack has not engaged in any conduct inside or outside of North Dakota that satisfies its long-arm statute or the Constitution.

In the absence of a federal statute authorizing jurisdiction, BankTrack must have contacts with North Dakota that satisfy its long-arm statute and the Due Process Clause of the Fourteenth Amendment. *Dever v. Hentzen Coatings, Inc.*, 380 F.3d 1070, 1073 (8th Cir. 2004). It does not have any

[8] Energy Transfer's allegations concerning the putative "enterprise" and its "conspiracy" are disjointed, with many allegations contained in broad and sweeping statements that read more like political polemic instead of concise, factual statements typically required in pleadings.

[9] *See also In re LIBOR-Based Fin. Instruments Antitrust Litig.*, No. 11 MDL 2262, 2015 U.S. Dist. LEXIS 147561, at*160-61 (S.D.N.Y. Oct. 19, 2015) ("courts that have recognized personal jurisdiction on the basis of conspiracy have required plaintiffs to '(1) make a *prima facie* factual showing of a conspiracy; (2) allege specific facts warranting the interference that the defendant was a member of the conspiracy; and (3) show that the defendant's co-conspirator committed a tortious act pursuant to the conspiracy in the forum").

contacts, so neither is satisfied.

i. BankTrack's contacts, not those of third parties, determine jurisdiction.

BankTrack's own contacts with North Dakota are determinative of jurisdiction, not those of any other alleged "enterprise" member. The North Dakota long-arm statute does not provide for jurisdiction over a non-resident alleged co-conspirator. Rather, it only permits jurisdiction "over a person who acts directly or by an agent …" N.D.R. Civ. P. 4(b)(2). Personal jurisdiction predicated on agency is a well-established basis for jurisdiction, and is distinct from jurisdiction predicated on conspiracy. *Jin v. Ministry of State Sec.*, 335 F. Supp.2d 72, 79 n.3 (D.D.C. 2004) ("Although conspiracy and agency both involve attribution of liability, the doctrines are not identical, the latter being closer to purposeful availment … [And] automatically equating conspiracy jurisdiction with agency-law analysis would not appear to satisfy due process in every, or even most, situations.").[10] And the fact that the long-arm statute explicitly provides for jurisdiction based on an agent's contact means that this Court should not read in a third basis.

But whether North Dakota would hypothetically extend its courts' jurisdiction to cover non-resident co-conspirators is of little practical importance. As this Court recently held: "a mere claim of civil conspiracy against individuals with otherwise insufficient minimum contacts will not support a finding of personal jurisdiction." *Alexander WF, LLC v. Hanlon*, No. 14-cv-068, 2015 U.S. Dist. LEXIS 189838, at *18 (D.N.D. Feb. 19, 2015). *See also Brown*, 504 F. Supp. 2d at 518 ("a nonresident's alleged participation in a conspiracy cannot serve as a constitutionally sufficient basis to exercise *in personam* jurisdiction over that individual in [a] situation which would otherwise fail the 'minimum contacts' approach"); *Jin*, 335 F. Supp. 2d at 80 ("This court determines that jurisdiction based on the three traditional elements of conspiracy jurisdiction alone violates due process. Personal jurisdiction,

[10] Energy Transfer has not (and could not) plead facts demonstrating a principal-agent relationship between BankTrack and any entity subject to jurisdiction in North Dakota.

even if based on conspiracy, requires purposeful availment."). BankTrack's own contacts with North Dakota are the only ones that matter for this jurisdictional inquiry.

ii. North Dakota's long-arm statute requires in-state conduct or an in-state injury, neither of which have been alleged by Energy Transfer.

While North Dakota's long-arm statute was "designed to permit the state courts to exercise personal jurisdiction to the fullest extent permitted by due process," *Beaudoin v. S. Tex. Blood & Tissue Ctr.*, 699 N.W.2d 421, 425 (N.D. 2005), the fact that Energy Transfer fails to satisfy it underscores the impropriety of jurisdiction over BankTrack.

North Dakota's long arm-statute enumerates several types of conduct that can provide a basis for jurisdiction. N.D.R. Civ. P. 4(b). Many of those bases are plainly inapplicable.[11] Only two require consideration: (1) whether BankTrack has "commit[ted] a tort within" North Dakota, N.D.R. Civ. P. 4(b)(2)(D); or (2) whether BankTrack has committed a tort outside North Dakota that "cause[d] injury to another person or property within" the state, N.D.R. Civ. P. 4(b)(2)(C). Assuming *arguendo* that torts were committed by BankTrack, and that Energy Transfer was somehow damaged, neither the acts nor the injury occurred in North Dakota.

Energy Transfer has alleged tortious interference and defamation. Compl. at 181-84[12]. This allegedly tortious conduct did not occur in North Dakota. There is no allegation that BankTrack circulated or published defamatory materials in or from North Dakota. And, critically, defamation occurs where "the offending material is circulated." *Supra, Keeton, Inc.*, 465 U.S. at 776-77. *See also, Walden v. Fiore*, 134 S. Ct. 1115, 1123-24 (2014) ("[B]ecause publication to third persons is a necessary element of libel, the defendants' intentional tort actually occurred" in place of publication (internal

[11] For example, BankTrack does not "transact[ ] any business" in North Dakota, N.D.R. Civ. P. 4(b)(2)(A). And, BankTrack does not "contract[ ] to supply or supply[ ] service, goods, or other things" in North Dakota.

[12] While alleged separately, these are not separate bases for liability, as the allegedly tortious conduct underlying the interference claim is the "dissemination of false, misleading and defamatory statements." *Id.* at 183. *See also Trade 'N Post, L.L.C. v. World Duty Free Ams., Inc.*, 628 N.W.2d 707, 717 (N.D. 2001) (tortious interference with business requires "independently tortious or otherwise unlawful act of interference").

citations omitted)). The simple fact that those materials referenced conduct in North Dakota does not mean that the torts were committed in North Dakota. Energy Transfer has not satisfied Rule 4(b)(2)(D). Nor is BankTrack alleged to have interfered with any business relationships between Plaintiffs and a North Dakotan.

While Plaintiffs contend that they have "suffered substantial damage in North Dakota, including costs of delayed construction, unanticipated costs of professional security services to ward off violent protesters, and costs associated with combatting the Enterprise's campaign of disinformation within North Dakota," Compl. ¶ 360, none of those purported injuries are actually or plausibly alleged to stem from BankTrack's conduct, which solely involved sending letters to out-of-state (primarily international) banks.

Energy Transfer's allegations of non-North Dakotan injuries identify four types of injuries; but, again, these injuries were either not suffered in North Dakota, or are completely unrelated to BankTrack's alleged conduct. First, Energy Transfer complains that "the Enterprise has impaired or otherwise damaged multiple contractual relationships," citing divestment from it and DAPL. Compl. ¶ 362. As to investors divesting from Energy Transfer stock – even if that could be considered an "injury" (and even if it was proximately caused by BankTrack) – it is not an "injury to another person or property within" North Dakota. The Energy Transfer companies are not North Dakota entities. And, there is no allegation that any divested equity interests were held in North Dakota. As for loans for the DAPL project, Energy Transfer has not alleged that any loans were cancelled or modified, only that certain members of the larger lending syndicate sold their loan participation interests to third-parties. See e.g. Compl. ¶¶ 275, 277, 278. There is no allegation – nor could there be – that the sale of any loan participation by one lender to another resulted in unfavorable terms, or delayed access to capital. Energy Transfer's credit facilities for construction of DAPL remained in place.

Second, Energy Transfer complains about damages to its reputation. *Id.* ¶ 363. Critically,

Energy Transfer does not allege that BankTrack's letters – which were neither circulated nor published in North Dakota – damaged its reputation in North Dakota. *Cf. id.* ¶ 363. (It is safe to say that given North Dakota media coverage and resident perceptions of the DAPL project, Energy Transfer maintains a good reputation in North Dakota.) If BankTrack caused any reputational damage, it occurred elsewhere, *i.e.*, where the letters were actually sent. *Cf. Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 776-777 (1984) ("[t]he tort of libel is generally held to occur wherever the offending material is circulated").

Third, Energy Transfer complains about disruption to its construction, which it claims arose because of "baseless claims in litigation" and "direct criminal actions taken to disrupt construction at DAPL worksites, damage construction equipment, and destroy segments of pipeline." *Id.* ¶ 364. None of those allegations are attributed to BankTrack. Nor could they be plausibly attributed: BankTrack does not engage in litigation (other than being forced to defend against this meritless action); and, has in no way engaged in, or even conceivably encouraged or contributed, to any physical disruptions through the act of writing letters to financial institutions.

Finally, Energy Transfer says it has suffered unspecified "monetary damages" because of "illegal cyber-attacks." *Id.* ¶ 365. This is an utterly frivolous, factually un-supported, and sensational allegation – certainly as to BankTrack. There is nothing in the Complaint that even suggests (much less plausibly suggests) that BankTrack participated in, had knowledge of, or encouraged cyber-attacks.

In short, Energy Transfer has not shown an injury in North Dakota that can be attributable to BankTrack and has therefore failed to satisfy Rule 4(b)(2)(C).

iii. BankTrack lacks the necessary minimum contacts with North Dakota, has not purposefully availed itself of the forum, and has not purposefully directed any activity at the forum.

"[T]he constitutional touchstone [for jurisdiction over a non-resident defendant] remains whether [he or she] purposefully established 'minimum contacts' in the forum state," such "that he

should reasonably anticipate being haled into court there." *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474 (1985). A defendant should anticipate being "haled into court" in a state when he or she "has 'purposefully availed' itself of the 'benefits and protections' of the forum state …" *Viasystems, Inc. v. EBM-Papst St. Georgen GmbH & Co., KG*, 646 F.3d 589, 594 (8th Cir. 2011) (quoting *Burger King*, 471 U.S. at 482)). Again, BankTrack does not transact any business, nor has it intentionally acted in any manner in North Dakota; it has not invoked the state's protections, and it "should [not] reasonably anticipate" having to litigate here. *Burger King*, 471 U.S. at 474.

While this reality should conclusively resolve matters, two issues require brief exploration. First, several of the "open letters" at issue in this case were published on BankTrack's website, which is presumably available in North Dakota. However, this is not the type of intentional contact with a forum that is relevant to jurisdictional analysis. "A passive Web site that does little more than make information available to those who are interested in it is not grounds for the exercise of personal jurisdiction." *See, Zippo Mfg. Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119, 1124 (W.D. Pa. 1997); *Johnson v. Arden*, 614 F.3d 785, 796 (8th Cir. 2010) (finding the "*Zippo* test instructive" for determining jurisdiction based on internet activity). Basing jurisdiction on the mere fact that a website was only available to forum residents would fly in the face of the Supreme Court's instruction that jurisdiction cannot be predicated on the fortuitous or independent acts of third parties. *See e.g., Burger King*, 471 U.S. at 475 (the "'purposeful availment' requirement ensures that a defendant will not be haled into a jurisdiction solely as a result of 'random,' 'fortuitous,' or 'attenuated' contacts, or of the 'unilateral activity of another party or third person'" (internal citations omitted)).

Second, BankTrack cannot be subject to specific jurisdiction based on "effects" felt in North Dakota. As explained above, Energy Transfer's alleged injuries (at least those it claims are connected to BankTrack's actions) were not suffered in North Dakota. Yet, even if BankTrack's conduct resulted in some effect or injury in North Dakota, it would not be sufficient to establish jurisdiction. The

Supreme Court has permitted so-called "effects" jurisdiction only where a defendant's "intentional, and allegedly tortious, actions were expressly aimed at" the state. *Calder v. Jones*, 465 U.S. 783, 789 (1984). *See also, Viasystems*, 646 F.3d at 594 (same, but noting additionally that "the brunt" of the harm must be suffered in the forum state). Moreover, the Eighth Circuit is clear that the "Calder effects test [should be construed] narrowly" and that "absent additional contacts, mere effects in the forum state are insufficient to confer personal jurisdiction." *Johnson v. Arden*, 614 F.3d 785, 796-97 (8th Cir. 2010).

BankTrack's "open letters" were not "expressly aimed" at North Dakota. The *Johnson* case is instructive. In that case, plaintiffs (Missouri residents) alleged that the defendant (a Colorado resident) had defamed them by posting false statements on a website (hosted in Colorado), including that the plaintiffs "killed and tortured unwanted cats and operated a 'kitten mill' in Unionville, Missouri." *Id.* at 796. The Court rejected the notion that the statements were aimed at Missouri simply because they referenced Missouri: "The statements were aimed at the Johnsons; the inclusion of 'Missouri' in the posting was incidental and not 'performed for the very purpose of having their consequences' felt in Missouri." *Id.* The circumstances here are identical. The fact that BankTrack discussed DAPL – a project that runs, in part, through North Dakota – can in no way suggest that its focus was on North Dakota. Quite the opposite, BankTrack's letters were directed to financial institutions outside North Dakota.

Nor, as discussed above, was the "brunt of the harm" suffered in North Dakota. Energy Transfer has not alleged – and, frankly, could not allege – that BankTrack intended to (or did) harm its reputation in North Dakota, or that BankTrack intended to deprive it (or, in fact, deprived it) of North Dakota investors or lenders. *Cf., Calder*, 465 U.S. at 789-90 (publishers of defamatory article subject to jurisdiction in California where "they knew that the brunt of that injury would be felt by respondent in the State in which she lives and works and in which the [publication] had its largest circulation").

Yet even if BankTrack had expressly aimed its conduct at North Dakota, and even if the brunt of the alleged harm occurred there, jurisdiction would still be improper because some additional forum contacts are still needed (and there simply are none). *Johnson*, 614 F.3d at 797 (additional contacts required, in addition to effects in the forum).

