STATE OF NORTH DAKOTA		IN DISTRICT COURT
COUNTY OF MORTON		SOUTH CENTRAL JUDICIAL DISTRICT
Energy Transfer LP (formerly known as Energy Transfer Equity, L.P.); Energy Transfer Operating, L.P. (formerly known as Energy Transfer Partners, L.P.); and Dakota Access, LLC, Plaintiffs, v. Greenpeace International (also known as "Stichting Greenpeace Council"); Greenpeace, Inc.; Greenpeace Fund, Inc.; Red Warrior Society (also known as "Red Warrior Camp"); Cody Hall; and Krystal Two Bulls, Defendants.	)	Case No. 30-2019-CV-00180

PLAINTIFFS' REPLY IN SUPPORT OF THEIR EMERGENCY MOTION FOR ANTI-SUIT INJUNCTION

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[¶1] Plaintiffs[1] submit this reply in support of their emergency motion for an anti-suit injunction to enjoin Defendant Greenpeace International ("GPI") from proceeding with a vexatious, duplicative action against Plaintiffs in the Netherlands that constitutes a direct assault on this Court's authority. Dkt. 5272.

INTRODUCTION

[¶2] After six years of litigation and multiple failed dismissal attempts, this Court allowed Energy Transfer's claims to proceed to trial. *See* Dkt. 4795. Over nearly a month, GPI had a full and fair opportunity to convince the jury that the case against it was unfounded. It failed. The jury found GPI liable for defamation, defamation per se, tortious interference, and conspiracy, awarding Energy Transfer roughly $131 million in damages for GPI's torts alone (including exemplary damages). Dkt. 5035. Dissatisfied, GPI has now attempted to attack the verdict's integrity through a lawsuit in the Netherlands (the "Dutch Action"). Dkt. 5725. As fully set forth in Energy Transfer's Motion, the Court has both the power and duty to protect its judgment by enjoining GPI from pursuing that evasive action in a foreign jurisdiction. *Laker Airways Ltd. v. Sabena, Belgian World Airlines*, 731 F.2d 909, 927–30 (D.C. Cir. 1984).

[¶3] In response, GPI attempts to obfuscate the true purpose of the Dutch Action by relying on affidavits from two alleged European legal scholars, who expend significant ink on the nuances of Dutch civil procedure and the European Union anti-SLAPP directive underlying the Dutch Action. *See generally* Dkt. 5287 (hereinafter "R.M. Hermans Aff.") and 5289 (hereinafter "Borg-Barthet Aff."). But even these affidavits reveal the heart of the Dutch Action: GPI's desperate attempt to do what it could not do in this case and obtain a declaration that Energy

[1] Plaintiffs are Energy Transfer LP, Energy Transfer Operating, L.P., and Dakota Access, LLC (collectively, "Energy Transfer").

Transfer's claims against it are "manifestly unfounded and abusive." R.M. Hermans Aff. ¶ 39. This Court and a North Dakota jury have already rejected that argument in resounding fashion and GPI cannot be allowed to relitigate the merits of Energy Transfer's claims in what it perceives to be a more favorable forum.

[¶4] Ultimately, Energy Transfer has cleared each of the hurdles necessary to establish its entitlement to an anti-suit injunction. GPI's arguments to the contrary are unavailing for three reasons. First, Energy Transfer has satisfied the "gatekeeping inquiry" by showing that the parties and issues involved in this case and the Dutch Action are "substantially similar." *Quaak v. Klynveld Peat Marwick Goerdeler Bedrijfsrevisoren*, 361 F.3d 11, 20 (1st Cir. 2004). GPI's insistence on a restrictive reading of this inquiry that would require the claims at issue to be literally identical and dispositive of one another rests on a misstatement of the law and would effectively prohibit any party from ever obtaining an anti-suit injunction against a foreign proceeding.

