No. 26-1806

United States Court of Appeals for the Ninth Circuit

VANESSA BELL, DESTINEY MURRAH, and SEAN NUGENT, individually and as representatives of a class of similarly situated persons,

Plaintiffs-Appellants,

– v. –

R.J. REYNOLDS VAPOR COMPANY; R.J. REYNOLDS TOBACCO COMPANY; REYNOLDS AMERICAN INC.; and BRITISH AMERICAN TOBACCO P.L.C.,

Defendants-Appellees.

ON APPEAL FROM AN ORDER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA IN NO. 25-CV-4521

BRIEF OF ATLANTIC LEGAL FOUNDATION AS *AMICUS CURIAE* IN SUPPORT OF REYNOLDS APPELLEES AND AFFIRMANCE

LAWRENCE S. EBNER
ATLANTIC LEGAL FOUNDATION
1701 Pennsylvania Avenue, NW,
Suite 200
Washington, DC 20006
(202) 872-0011
lawrence.ebner@atlanticlegal.org

Attorney for Amicus Curiae

COUNSEL PRESS
A Proceed Service
The Appellate Experts®
(800) 4-APPEAL • (397272)

CORPORATE DISCLOSURE STATEMENT

Amicus curiae Atlantic Legal Foundation is a nonprofit, nonpartisan, public interest law firm. It has no corporate parent, and since it issues no stock, no publicly held corporation owns 10% or more of its stock.

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES iii

INTEREST OF THE *AMICUS CURIAE*.....1

SUMMARY OF ARGUMENT.....3

ARGUMENT.....5

The Court Should Not Allow This Suit To Proceed.....5

A. Verra's widely used Verified Carbon Standard (VCS) Program is scientifically rigorous.....5

B. Appellants' false advertising claims challenge the validity of Verra's scientific methodologies and conclusions.....12

C. Allowing this suit to proceed would chill environmentally conscious corporations' incentives for investing in carbon-offset projects.....17

CONCLUSION.....23

TABLE OF AUTHORITIES

Page(s)

Cases

Berrin v. Delta Air Lines, Inc.,
No. 2:23-CV-04150-MEMF-MRW, 2024 WL 3304815
(C.D. Cal. Mar. 28, 2024) 20

Blackburn v. Etsy, Inc.,
No. CV 23-5711 PA, 2023 WL 9105662
(C.D. Cal. Oct. 12, 2023) 20

Dib v. Apple, Inc.,
No. 25-cv-02043-NW, 2026 WL 483057 (N.D. Cal. Feb. 20, 2026), appeal filed, No. 26-1801
(9th Cir. Mar. 23, 2026) 6, 20, 21, 22

Zero Carbon Holdings, LLC v. Aspiration Partners, Inc.,
732 F.Supp.3d 326 (S.D.N.Y. 2024)..... 7, 8, 9, 10, 18

Other Authorities

Amicus Curiae Brief of Environmental Defense Fund In Support of Defendant's Motion to Dismiss First Amended Complaint, *Dib v. Apple, Inc.*, No. 5:25-cv-02043-NW-NMC
(N.D. Cal. July 18, 2025) 23

Guy Turner et al., MSCI, Carbon Credits Come of Age in 2025 (Jan. 2026) 17-18, 20

Jonathan L. Ramseur, Voluntary Carbon Offsets: Background, Federal Involvement, and Issues for Congress, Cong. Rsch. Serv., Report No. R49035 (2026) 4, 8

Melaina Dyck et al., The Voluntary Carbon Market Explained (Oct. 2023) 8, 9

Verra, https://verra.org/..... 3

Verra, Verified Carbon Standard (VCS) Program, Program Overview 2, 7

Verra, VCS Frequently Asked Questions 11

Verra, VCS Program, Active Methodologies. 12

Verra, VCS Program, How It Works 9, 10

Verra, VCS Program Methodologies 11

INTEREST OF THE *AMICUS CURIAE* [1]

Established in 1977, the Atlantic Legal Foundation (ALF) is a national, nonprofit, public interest law firm. Its mission is to advance the rule of law and civil justice by advocating for individual liberty, free enterprise, property rights, limited and responsible government, sound science in judicial and regulatory proceedings, and effective education, including parental rights and school choice. With the benefit of guidance from the distinguished legal scholars, former government officials, corporate legal officers, private practitioners, business executives, and prominent scientists who serve on its Board of Directors and Advisory Council, ALF pursues its mission by participating as *amicus curiae* in carefully selected appeals before the Supreme Court, federal courts of appeals, and state appellate courts. *See* atlanticlegal.org.

[1] Appellants and Appellees have consented to the filing of this brief. In accordance with Federal Rule of Appellate Procedure 29(a)(4)(E), undersigned counsel hereby states that no party's counsel authored this brief in whole or part, and no party or party's counsel, and no person other than the *amicus curiae*, its supporters, or its counsel, contributed money that was intended to fund preparing or submitting the brief.

ALF is widely recognized as the nation's leading advocate for fostering sound science in judicial proceedings. For example, in product liability and toxic tort suits ALF long has advocated for judicial adherence to Federal Rule of Evidence 702. That rule requires district judges to fulfill a crucial gatekeeping role by ensuring that juries only consider scientific or other expert testimony that is based on reliable principles and methods.