C. Energy Transfer's claims run afoul of the First Amendment.

Because of legitimate concerns about chilling Constitutionally-protected activity, courts have a special duty to scrutinize pleadings that implicate the First Amendment. *E.g.*, *Oregon Natural Res. Council v. Mohla*, 944 F.2d 531, 533 (9th Cir. 1991) (recognizing a "heightened pleading standard" for cases that implicate the Petition Clause of the First Amendment). Even before *Iqbal*, a plaintiff was required to "include [non-conclusory] allegation[s] of the specific activities, which bring the defendant's conduct into one of the exceptions to [the First Amendment] protection." *Id.* Under the First Amendment, BankTrack has the right to associate with others – even where those others allegedly commit crimes – so long as it neither participates in the criminal activity nor shares specific intent to further that activity. And BankTrack's own conduct, consisting solely of commentary on a matter of intense public debate, is well within the First Amendment's speech protections.

1. The First Amendment protects the right to freely associate; BankTrack cannot be held liable for the allegedly unlawful acts of others.

Energy Transfer's claims run afoul of not just the right to free speech but also, in the context of its RICO and conspiracy claims, the right of association. "Effective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association, as this Court has more than once recognized by remarking upon the close nexus between the freedoms of speech and assembly." *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 460 (1958).

BankTrack's right of association is critical in the context of this case because it has the right to freely associate with other individuals and NGOs, and the mere fact of that association does not give rise to liability. Even accepting Energy Transfer's sensational accounts, "[c]ivil liability may not

be imposed merely because an individual belonged to a group, some members of which committed acts of violence. For liability to be imposed by reason of association alone, it is necessary to establish that the group itself possessed unlawful goals and that the individual held a specific intent to further those illegal aims." *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 920 (1982).

In *Claiborne Hardware*, the Supreme Court specifically held that individuals' First Amendment rights are not limited simply because their partners in expressive activity violated the law in furtherance of their joint campaign. *Id.* at 908, 919-20. To show that the First Amendment does not apply, a party must prove that the individual had "a specific intent to further an unlawful aim embraced by th[e] group." *Id.* at 925-26. Thus, it is not sufficient, as Energy Transfer suggests, that BankTrack and certain co-defendants at times worked together to craft a message in pursuit of a shared goal, when that goal was unquestionably **legitimate**: protection of our environment and combating climate change. That does not make BankTrack liable for others' wrongful conduct.

There are no factual allegations that suggest BankTrack intended to further any unlawful goal. There are no facts in the Complaint that suggest BankTrack did not believe the statements that it made were true (and, no facts could exist, because its statements were true). There are no facts in the Complaint suggesting that BankTrack supported (or how it furthered) violence or property destruction relating to DAPL. Simply put, BankTrack's campaigns are protected expression.

2. BankTrack's own advocacy work is protected speech under the First Amendment.

BankTrack's advocacy work engaging financial institutions on CSR issues, including its actions highlighting those issues with DAPL, is within the core of First Amendment protection. Letters, petitions, and articles are types of speech and actions entitled to protection. This includes even "hurtful" speech. *Snyder v. Phelps*, 562 U.S. 443, 446 (2011). Such speech may, for instance, coerce or embarrass others into boycotting businesses and still retain its constitutional protection. *Thornhill v. Alabama*, 310 U.S. 88 (1940); *Claiborne Hardware*, 458 U.S. at 910; *see also Organization for a Better Austin*

v. Keefe, 402 U.S. 415 (1971). The First Amendment fully protects even "threats of social ostracism, vilification, and traduction." *Claiborne Hardware*, 458 U.S. at 921.

"[T]here are, of course, some activities, legal if engaged in by one, yet illegal if performed in concert with others, but political expression is not one of them." *Citizens Against Rent Control/Coalition for Fair Hous. v. Berkeley*, 454 U.S. 290, 294 (1981) ("[T]he practice of persons sharing common views banding together to achieve a common end is deeply embedded in the American political process. ... [B]y collective effort individuals can make their views known, when, individually, their voices would be faint or lost.").

3. Energy Transfer was a public figure in relation to DAPL by November 7, 2016.

Energy Transfer was either a public figure generally, or at a minimum a limited public figure in relation to the DAPL controversy, by the time any of the Defendants made public statements about the controversy. If there is any question on this issue, however, there can be no doubt that Energy Transfer had this status by the time of BankTrack's actions. The first action attributed to BankTrack in the Complaint was sending a letter on November 7, 2016. *See* Statement of Facts. By that point, the DAPL controversy – and Energy Transfer's role in it – was front-page news across the world – being reported in sources from the local Bismarck Tribune[13], to the Washington Post[14] and the United Kingdom's Guardian newspaper.[15]

In *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974), the Supreme Court established that the "actual malice" standard applies where someone "is drawn into a particular public controversy and

[13] Lauren Donovan, Bismarck Tribune, "Dakota Access Pipeline files condemnation lawsuits," January 1, 2016; http://bismarcktribune.com/bakken/dakota-access-pipeline-files-condemnation-lawsuits/article_e4473aea-3b7b-534c-9110-7555ae86b6e6.html

[14] Washington Post, "Protesters clash with private security at Dakota Access Pipeline construction site," September 7, 2016; https://www.washingtonpost.com/video/national/protesters-clash-with-private-security-at-dakota-access-pipeline-construction-site/2016/09/07/a89050ce-7504-11e6-9781-49e591781754_video.html

[15] Nicky Woolf, The Guardian, "Native American tribes mobilize against proposed North Dakota oil pipeline," April 1, 2016. https://www.theguardian.com/us-news/2016/apr/01/native-american-north-dakota-oil-pipeline-protest.

thereby becomes a public figure for a limited range of issues." *Id.* at 351. The determination of this status requires two steps: "we must first identify the particular public controversy giving rise to the defamatory speech"; "[A]fter identifying the particular controversy giving rise to the defamation, we then examine the 'nature and extent' of [the plaintiff's] involvement." *Lundell Mfg. Co. v. ABC, Inc.*, 98 F.3d 351, 363 (8th Cir. 1996).

The DAPL controversy was obviously an issue of public debate well before November 7, 2016. On September 26, 2016, for example, this Court issued an order that recognized that "one need only turn on a television set or read any newspaper in North Dakota" in order to find "countless videos and photographs" of the DAPL protests. *Dakota Access, LLC v. Archambault*, No. 1:16-cv -296, Docket No. 45 at 3-4 (Sept. 26, 2016). The New York Times ran front-page stories on the issue on September 9 and 10, 2016,[16] and the newspaper's website ran 100 stories on DAPL during September-October 2016. ABC News's website lists 139 stories on DAPL during the same two months.[17]

It is equally clear that Energy Transfer was deeply involved in this public controversy during the relevant period. The New York Times article on September 9, 2016, for example, includes a statement from Energy Transfer. On September 13, 2016, Energy Transfer released a statement that was styled as a message from its CEO to its employees, but directly engaged with the controversy: arguing that none of the land abutting the pipeline route "is subject to Native American control or ownership," that surveys have "found no sacred items along the route," and that "[c]oncerns about the pipeline's impact on the local water supply are unfounded."[18] There is no question that, well before

[16] Jack Healy, The New York Times, "'I Want to Win Someday': Tribes Make Stand Against Pipeline" (Sept. 9, 2016), available at https://www.nytimes.com/2016/09/09/us/dakota-access-pipeline-protests.html; Jack Healy & John Schwartz, The New York Times, "U.S. Suspends Pipeline Work in Tribes' Path" (Sept. 10, 2016), available at https://www.nytimes.com/2016/09/10/us/judge-approves-construction-of-oil-pipeline-in-north-dakota.html.

[17] Web searches on www.nytimes.com and abcnews.go.com for "Dakota Access."

[18] Statement from Kelcy Warren, Chairman & CEO of Energy Transfer Partners (Sept. 13, 2016), *available at* http://www.valleynewslive.com/content/misc/Statement-on-Dakota-Access-Pipeline-from--Chairman-and-CEO-of-Energy-Transfer-393249261.html.

BankTrack's actions in November 2016, Energy Transfer had already been "drawn into a particular public controversy," and thus must meet the "actual malice" standard for any statements by BankTrack. *Gertz*, 418 U.S. at 351.

4. Energy Transfer cannot meet the applicable "actual malice" standard.

The Eight Circuit has explained the high standard that must be met where a public figure seeks to claim damages for a defendant's speech:

> A public-figure plaintiff must do more than prove falsity to prevail in a defamation claim. Even if the defendant's remarks are proven both defamatory and false, a public-figure plaintiff must also prove by clear and convincing evidence that the defendant acted with actual malice – that is, that the defendant made false remarks with a high degree of awareness of probable falsity, or that the defendant entertained serious doubts as to the truth of his publication. The standard is, therefore, a "daunting one." Evidence of a defendant's ill will, desire to injure, or political or profit motive does not suffice.

Campbell v. Citizens for an Honest Gov't, Inc., 255 F.3d 560, 569 (8th Cir. 2001) (internal citations omitted). Energy Transfer's complaint fails to meet this standard with respect to BankTrack.

The complaint includes no specific allegations that BankTrack acted with actual malice. Aside from boilerplate, conclusory statements that BankTrack's statements were part of "intentional and repeated misstatements," Compl. ¶ 118, there are no specific allegations of BankTrack's knowledge of any alleged falsity of the statements at issue.

In fact, the statements cited prove that actual malice cannot be found on these allegations. As a "matter of law," actual malice is precluded where the defendant has relied in good faith "on previously published reports in reputable sources." *Liberty Lobby, Inc. v. Dow Jones & Co.*, 838 F.2d 1287, 1297 (D.C. Cir. 1988). BankTrack's November 7, 2016, letter, for example, includes nine citations to the sources on which it relies for its allegations (See Exhibit A). BankTrack's November 28, 2016, letter (identical to its November 30, 2016 letters referenced in the Complaint) similarly includes seven source citations (See Exhibit B).

Following *Iqbal* and *Twombly*, a plaintiff cannot state a claim simply by making conclusory

assertions of the elements of actual malice. With no plausible allegations showing BankTrack's actual malice, the complaint fails. "[T]he circuits that have considered the question have uniformly held that a claim may be dismissed for failing plausibly to allege actual malice without permitting discovery." *Resolute Forest Prods. v. Greenpeace Int'l*, No. 17-cv-02824, U.S. Dist. LEXIS 170927, *46 (N.D. Cal. Oct. 16, 2017) (citing *Michel v. NYP Holdings*, 816 F.3d 686, 701-02 (11th Cir. 2016); *Biro v. Condé Nast*, 807 F.3d 541, 544-45 (2d Cir. 2015); *Schatz v. Republican State Leadership Comm.*, 669 F.3d 50, 58 (1st Cir. 2012)). Even assuming the falsity of BankTrack's statements – which BankTrack vigorously contests – nothing in the Complaint plausibly suggests that BankTrack did anything more than re-publish, in good faith, allegations about the DAPL controversy that were already circulating in the news media and by activist groups. In fact, the actual malice standard was designed to allow publishers the 'breathing space' needed to ensure robust reporting on public figures and events." *Michel*, 816 F.3d at 702 (citing *Sullivan*, 376 U.S. at 271–72).

Energy Transfer claims that, in pursuit of engaging in a putative "enterprise" to harm it, BankTrack made false, defamatory statements with the intent of injuring Energy Transfer's reputation. However, "intent" is insufficient to establish actual malice. *See Morgan v. Tice*, 862 F.2d 1495, 1500 (11th Cir. 1989) (no actual malice based on defendant's alleged "purpose and intent to find whatever unsavory things he could about" plaintiff). To plead actual malice, Energy Transfer must allege facts sufficient to give rise to a reasonable inference that the alleged false statements were made by BankTrack with knowledge that were false or with reckless disregard of whether they were false. *Meisler v. Gannett Co.*, 12 F.3d 1026, 1030 (11th Cir. 1994). The question is whether BankTrack actually entertained serious doubts as to the veracity of published accounts concerning the activities around or effects of DAPL, or was highly aware that such accounts were probably false. Energy Transfer's complaint does not allege – and cannot allege – facts suggesting that BankTrack had any serious doubts that the letters it sent to financial institutions were true.

D. Energy Transfer fails to plausibly allege liability.

Fatal threshold issues of jurisdiction and First Amendment privilege aside, Energy Transfer has failed to plausibly plead BankTrack's liability for RICO and the non-federal claims.

1. Pleading standards are heightened in this case.

Energy Transfer is required to "plead facts sufficient to raise a right to relief above the speculative level. . . . [T]hey must show the [ ] claims are plausible." *Brown v. Medtronic, Inc.*, 628 F.3d 451, 459 (8th Cir. 2010) (internal quotation marks and citations omitted). A claim is plausible when the pled facts "allow[ ] the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* While a court must accept the truth of the factual allegations, it is "not required to accept a plaintiff's legal conclusions." *Id.*

An even more rigorous standard governs Energy Transfer's claims. Because of the stigmatic effects of a RICO lawsuit and the prospect of treble damages, there is "a particular imperative . . . to flush out frivolous civil RICO allegations at an early stage of litigation." *Curtis & Assocs., P.C. v. Law Offices of David M. Bushman, Esq.*, 758 F. Supp.2d 153, 167 (E.D.N.Y. 2010). More specifically, vague allegations that do not demonstrate the existence of an enterprise, how it functioned, and the defendants' role are insufficient to plead a RICO claim. *Crest Constr. II, Inc. v. Doe*, 66- F.3d 346, 356 (8th Cir. 2011) ("While the complaint is awash in phrases such as 'ongoing scheme,' 'pattern of racketeering,' and 'participation in a fraudulent scheme,' **without more**, such phrases are insufficient to form the basis of a RICO claim." (Emphasis added)). And, where, as here, the alleged predicate acts sound in fraud, a plaintiff must satisfy "the heightened pleading requirements of Rule 9(b)." *Id.* at 358.