[¶5] Second, Energy Transfer has established that multiple equitable considerations weigh in favor of an anti-suit injunction. In particular, Energy Transfer has established that:

- The Dutch Action is an affront to North Dakota's interests in protecting the integrity of its courts and the finality of its jury verdicts, as it ultimately asks a foreign court to relitigate the merits of Energy Transfer's claims, which have already been decided by this court and the jury. *See Laker Airways*, 731 F.3d at 928;

- The Dutch Action is a vexatious and harassing "ploy" as evidenced by the timing of its filing on the eve of trial in this case, and it will lead to unnecessary expenses and the "absurd" duplication of efforts. *Kaepa, Inc. v. Achilles Corp.*, 76 F.3d 624, 627–28 (5th Cir. 1996) (affirming anti-suit injunction); and

- The Dutch Action is rooted in an EU anti-SLAPP directive that "raises a substantial risk of irreconcilable judgments." *EU Anti-SLAPP Directive: Public Participants May Claim Compensation for Strategic Litigation Outside EU*, JD SUPRA (Apr. 4, 2025), https://www.jdsupra.com/legalnews/eu-anti-slapp-directive-public-9204791.

[¶6] Third, even under the most restrictive approach to anti-suit injunctions, the so-

called "conservative approach,"[2] any concerns of international comity are far outweighed by these equitable considerations to the extent that GPI's assault on this Court's integrity created any crisis of comity. *Quaak*, 361 F.3d at 20–21.

[¶7] In short, this Court has both the power and the duty to protect the integrity of these proceedings, prevent vexatious litigation and forum shopping, and put an end to GPI's campaign of legal evasion. Plaintiffs respectfully request that the Court exercise that power here and issue an anti-suit injunction without delay.

ARGUMENT

[¶8] The Court should enter an anti-suit injunction against GPI. GPI does not seriously contest, and thus concedes, that the Court has the power to do so. *Hoever v. Wilder*, 2024 ND 58, ¶ 5, 5 N.W.3d 544 ("We will not consider an argument that is not adequately articulated, supported, and briefed, or engage in unassisted searches of the record for evidence to support a litigant's position." (internal quotations omitted)). Nor could GPI credibly contest the Court's power to enter an anti-suit injunction, as "[d]istrict courts have broad authority when fashioning an equitable remedy." *Schroeder v. Buchholz*, 2001 ND 36, ¶ 29, 622 N.W.2d 202 (citing *Baker v. Minot Pub. Sch. Dist. No. 1*, 253 N.W.2d 444, 451 (N.D. 1977)). The lack of North Dakota caselaw addressing anti-suit injunctions is thus "no obstacle to equitable relief which may be appropriate in a particular factual setting." *Id.* (cleaned up).

[¶9] Instead, GPI begins its attempt to evade an anti-suit injunction by peddling the same jurisdictional argument that the Court has repeatedly rejected and by mischaracterizing the

[2] Energy Transfer's Memorandum of Law in Support of its Emergency Motion for Anti-Suit Injunction refers to this as the "restrictive approach." Dkt. 5273 ¶ 12. In its opposition, GPI frames the contrast in approaches to anti-suit injunctions in the "liberal" and "conservative" phrasing commonly employed by federal courts. *See, e.g.*, Dkt. 5286 ¶ 37. For convenience and consistency, Energy Transfer will employ the same framing here.

standards that must be applied to a request for an anti-suit injunction. None of these arguments presents an obstacle to the relief that Energy Transfer requests here.

