No. 26-2317

**IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT**

FORD MOTOR COMPANY,

*Plaintiff-Appellant,*

v.

STEVE B. MIKHOV; AMY MORSE; ROGER KIRNOS,

*Defendants-Appellees,*

ON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA
CASE NO. 2:25-CV-04550-MWC-PVC
HONORABLE MICHELLE WILLIAMS

# BRIEF OF AMICUS CURIAE OF CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA IN SUPPORT OF PLAINTIFF-APPELLANT

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# UNITED STATES COURT OF APPEALS
# FOR THE NINTH CIRCUIT

## Form 34. Disclosure Statement under FRAP 26.1 and Circuit Rule 26.1-1

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**9th Cir. Case Number(s)** 26-2317

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Not applicable.

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# TABLE OF CONTENTS

# TABLE OF AUTHORITIES

## Cases

**Statutes**



**Rules**

## Other Authorities

## INTEREST OF AMICUS CURIAE[1]

The U.S. Chamber is the world's largest business organization. As the nation's leading advocate for business, the Chamber represents companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files amicus curiae briefs in cases, like this one, that raise issues of concern to the nation's business community.

Litigation in California involving the Song-Beverly Consumer Warranty Act (California's "Lemon Law") has long been rife with abusive and fraudulent tactics, including those highlighted in this case. Lemon Law firms have submitted sworn billing records

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[1] Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(e), *amicus curiae* states that no counsel for any party authored this brief in whole or in part and that no entity or person, aside from amicus curiae, its members, or its counsel, made any monetary contribution intended to fund the preparation or submission of this brief. All parties have consented to the filing of this brief.

padded with hours for work that was never performed, forcing manufacturers to pay tens of millions of dollars in fabricated fees. Amicus and its members have a significant interest in curtailing this unethical and unlawful conduct. As set forth in greater detail below, amicus urges the Court to reverse the District Court's order and allow Ford to pursue its civil RICO claims against Defendants. Accordingly, amicus respectfully requests that this Court accept and file the attached amicus curiae brief.

## INTRODUCTION AND SUMMARY OF ARGUMENT

In our judicial system, lawyers are considered officers of the court. A lawyer's first ethical obligation is thus to deal truthfully with the court, especially when swearing to facts under penalty of perjury. Judges cannot independently verify every sworn affidavit or record, so the integrity of the process depends on the honesty of those practicing law. Here, however, Ford alleges—based on its review of billing records over many cases—that Defendants brazenly lied to numerous courts over many years to enrich themselves. Ford alleges that the Knight Law Group concocted hours outright, staffing a "Fee Motion Department" with non-lawyers to fabricate time entries for their attorneys. This firm submitted these fraudulent fee records to various courts and swore to their accuracy, forcing certain manufacturers to pay more than $100 million on the strength of these filings.

These lies undermine the legitimacy of our legal system and erode confidence in the legal profession. Yet the District Court dismissed the complaint on the grounds that the First Amendment right to petition protects attorneys who knowingly lied (repeatedly) in sworn declarations to inflate fee awards that benefited only themselves—not their clients. That is a gross misunderstanding of the First Amendment and the *Noerr-Pennington* doctrine that protects the right to petition.

The Chamber agrees with Ford that the *Noerr-Pennington* doctrine does not even apply to Ford's RICO claims because that doctrine does not protect "petitions predicated on fraud or deliberate misrepresentation." *United States v. Philip Morris USA Inc.*, 566 F.3d 1095, 1123 (D.C. Cir. 2009) (per curiam) (quoting *Edmondson & Gallagher v. Alban Towers Tenants Ass'n*, 48 F.3d 1260, 1267 (D.C. Cir. 1995)) (citation modified); *San Antonio Cmty. Hosp. v. S.*