While Rule 9 does not extend its "particularity" requirement to allegations about a defendant's state of mind, Fed. R. Civ. P. 9(b), "conclusory allegations [still] do not satisfy the pleading requirements [and] the complaint must provide a factual basis for allegations of scienter." *In re K-Tel*

Int'l Sec. Litig., 300 F.3d 881, 894 (8th Cir. 2002). In other words, "Rule 9 merely excuses a party from pleading [fraudulent] intent under an elevated pleading standard. It does not give him license to evade the less rigid – though still operative – strictures of Rule 8." *Ashcroft v. Iqbal*, 556 U.S. 662, 686-87 (2009). In a fraud case, a plaintiff needs to plead facts that suggests a defendant either knew that statements were not true, or had no reasonable grounds to believe they were true. *See, Gunderson v. ADM Investor Servs., Inc.*, 85 F. Supp. 2d 892, 903 (N.D. Iowa 2000) ("the complaint must set forth specific facts that make it reasonable to believe that defendants knew that a statement was materially false or misleading" (quoting *Lucia v. Prospect Street High Income Portfolio, Inc.*, 36 F.3d 170, 174 (1st Cir. 1994)). Energy Transfer's claims fail on this basis alone.

So too for defamation claims. "Not only is proving actual malice a heavy burden, but, in the era of *Iqbal* and *Twombly*, pleading actual malice is a more onerous task as well." *Biro v. Conde Nast*, 963 F. Supp.2d 255, 278 (S.D.N.Y. 2013). Assertions that "statements were known by them to be false at the time they were made, were malicious or were made with reckless disregard as to their veracity [are] entirely insufficient." *Mayfield v. NASCAR*, 674 F.3d 369, 378 (4th Cir. 2012). *See also, Michel v. NYP Holdings, Inc.*, 816 F.3d 686, 702-03 (11th Cir. 2016) ("To plead actual malice, then, Michel must allege facts sufficient to give rise to a reasonable inference that the false statement was made with knowledge that it was false or with reckless disregard of whether it was false or not." (Internal citations and quotation marks omitted)).

2. Energy Transfer has failed to plausibly plead BankTrack's RICO liability.

The federal RICO statute provides a private cause of action to a plaintiff "injured in his business or property by reason of a violation of section 1962 . . . ." 18 U.S.C. § 1964(c). Section 1962 makes it unlawful to participate in, invest in, or derive income from an "enterprise" through a "pattern of racketeering." 18 U.S.C. § 1962(a)-(c). Thus, to state a RICO claim, Energy Transfer must plead a cognizable "injury," which was proximately caused by BankTrack's participation, through a pattern of

racketeering activity, in an "enterprise."

Energy Transfer fails to plead every required element of its RICO claims. **First**, it utterly fails to allege an injury to its "business or property" that was proximately caused by BankTrack's purported "racketeering" activity (i.e., writing letters to financial institutions). *See, Hamm v. Rhone-Poulenc Rorer Pharms.*, 187 F.3d 941, 952 (8th Cir. 1999). Significantly, the reputational damages it seeks are not cognizable under RICO. *Id.* at 954.

Second, Energy Transfer also failed to plead the existence of an "enterprise." *See, Crest Constr.*, 660 F.3d at 355. The allegations in Energy Transfer's complaint in no way plausibly suggest that the defendants had a common purpose (which Energy Transfer suggests "was to generate increased donations to the Enterprise members," e.g., Compl. ¶ 409), "an ongoing organization with members who function as a continuing unit" or, "an ascertainable structure distinct from the conduct of a pattern of racketeering". *United States v. Lee*, 374 F.3d 637, 647 (8th Cir. 2004).

Third, and beyond these threshold issues, Energy Transfer has utterly failed to plead *BankTrack's* RICO liability. RICO liability extends only to those individuals who "participate in the operation or management of the enterprise itself." *Reves v. Ernst & Young*, 507 U.S. 170, 185 (1993). Liability depends on showing that a defendant managed or participated in conduct of the '*enterprise's* affairs,' not just their own affairs." *Cedric Kushner Promotions, Ltd. v. King*, 533 U.S. 158, 163 (2001) (emphasis in original, internal citations and quotation marks omitted).

Fourth, even had BankTrack participated in an alleged "enterprise," Energy Transfer would still need to show that it did so through a "pattern of racketeering activity." "[A]ll the substantive RICO offenses require pleading and proof that the defendant engaged in a 'pattern of racketeering activity.'" *Baker v. Patterson*, No. 4:16-CV-00181, 2017 U.S. Dist. LEXIS 172748, at *15-16 (D. Idaho Apr. 20, 2017).

Fifth, it is crucial to note that Energy Transfer has not plausibly pled that BankTrack was part

of a RICO conspiracy. A RICO conspiracy under § 1962(d) requires that a defendant was "aware of the essential nature and scope of the enterprise and intended to participate in it." *United States v. Christensen*, 828 F.3d 763, 780 (9th Cir. 2015) (quoting *United States v. Fernandez*, 388 F.3d 1199, 1230 (9th Cir. 2004)), *cert. denied*, 137 S. Ct. 628, 196 L. Ed. 2d 517 (2017). "'[T]he point of making the [plaintiff] show that the defendants ha[d] some knowledge of the nature of the enterprise is to avoid an unjust association of the defendant with the crimes of others.'" *Id.* (quoting *United States v. Brandao*, 539 F.3d 44, 52 (1st Cir. 2008)). The issue here is that there are no allegations plausibly suggesting that BankTrack was aware of what Energy Transfer refers to as criminal activity that would serve as a predicate act under RICO, nor are there any plausible allegations that BankTrack intended to participate in or commit any such predicate acts. In the absence of any such plausible allegations, any RICO conspiracy claim must be dismissed.

i. Energy Transfer lacks standing to bring RICO claims.

Energy Transfer lacks standing because it failed to show any injury to its "business or property." *Hamm v. Rhone-Poulenc Rorer Pharms.*, 187 F.3d 941, 954 (8th Cir. 1999). At most, Energy Transfer alleges reputational damage as a result of the letters BankTrank wrote to financial institutions. Damage to reputation is generally considered a personal injury and thus is not an injury to "business or property" within the meaning of 18 U.S.C. § 1964(c). *See, e.g., City of Chicago Heights v. Lobue,* 914 F. Supp. 279, 285 (N.D. Ill. 1996) (damage to city's business reputation not injury to "business or property" compensable under § 1964(c)); *In re Teledyne Defense Contracting Derivative Litigation,* 849 F. Supp. 1369, 1372 n.1 (C.D. Cal. 1993) (noting injuries to "business reputation" are not cognizable under RICO).

To the extent Energy Transfer alleges that the letters BankTrack sent to financial institutions resulted in some sort of delay with respect to its construction schedules or financing activities with respect to DAPL, it is crucial to note that Energy Transfer's complaint does not allege that any of its

loans were suspended or cancelled (only that one or more members of its lending syndicate sold their participation interests in the DAPL loans to third parties).

Moreover, almost all of the allegations address "misrepresentations" or "false" statements to third-parties, i.e., not Energy Transfer. They have not shown how those statements *proximately* harmed them. On almost identical facts, the Northern District of California recently dismissed RICO claims against Greenpeace for failing to satisfy RICO's rigorous proximate cause analysis:

> Resolute does not explain how it is the victim of [Greenpeace's] fundraising scheme, given that the only person that could have been defrauded were the donors who gave the money. Also, to the extent that Resolute can claim harm, determining the amount of Resolute's damages attributable to Greenpeace's advocacy would be very difficult, because there are numerous reason why a customer might cease or interrupts its relationship with Resolute . . . .

Resolute Forest Prods. v. Greenpeace Int'l, No. 17-cv-002824, 2017 U.S. Dist. LEXIS 170927, at *35 (N.D. Cal. Oct. 16, 2017). These allegations, similarly, simply do not establish standing.

ii. Energy Transfer failed to plead the existence of an enterprise.

RICO liability requires the existence of an "enterprise", which is "a continuing unit that functions with a common purpose." *Nelson v. Nelson*, 833 F.3d 965, 968 (8th Cir. 2016) (quoting *Boyle v. United States*, 556 U.S. 938, 948 (2009)). A RICO enterprise must have "some sort of discrete existence and structure uniting its members in a cognizable group." *Id.* "Three elements must be proven to show that a RICO enterprise existed: (1) a common purpose that animates the individuals associated with it; (2) an ongoing organization with members who function as a continuing unit; and (3) an ascertainable structure distinct from the conduct of a pattern of racketeering." *United States v. Lee*, 374 F.3d 637, 647 (8th Cir. 2004). "In deciding whether an alleged RICO enterprise has an ascertainable structure distinct from the pattern of racketeering activity, [a court] must determine if the enterprise would still exist were the predicate acts removed from the equation." *Crest Constr. II, Inc. v. Doe*, 660 F.3d 346, 354-55 (8th Cir. 2011). Conclusory allegations of the existence of an enterprise

are insufficient. *Nelson*, 833 F.3d at 968. Quite simply, Energy Transfer's complaint fails to plausibly allege any of the requirements of an enterprise.

As with almost all the allegations in the complaint, it is difficult to divine what Energy Transfer imagines is the common purpose of the "enterprise." The complaint states:

> The common purpose of the Enterprise was to act as a parasite on the primarily local, indigenous objections to DAPL, and use those concerns to manufacture an international media frenzy based on sensational lies that could be used to raise funds, advance the ulterior motive of the Enterprise member's major financial supports, pressure Plaintiffs' business partners and investors to sever ties with the Company, and incite illegal and violent attacks.

Compl. ¶ 39. This allegation is remarkable in a number of respects. First – and significantly – it admits that there were indigenous objections to DAPL, which BankTrack would suggest provided a basis for its letters to financial institutions. However, in the context of its RICO claims, Energy Transfer apparently is unable to decide on a single common purpose for the alleged "enterprise." It appears to make four amorphous and poorly-articulated allegations. The first alleged common purpose was to "raise funds." That is not a "common" purpose. Energy Transfer has not alleged that the putative "enterprise" collected common funds that were then distributed to its members. Moreover, while any other defendant might theoretically have a motive to increase its own fundraising, no other defendant would have any reason to care about BankTrack's own fundraising efforts. And, critically, while the Complaint includes specific references to other co-defendants' efforts to fundraise in connection with legitimate advocacy efforts, there are no such allegations concerning BankTrack. All that is included about BankTrack is a barebones and unsupported allegation that it "benefited from their participation in the Enterprise by fraudulently inducing donations to BankTrack that were used to sustain its continued operations." Compl. ¶ 38(j).

The second allegation made by Energy Transfer was that the putative enterprise existed to advance the "ulterior motives" of financial backers. This allegation is unfathomable and makes no sense. Third, Energy Transfer alleges the purpose of the putative enterprise was to "pressure" their

business partners and investors to sever ties with them. While engaging international financial institutions on corporate social and environmental responsibilities is within BankTrack's independent interest, this allegation is insufficient – not to mention being fully-protected advocacy work.

Fourth, and finally, Energy Transfer alleges that the putative enterprise existed to "incite violent and illegal attacks." While some individual protesters were charged with criminal conduct, Energy Transfer has not alleged any evidence that BankTrack or any of its co-defendants shared that objective.

There are also no allegations in the Complaint (much less plausible ones) showing *how* the putative "Enterprise" is organized. There is nothing that suggests that the sweeping and disparate conduct discussed in the Complaint – which includes everything from environmental litigation, to grass-roots protesting, to writing to financial institutions – was being controlled or directed by the Enterprise . . . Or, who was calling the shots . . . Or, how the Enterprise communicated, coordinated or funded its efforts. *United States v. Kragness*, 830 F.2d 842, 856 (8th Cir. 1987) (an enterprise requires "an organization pattern or system of authority that provides a mechanism for directing the group's affairs on a continuing, rather than an ad hoc basis"). *See also See Stephens Inc. v. Geldermann, Inc.*, 962 F.2d 808, 815-16 (8th Cir. 1992) (no enterprise where the "group . . . had no structure independent of the alleged racketeering activity"). There is simply nothing here that suggests anything more than parallel but independent conduct. *Stephens Inc.*, 962 F.2d at 816. In the absence of any plausible allegations concerning an organizational structure for the putative "enterprise", Energy Transfer's RICO claims simply do not stand.

iii. BankTrack did not direct or control any RICO enterprise.

In order to survive a motion to dismiss, Energy Transfer needs to plausibly plead that BankTrank participated in a RICO enterprise. To be liable, a RICO defendant must have "exercised some degree of control over the operation or management" of the enterprise. *Dahlgren v. First Nat'l*

Bank, 533 F.3d 681, 689-690 (8th Cir. 2008).

Energy Transfer has not made any plausible allegation in its Complaint that BankTrack exercised any degree of control or management of the putative enterprise. While it is not necessary that a RICO defendant have wielded complete control over an enterprise, a plaintiff "must prove some part in the direction . . . of the enterprise's affairs." *Handeen v. Lemaire*, 112 F.3d 1339, 1348 (8th Cir. 1997). Energy Transfer's complaint fails with respect to this basic requirement.

iv. Energy Transfer fails to plead that BankTrack engaged in racketeering activity.