[¶10] Turning first to jurisdiction, GPI makes the halfhearted argument that it cannot be enjoined because it is not subject to this Court's personal jurisdiction. Dkt. 5286 ¶ 11. The Court has twice rejected GPI's personal jurisdiction arguments, and GPI can conjure no reason for the Court to change course now. *See* Dkt. 242 (denying GPI's motion to dismiss for lack of personal jurisdiction); Dkt. 5193, Mar. 10, 2025 Tr. 77:20–78:4 (denying GPI's Rule 50(a) motion for judgment as a matter of law, which hinged largely on its personal jurisdiction objection). After all, Energy Transfer has established that GPI's conspiracy, defamatory statements, and tortious interference concerned Energy Transfer's activities in North Dakota and caused reputational injury in this state such that North Dakota "was the focal point of the [torts] and of the harm suffered." *See Calder v. Jones*, 465 U.S. 783, 788–89 (1984). And, in any event, the jury held GPI liable for its unlawful conspiracy to commit torts in North Dakota, and "[a] co-conspirator is liable for the acts of the other members in the conspiracy, *including those which establish jurisdiction*." *In re N.D. Pers. Injury Asbestos Litig.*, 737 F. Supp. 1087, 1098–99 (D.N.D. 1990) (emphasis added). So, there can be no doubt that GPI is subject to the Court's jurisdiction.

[¶11] Although it concedes that courts have the equitable power to grant anti-suit injunctions, Dkt. 5286 ¶ 12, GPI next attempts to reframe the anti-suit injunction inquiry based on two misstatements of the law.

[¶12] First, GPI contends that state courts must be especially "loath" to issue anti-suit injunctions that enjoin a party from proceeding with a foreign proceeding. Dkt. 5286 ¶ 13. Tellingly, GPI cites no authority in support of this supposed presumption against state-issued anti-suit injunctions; because none can be found. It is beyond dispute that state courts have the power

to enjoin a party from proceeding with foreign litigation, when, as here, the foreign proceeding threatens a key domestic policy, is vexatious or harassing, and will create a risk of inconsistent judgments. *See, e.g.*, *Lee v. Grimblat*, 234 A.D.3d 491, 491–92, (N.Y. App. Div.), *leave to appeal denied*, 43 N.Y.3d 907, 261 N.E.3d 968 (2025) (affirming anti-suit injunction enjoining party from pursuing French proceeding "in the interest of preventing duplicative litigation that might lead to conflicting results and preventing the waste of judicial resources"); *Bridas Corp. v. Unocal Corp.*, 16 S.W.3d 887, 892–93 (Tex. App.—Houston [14th Dist.] 2000, pet. dism'd w.o.j.) (affirming anti-suit injunction enjoining party from pursuing Afghan proceeding to prevent "vexatious or harassing" re-litigation of "the same matter in a foreign jurisdiction where a plea of *res judicata* could likely fall on deaf ears.").

[¶13] Second, GPI repeatedly argues that a court can only issue an anti-suit injunction if the foreign proceeding (1) poses a threat to the enjoining court's jurisdiction *or* (2) it will frustrate the strong public policies of the enjoining forum. Dkt. 5286 ¶¶ 21–24. That is not the law. Although either of these factors is sufficient to support an anti-suit injunction, they are far from necessary, and courts have cautioned against the "erroneous[]" interpretation that they are required. *Ibeto Petrochemical Indus. Ltd. v. M/T Beffen*, 475 F.3d 56, 64 (2d Cir. 2007); *accord Quaak*, 361 F.3d at 18 (rejecting notion that "preservation of jurisdiction" and "protection of important national policies" are the "exclusive" grounds for an anti-suit injunction). The "sensitive and fact-specific nature" of the anti-suit injunction inquiry "counsels against the use of inflexible rules" and, instead, requires a multi-step analysis. *Quaak*, 361 F.3d at 18.

[¶14] Applying the correct framework here, Energy Transfer has established that it is entitled to an anti-suit injunction.

I. Energy Transfer Has Shown That the Parties and Issues Are Substantially Similar in the North Dakota and Dutch Actions. Nothing More is Required.