*Cal. Dist. Council of Carpenters*, 125 F.3d 1230, 1239 (9th Cir. 1997) ("The First Amendment does not protect fraud."). Because there is no constitutional right to lie to a court, a claim premised on a willful lie under oath does not present any constitutional concerns. *See* Opening Brief for Appellant Ford Motor Co. at 20-24, *Ford Motor Co. v. Mikhov,* No. 26-2317 (9th Cir. Aug. 3, 2026) [hereinafter Ford Br.]. But even if the doctrine *could* apply here, *Noerr-Pennington* does not immunize Defendants' conduct from liability because submitting false fee petitions supported by perjured affidavits falls squarely within the "sham" exception.[2]

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[2] As Ford correctly argues, Defendants cannot satisfy any element of *Noerr-Pennington*'s three-part test. First, Ford's RICO claims do not impose a burden on petitioning rights because holding Defendants liable would not discourage future litigants or attorneys from bringing Song-Beverly Act claims—it would only prevent attorneys from supporting fee motions with fabricated evidence. Ford Br. at 30–36. Second, Defendants' fraudulent scheme is not constitutionally protected petitioning activity because the sham exception applies. *Id.* at 36–46. And third, RICO's fraud and obstruction predicates cannot be construed to exclude Defendants' fraud and perjury. *Id.* at 46–52. The Chamber's brief focuses on the sham litigation exception.

The sham exception applies, among other circumstances, where "a party's knowing fraud upon, or its intentional misrepresentations to, the court deprive the litigation of its legitimacy." *Sosa v. DirecTV, Inc.,* 437 F.3d 923, 938 (9th Cir. 2006) (quoting *Kottle v. Nw. Kidney Centers*, 146 F.3d 1056, 1060 (9th Cir. 1998)). A lawyer who invents billing records, swears they are true, and collects a fee based on his fabrication has not petitioned a court. He has defrauded one. The First Amendment provides no refuge for such fraud on the court. On the contrary, the Supreme Court has consistently held that the First Amendment's Speech Clause does not immunize perjury or fraud, and the Court has declined to give the Petition Clause a broader protective reach.

The allegedly perjured affidavits in this case tainted the fee awards in hundreds of Song-Beverly Act cases. In such cases, the fee awards are often far larger than the damages obtained by the plaintiffs. Accordingly, a knowing misrepresentation that changes the amount of the fee award materially alters the outcome of the case. In addition to defrauding the corporate defendant, the use of perjured affidavits undermines confidence in the legal system, which depends on lawyers to deal honestly with the court. Affirming the District Court's erroneous ruling that the First Amendment protects this conduct would only invite more predation and further undermine the legitimacy of the courts.

This action presents a rare opportunity to restore faith in the legal system by holding accountable those who have abused it for their own benefit. Defendants victimized by fraudulent fee awards have limited options for obtaining recourse. It is difficult to detect this sort of fraud contemporaneously, which means bad actors rarely face sanctions motions. And even when they do, sanctions are rarely substantial enough to deter future misconduct. The State Bar of California has also proved incapable of policing unethical attorneys. And California's legislature is unlikely to address this issue through legislation. Accordingly, actions like this are one of the few avenues available for holding the worst offenders accountable.

The Chamber thus urges the Court to reverse the District Court's judgment. Fraud on the court is not constitutionally protected petitioning, and treating it as protected does nothing to preserve access to the courts. On the contrary, it undermines confidence in the judicial system and the legal profession.

## ARGUMENT

### I. Perjury and Fraud Enjoy no First Amendment Protection

The Constitution does not protect knowing lies told under oath. *United States v. Alvarez*, 567 U.S. 709, 720–21 (2012). In *Alvarez*, although the Court struck down a statute that made it a crime to lie publicly about military honors, it nevertheless confirmed that perjury falls outside the First Amendment. *Id.* That is because perjury "undermines the function and province of the law and threatens the integrity of judgments." *Id.* The Court likewise held that a false claim "made to . . . secure moneys or other valuable considerations"—*i.e.*, fraud—may be prohibited "without affronting the First Amendment." *Id.* at 723. Similarly, in the law of defamation, where the First Amendment shields even false statements to provide breathing room for honest speech, the Court has held that knowing or reckless falsehoods "do not enjoy constitutional protection." *Garrison v. Louisiana*, 379 U.S. 64, 75 (1964). In short, the freedom of speech protected by the First Amendment is not a refuge for knowing falsehoods.