"Liability under RICO is premised upon conduct involving a 'pattern' of racketeering activity. 18 U.S.C. § 1962. RICO defines a 'pattern' as requiring at least two acts of racketeering activity or predicate acts." *Manion v. Freund*, 967 F.2d 1183, 1185 (8th Cir. 1992). The racketeering activity requires at least two "related" violations of specific criminal laws, which "amount to or pose a threat of continued criminal activity." *Id.* "A person cannot have engaged in a pattern of predicate racketeering activity without knowledge of the conduct that makes the predicate acts illegal." *Baker v. Patterson*, 2017 U.S.Dist.LEXIS 172748, at *15-16 (D. Idaho, No. 4:16-CV-00181-MWB, Apr. 20, 2017).

a. Defamation is not a predicate act.

Energy Transfer's case is certainly not the first attempt to spin an alleged scheme to harm a plaintiff's professional reputation into a RICO claim. E.g., *Manax v. McNamara*, 660 F. Supp. 657, 658 (W.D. Tex. 1978), aff'd, 842 F.2d 808 (5th Cir. 1988) (alleging a conspiracy to harm plaintiff's medical practice). Appropriately, such claims are rarely successful because it is firmly established that defamation and many other similar allegations do not constitute requisite predicate acts for RICO violations. *E.g., Contes v. City of New York*, 1999 U.S. Dist. LEXIS 10634, No. 99 Civ. 1597, 1999 WL 500140, at *8 (S.D.N.Y. July 14, 1999) ("Defamation is not a predicate act under § 1961."); *also see Mount v. Ormond*, 1991 U.S. Dist. LEXIS 12941, No. 91 Civ. 125, 1991 WL 191228, at *2 (S.D.N.Y. Sept. 18, 1991) ("Section 1961(1) does not include defamation [or] libel … as predicate acts …"). In

this case, the only objective conduct Energy Transfer can point to are letters sent by BankTrack to financial institutions, as well as corresponding information published on BankTrack's website in the Netherlands. To the extent Energy Transfer believes such statements were defamatory (they were not), the bottom line is that it is insufficient to constitute a predicate act for purposes of establishing liability under RICO.

b. BankTrack is not liable on mail and wire fraud claims.

Federal Rule of Civil Procedure 9(b), requiring that fraud allegations be pleaded with particularity, applies to civil claims under RICO where fraud is the predicate act. Thus, a plaintiff that bases its RICO claim on a mail or wire fraud scheme must allege the time, place, content of, and parties to the fraudulent communications, and must show that the plaintiff was deceived by those communications. *See, e.g., Abels v. Farmers Commodities Corp.*, 259 F.3d 910, 919 (8th Cir. 2001); *Cayman Exploration Corp. v. United Gas Pipe Line Co.*, 873 F.2d 1357, 1362 (10th Cir. 1989) (collecting cases); *American Dental Ass'n v. Cigna Corp.*, 605 F.3d 1283 (11th Cir. 2010). Energy Transfer has failed to meet this basic minimum requirement.

To make an actionable claim of fraud, representations must be made with knowledge of their falsity and with intent to deceive, and critically, that a plaintiff must show that they relied upon the representations made. *Leach v. Kelsch*, 106 N.W.2d 358, 364 (N.D. 1960). Fraud is not presumed but must be proved. *Id.* Energy Transfer's complaint fails miserably with respect to its fraud allegations. To prevail, it would have to demonstrate that it was defrauded, and that it relied upon representations made in BankTrack's communications. Energy Transfer has not – and cannot – claim that it relied upon statements made in BankTrack's letters to financial institutions and on its website to claim that it was in any way defrauded.

Allegations of predicate mail and wire fraud acts should state the contents of the communications, who was involved, where and when they took place, and explain why they were

fraudulent. *See, Official Publications, Inc. v. Kable News Co., Inc.,* 692 F. Supp. 239, 245 (S.D.N.Y. 1988), *aff'd in part, rev'd in part on other grounds,* 884 F.2d 664 (2d Cir. 1989). Energy Transfer's amorphous allegations of fraud simply do not suffice. Additionally, mail and wire fraud require a showing of fraudulent intent. *Jepson, Inc. v. Makita Corp.,* 34 F.3d 1321, 1328, (7th Cir. 1994); *also see, Gerstenfeld v. Nitsberg*, 190 F.R.D. 127 (S.D.N.Y. 1999) (dismissing RICO claims because the complaint failed to allege facts giving rise to a strong inference of fraudulent intent). Energy Transfer failed to allege facts that support an inference of intent for its claims and has simply not adequately pled a predicate act of mail and wire fraud.

c. Energy Transfer's extortion allegations are baseless.

In the present case Energy Transfer alleges that BankTrack engaged in the "harassment" of its creditors with "extortionate threats" in order to claim a predicate act under RICO. Compl., ¶ 400. Energy Transfer does not come close to alleging extortion. "[E]xtortion is defined as 'the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence or fear . . . .'" *I.S. Joseph Co. v. J. Lauritzen A/S*, 751 F.2d 265, 267 (8th Cir. 1984) (quoting 18 U.S.C. § 1951). *See also Scheidler v. Nat'l Org. for Women, Inc.*, 537 U.S. 393, 407 (2003).

Whom did BankTrack extort? Plaintiffs believe BankTrack extorted the financial institutions that were sent letters. If so, what property did BankTrack obtain or seek to obtain? The Complaint is silent on that point. And, more fundamentally, what was the threat that BankTrack made to those institutions? BankTrack certainly did not threaten violence; and, they did not even threaten a boycott or any similar action that might cause those institutions to fear economic injury.[19] *See Flowers v.*

[19] With respect to extortion allegations, it is worth noting that there is nothing inherently wrongful about the use of economic fear to obtain property. *See United States v. Kattar*, 840 F.2d 118, 123 (1st Cir. 1988); *United States v. Clemente*, 640 F.2d 1069, 1077 (2d Cir.), *cert. denied*, 454 U.S. 820, 102 S. Ct. 102, 70 L. Ed. 2d 91 (1981). "Unlike extortion cases based on the use of force and violence, extortion cases based on the use of economic fear typically will not involve allegations of wrongful means, but only allegations of wrongful ends." *United States v. Sturm,* 870 F.2d 769, 772-773 (1st Cir. 1989). As with the failure to plead wrongful intent for its mail and wire fraud claims, there are no plausible allegations that BankTrack possessed the requisite wrongful purpose for extortion here.

Continental Grain Co. , Wayne Poultry Div., 775 F.2d 1051, 1053 (8th Cir. 1985). Plaintiffs have not shown any of the elements of extortion.

Furthermore, what Energy Transfer refers to as "extortionate threats" – namely, advocating that financial institutions divest from certain projects, including DAPL – also falls into the realm of protected speech. "Speech does not lose its protected character . . . simply because it may . . . coerce [others] into action." *Claiborne Hardware*, 458 U.S. at 910; *accord Organization For a Better Austin*, 402 U.S. at 419 (holding that petitioners' purpose in distributing literature to "'force' respondent to sign a no-solicitation agreement. . . does not remove [the expression] from the reach of the First Amendment.").

3. Energy Transfer's state law claims fail.

i. State RICO claims lack merit.

Analysis of the state law RICO claims made by Energy Transfer to a large extent follows the guidance of the federal cases cited above. However, the North Dakota Supreme Court, in *Rolin Mfg., Inc. v. Mosbrucker*, 544 N.W.2d 132 (N.D. 1996), provided specific guidance with respect to North Dakota's RICO variant. The Court noted that "to state a cause of action for civil damages under RICO, the plaintiff's damages must be proximately caused by the defendant's violation of a predicate RICO act." (*citing Rosier v. First Financial Capital Corp.*, 181 Ariz. 218, 889 P.2d 11, 15 (Ariz.App.1994)), *Id*, at 138. Furthermore, state RICO claims must "be pled with the same particularity that is required in the pleading of fraud. Fed.R.Civ.P. 9(b)" (*citing Taylor v. Bear Stearns & Co.*, 572 F.Supp. 667, 682 (N.D.Ga.1983)), *Id.* Critically, the Court noted that "predicate acts must be criminal acts. … Characterizing some event as criminal does not make it so. ... Therefore, it is necessary that either a prior conviction or probable cause be alleged with reference to the predicate acts" (*citing Taylor v. Bear Stearns & Co.*, 572 F.Supp. at 682–83), *Id.*

This presents Energy Transfer with an extremely high burden in that under state law, "[a] necessary ingredient of every successful RICO claim is an element of criminal activity …" *Id.*, *citing*

Babst v. Morgan Keegan & Co., 687 F.Supp. 255, 258 (E.D.La.1988), and that a defendant's state of mind be the same as that required in a criminal prosecution." *Id.* While Energy Transfer attempts to characterize BankTrack's correspondence with financial institutions and publication of information on its website as criminal acts, mere assertions do not make it so. Energy Transfer's pleadings fall far short of the legal prerequisites and it is unable to plead a claim capable of surviving a motion to dismiss.

ii. Civil conspiracy claims lack merit.

The North Dakota Supreme Court defined a "civil conspiracy" as "a combination of two or more persons acting in concert to commit an unlawful act or to commit a lawful act by unlawful means, the principal element of which is an agreement between the parties to inflict a wrong against or injury upon another and an overt act that results in damages. *Service Oil v. Gjestvang*, 861 N.W.2d 490, 500 (N.D. 2015). As discussed above, BankTrack's activities constituted lawful advocacy work protected by the First Amendment. Simply, Energy Transfer has failed to plausibly plead facts establishing the existence of a civil conspiracy under North Dakota law. It is also worth noting that "[a]lthough criminal and civil conspiracy have similar elements, the distinguishing factor between the two is that damages are the essence of a civil conspiracy and the agreement is the essence of a criminal conspiracy. There can be no damages if there is not an unlawful act." *Burris Carpet Plus, Inc. v. Burris*, 2010 ND 118, ¶ 42, 785 N.W.2d 164 (citations omitted). Energy Transfer has not shown any unlawful acts, hence, no damages. Its state law civil conspiracy claim lacks merit.

iii. Energy Transfer's tortious interference claims lack merit.

Under North Dakota law, to succeed on a claim for tortious interference, a plaintiff must prove "(1) a contract existed, (2) the contract was breached, (3) the defendant instigated the breach, and (4) the defendant instigated the breach without justification." *Thimjon Farms Partnership v. First Intern. Bank & Trust*, 3837 N.W.2d 327, 333 (N.D. 2013). In this instance, Energy Transfer alleges that

BankTrack's letters to its lenders constituted tortious interference with its business relationships. Under the most generous reading of the complaint, Energy Transfer fails to make a claim, as it has not pled that BankTrack's letters to lenders (which BankTrank argues were justified) resulted in a breach of any of the credit facilities in place to finance DAPL. At most, Energy Transfer claims that DNB Norway sold its investments in DAPL to a third party. Compl., ¶ 239. There is no plausible allegation of a breach of any of Energy Transfer's loan agreements made in the complaint and, therefore, no claim exists for tortious interference.

iv. State law defamation claims lack merit.

North Dakota generally follows the reasoning set forth above in BankTrack's discussion of First Amendment privilege. Under state law, the same analysis of Energy Transfer's status as a public figure applies, as does the protection afforded statements of opinion. To determine a plaintiff's public figure status, courts "look at the nature and extent of the individual's participation in the controversy giving rise to the alleged defamation." *Riemers v. Mahar*, 748 N.W.2d 714, 721 (N.D. 2008). For public figures, or even limited public figures, North Dakota follows *Gertz* and corresponding Supreme Court precedent. Actual malice requires showing knowledge that the statements are false or that the statements were made with reckless disregard for whether they were false. *Id.* The plaintiff must demonstrate the author had serious doubts about the truth of his publication or had "a high degree of awareness of [the] probable falsity." *Id.*

Furthermore, statements of opinion, such as those expressed in BankTrack's advocacy work – persuading financial institutions to strengthen their commitments to environmental and social responsibility in light of the DAPL controversy and ongoing media reports of events related to the DAPL protests – constitute core protected speech and are not defamatory. *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 20 (1990); *Gertz, supra* at 339-40. As noted above, Energy Transfer has not met this burden and its state law claims fail.

Conclusion

On all counts, Energy Transfer has failed to allege claims entitling it to relief. First, with respect to federal RICO claims, Energy Transfer fails to allege facts that would authorize this Court to exercise jurisdiction over BankTrack. Second, all of BankTrack's actions are protected by the First Amendment. Energy Transfer is a public figure, with its claims subject to heightened scrutiny under the First Amendment. Third, Energy Transfer fails to establish the existence of an enterprise for purposes of RICO and, furthermore, fails to plausibly allege the existence of any predicate acts that would result in liability under RICO. Finally, Energy Transfer's state law claims fail because first, in the absence of federal jurisdiction, this Court lacks jurisdiction over BankTrack with respect to state law claims; and second, Energy Transfer has simply failed to make plausible allegations in its complaint to even meet the bare minimum requirements for each of its claims. This Court should grant BankTrack's motion and dismiss Energy Transfer's case in its entirety.

Dated this 28th day of November 2017.

THE MARTINEZ LAW FIRM, LLC

By: /s/ Robin S. Martinez

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Attorney for BankTrack

To: Mr. Nigel Beck, Standard Bank, Chair of the Equator Principles Association
All Equator Principles Financial institutions (EPFIs)

Concerning: Equator Principles climate commitments, and EPFI financing of the Dakota Access Pipeline, for discussion at your Annual Meeting and Workshop in London

November 7, 2016

Dear Mr. Beck,

The undersigned organizations are writing to you, as Chair of the Equator Principles Association, to urge the Association at its upcoming Annual Meeting in London to address two distinct and important issues:

- Equator Principles Financial Institutions (EPFIs) must take long overdue, concrete steps to strengthen their climate commitments.
- Our deep concern about the involvement of a substantial number of EPFIs in the financing of the Dakota Access Pipeline (DAPL).