[¶15] To begin, Energy Transfer has satisfied the "gatekeeping inquiry" of showing that the parties and issues are "substantially similar" here. *Quaak*, 361 F.3d at 18, 20 (finding that "parties and issues [that] are substantially similar . . . satisfy[] the gatekeeping inquiry"); *BAE Sys. Tech. Sol. & Servs., Inc. v. Republic of Korea's Def. Acquisition Program Admin.*, 195 F. Supp. 3d 776, 787 (D. Md. 2016). Although GPI does not dispute that there is substantial similarity between the parties to this case and the Dutch Action, it contends that the issues in both cases are insufficiently similar. Dkt. 5286 ¶¶ 16–20. In search of support for this argument, GPI relies primarily on the Eleventh Circuit's decision in *Canon Latin America, Inc. v. Lantech (CR), S.A.*, 508 F.3d 597 (11th Cir. 2007). Dkt. 5286 ¶¶ 16–17. But *Canon Latin America* cannot bear the weight that GPI gives it.

[¶16] First, GPI cites *Canon Latin America* to contend that it is not enough for the issues involved in this case and the Dutch Action to be "substantially similar," and that Energy Transfer must instead show that this case is "dispositive" of the Dutch Action. Dkt. 5286 ¶ 16 (quoting *Canon Latin Am.*, 508 F.3d at 602). Despite GPI's allusions to the contrary, this "dispositive" test has not been widely adopted. Instead, courts "taking both liberal and conservative approaches [to anti-suit injunctions] have considered substantial similarity, instead of looking only for . . . whether the case in the enjoining court is dispositive of the other case." *BAE Sys.*, 195 F. Supp. 3d at 787 (collecting cases). Most courts to consider this issue have rejected the rigorous application of the "dispositive" test suggested by GPI, and for good reason:

> Technically speaking, no action by a United States court can ever be dispositive of a foreign court's decision because that court's determination about whether to give *res judicata* effect to a U.S. judgment is governed by comity principles, which always give a foreign court discretion to determine whether to enforce a U.S. judgment (absent a treaty stating otherwise).

In re Vivendi Universal, S.A. Sec. Litig., No. 1:02-CV-05571, 2009 WL 3859066, at *6 (S.D.N.Y. Nov. 19, 2009) (citing Daniel Tan, *Anti-Suit Injunctions and the Vexing Problem of Comity*, 45 VA. J. INT'L L. 283, 317 (2005)). So, if the "dispositive" test were applied as strictly as GPI contends that it should be here, "the requirement could *never be satisfied* when one party seeks to enjoin a proceeding in a foreign country." *Id.* (emphasis added). This cannot be. Instead, as articulated in Energy Transfer's Motion, the correct inquiry is whether issues raised in the two actions are "substantially similar." *BAE Sys.*, 195 F. Supp. 3d at 787.

[¶17] Seeking to create daylight between this case and the Dutch Action, GPI next argues that there can be no substantial similarity here because the Dutch Action involves causes of action unique to the EU and Dutch Law. Dkt. 5286 ¶¶ 17–19. This, too, misses the mark. The correct inquiry is not whether the claims at issue are "precisely and verbally identical," but whether the cases involve the same issues. *Applied Med. Distrib. Corp. v. Surgical Co. BV*, 587 F.3d 909, 915–16 (9th Cir. 2009); *accord Sing Fuels Pte Ltd. v. M/V Lila Shanghai*, No. 4:20-CV-00058, 2023 WL 3506466, at *4 (E.D. Va. May 17, 2023) ("There is no requirement that the two actions be identical"). Courts have long recognized that interpreting the second prong of this threshold inquiry to require strict identity of claims "would lead to counterproductive, and perhaps unintended results." *Applied Med. Distrib. Corp.*, 587 F.3d at 915. In *Applied Medical Distribution*, the Ninth Circuit reasoned that requiring a strict identity of claims and issues would weaken forum-selection clauses because "a party could avoid them simply by waiting until a local suit is filed," and then filing a foreign action that is "in some way not identical in form, a likely possibility because the verbal form of laws in different countries will inevitably differ." *Id.* at 915. That rationale applies with equal force here: GPI's strict interpretation of the threshold inquiry would "invariably allow[] competing international litigation" because parties like GPI could

litigate a case to verdict in an American court and, if dissatisfied with the result, file a retaliatory, do-over action abroad with impunity so long as their claims are not "identical in form" to those in the American litigation. *See id.*