The right to petition does not somehow shield this same misconduct when committed by lawyers under oath in a court of law. As the Supreme Court has explained, there is "no sound basis for granting greater constitutional protection to statements made in a petition . . . than other First Amendment expressions." *McDonald v. Smith*, 472 U.S. 479, 485 (1985) (clarifying that while the "right to petition is guaranteed; the right to commit libel with impunity is not"); *see Bill Johnson's Restaurants, Inc. v. NLRB*, 461 U.S. 731, 743 (1983) ("Just as false statements are not immunized by the First Amendment right to freedom of speech, baseless litigation is not immunized by the First Amendment right to petition." (citation modified)). Because a knowing, sworn falsehood used to obtain money enjoys no protection as speech, and the Petition Clause affords no greater protection than the Speech Clause, *McDonald*, 472 U.S. at 485, the Petition Clause cannot be invoked to protect attorneys who submit perjured affidavits in court.

Here, Defendants allegedly submitted sworn statements to the court that they knew to be false, and they did so for the base purpose of obtaining money from Ford. Those perjured statements do not fall within "the freedom of speech" protected by the First Amendment and thus are not shielded by the Petition Clause.

## II. THE *NOERR-PENNINGTON* DOCTRINE DOES NOT BAR FORD'S CLAIM BECAUSE DEFENDANTS' PERJURED AFFIDAVITS BRING THIS CASE WITHIN THE "SHAM" EXCEPTION

The *Noerr-Pennington* doctrine does not immunize Defendants' conduct, because submitting perjured affidavits is "sham" litigation conduct. The "sham" exception withholds *Noerr-Pennington* protection from litigation conduct that is not genuine petitioning—whether because the suit is "objectively baseless," *see Prof'l Real Est. Invs., Inc. v. Columbia Pictures Indus., Inc.*, 508 U.S. 49, 60–61 (1993), or because "a party's knowing fraud upon, or its intentional misrepresentations to, the court deprive the litigation of its legitimacy," *Sosa*, 437 F.3d at 938 (quoting *Kottle*, 146 F.3d at 1060 (9th Cir. 1998)). The District Court concluded that the alleged fraud and perjury here did not "deprive the litigation of its legitimacy" because Ford's action did not attack the merits of the underlying Song-Beverly Act claims. *Ford Motor Co. v. Mikhov*, No. 2:25-CV-04550-MWC-PVC, 2026 WL 691879, at *11 (C.D. Cal. Mar. 10, 2026) [*hereinafter* Order]. But that is the wrong test. Even though Ford's RICO action does not seek to disturb the merits of any underlying claim, Defendants' misconduct affected the outcome of multiple cases by inflating fee awards. And the type of perjury and fraud at issue here directly undermines the legitimacy of the court by eroding confidence in the legal system itself, which is what the "sham" exception is designed to address.

### A. Fee Fraud Deprives the Entire Litigation of Its Legitimacy

The District Court determined that because the Defendants' actions did not "so infect the Lemon Law proceedings as to render them illegitimate," their fraudulent conduct was immunized by the right to petition. Order at *11 (asserting that the "the outcome would have been the same" even without the inflated billing) (quoting *Baltimore Scrap Corp. v. David J. Joseph Co.*, 237 F.3d 394, 402

(4th Cir. 2001)). The District Court applied the wrong test and misapplied even the test that it purported to apply.