STRONG CLIMATE CHANGE COMMITMENTS FROM EPFIS NEEDED

As you will be aware, your Annual Meeting coincides with the start of the Marrakech Climate Summit, where governments will seek ways to implement the Paris Climate Agreement that came into effect on November 4. As is already clear, commitments made thus far by state parties to the agreement will not keep average global temperature rise below the agreed 2 degree Celsius threshold, let alone the desired 1.5 degree target.[1] To achieve this, much more needs to be done, urgently, by state and non-state parties alike.

The Equator Principles (EPs), being the prime sustainability initiative of 85 of the world's leading banks, could play an important role in strengthening the climate commitments of adopting banks. This would also be in the best interest of those banks, given that the EPs are meant to be an 'enhanced risk management framework for determining, assessing and managing environmental and social risk', presumably with 'climate change' included as a major risk.

Given the magnitude of the current climate crisis one would expect that the EPs demand a high level of climate due diligence to be conducted, not only to assess the potential impact of climate change on projects under consideration, but also – and more importantly – to assess how these projects will contribute to, or may jeopardize, reaching the globally agreed climate targets of the Paris Agreement.

It would then be imperative that such identified risks are avoided wherever possible. This would require the *mandatory* choice of the least Greenhouse Gas (GHG) intensive alternative for all

[1] https://www.theguardian.com/environment/2016/nov/03/world-on-track-for-3c-of-warming-under-current-global-climate-pledges-warns-un

proposed projects[2], but also the withholding of finance for all projects and business activities that pose an unacceptably large climate risk. Such stringent due diligence and selection procedures, combined with the *a priori* categorical exclusion of all projects that by their very nature strongly contribute to climate change (most notably all fossil fuel extraction and transportation infrastructure, and all fossil fuel based energy generation projects[3]) must then necessarily result in major shifts in the overall portfolio of EPFIs.

However, the reality today is very different. It took over a decade for the word 'climate' to even appear in the text of the EPs. But the current, 2014 version of the EPs (EPIII), in which the word finally appears, still seems to be in near-complete denial on the severity of the climate crisis, as it places almost no meaningful climate conditionality on prospective clients and projects.

Meanwhile, EPFIs have continued to enthusiastically finance new coal mines and coal power plants, oil exploration projects and pipelines, gas fracking projects and LNG terminals all over the world.[4] The fact that all these climate destroying projects are stamped with an 'Equator Compliant' seal of approval not only provides project sponsors with a wholly undeserved claim to sustainability, but it also makes a complete mockery of the pretention of the EPFIs to adequately manage social and environmental risk that impact on their business.

Change in the climate approach of the EPs is urgently needed and long overdue. **We urgently call upon your Association to use this Annual Meeting to start strengthening your collective climate commitments, by including stringent and *binding* climate criteria for all projects to be considered under the EP framework, and by categorically excluding all energy projects with an unacceptably large impact on climate change, starting with all coal power plants.**

Fortunately, the urgency of this matter is not lost on some of your members; over the last two years a number of EPFIs have adopted climate and energy policies that move way beyond the EPs.[5] It is time for the EP Association as a whole to side with the leaders in your group and move ahead, rather than be content with the EPs merely reflecting the lowest common denominator.

EQUATOR BANK FUNDS FOR THE DAKOTA ACCESS PIPELINE (DAPL)

Our organizations have been astonished to learn that no less than 13 EPFIs are involved in a credit agreement with Dakota Access LLC and Energy Transfer Crude Oil Company LLC, to borrow up to

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[2] The EPs currently require 'the evaluation of technically and financially feasible and cost-effective options available to reduce project-related GHG emissions during the design, construction and operation of the Project', but it is left to the client to determine whether it considers these alternatives. 'technically and financially feasible and cost-effective options' See http://www.equator-principles.com/resources/equator_principles_III.pdf, page 12

[3] E.g. see The Sky's Limit: Why the Paris Climate Goals Require a Managed Decline of Fossil Fuel Production, by Oil Change International, September 2016

[4] For an illustration of what fossil fuel projects EPFIs are still financing see the relevant sections of www.banktrack.org and www.coalbanks.org

[5] For an overview of the state of climate policies of a number of leading EPFIs see http://dev.banktrack.org/download/ran_report_shorting_the_climate_2016_pdf/ran_report_shorting_the_climate_2016.pdf

$2.5 billion to construct the Dakota Access Pipeline and the Energy Transfer Crude Oil Pipeline in the United States.[6] An additional 8 EPFIs are providing further credit to the project sponsors.[7]

As you are aware, the proposed 1,172 mile-long DAPL is the subject of huge international outcry, led by the Standing Rock Sioux tribe, but supported by the tribal governments of over 280 other tribes and allies from all over the world.[8] This growing global resistance opposes DAPL because it threatens air and water resources in the region and further downstream, and because the pipeline trajectory is cutting through Native American sacred territories and unceded Treaty lands. Harm to Native areas has already occurred when DAPL personnel deliberately desecrated documented burial grounds and other culturally important sites. Native American opponents to the project emphasize that the DAPL struggle is about larger Native liberation, self-determination and survival at the hands of colonial corporations and compliant government actors.

Over the last months, an ever growing number of Native water protectors and their thousands of allies have converged peacefully in the pipeline construction area to halt further construction of the project. In response to this strictly-peaceful, on-site resistance, police from multiple U.S. states and agencies, members of the U.S. National Guard, and armed private security forces working for project sponsors have used military equipment, tactics and weapons to intimidate, assault, arrest and otherwise commit grievous human rights violations against water protectors and their allies. Indiscriminate use of attack dogs, rubber bullets, concussion grenades, tazers and mace are reported, while journalists covering the assault on non-violent water protectors have been arrested. Protesters that have been arrested have been subjected to inhumane treatment that involved, amongst other things, being locked up naked, or cramped without food and warmth into dog kennels.[9]

The debacle has escalated into a national crisis and an international scandal. A member of the UN's Permanent Forum on Indigenous Issues has been deployed to North Dakota to monitor the situation, while President Obama has intervened to ask the Army Corps of Engineers to examine alternative routes for the pipeline. Meanwhile, the protest at Standing Rock is backed by over a million – and growing – allies worldwide, with numerous solidarity actions springing up across the United States and beyond, including protests at EPFI headquarters and outlets.

The world is closely watching how all actors involved will deal with the situation, including the banks that provide financial support to the project. Given the presumed Indigenous rights commitments of EPFIs, it is for us inexplicable that gross violations of Native land titles, threats to water sources and the desecration of burial grounds have not been identified early on as reasons for EPFIs to not provide funding for this project. However, this unfortunately fits into a documented and consistent pattern of disrespect of local communities and Indigenous rights by EPFI-backed projects worldwide.

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[6] See https://www.sec.gov/Archives/edgar/data/1161154/000119312516675095/d215460d8k.htm; additional bank information sourced from Bloomberg. EPFIs involved in this loan are BBVA, BNP Paribas, Bank of Tokyo Mitsubishi UFJ, Citigroup, Crédit Agricole, ING Group, Intesa Sanpaolo, Mizuho, Natixis, Société Générale, Sumitomo Mitsui, TD Bank Financial Group and Wells Fargo.

[7] Bank of Nova Scotia, Barclays, JP Morgan Chase, Bank of America, Credit Suisse, Sumitomi Mitsui, RBC and HSBC, see http://www.foodandwaterwatch.org/news/who%27s-banking-dakota-access-pipeline

[8] http://standwithstandingrock.net/supporters/?support=tribal

[9] https://www.washingtonpost.com/news/morning-mix/wp/2016/11/01/dakota-access-protesters-accuse-police-of-putting-them-in-dog-kennels-marking-them-with-numbers/

We understand that it is not the role of the EP Association to intervene in specific project situations. Nevertheless, we consider it crucial for the credibility of the Equator Principles as an effective safeguard against violation of Indigenous Peoples' rights that your meeting calls upon the EPFIs involved in financing DAPL that they take swift action to stop the ongoing violation of the rights of Native Americans.

This for now requires that all further loan disbursements to the project are put on hold, and that the EPFIs involved demand from the project sponsors an immediate halt to the construction of the pipeline and all associated structures, until all outstanding issues are resolved to the full satisfaction of the Standing Rock Sioux Tribe.

We kindly request to hear from you as soon as possible on how the EP Annual Meeting has dealt with these two crucial issues and suggest that we further discuss them at our already planned meeting in January.

We wish you a good and productive meeting.

Sincerely

Johan Frijns, Director **BankTrack**, Netherlands
(For contact on this letter: johan@banktrack.org)

And:
Amazon Watch United States - Christian Poirier, Program Director
Amigos da Terra Amazônia Brasileira Brazil - Mauro J. Capóssoli Armelin, Executive director
ARA e.v. Germany – Monika Nolle, forest & paper campaigner
Blue Dalian China
Both Ends Netherlands - Wiert Wiertsema, Senior Policy Advisor
Fern United Kingdom/Belgium – Mark Gregory, finance campaigner
Finance & Trade Watch Austria - Thomas Wenidoppler, Director
Foundation "Development YES - Open-Pit Mines NO" Poland - Kuba Gogolewski, Vice-President
Friends of the Earth United States – Doug Norlen, Economic Policy Program Director
GegenStroemung Germany – Heike Drillisch, Board member
Green Longjiang China
Greenpeace United States – Diana Best, Climate and Energy Campaigner
Institut für Ökologie und Aktions-Ethnologie e.V. Germany – Johannes Rohr, Board member
International Foundation Batani Russia - Pavel Sulyandziga, Chair of the Board
International Indian Treaty Council International – Andrea Carmen, Executive director
International Rivers United States – Kate Horner, Executive Director
Les Amis de la Terre France – Lucie Pinson, private finance campaigner
Market Forces Australia – Julien Vincent, Director
Mineral Policy Institute Australia - Charles Roche, Director
Oil Change International United States – Steve Kretzmann, Executive Director & Founder
Nostromo Research United Kingdom – Roger Moody, Director
Rainforest Action Network United States – Amanda Starbuck, Climate & Energy Program Director
Sierra Club United States -Nicolle Ghio, Senior campaign representative
The Corner House United Kingdom - Nicholas Hildyard, co-Director
Urgewald Germany – Heffa Schuecking, Director

BBVA
ATT. MR. CARLOS TORRES VILA, CEO
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BILBAO
SPAIN

CONCERNING: HALT YOUR SUPPORT TO THE DAKOTA ACCESS PIPELINE

November 28, 2016

Dear Mr. Vila,

The undersigned organizations are writing to you to share our deep concern about your participation in a credit agreement led by Citibank with Dakota Access LLC and Energy Transfer Crude Oil Company LLC, to borrow up to $2.5 billion to construct the Dakota Access Pipeline (DAPL) and the Energy Transfer Crude Oil Pipeline in the United States.[1]

As you are aware, the proposed 1,172 mile-long DAPL is the subject of a huge international outcry, led by the Standing Rock Sioux tribe, but supported by the tribal governments of over 280 other tribes and allies from all over the world.[2] This growing global resistance opposes DAPL because the pipeline trajectory is cutting through Native American sacred territories and unceded Treaty lands, and because it threatens air and water resources in the region and further downstream.[3]

Since last April, an ever growing number of Native water protectors and their thousands of allies have converged peacefully at Standing Rock in the pipeline construction area to halt further construction of the project. In response to this strictly-peaceful, on-site resistance, police from multiple U.S. states and agencies, members of the U.S. National Guard, and armed private security forces working for project sponsors have used military equipment, tactics and weapons to intimidate, assault, arrest and otherwise commit grievous human rights violations against water protectors and their allies. Indiscriminate use of attack dogs, rubber bullets, concussion grenades, tazers and mace are reported, while journalists covering the assault have been arrested. The violence unleashed on the protesters by security forces has already left hundreds severely injured.[4] Last week, protesters were attacked with water cannons used in sub-zero temperatures, leading to life threatening situations. One protester faces a possible amputation of her arm after being hit with a concussion grenade.[5] Protesters that have been arrested have also been subjected to inhumane treatment that involved, amongst other things, being locked up naked, or cramped without food and warmth into dog kennels.[6]

[1] See https://www.sec.gov/Archives/edgar/data/1161154/000119312516675095/d215460d8k.htm. Additional information sought from Bloomberg.
[2] http://standwithstandingrock.net/supporters/?support=tribal
[3] See: http://www.banktrack.org/show/dodgydeal/dakota_access_pipeline
[4] http://priceofoil.org/2016/11/22/300-injured-at-standing-rock-he-just-smiled-and-shot-both-my-kneecaps/
[5] http://nymag.com/daily/intelligencer/2016/11/hundreds-injured-in-dakota-access-pipeline-protest.html
[6] https://www.washingtonpost.com/news/morning-mix/wp/2016/11/01/dakota-access-protesters-accuse-police-of-putting-them-in-dog-kennels-marking-them-with-numbers/

EXHIBIT B

As the loan syndicate is led by four banks that are signatory to the Equator Principles, this project loan is subject to these Principles. Given that Indigenous rights commitments are presumed to be respected by the Principles, specifically the right of indigenous communities to withhold consent to projects affecting their ancestral lands (FPIC) [7], it is for us inexplicable that the clear and long standing opposition to the project by the Standing Rock Sioux Tribe, as well as widely documented gross violations of Native land titles, threats to water sources and the desecration of burial grounds have not been identified early on as reasons for participating banks to not provide funding for this project. Harm to Native areas has now already occurred when DAPL personnel deliberately desecrated documented burial grounds and other culturally important sites. Native American opponents to the project have emphasized throughout that the DAPL struggle is about larger Native liberation, self-determination and survival at the hands of colonial corporations and compliant government actors.