[¶18] In short, Energy Transfer has satisfied the threshold inquiry of showing that the parties and issues across this case and the Dutch action are "substantially similar." *Quaak*, 361 F.3d at 20. GPI's arguments to the contrary ultimately boil down to its incredible assertion that there is no conflict between a potential Dutch finding that this case was "manifestly unfounded and abusive" and the Court's entry of a final judgment in favor of Energy Transfer. *See* R.M. Hermans Aff. ¶¶ 39, 44. This implausible justification serves only to reinforce that GPI "seeks to relitigate the same issues in a foreign court hoping to find a favorable judgment." *Sing Fuels*, 2023 WL 3506466, at *4.

II. The Equitable Factors for Foreign Anti-Suit Injunctions Favor Enjoining GPI From Proceeding with the Dutch Action.

[¶19] Energy Transfer has also established that the equitable factors weigh in favor of an anti-suit injunction here. In assessing the need for an anti-suit injunction, the Court must consider whether the Dutch Action would (1) frustrate a policy in the enjoining forum, (2) be vexatious or oppressive, (3) threaten the Court's *in rem* or *quasi in rem jurisdiction*, (4) prejudice other equitable considerations, or (5) result in delay, inconvenience, expense, inconsistency, or a race to judgment. *See, e.g.*, *Software AG, Inc. v. Consist Software Sols., Inc.*, 323 F. App'x 11, 12 (2d Cir. 2009). These factors are disjunctive—that is, an anti-suit injunction may be proper if even one of them is established. *E. & J. Gallo Winery v. Andina Licores S.A.*, 446 F.3d 984, 990 (9th Cir. 2006); *see also Sing Fuels*, 2023 WL 3506466, at *2. Here, Energy Transfer has established that the Dutch Action will (1) frustrate key policies of the State of North Dakota, (2) be vexatious and oppressive, and (3) result in delay, inconvenience, expense, inconsistency, and a race to

judgment.

A. The Dutch Action Undermines North Dakota's Policy Interests.

[¶20] First, GPI's Dutch Action, which is nothing more than a collateral attack on this Court's decisions and the jury's verdict, threatens the integrity of the North Dakota judiciary and the finality of its jury verdicts, two critical state interests. *Cf. Williams-Yulee v. Fla. Bar*, 575 U.S. 433, 446 (2015) (noting that the integrity of judicial proceedings is a "state interest of the highest order"); *Anderson v. Burnett Cnty.*, 558 N.W.2d 636, 640 (Wis. Ct. App. 1996) (noting that finality "is essential to the viability of the jury as an institution integral to our judicial system"). On this point, the Court need not take Energy Transfer's word for it: GPI's supporting affidavit confirms that GPI seeks a declaration from a Dutch court that this case is "manifestly unfounded and abusive," that Energy Transfer committed a "violation of right" by bringing this case, and that Energy Transfer is obligated to pay GPI for its costs and fees associates with this lawsuit. R.M. Hermans Aff. ¶¶ 23, 26, 35, 39. Simply put, the Court cannot countenance this brazen affront to the integrity of its rulings and the jury's verdict. Indeed, the need for an anti-suit injunction "crests" when a party like GPI "institutes a foreign action to evade the rightful authority" of the forum court. *Quaak*, 361 F.3d at 20 (citing *Laker Airways*, 731 F.2d at 929–30).

[¶21] Although it concedes that its Dutch claims relate, at least in part, to the "conduct of this litigation," GPI insists that it does not seek a "re-assessment" of the jury's verdict and that the Dutch Action is somehow divorced from the merits of this case. Dkt. 5286 ¶ 25. The flaw in GPI's argument can be reduced to a single question: How can it possibly be maintained that GPI's Dutch Action—which inarguably seeks a declaration that this case is "manifestly unfounded and abusive" even though the jury held GPI liable to the tune of $131 million—is anything other than an attempt by GPI to "re-assess" the merits of Energy Transfer's claims in what it perceives to be

a more favorable forum? *Cf. Sing Fuels*, 2023 WL 3506466, at *4 (a party cannot "relitigate the same issues in a foreign court hoping to find a favorable judgment").