As an initial matter, this Court has rejected a cramped view of the sham exception that "look[s] only at the merits of the underlying litigation." *Theofel v. Farey-Jones*, 359 F.3d 1066, 1079 (9th Cir. 2004) (rejecting the "implausible proposition" that a litigant has *Noerr-Pennington* immunity "for any and all discovery abuses so long as his lawsuit has some merit"); *see also Sosa*, 437 F.3d at 938. Moreover, even if the District Court were correct that the sham exception applies only to outcome-influencing misconduct, its conclusion here does not follow because fee requests are a core part of Song-Beverly litigation, and fee awards are incorporated into the court's judgment. *See* Order at *10 (recognizing that section 1794(d) "deems a fee award to be a portion of the overall judgment"). A fraudulently obtained fee award thus materially affects the judgment.

Indeed, fee awards are the main event in many Lemon Law cases, and the incentive to inflate them has only grown as Lemon Law filings have flooded California's courts. Between 2022 and

2023, Song-Beverly filings rose from 14,892 to 22,655, an increase the California legislature traced to a fee-shifting structure that pays attorneys regardless of how small the underlying vehicle claim is. Assemb. Comm. on Judiciary, Analysis of AB 1755, 2023–2024 Reg. Sess., at 20 (Cal. Aug. 30, 2024). A Lemon Law plaintiff typically recovers only the purchase price of the vehicle, while attorneys routinely request lodestar fees many multiples of that recovery. For example, in *Warren v. Kia Motors Am., Inc.*, the plaintiff recovered $17,455.57 in damages, but her attorney requested $526,582.89 in fees. 30 Cal. App. 5th 24, 31 (2018). The trial court applied a "negative multiplier" to the requested fee award "to tie the attorney fee award to a proportion of Warren's modest damages award," resulting in an award of $115,848.24. *Id.* at 28, 33. But even though the resulting fee award still dwarfed actual damages, the California Court of Appeal held that the fee award should *not* have been reduced to render it proportional to the damages award. *Id.* at 40 ("The court erred to the extent it selected the negative multiplier to make the fee award roughly proportionate to Warren's modest damages award."). As *Warren* makes clear, fee awards in Song-Beverly cases are often orders of magnitude higher than the actual damages, and even negligible damages awards can lead to substantial fee awards.

Here, the fabricated fee petitions allegedly changed the size of the overall fee awards obtained by Defendants in hundreds of cases. Given the centrality of the fee awards to the underlying proceedings, procuring these fee awards through perjury tainted the judgments. And because Ford did not contest most fee petitions, the perjured declarations induced Ford to "settle" these cases for greater "amount[s] than [it] would have in the absence of the fraud," which this Court has held removes *Noerr-Pennington* immunity. *Sosa*, 437 F.3d at 940; *accord Mercatus Grp., LLC v. Lake Forest Hosp.*, 641 F.3d 834, 843 (7th Cir. 2011) (no immunity where defendant's knowing misrepresentation "was material, in the sense that it actually altered the outcome of the proceeding").

Beyond that, any attorney willing to lie in a sworn declaration about the most financially significant aspect of the case cannot be trusted to deal honestly with the court in other aspects of the case. A fraudulent affidavit submitted as part of a fee award thus calls into question the veracity of every filing supported by an attorney affidavit.

Accordingly, the allegations here place this case squarely within the sham exception to *Noerr-Pennington* immunity.

### B. Immunizing Fraud Harms the Judiciary Itself

This type of fraud is particularly harmful to the judiciary's legitimacy. A judgment entered on perjured sworn evidence is a corrupted judgment whatever the merits of the underlying claims. And a reasonable observer who becomes aware of the fraud—and the lack of recourse for it—may well lose confidence in the whole judicial system.