The undersigned organizations are closely watching how the banks providing financial support to the project are acting on the ever worsening situation on the ground, including your bank. Given your stated commitment to respect indigenous rights, and the harsh reality on the ground **we demand that:**

1. **all further loan disbursements to the project are immediately put on hold;**
2. **banks involved in the loan demand from the project sponsor that all construction of the pipeline and all associated structures is put on hold until all outstanding issues are resolved to the full satisfaction of the Standing Rock Sioux Tribe;**
3. **in case such a resolution of outstanding issues is not achieved with the Standing Rock Sioux Tribe, your bank fully withdraws from the loan agreement;**
4. **a public statement is made by your bank on how you will act on the issues identified above**

We all stand with the Standing Rock Sioux Tribe in defending their ancestral lands from the impact of this project and are prepared to take further campaign steps in case we consider your response on this call unsatisfactory. Given the urgency of the matter we seek a response from you on this letter as soon as possible, but no later than December 5.

Sincerely

Johan Frijns, Director **BankTrack**, Netherlands
johan@banktrack.org

And;

1Earth Institute INC, United States - Eva Willmann de Donlea, Executive Director & Co-Founder
350 Central Maine, United States - Richard Thomas, Co-leader

[7] It is assumed in this project situation that US law is equivalent to, or exceeds the requirements contained in Principle 7 of the Equator Principles, which states: "Projects affecting indigenous peoples will be subject to a process of Informed Consultation and Participation, and will need to comply with the rights and protections for indigenous peoples contained in relevant national law, including those laws implementing host country obligations under international law. Consistent with the special circumstances described in IFC Performance Standard 7 (when relevant as defined in Principle 3), projects with adverse impacts on indigenous people will require their Free, Prior and Informed Consent (FPIC)." See: http://www.equator-principles.com/resources/equator_principles_III.pdf, p.7

350 Colorado, United States - Micah Parkin, Executive Director
350 Louisiana, United States - Renate Heurich, Co-founder
350 Maine, United States - Sarah Lachance, Extreme Energy and Solutions Team Coordinator
350 San Antonio, United States - Kathy Glass, Representative
350.org, United Kingdom - Nicolò Wojewoda, Europe Team Leader
350.org Belgium, Belgium - An, Co-founder
350.org France, France - Clémence Dubois, Campaigner
350.org Japan, Japan - Shin Furuno, Japan Divestment Campaigner
350NJ.org, United States - Rosemary Carey, President
Acción por la Biodiversidad, Argentina - Carlos Vicente, Coordinador
Accountability Counsel, United States - Natalie Bridgeman Fields, Executive Director
Action Non-Violente COP21, France - Jon Palais, Équipe d'animation
ActionAid Netherlands, Netherlands - Ruud van den Hurk, Director
Advocacy Action Group St. Michael & All Angels Episcopal Church, United States - Peter Sergienko, Co-chair
Advocates for Springfield, NY, United States - Tara Sumner, Vice President
AFM Local 1000, United States - John O'Connor, Secretary Treasurer Emeritus
Agricultural Missions, Inc, United States - Mikhiela Sherrod, Executive Director
AKIN, Austria - Matthias Neitsch, Treasurer
Aktionsgruppe Indianer & Menschenrechte e.V., Germany - Monika Seiller, Chair person
Alaska Wilderness League, United States - Leah Donahey, Senior Campaign Director
Aldeah, France - Raquel Neyra, Member
Almáciga, Spain - Eva Sáinz, Coordinadora
Alofa Tuvalu, France - Gilliane Le Gallic, President
Alternatiba, France - Fanny Delahalle, Representant
Alternativa intercanvi pobles indígenes, Spain - Esther, Project Management
Amazon Watch, United States - Christian Poirier, Program Director
Amigos de la Tierra (FoE Spain), Spain - Hector de Prado, Head of climate and energy unit
Andy Gheorghiu Consulting, Germany - Andy Gheorghiu, Owner
Arctic Consult, Norway - Dmitry Berezhkov, Director
Asia Indigenous Peoples Pact, Thailand - Joan Carling, Secretary General
ASNAI, Germany - Grit Steenbergen, Member
Asociación de Cultura Popular Alborada, Spain - Ángel López, President
Asociación Perifèries del Món, Spain - Rafael Maurí Victoria, Presidente
ATTAC CADTM Maroc, Morocco - Omar Aziki, General Secretary
Attac France, France - Maxime Combes, Spokerperson
BALLE, United States - Sandy Wiggins, Chairman
Barn Owl Foundation, Hungary - Ákos Klein, Managing director
Bassetlaw against fracking, United Kingdom - David Larder, Chairman
Batani Indigenous Foundation, Russia - Pavel Sulyandziga, Chair of the Board
Bay Area Labor Committee for Peace & Justice, United States - Michael Eisenscher, Coordinator
BBVAren aurkako Plataforma /Plataforma contra el BBVA, Basque Country - Martin Mantxo, Coordinator
Bergen Save the Watershed Action Network, United States - Lori Charkey, Director

Beyond Extreme Energy, United States - Gabriel Shapiro, Organizer
Bi lebenswertes Korbach e.V., Germany - Andy Gheorghiu, Member of Board
BI Umweltschutz Lüchow-Dannenberg, Germany - Günter Hermeyer, Board Member
Biofuelwatch, United States - Rachel Smolker, Codirector
Birgit Breuer Huforthopädie, Germany - Birgit Breuer, CEO
Bisbee & Cochise People for Community and Environmental Rights, United States - Maggie **Kohanek**, Organizer
Bizi!, Basque Country - Jon Palais, Groupe international
Bold Alliance, United States - Jane Kleeb, President
Bold Iowa, United States - Ed Fallon, Director
Bold Louisiana, United States - Cherri Foytlin, Director
Bold Nebraska, United States - Amy Schaffer, Director
Bold Oklahoma, United States - Mekasi Camp, Director
Bootshaus Zeuthener See, Germany - Hartmut Zeeb, Owner
Boston Impact Initiative, United States - Deborah Frieze, Founding Partner
Both ENDS, Netherlands - Danielle Hirsch, Director
BP or not BP?, United Kingdom - Danny Chivers, Co-founder
Bread of Life Church, USA - Mike Little, Pastor
Brighton Action Against Fracking, United Kingdom - Atlanta Cook, Equal
Brighton Downlanders, United Kingdom - Charlie Flint, Secretary
Bruno Manser Fund, Switzerland - Johanna Michel, Campaigner
Buffalo Nickel, United States - Thomas Ryan RedCorn, CEO
BUND Berlin e.V, Germany - Matthias Krümmel, Consultant for climate protection policies
BUND Naturschutz in Bayern (Friends of the Earth Bavaria), Germany - Richard Mergner, Director, Policy
Bürgerinitiative gegen CO2-Endlager e,V., Germany - Karin Petersen, Vorstand
Business Alliance for Local Living Economies, United States - Jessica Daniel, Director of Fellowship
Cadena de Derechos Humanos Honduras, Germany - Daniela Dreissig, PR Coordinator
CADTM, International - Rémi, CADTM
Carson Connected, United States - Lori Noflin, Volunteer / Founder
Casabel, Belgium - Pauline Delgrange, Lawyer
CAUGE, Scotland - Janette McGowan, Member
C-CARE (Chenango Community Action for Renewable Energy), United States - Kenneth Fogarty, Chairperson
Center for Biological Diversity, United States - Valerie Love, Clean Energy Campaigner
Center for Economic Democracy, United States - Aaron Tanaka, Director
Center for Environment/Friends of the Earth BiH, Bosnia and Herzegovina - Igor Kalaba, Energy and Climate Change Program Coordinator
Center for International Environmental Law, United States - Carla Garcia Zendejas, Director, People, Land & Resources Program
Center for Justice, United States - Rick Eichstaedt, Executive Director
Center for support of indigenous peoples of the North, Russia - Rodion Sulyandziga, Director
Centro de Documentación en Derechos Humanos "Segundo Montes Mozo S.J." (CSMM), Ecuador - Susana Peñafiel Acosta, Coordinadora General
CGT Saysep Palencia Spain, Spain - Javier Escudero, Coordinator

Chenango CDOGG (Chenango Delaware Otsego Gas Drilling Opposition Group), United States - Daniel Taylo, Member
Chichester Antifracking Forum, United Kingdom - John Houston, Owner admin
Chino Cienega Foundation, United States - Stephen Nichols, President
Citizen Action of New York, United States - Bob Cohen, Policy Director
Citizen United for Renewable Energy (CURE), United States - Georgina Shanley, Co-Founder
Class Action, United States - Anne Phillips, Executive Director
Clean Air Council, United States - William Fraser, Outreach coordinator
Clean Water Action, United States - Jennifer Peters, National Water Programs Director
Climate Justice Program, Sweden - Karl Andreasson, Co-Founder & Trainer
Climate Justice Project, United States - Julie Maldonado, Member
Climate Movement of Denmark, Denmark - Thomas Meinert Larsen, Spokesperson
ClimateMama, United States - Harriet Shugarman, Executive Director
CliMates, fossil-free.ch, Switzerland - Alexandra Gavilano, Founder, Project leader
Climaximo, Portugal - Sinan Eden, Member
Coalition Beauce -Etchemin, Canada - Claude C. Lachapelle, President
Coalition Marocaine pour la Justice Climatique, Morocco - Noura El Ouardi, Coordinator
CoFED (Cooperative Food Empowerment Directive), United States - Hnin Hnin, Co-Director
Collectif 07 Stop au gaz et Huile de Schiste, France - Christophe Tourre, Coordinator
Collectif 38 France STOP Hydrocarbures GHRM, France - bruno Morant, Référent
Collectif Causse Méjean - Gaz de Schiste NON!, France - Tardy, Member
Collectif relais d'informations et actions citoyennes, France - Bob Pilli, President
Collectif Roosevelt, France - Bruno Lamour, President
Columbus Community Bill of Rights, United States - Greg Pace, Co-founder
Comité Citoyens et Citoyennes pour la Protection de l'Environnement Maskoutain, Canada - Jacques Tétreault, Président
Comité citoyens sur les gaz de schiste Victoriaville, Canada - Alain Guillon, Président cordonateur régional du RVHQ
Comite de citoyens responsables de Becancour, Canada - Yves Mailhot, Member
Community Allies, United States - Ellen Shepard, CEO
Community Empowerment and Social Justice (CEmSoJ) Foundation, Nepal - Prabindra Shakya, Chairperson
Community Reinvest, United Kingdom - Joel Benjamin, Director
Community Sourced Capital, United States - Rachel Maxwell, CEO
Complete It Cuomo, United States - Christine Macpherson, Founder
Compressor Free Franklin, United States - Donald Hebbard, President / Founding Member
Concerned Burlington Neighbors, United States - Suzy WInkler, Co-founder
Concerned Citizens of Otego, United States - Dennis Higgins, Secretary
Concerned Citizens Ohio, United States - Gwen Fischer, Co-cordinator
Concerned Residents of Oxford, NY, United States - Trellan Smith, Co-founder
Congregation of Sisters of St. Agnes, United States - Sister Sally Ann Brickner, Coordinator of Justice, Peace and Integrity of Creation
Consultants for Sustainable Development, Hungary - Kinga Horváth, Co-chair
Corporate Europe Observatory, Belgium - Pascoe Sabido, Researcher and Campaigner
Croatan Institute, United States - Joshua Humphreys, President

Crude Accountability, United States - Kate Watters, Executive Director
CSIA-Nitassinan, France - Edith Patrouilleau, Co-founder and vice-president
Cultural Survival, United States - Suzanne Benally, Executive Director
Daily Kos, United States - Mara Schechter, Campaign Director
dangerous drums / dub interventions / KKDWberlin, Germany - Corin Arnold, Self employed initiator of all
Debt Resistance UK, United Kingdon - Ludovica Rogers, Co-ordination group member
Defund DAPL, Oceti Sakowin - Adam Elfers, Co-Founder
Dharma Action Network for Climate Engagement, United Kingdom - Amanda Root, Member
Disclosure Network New York, United States - Nick Curto, Director & Co-Founder
Divest Aachen, Germany - Gary Evans, Organizer
Divest Uni Kassel, Germany - Kerstin L, Member
DivestInvest Individual, United States - Vanessa Green, Director
DivestInvest Philanthropy, United States - Clara Vondrich, Director
Don't Gas the Pinelands, United States - Dr Bob Allen, Co-Chair
Earth Action, United States - Mary Gutierrez, Executive Director
Earth Care, United States - Bianca Sopoci-Belknap, Executive Director
Earth First UK, United Kingdom - Sylvestre, Collective member
Earth Guardians, United States - Russell Mendell, Campaign Coordinator
Earth in Brackets, United States - Rachael Goldberg, Member
Earth Peoples, International - Rebecca Sommer, President
Ecologistas en Acción, Spain - Samuel Martín-Sosa, International Coordinator
EcoNexus, United Kingdom - Helena Paul, Co-Director
ECOTERRA Africa, Tanzania - Prof. J. Bauer, CEP & PDG
ECOTERRA e.V., Germany - Angelika Lotz, Spokesperson
ECOTERRA Intl., Germany - Dr. Hans-Juergen Duwe, Speaker
Ecumenical Office for Peace and Justice, Germany - ,
Eerlijke Bankwijzer, Netherlands - Peter Ras, Projectleader
EKBO Evangelische Kirche, Germany - Johanna Melchior, Pastor
Ekologistak Martxan, Basque Country - Martin Mantxo, Responsable de Internacional
Elmirans & Friends Against Fracking, United States - Doug Couchon, Co-founder
Embrey Family Foundation, United States - Lauren Embrey, CEO/President
End Ecocide on Earth, France - Valérie Cabanes, Spokeperson
Energy Democracy Project, United Kingdom - Sakina Sheikh, Campaigner
Entrepueblos/Entrepobles/Entrepobos/Herriarte, Catalonia - Àlex Guillamón, Coordinator
Environmental Commission of the Epsiscopal Diocese of Oregon, United States - Peter Sergienko, Convener
Environmental Institute of Munich, Germany - Christina Hacker, Member of the board of directors
Equal Exchange, United States - phyllis robinson, Education and Campaigns
Equivicentinos, Portugal - Nídia Barata, Manager
ETC Group, Mexico - Silvia Ribeiro, Latin America Director
Euromeeting - European Support Groups for Indigenous Peoples in North America, Switzerland - Helena Nyberg, Member
European Water Movement, Europe - Thierry Uso, Communication officer