[¶22] In the end, GPI had a full and fair opportunity to establish that this case is "unfounded"—it moved to dismiss, filed or joined nearly a dozen motions for summary judgment, presented its defenses to the jury over nearly a month of trial, and moved for judgment as a matter of law. *See, e.g.*, Dkts. 133, 2849, 2878, 2903, 2960, 3068, 3149, 3222, 5015. It failed to do so. The Court denied GPI's motions to dismiss, for summary judgment, and its Rule 50(a) motion, finding that Energy Transfer's claims possessed sufficient merit to proceed to a jury. Dkts. 242, 4795, 5193. The jury ultimately held GPI liable for conspiracy, defamation (including defamation per se), and tortious interference. Dkt. 5035. These decisions, along with the Court's forthcoming final judgment, are entitled to finality subject to a properly perfected appeal. *See generally* N.D. R. Civ. P. 54; *see also Med. Arts Bldg. Ltd. v. Eralp*, 290 N.W.2d 241, 246 (N.D. 1980) (explaining that a court's judgment is "final" and "save for appellate review . . . the matter decided is irrefutable"). Put differently, although GPI has the right to challenge the jury's verdict on appeal, it does not have the right to make a mockery of this proceeding by obtaining a foreign declaration that this case is "manifestly unfounded and abusive." *See Laker Airways*, 731 F.2d at 928.

B. The Dutch Action is Vexatious and Oppressive.

[¶23] Next, GPI's opposition only serves to confirm that the Dutch Action was not brought for any proper purpose but rather to harass and burden Energy Transfer and to give GPI a chance at a do-over in this case on the eve of trial. *Microsoft Corp. v. Motorola, Inc.*, 696 F.3d 872, 886 (9th Cir. 2012). According to GPI, its claims stem from an EU anti-SLAPP directive that went into effect in May 2024 and which, at least in GPI's view, required no formal implementation by the Dutch legislature. *See* R.M. Hermans Aff. ¶¶ 33–34. And yet, GPI waited over nine

months—until the eve of trial—to file the Dutch Action. *See* Dkt. 5275. This "belated ploy" of filing a foreign suit on the same issues that the parties have litigated before the Court for years "smacks of cynicism, harassment, and delay." *Kaepa, Inc.*, 76 F.3d at 627–28 (affirming anti-suit injunction).

C. GPI Does Not Dispute That the Dutch Action Will Cause Unnecessary Expense and Duplicate Efforts. Nor Can it Dispute the Risk of Inconsistent Judgments.

[¶24] As for the final equitable factor, there is no dispute that GPI's Dutch Action will result in unnecessary expense, inconvenience, and the duplication of efforts. *Software AG*, 323 F. App'x at 12. As the Court is surely aware, the parties have litigated this case vigorously for over six years. For its part, GPI engaged in extensive discovery, filed multiple dispositive motions, went to trial, and lost. It has since filed and joined multiple post-trial motions and signaled that it plans to move for a new trial under North Dakota Rule of Civil Procedure 59, with an appeal likely to follow. *See* Dkts. 5041, 5109, 5143–44. Yet GPI also seeks to open a second front in the Netherlands, where it recycles several of the same arguments that have been unsuccessful here in pursuit of a declaration that this case is "unfounded." *See* Dkt. 5273 ¶ 16; R.M. Hermans Aff. ¶ 39. Allowing GPI to move forward with the Dutch Action will entail "an absurd duplication of effort and would result in unwarranted inconvenience, expense, and vexation." *Kaepa*, 76 F.3d at 627.