The damage to the court's legitimacy is magnified when the perjured statements are made by lawyers. While the adversarial system can address lying witnesses or experts through cross-examination and rebuttal, fraudulent representations by lawyers not only violate their duty of candor to the court but impair its ability to function. *See In re Intermagnetics Am., Inc.*, 926 F.2d 912, 916 (9th Cir. 1991) (fraud on the court includes fraud "perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task") (citation modified); *United States v. Estate of Stonehill*, 660 F.3d 415, 445 (9th Cir. 2011) (distinguishing officer-of-the-court fraud from ordinary witness perjury). When a firm swears that fabricated entries were completed contemporaneously, it turns the court's necessary reliance on lawyers' honesty into the instrument of the fraud. Fraud of that kind is "a wrong against the institutions set up to protect and safeguard the public." *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 246 (1944), *overruled on other grounds by Standard Oil Co. of Cal. v. United States*, 429 U.S. 17 (1976). That is why fraud on the court does not turn on "whether fraudulent conduct prejudiced the opposing party, but whether it harmed the integrity of the judicial process." *Estate of Stonehill*, 660 F.3d at 444 (citation modified) (quoting *Alexander v. Robertson*, 882 F.2d 421, 424 (9th Cir. 1989)).

Adopting the District Court's expansive view of *Noerr-Pennington* immunity would give lawyers license to commit fraud on the court in any aspect of the proceeding so long as the underlying merits remain unaffected. That rule would plainly incentivize unethical lawyers to lie to courts. And because our judicial system depends on courts being able to trust the sworn declarations of officers of the court, the District Court's rule would introduce a cancer into our judicial system.

By contrast, reversing the District Court's erroneous ruling would not chill legitimate petitioning activity. The sham exception applies only to "knowing fraud" and "intentional misrepresentations," *Kottle*, 146 F.3d at 1060 (citation omitted), so a lawyer who works long hours (and thus can justify her bills), presses a novel theory, makes a mistake, or simply loses a case remains protected. No lawyer or firm engaged in good-faith litigation will be deterred by a ruling allowing Ford's case to proceed against attorneys who manufactured billable hours out of whole cloth. Indeed, most lawyers would welcome accountability for the few bad actors whose misconduct besmirches the profession.

## III. Little Recourse Exists to Address Fraudulent Fee Filings Apart From Civil Suits

A collateral action like this one is often the only practical recourse available to corporate defendants defrauded through inflated attorneys' fees. The ordinary tools for punishing a lying attorney—opposing the fee motion or moving for sanctions—are only available while a case is still pending before the court. And the type of fraud alleged by Ford in this case is designed to evade detection: fabricated hours buried in sworn billing records everyone presumes to be honest, spread across dozens of cases, surfacing (if at all) only after the money has been paid.

Even if fraud is occasionally caught in time, sanctions in a single case are unlikely to hold the perpetrators meaningfully accountable or deter all future misconduct. In *Johnson v. 27th Avenue Caraf, Inc.*, for example, a court sanctioned serial ADA plaintiff Johnson and his attorney Dinin for fabricating billable hours in 26 ADA gas-pump cases. 9 F.4th 1300, 1308 (11th Cir. 2021). But although Dinin had filed 653 other ADA cases in six years, 131 of which named Johnson as the plaintiff, *id.* at 1307 n.2, there is no indication that these additional cases were investigated or audited. *See id.* at 1305–10 (limiting the disgorgement order to "each of the 26 gas pump cases" and describing no further investigation of Dinin's other ADA filings).

Not only do courts rarely impose sanctions, but even when they do, the penalty is typically insufficient to deter future misconduct. For example, Dinin's monetary penalty, beyond disgorging his fees and costs from the gas-pump cases, was only $59,900 despite profiting from hundreds of ADA cases. *Id.* at 1309. In *In re Porcheddu,* a firm that had submitted filings in over 5,000 bankruptcy cases in one year was caught submitting fake fee statements disguised as contemporaneous business records. 338 B.R. 729, 732–34 (Bankr. S.D. Tex. 2006). Although the firm was "engaged in a systematic effort to mislead the [court]" and had billed about $125,000 in just a two-week period, the firm's sanction was a negligible $65,000. *Id.* at 732, 746. Sanctions alone are unlikely to deter fraud on the court.