Executive Coaching, United States - Karen Metzger, Principle
ExtrACTION Topical Group, SfAA, United States - Jeanne Simonelli, Convenor
EYDAP S.A., Greece - Ilias Gerolymatos, Advisor
Facing Finance e.V., Germany - Thomas Kuechenmeister, Managing Director
Fair Finance France, France - Alexandre Naulot, Coordinator
FairFin, Belgium - Frank Vanaerschot, Research coordinator
Fern, Belgium - Julia Christian, Forest Governance Campaigner
Films for the Earth, Switzerland - Kai Pulfer, CEO
Finance & Trade Watch, Austria - Thomas Wenidoppler, Director
First Nations Oweesta Corporation, United States - Chrystel Cornelius, Executive Director
FÍS NUA, Ireland - C. Williams, Spokesperson
Focus, Slovenia - Živa Kavka Gobbo, Chair
Focus on the Global South, Thailand - Shalmali Guttal, Executive Director
Food & Water Europe, Belgium - Frida Kieninger, Campaign Officer
Food & Water Watch, United States - Hugh MacMillan, Senior Researcher
FORCE: Upsetting Rape Culture, United States - Hannah Brancato, Co-Founder and Co-Director
Forest Peoples Programme, United Kingdom - Tom Griffiths, Responsible Finance Coordinator
Former California State Senate Candidate, United States - Jack Lindblad, Founder
Fossielvrij NL, Netherlands - Liset Meddens, National coordinator
Fossil Free Amsterdam, Netherlands - Sven Jense, Initiator
Fossil Free Augsburg, Germany - Christian Schön, Campaigner
Fossil Free Berlin, Germany - Meike Schützek, Volunteer
Fossil Free Erlangen, Germany - Christian Eichenmüller, Chairperson
Fossil Free Freiburg, Germany - Tamara Nausner, Member
Fossil Free Lund University, Sweden - Ruth Kruger, Member
Fossil Free München, Germany - Maiken Winter, Member
Fossil Free Münster, Germany - Leandra Praetzel, Member
Fossil Free Oldenburg, Germany - Anna Deckert, Member
Fossil Free SOAS, United Kingdom - Julia Christian, Campaigner
Fossil Free Strathclyde, United Kingdom - Mathieu Munsch, Campaign organiser
Fossil Free Stuttgart, Germany - Carolin Jaschek, PR
Fossil Free Uppsala, United Kingdom / Sweden - Guy Finkill, President
Fossil Fuel Divestment Student Network, United States - Greta Neubauer, Director
Fossil Free The Hague, Netherlands - Femke Sleegers, Campaiger/coordinator
Foundation Article 25, Poland - Aleksandra Antonowicz-Cyglicka, Chairperson
Frack Free Lancashire, United Kingdom - Ian Roberts, Member
Frack Free Mickle Trafford, United Kingdom - Stephen Allman, Part of the community group
Frack Free North East England, United Kingdom - Edith Carli, Support
Frack Free Storrington and West Chiltington, United Kingdom - Martin Dale, Admin
Frack Free Sussex, United Kingdom - Ellie Wyatt, Chairman
Frack Free Upton, United Kingdom - Joanne Sparke, Member
Frack Free Wales, Wales - Keith M Ross, Co-ordinator
Frack Free Worthing, United Kingdom - Steve Nethercott-Cable, Chairman

Frack Off London, United Kingdom - Lorraine Inglis, Campaigner
FrackFree Malpas, United Kingdom - Giles Tayler, Founder
Frackfreesomerset, United Kingdom - Andy Andrews, Volunteer
Framtiden i våre hender, Norway - Gustavo Parra de Andrade, Project manager
France Libertes - Fondation Danielle Mitterrrand, France - Marion Veber, Program leader
Franciscan Action Network, United States - Jason Miller, Director of Campaigns
Frente de Defensa de Cajamarca, Peru - Nicanor Alvarado, Member
Freshwater Accountability Project, United States - Lea Harper, Managing Director
Freshwaters Illustrated, United States - Jeremy Monroe, Director
Freunde der Naturvölker e.V. (German section of fPcN - friend of Peoples close to Nature), Germany - Bernd Wegener, Chairman
Friends of Peoples close to Nature (fPcN-interCultural), Switzerland - Friedericke Bienert, Speaker
Friends of the Earth Europe, Belgium - Colin Roche, Extractive Industries Campaigner
Friends of the Earth Germany, Germany - Prof. Dr. Hubert Weiger, President
Friends of the Earth International, Global - Dipti Bhatnagar, Climate Justice & Energy Program Coordinator
Friends of the Earth Japan, Japan - Hozue Hatae, Development Finance and Environment Team
Friends of the Earth NL / Milieudefensie, Netherlands - Evert Hassink, Sr. campaigner energy
Friends of the Earth Scotland, Scotland - Mary Church, Head of Campaigns
Friends of the Earth US, United States - Doug Norlen, Director, Economic Policy Program
Friends of the Landless - Finland, Finland - Taru Salmenkari, Board member
Friends of the Siberian Forests, Russia - Andrey Laletin, Chairman
Fund for Democratic Communities, United States - Marnie Thompson, Co-Managing Director
Fundación M´Biguá, Ciudanía y Justicia Ambiental, Argentina - Jorge Oscar Daneri, Abogado
Fundación para el desarrollo alternativo Jenzera, Colombia - Efraín Jaramillo, Director
Fundacja "Rozwój TAK - Odkrywki NIE", Poland - Kuba Gogolewski, Deputy Director
Future instead of coal / Zukunft statt Kohle, Switzerland - Markus Keller, President
GABRIELA Washington, D.C., United States - Jo Quiambao, Secretary-General
GAIA - Global Alliance for Incinerator Alternatives, United States - Christie Keith, International Coordinator
GegenStroemung - CounterCurrent, Germany - Heike Drillisch, Board
GenderCC - Women for Climate Justice, Germany - Lisa Goeldner, Project Coordinator
Glasgow University Climate Action, Scotland - Isabella Nilsen, Co-ordinator
Global Climate Convergence, United States - Timeka Drew, Coordinator
Global Justice Now, United Kingdom - Kevin Smith, Press officer
Global Witness, United States - Zorka Milin, Senior Legal Advisor
GRAIN, International - LB, Researcher
Grassroots Global Justice Alliance, United States - Cindy Wiesner, National Coordinator
Greater Bristol Alliance, United Kingdom - Alison Allan, Chair
Green America, United States - Fran Teplitz, Executive Co-Director
Green Blob, United Kingdom - Stephen Jackson, Owner
Green Sanctuary Committee, CCNY, UU, United States - Gusti Bogok, Chair
GreenDependent Sustainable Solutions Association, Hungary - Edina Vadovics, President

GreenLatinos, United States - Mark Magana, President & CEO
Greenpeace France, France - Jean-François Julliard, Executive director
Greenpeace International, International (based in the Netherlands) - Daniel Mittler, Political Director
Greenpeace Netherlands, Netherlands - Joris Thijssen, Executive Director
Greenpeace USA, United States - Annie Leonard, Executive Director
Greensboro Mural Project, United States - Alyzza May, Organizer
GroenFront!, Netherlands - Karel Boom, Member
Grupo de Apoio aos Jovens Indigenas do MS, Brazil, Brazil - Maria de Lourdes Beldi de Alcantara, President
Guernsey County Citizens Support on Drilling Issues, United States - Greg Pace, Administrator / Founder
Healing Revolution, United States - Jeff Ethan Au Green, Chief Executive Organizer
Health, Scotland - Caroline McManus, Direct contact
Highlander Research and Education Center, United States - Susan Williams, Education team
Hip Hop Caucus, United States - Nakisa Glover, National Climate Justice Organizer
Historischer Westernverein Hameln und German Internet Radio Association, Germany - Uwe Klinge, Moderator und Reporter
HondurasDelegation, Germany - Daniela Dreissig, person responsible for press and lobby
HOPE (Heal Our Planet Earth), United States - Cathy Spofford, Facilitator
Human Rights 3000 / Menschenrechte 3000 e.V., Germany - Gudrun Wippel, Board Member
Human Rights-Racial Justice Center, United States - King Downing, Founder
Hungarian Climate Alliance, Hungary - Csaba Lajtmann, Executive
ICRA International, France - Hervé Valentin, Chargé de mission
Idle no more, Germany - Gabriele Weber, Member
Inclusive Development International, United States - David Pred, Managing Director
Incomindios, Switzerland - Lorenz Häberli, CEO
Indigenous Concerns Resource Center , Kenya - Ben Koissaba, Team Leader
Indigenous World Association, United States - Petuuche Gilbert, President
INOCHI / Safe Energy Project, United States - Claire Greensfelder, Director
Institut für Ökologie und Aktions-Ethnologie e.V. (INFOE), Germany - Johannes Rohr, Member of the board
Institute for Agriculture and Trade Policy, United States - Ben Lilliston, Director of Climate Strategies
Institute for Policy Studies, Global Economy Project, United States - John Cavanagh, Director
Intal, Belgium - Korneel De Rynck, Volunteer
International Accountability Project, International - Ryan Schlief, Executive Director
International Foundation for Indigenous Development "BATANI", Russia - Pavel Sulyandziga, Chair of the Board
International Indian Treaty Council, International - Andrea Carmen, Executive Director
International Rivers, United States - Monti Aguirre, Latin America Program Coordinator
International Work Group for Indigenous Affairs (IWGIA), Denmark - Kathrin Wessendorf, Climate Program Coordinator
Irreducible Productions, United States - Michael Gogins, Composer
Isle de Jean Charles, United States - Albert Naquin, Chief

IWGIA, Denmark - Alejandro Parellada, Programe coordinator
Kalikasan - People's Network for the Environment, Philippines - Leon Dulce, Campaign Coordinator
Keep Billingshurst Frack Free, United Kingdom - Martin Dale, Admin
Keep Ireland Fracking Free, Ireland - Charlie, Spokesperson
Keep Kirdford and Wisborough Green, United Kingdom - Jill Sutcliffe, Chair
Kentucky Environmental Foundation, United States - Heather Warman, Executive Director
Khalif A. Williams Consulting, United States - Khalif Williams, Owner
Kleiner Fratz GmbH, Germany - Grit Nierich, Management
Közép-magyarországi Zöld Kör, Hungary - Klara Kis, Program officer
KyotoUSA, United States - Tom Kelly, Executive Director
LAQAF, Canada - Albert Geuzaine, President
Late Bloom Farm, United States - Kristin Pursell, Co-owner
Leave it in the Ground Initiative (LINGO), Germany - Kjell Kühne, Founder
Les Amis de la Terre France - FoE France, France - Lucie Pinson, Finance campaigner
LES People's Federal Credit Union, United States - Linda Levy, CEO
Liberate Tate, United Kingdom - Kevin Smith, Member
Liberty Tree Foundation, United States - Ben Manski, President
Lifted Voices, United States - Kelly Hayes, Co-founder
Little Coloradro River Watershed Cha Association (LCRWCA), Navajo Nation - Kern Collymore, Senior Youth Coordinator
Livelihoods Knowledge Exchange Network, United States - Mary Hufford, Director, Arts and Humanities
Local 1000, United States - Tret Fure, President
Local Futures/ISEC, United States - Sean Keller, Outreach Coordinator
LPSG, germany - Christine Brelowski, Member
MANA, France - Mignotte, Founder
Mangrove Action Project, United States - Alfredo Quarto, Co-director
Markets For Change, Australia - Peg Putt, Chief Executive Officer
Markwells Wood Watch, United Kingdom - Emily Mott, Founder
Maryknoll Office for Global Concerns, United States - Chloe Schwabe, Faith Economy Ecology Program Director
Medact, United Kingdom - David McCoy, Director
Medicine Tribe Water Warriors, United States - Michelle Gottreich , Founder
MGE, United States - Albert Mitchell, Vice President Sales
MGPA, Australia - Robyn King, Member
Migrante Washington DC, United States - Jhong Dela Cruz, Chairperson
Milford Doers/Residents of Crumhorn, United States - Otto Butz , Founder
Milieudefensie - Friends of the Earth Netherlands, Netherlands - Freek Kallenberg, Campaigns manager
MiningWatch Canada, Canada - Catherine Coumans, Co-Manager
Molly P Hauck, Ph.D., LLC, United States - Molly P Hauck, Ph.D., Licensed Psychologist, President
Move Your Money UK, United Kingdom - Fionn Travers-Smith, Campaign Manager
Movement for the Survival of the Ogoni People (MOSOP), Nigeria - Legborsi Saro Pyagbara, President