[¶25] The Dutch Action also entails the unacceptable risk of inconsistent judgments. *Software AG*, 323 F. App'x at 12. In response, GPI attempts sleight of hand, arguing that there can be no risk of inconsistent judgments as the Dutch Action is merely an effort to hold Energy Transfer to account for alleged "tortious conduct" under Dutch law that is somehow independent from any judgment the Court enters. Dkt. 5286 ¶ 26. But GPI's own affidavits make clear that, at its core, the Dutch Action is an attempt by GPI to do what it unsuccessfully attempted to do at

every turn in this case: obtain a judicial declaration that Energy Transfer's efforts to hold GPI accountable for its illegal campaign to stop DAPL is without merit and somehow unlawful. R.M. Hermans Aff. ¶ 39. In the words of GPI's executive director, the Dutch Action is ultimately an attempt by GPI to brand this case as an "unfounded intimidation lawsuit" and to recoup GPI's attorneys' fees and costs, *see* Ex. A, despite the fact that the jury saw fit to hold GPI liable for $131 million in damages for its misconduct, Dkt. 5035.

[¶26] Nor can GPI wave away the risk of inconsistent judgments by asserting that Energy Transfer can merely ask a Dutch court to "adhere" to any judgment issued by the Court. Dkt. 5286 ¶ 34. As GPI's purported expert on Dutch law impliedly acknowledges, Dutch courts are not bound by the judgments of an American court. *See* R.M. Hermans Aff. ¶¶ 41–44. Instead, a Dutch court will have discretion to determine whether to enforce a judgment from this Court. *See, e.g.*, *Vivendi*, 2009 WL 3859066, at *6. Curiously, neither of GPI's European affiants acknowledges that Article 16 of the EU Directive at the heart of the Dutch Action expressly bars the recognition and enforcement of judgments of a third-country (i.e. a judgment from the United States) that an EU Member State court deems to be manifestly unfounded or abusive under the law of the Member State in which such recognition or enforcement is sought. *See* Directive (EU) 2024/1069 of the European Parliament and of the Council, art. 16, 2024 O.J. (L 16).[3] It is for precisely this reason that legal commentators have stated that the Directive "increases the likelihood of irreconcilable rulings." *EU Anti-SLAPP Directive: Public Participants May Claim Compensation for Strategic Litigation Outside EU*, JD SUPRA (Apr. 4, 2025), https://www.jdsupra.com/legalnews/eu-anti-slapp-directive-public-9204791. An anti-suit injunction is thus especially warranted here, where the risk of inconsistent rulings is high and any plea of *res judicata* "could likely fall on deaf ears."

[3] Attached as Exhibit B.

Bridas Corp., 16 S.W.3d at 892–93.

[¶27] Taken together, Energy Transfer has established that the Dutch Action will lead to both an absurd duplication of efforts and an increased risk of inconsistent judgments. Accordingly, this factor weighs heavily in favor of an anti-suit injunction. *See, e.g.*, *Sing Fuels*, 2023 WL 3506466, at *5.

III. Any Comity Concerns Stem from GPI's Effort to Evade This Case and Are Outweighed by the Equitable Factors.

[¶28] Under even the most restrictive, conservative approach, the equitable factors weigh heavily in favor of an anti-suit injunction here. *Paramedics Electromedicina Comercial, Ltda v. GE Med. Sys. Info. Techs., Inc.*, 369 F.3d 645, 654–55 (2d Cir. 2004) (applying conservative approach and affirming anti-suit injunction); *Quaak*, 361 F.3d at 21–22 (same). Of course, international comity is an "important integer" in the anti-suit injunction calculus. *Quaak*, 361 F.3d at 17. As a part of this calculus, the Court must first consider the nature of the Dutch Action. Just as in *Quaak*, the "essential character" of the Dutch Action is "easily discerned"—in it, GPI seeks a declaration that this case is "unfounded" and to impose financial penalties on Energy Transfer for having the temerity to hold GPI accountable for its torts in North Dakota. *See id.* at 20; R.M. Hermans Aff. ¶ 39. As explained above, the Dutch Action creates an increased likelihood of incompatible rulings, and a Dutch judgment that this case is "unfounded" could thwart Energy Transfer's efforts to enforce a final judgment in the Netherlands. "In technical terms, this may not constitute a frontal assault on the district court's jurisdiction, but the practical effect is the same." *Quaak*, 361 F.3d at 20. Under these circumstances, the Court has a duty to "preserve its ability to do justice between the parties in cases that are legitimately before it." *Id.* (citing *Laker Airways*, 731 F.2d at 930). This duty outweighs any concerns of comity, particularly so here, where it was GPI that "set the stage for a crisis of comity" by filing the Dutch Action on the eve of trial in this