Nor can a defrauded party count on the State Bar of California. Courts and the State's own Auditor describe a discipline system that lets serious misconduct pass. *See In re Yagman*, 38 F.4th 25, 32 (9th Cir. 2022) (the Bar has "long allowed patterns of serious misconduct … to go unpunished"). The numbers bear it out: in a single year the Bar closed more than 15,333 complaints with no action. State Bar of California, *Annual Discipline Report, Fiscal Year 2025*, at 17 (Nov. 26, 2025), https://www.calbar.ca.gov/sites/default/files/2025-12/2025-Annual-Discipline-Report.pdf. In April 2022, the California State Auditor reported to California's governor and legislature that the State Bar "failed to effectively deter or prevent some attorneys from repeatedly violating professional standards" and had "prematurely closed some cases." Auditor of the State of California, *The State Bar of California's Attorney Discipline Process: Weak Policies Limit Its Ability to Protect the Public from Attorney Misconduct* (Apr. 14, 2022), https://tinyurl.com/yy7wpdrp. Over a seven-year span, one attorney accumulated 165 complaints, "many of which the State Bar dismissed outright or closed after sending private letters to the attorney." *Id*. The Bar closed 87 complaints against another attorney over twenty years before finally seeking disbarment—and only after a federal money-laundering conviction. *Id*. Most egregiously, the Bar received 136 complaints about disgraced attorney Thomas Girardi between 1982 and 2020, yet took no action, even as he was sued repeatedly for embezzling millions of dollars in client funds. Joyce E. Cutler, *Girardi Criminal*

*Charges Also Impugn California Bar, Critics Say*, Bloomberg Law (Feb. 2, 2023), https://tinyurl.com/3fjh5ht3. If such flagrant misconduct escaped punishment for four decades, a manufacturer overbilled through concealed perjury cannot expect the Bar to intervene. Indeed, despite the fabrication alleged here, none of the responsible lawyers identified by Ford, Mikhov (#224676), Morse (#290502), or Kirnos (#283163), has yet faced public discipline.

Moreover, although courts have occasionally cut Knight Law's fee requests as grossly inflated, such fee reductions do not provide accountability for fraud. Most recently, for example, a court reduced the plaintiffs' attorneys $623,000 fee request by 85% as disproportionate to the plaintiffs' minimal recovery and padded with duplicative, vague, and clerical time. *In re Volkswagen "Clean Diesel" Mktg., Sales Pracs., & Prods. Liab. Litig.*, No. 15-MD-02672-CRB, 2023 WL 4109573, at *8-12 (N.D. Cal. June 20, 2023) (reducing the rates of Knight Law Group billing attorneys, including defendant Kirnos). But a reduction for padded fees is not accountability. It leaves the guilty lawyer no worse off than honest billing would have, which incentivizes inflation.

The California legislature has also provided no relief for defendants victimized by fraudulent fee petitions. California's recent Lemon Law reforms target the volume of lemon litigation, mandating pre-suit notice and imposing a statute of limitations, but they do not address fee fraud. Assem. B. 1755, 2023–2024 Sess. (Cal.). Those reforms also apply only prospectively, meaning those legislative amendments cannot remedy Ford's losses. With sanctions foreclosed, the State Bar inert, and even the limited legislative reform prospective, the collateral action that the District Court dismissed remains the only available avenue for holding the perpetrators accountable. If the courts will not hear these claims, no forum will.

By allowing this civil RICO suit to move forward, the court can hold the worst Lemon Law fee-shifting abusers accountable and preserve the integrity of the court by confirming that the First Amendment does not immunize perjury and fraud.

## CONCLUSION

For these reasons, the Chamber urges this Court to reverse the District Court's dismissal so that Ford can litigate its RICO claims on the merits.

Dated: August 10, 2026

Respectfully submitted,

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**UNITED STATES COURT OF APPEALS**
**FOR THE NINTH CIRCUIT**

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**9th Cir. Case Number(s)** 26-2317

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## CERTIFICATE OF SERVICE

I certify that the foregoing brief of amicus curiae was filed via CM/ECF and served on all counsel of record.

Dated: August 10, 2026

Respectfully submitted,

/s/ *Robert E. Dunn*
Robert E. Dunn

*Counsel for Amicus Curiae*