Ms. Foundation for Women, United States - Teresa Younger, CEO and President
Musée de l'Homme, France - Duda Romain, PhD
Naropa University Sustainability Council, United States - Jeff Ethan Au Green, Member
National Association of Professional Environmentalists, Uganda - Frank Muramuzi, Executive Director
National Lawyers Guild, United States - Robin Martinez, Midwest Region Vice President
National Society of Conservationists - Friends of the Earth Hungary, Hungary - István Farkas, Executive president
National Toxics Network, Australia - Dr Mariann Lloyd-Smith, Senior Advisor
National Young Farmers Coalition: Catskills, United States - tianna kennedy, President
Native Oganizers Alliance, United States - Judith LeBlanc, Director
Natur og Ungdom (Young Friends of the Earth Norway), Norway - Ingrid Skjoldvær, Chair
NDPoint Strategies, United States - Nikki Daruwala, President
NEA, United States - Elizabeth Brown, Member
Nebenrolle Natur, Switzerland - Marius Lochbihler, Vice-President
New Economy Project, United States - Deyanira Del Rio, Co-Executive Director
New Energy Economy, United States - Mariel Nanasi, Executive Director
New Hampshire Pipeline Awareness Network, United States - David Moloney, Chairman
New Mexico Interfaith Power and Light, United States - Joan Brown, osf, Executive Director
New Mexico Story Power, United States - Maya Rommwatt, Editor
NINJAN.news, United States - Rebecca Em Campbell, Principal
No Canton Gas Pipeline, United States - Jennifer Wexler, Founding member
No Fracking in Balcombe Society, United Kingdom - Charles Metcalfe, Member
No Sharon Gas Pipeline, United States - Birgitta McAlevey, President
NOOSFERA, Tajikistan - Tatiana Novikova, Project coordinator
Northern New Mexico Climate Activists, United States - Nomi Green, Coordinator
Northwest Watershed Institute, United States - Peter Bahls, Executive Director
Norwegian Saami Association, Norway - Beaska Niillas, Chairman
Nostromo Research, United Kingdom - Roger Moody, Director
Notre affaire à tous, France - Marie Toussaint, President
NTFP Exchange Programme, Philippines - Femy Pinto, Asia Executive Director
OBRA (One Billion Rising Austria), Austria - Kazuko Kurosaki, Head of the association
Observatorio de Multinacionales en America Latina - Paz con Dignidad, Spain - Erika Gonzalez, Resercher
Occupy Democracy London, United Kingdom - George Barda, Member
ODG, Catalonia - Alfons Pérez, Member
Oil Change International, United States - Stephen Kretzmann, Executive Director
ONCA, United Kingdom - Laura Coleman, Director
Oregon Physicians for Social Responsibility, United States - Kelly Campbell, Executive Director
OTN-Hydroconsult, Netherlands - Teunis H. op ten Noort, Director
Our Revolution, United States - Shannon Jackson, Executive Director
OVEC (Ohio Valley Environmental Coalition), United States - Vivian Stockman, Vice Director
Pacific Environment, United States - Alex Levinson, Executive Director
Pakistan Fisherfolk Forum, Pakistan - Saeed Baloch, General Secretary

Partnership for Global Justice, United States - JoAnn Mark, Executive Director
Peacemakers of Schoharie County, United States - Wayne Stinson, Action Committee lead
Pennsylvania Interfaith Power & Light, United States - Rev. Douglas Hunt, Vice President
People & Planet, United Kingdom - Andrew Taylor, Co-Director, Campaigns & Communications
People of Albany United for Safe Energy - PAUSE, United States - Diana Wright, Facilitator
People, Not Pipelines, United States - Colleen McKinney, Co-founder
Perkumpulan Prakarsa, Indonesia - Victoria F, Research manager
Plane Stupid, United Kingdom - All of us, no roles / no positions
Plataforma Algarve Livre de Petróleo, Portugal - Rosa Guedes, Member
Plataforma Ciudadana Zaragoza sin Fractura, Spain - Juan Carlos Gracia, Member of the board
Plataforma Interamericana de Derechos Humanos, Democracia y Desarrollo (PIDHDD), Ecuador - Pablo A. de la Vega M., Coordinador Regional
Platform, United Kingdom - Mika Minio-Paluello, Campaigner
Plymouth Friends of Clean Water, United States - Peter Hudiburg, Founder
Power Shift Network, United States - Lydia Avila, Executive Director
PowerShift, Germany - Michael Reckordt, Member
Preservar Algarve, Portugal - Celine Jacinto Rodrigues, Coordinator
Pro REGENWALD, Germany - Hermann, Coordinator
Project21, Switzerland - Marie-Claire Graf, Executive board
Protect Orange County, United States - Pramilla Malick, Chair
Protect the Forest, Sweden, Sweden - Elin Götmark, Spokesperson
Protect the planet, Germany - Dorothea Sick-Thies , Founder
PUSH Sweden, Sweden - Ahmed Al-Qassam, President
Radical Independence Campaign East Kilbride, Scotland - Frances Sinclair, Campaign and event co-ordinator
RAFT, United States - Ann Law, Member
Rainforest Action Network, United States - Amanda Starbuck, Climate & Energy Program Director
Raus aus der Steinkohle, Germany - Michael, Head
Re:Common, Italy - Elena Gerebizza, Energy campaigner
Reclaim The Power, United Kingdom
Reflex Environmental Association, Hungary - Ferenc Horváth, Executive
Regroupement vigilance hydrocarbures Québec, Canada - Odette Sarrazin, Désinvestir
Renourish, United States - Eric Benson, Founder
RepaNet Austria, Austria - Matthias Neitsch, Managing Director
Réseau Action Climat France, France - Morgane Créach, Director
Residents Action on Fylde Fracking (RAFF), United Kingdom - Ian Roberts, Chairman
Resolution Meida Fund, United States - mark Lichty, Board member
Resource Generation, United States - Jessie Spector, Executive Director
Retenergie Coop, Italy - Daniela Patrucco, Vice-presidente
Rio Arriba Concerned Citizens, United States - William Clark, President
River Network, United States - Nicole Silk, President
River Source Inc., United States - Richard Schrader, Director
Robin Wood, Germany - Philip Bedall, Energy Campaigner

Rochester Defense Against Fracking, United States - Patricia Chana Lunior, Stop all Pipelines
Roxbury Arts Group, United States - David Capps, President, Board of Directors
RVHQ, Canada - Den Des, Coordonateur
Sacred Stone Camp, Oceti Sakowin - Oceti Sakowin, Supporter
Sacred Stone Camp UK Solidarity Network, United Kingdom - Suzanne Dhaliwal, Member of the collective
Salva la Selva, Spain - Klaus Schenk, Director
Samiparliament, sweden - Stefan Mikaelsson , Chairperson
SAPE, United States - Susan McDonnell, Co-founder
Save The Hills Alliance, Inc., United States - Cheryl Miller, President
SaveGreekWater, Greece - Maria Kanellopoulou, Coordinator
SCALE, Incorporated, United States - Anthony Flaccavento, President
Sekes For Public Athens Water Company, Greece - Petros Basteas, Member of Secretariat
sekes-eydap.gr, Greece - Mastorakis Manolis, Member of the Secretarial
ShareAction, United Kingdom - Catherine Howarth, Chief Executive
Sheffield People & Planet, United Kingdom - Chris Saltmarsh, Fossil Free Co-ordinator
Sierra Club, United States - Nicole Ghio, Senior Campaign Representative
Sisters of St. Francis of Philadelphia, United States - Nora M. Nash, Director Corporate Social Responsibility
Skydda Skogen - Protect the Forest, Sweden - Elsabritt Calamnius, Member of committee
Social Entrepreneurs for Sustainable Development Liberia, Liberia - Daniel Krakue, Director
Society for threatened peoples e.V., Germany - Tanja Lehmann, Activist
Society for Threatened Peoples Switzerland, Switzerland - Christoph Wiedmer, Co-Director
Society for Threatened Peoples/Germany, Germany - Yvonne Bangert, Indigenous Peoples Dpt.
SOS Liverpool Plains, Australia - Nicola Chirlian, Committee
SpeziaPolis, Italy - daniela patrucco, Owner
SpeziaViaDalCarbone, Italy - Daniela Patrucco, Speaker
Split This Rock, United States - Sarah Browning, Executive Director
Spokane Riverkeeper, United States - Jerry White Jr., Director
Stand for Mauna Kea, United States - Cha Smith, Member
Stichting Schaliegasvrij Nederland, Netherlands - Ko van Huissteden, Chair
Stop Ecocide, Netherlands - Katy Olivia van Tergouw, Directer
Stop NY Fracked Gas Pipeline, United States - Becky Meier, Co-Founder
Stop Petroleo Vila do Bispo, Portugal - Ana Carla Cabrita, Member
Stop the Algonquin Pipeline Expansion, United States - Suzannah Glidden, Co-founder
StopNED, United States - Cathy Kristofferson, Co-founder
Story of Stuff Project, United States - Michael O'Heaney, Executive Director
Sullivan Area Citizens for Responsible Energy Development. (SACRED), United States - Larysa Dyrszka MD, Co-founder
Sussex,Hampshire,Awareness,Fracking,Trust. (ed), United Kingdom - Stephen Jackson, Owner
Sustainable Economies Law Center, United States - Chris Tittle, Director of Organizational Resilience; President
Sustainable Endowments Institute, United States - Emily Flynn Pesquera, Associate Director

Sustainable Tompkins, United States - Gay Nicholson, PhD, President
SustainUS, United States - Ben Goloff, COP22 Delegate
Swiss Youth For Climate, Switzerland - Marie, Member
System Change, not Climate Change!, Austria - Magdalena Heuwieser, Activist
Taiga Research and Protection Agency, Russia - Alexander Arbachakov, Director
The Corner House, United Kingdom - Nicholas Hildyard, Co-Director
The Crane Hill Organic Farm, United States - Ellen.sokolow@gmaik.com, Farmer
The Democracy Collaborative, United States - John Duda, Director of Communications
The International Institute of Climate Action & Theory, United States - Dr. Richard Widick, Director
The Land Is Ours, United Kingdom - Tree, Collective member
The Palestine BDS National Committee (BNC), Palestine - Riya Hassan, Europe Organiser
The Woodland League, Ireland - Andrew St Ledger, PRO
Three Squares Inc., United States - Jaime Nack, President
Tightshift Laboring Cooperative, United States - Allison Basile, Member
Tokata-LPSG RheinMain e. V., Germany - Dr. Michael Koch, Director
Tolani Lake Enterprises Inc., United States - Bill Edwards, Executive Director
Towards Sustainability Association, Hungary - Ákos Éger, President
Toxics Action Center, United States - Claire Miller, Lead Community Organizer
Transition Express Campaign, United States - Priscilla Rich, Executive Director
Transnational Institute, Netherlands - Fiona Dove, Executive Director
UCSOND, Ghana - Wisdom Quaiku, Executive Director
UK Tar Sands Network, United Kingdom - Suzanne Dhaliwal, Coordinator
Ulu Foundation, United States - Stephanie Fried, Executive Director
United for Action, United States - Edith Kantrowitz, Board Member
Unternehmensberatung TEMP GbR., Germany - Rudolf W. Hege, President
Unterstützung nordamerikanischer Indianer, Germany - Claudia Ehlers, Member
Up To Us, United States - Ethan Au Green, Member
Uper Valley Affinity Group, United States - Frederick Wolfe, Member
Upper Mooki Landcare Inc, Australia - Nicola Chirlian, Chairman
Upper Valley Affinity Group, United States - Geoffrey Gardner, Communications Director
Urgenda, Netherlands - M. Minnesma, Director
Urgewald, Germany - Heffa Schuecking, Director
US Labor Against the War, United States - Reece Chenault, National Coordinator
Utah Moms for Clean Air, United States - Cherise Udell, Founder
VABÖ - Verband Abfallberatung Österreich, Austria - Matthias Neitsch, Managing Director
Vamos e.V. Münster, Germany - Stefanie Neumann, Campaigner
Védegylet Egyesület, Hungary - Györgyi Újszászi, Secretary general
Verein zur Unterstützung nordamerikanischer Indianer, Germany - Karl-Heinz Prestel, Member
Veterans for Peace - Santa Fe Chapter, United States - Kenneth E. Mayers, Chapter Secretary
Walkin´Sagres, Portugal - Ana Carla Cabrita, Owner/Nature Guide
Wall of Women Colorado, United States - Paddy McClelland, Manager
Water Protectors Legal Collective, United States - Bruce Ellison, Board Liason, Criminal Defense Coordinator

We Are Seneca Lake, United States - Peter Drobny, Liaison, Coordinating Council
WECAN (Women's earth and climate action network), United States - osprey-orielle lake, Founder and ED
Welsh National Freedom News, United Kingdom - John Houston, Admin
WeMove.EU, Europe - Oliver Moldenhauer, Executive Director
Winter Oak Press, United Kingdom - Jon Harvey, Editorial co-ordinator
WissenLeben e.V., Germany - Dr. Maiken Winter, Director
Women Emancipation and Survival Foundation, Ghana - Winfried Donkor, Executive Director
Women's Media Center, United States - Julie Burton, President
Working Circle Indians of North America (AKIN), Austria - Peter Schwarzbauer, Chairman
Worthing Climate Action Network, United Kingdom - Emma Cameron, Chair
Worthing Downlanders, United Kingdom - Steve Nethercott-Cable, Committee Member
XminY hét actiefonds, Netherlands - Doron Joles, Regional Coordinator
Xun Biosphere Project, United States - Jon Anderholm, Director
Young Friends of the Earth Europe, Europe – Zivile Mantrimaite, Coordinator
Zeeb Kommunikation, Germany - Hartmut Zeeb, CEO
Zelenite (The Greens), Bulgaria - Borislav Sandov, Campaign coordinator
Zwei Welten Fachverlag, Germany - Antje Small Legs, Owner
Возрождение Казаса и шорского народа, Russia - Владислав Таннагашев, Chairman
Фонд саамского наследия и развития, Russia - Andrei, Director