case. *Id.*

[¶29] The Court may also consider the timing and relative progression of the two suits. *See, e.g.*, *BAE Sys.*, 195 F. Supp. 3d at 800. "[I]t is settled that considerations of comity have diminished force when . . . one court has already reached judgment." *Goss Int'l Corp. v. Man Roland Druckmaschinen Aktiengesellschaft*, 491 F.3d 355, 361 (8th Cir. 2007). Relatedly, comity concerns are diminished where the foreign court has yet to exercise jurisdiction over the matter. *See, e.g.*, *Bridas Corp.*, 16 S.W.3d at 892. Although the Court has not yet entered a final judgment, the jury reached a resounding verdict, and the entry of judgment is imminent. On the other hand, as GPI's affidavits acknowledge, Energy Transfer has not yet responded in the Dutch Action and it will have a colorable challenge to the international jurisdiction of the Dutch court. R.M. Hermans Aff. ¶¶ 8, 15. Under the circumstances, concerns of comity have "diminished force." *Goss*, 491 F.3d at 361.

[¶30] In response, GPI cites the Eighth Circuit's decision in *Goss* for the proposition that, as a matter of international comity, an American court cannot issue an anti-suit injunction, the effect of which is to prevent a party from seeking a remedy available only in its home country. Dkt. 5286 ¶¶ 38–40. But GPI fails to paint a complete picture of the unique circumstances in *Goss* that render it inapposite here. In that case, an American company obtained a verdict against a Japanese competitor for violations of the 1916 Antidumping Act. *Goss*, 491 F.3d at 356–57. While the jury's verdict was on appeal, Congress prospectively repealed the Antidumping Act. *Id.* at 357. After the Eighth Circuit affirmed the jury's verdict and damages award, the Japanese company expressed its intention to file suit in Japan under a special "clawback" statute intended to allow Japanese nationals to recoup any judgment entered against them under the Antidumping Act. *Id.* at 358–59. The American company sought and obtained an anti-suit injunction to prevent

the Japanese company from "usurping the [American court's] jurisdiction and frustrating the court's judgment." *Id.* at 359. The Japanese company responded by satisfying the judgment against it in full, thus ending any American litigation. *Id.* In light of these "changed circumstances," the Eighth Circuit vacated the anti-suit injunction, holding that it lacked jurisdiction to maintain the anti-suit injunction as there was no longer "parallel" litigation split between American and Japanese courts. *Id.* at 357, 365–66.

[¶31] Unlike the Japanese defendant in *Goss*, GPI has not satisfied the jury's damages award here, and its chief in-house legal officer has defiantly declared that "there is no scenario" in which it does so. Dkt. 5279 at 4. Thus, there are no "changed circumstances" that would strip the Court of its jurisdiction here. *See Goss*, 491 F.3d at 357. Instead, the Court retains both the power and the duty to protect the integrity of its decisions and the jury's verdict, and it must issue an anti-suit injunction to prevent GPI's Dutch assault on the integrity of these proceedings. *Laker Airways*, 731 F.2d at 928–30.

CONCLUSION

[¶32] For these reasons, Energy Transfer respectfully requests that the Court enjoin GPI from proceeding with its duplicative and vexatious Dutch Action, which threatens the legitimacy of the North Dakota judiciary, during the pendency of this case and any future appeals.

Dated this 12th day of August, 2025.

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