The Plaintiffs-Appellants in this so-called "greenwashing" suit fault the district court for acting as a different but equally important type of sound-science gatekeeper. Finding that Appellants "have failed to plausibly allege consumer protection claims," the court issued an Order dismissing their "challenge to [the] scientific efficacy" of carbon-offset projects that were "evaluated by qualified third parties," ER_51, 52, and certified in accordance with Verra's Verified Carbon Standard (VCS) Program, "the world's leading greenhouse gas crediting program."[2]

ALF is filing this brief in support of the Reynolds Defendants-Appellees ("RJR") to urge the Court to affirm the district court's

[2] *See* Verra, Verified Carbon Standard (VCS) Program, Program Overview, https://verra.org/programs/verified-carbon-standard/ (last visited Oct. 30, 2026) [https://perma.cc/34NQ-X4PY].

judgment. The brief explains that this putative class action alleging false "carbon neutral" advertising is an attempt to use the federal judicial system to obtain a substantial damages award by second-guessing a globally respected, carbon-offset project certifier's scientific methodologies and project-specific conclusions. Allowing this suit to proceed—and thereby threaten RJR with liability for relying on third-party organizations' science-based carbon-offset certifications—would seriously undermine the sound-science gatekeeping reflected in the district court's Order. And it would deter environmentally conscious corporations like RJR from investing millions of dollars in independently certified carbon-offset projects through purchase of carbon-offset credits in what is commonly referred to as the "voluntary carbon market."

SUMMARY OF ARGUMENT

Concerns about the efficacy of carbon-offset projects or the methodologies used by Verra or similar organizations to evaluate and certify them should be aired in peer-reviewed scientific journals, not cloaked as false advertising claims and adjudicated in federal or state courts.

This state-law false advertising suit is an attempt to hold an environmentally conscious corporation liable for purchasing and relying on carbon-offset credits and projects certified by Verra, the world's leading, independent, greenhouse gas crediting organization. The Plaintiffs-Appellants are appealing the district court's holding that despite their so-called investigation of four Verra-certified carbon-offset projects in China and Uruguay, they cannot call upon a lay jury to second-guess Verra's scientific methodologies and conclusions, made in accordance with its widely used Verified Carbon Standard (VCS).

As RJR explains in its answering brief, the legal question before the Court is narrow: whether, contrary to the district court's well-reasoned analysis, Appellants have plausibly alleged false advertising claims based on "carbon neutral" statements that RJR disclosed were made in reliance on Verra-certified carbon-offset credits. Unless the district court's judgment is affirmed, the ramifications of allowing this suit to proceed would be significant for any corporation that seeks to foster environmental protection by investing in independently certified carbon-offset credits and the carbon-offset projects that underlie them.

The threat of being sued and held liable for making carbon neutral statements based in part on certified carbon credits would deter corporations from voluntarily investing millions of dollars in carbon-offset projects through purchase of carbon-offset credits, such as those RJR relied upon here. Suits like this would proliferate, as they already have begun to do. By affirming the district court's judgment, this Court will go a long way in stemming the rising tide of carbon offset credit-based false advertising suits, and in so doing, enable the voluntary carbon-credit market to continue to serve its environmentally beneficial purposes.

ARGUMENT

The Court Should Not Allow This Suit To Proceed

A. Verra's widely used Verified Carbon Standard ("VCS") Program is scientifically rigorous

1. To support its statements that Vuse-brand e-cigarette products are carbon neutral, RJR relied in part on its purchase of carbon-offset credits certified by Verra. *See* Reynolds Defendants-Appellees Answering Brief (Ans. Br.) at 6-7 (discussing how Vuse achieved carbon-neutral status by directly reducing carbon emissions and also purchasing Verra-certified carbon-offset credits); *see also* First Am. Compl. (FAC) ¶ 50

(ER_250); *see generally* Verra ("Verra Sets The World's Leading Standards For Climate Action").[3]

Seeking to hold RJR liable for relying on Verra-certified carbon-offset credits, Appellants attempt to denigrate Verra's scientific credibility and downplay its importance in the voluntary carbon market. They describe Verra merely as "a nonprofit organization based in Washington, D.C. that administers and manages the Verified Carbon Standard (VCS) Program, which is a voluntary carbon offset program." FAC ¶ 50 (ER_250). In reality, Verra is "globally recognized for its work administering and managing the VCS Program, one of the world's leading carbon offset programs." *Dib v. Apple, Inc.*, No. 25-cv-02043-NW, 2026 WL 483057, at *5 (N.D. Cal. Feb. 20, 2026), appeal filed, No. 26-1801 (9th Cir. Mar. 23, 2026).[4]

---

[3] https://verra.org/ (last visited Oct. 30, 2026) [https://perma.cc/R3G7-NCL4].

[4] "A carbon offset is a measurable reduction or sequestration of greenhouse gas (GHG) emissions used to compensate for GHG emissions generated elsewhere." Jonathan L. Ramseur, Voluntary Carbon Offsets: Background, Federal Involvement, and Issues for Congress, Cong. Rsch. Serv., Report No. R49035, at 1 & n.2 (2026). "The terms carbon offset and carbon credit are generally interchangeable." *Id.*

2. Verra's website indicates that its VCS Program "is the world's most widely used greenhouse gas (GHG) crediting program." Verra, Program Overview, *supra*; *see also Zero Carbon Holdings, LLC v. Aspiration Partners, Inc.*, 732 F.Supp.3d 326, 333 (S.D.N.Y. 2024) ("The largest issuer of voluntary carbon credits is VERRA . . . ."). Verra explains that

> [t]he VCS Program has become the largest GHG crediting program in the world because of its rigorous rules and requirements; its adaptiveness to new scientific, technological, and regulatory developments; and the transparent information about its projects and their activities, which is publicly available on the Verra Registry.

Verra, Program Overview, *supra.*

> A carbon credit is a tradable unit that represents one ton of greenhouse gas (GHG) emission reductions or removals. Carbon credits in the voluntary carbon market (VCM) are generated by mitigation activities that are certified by carbon standards. The credits are purchased by companies, individuals, and other entities to offset GHG emissions or otherwise contribute to GHG emissions abatement. The prices of carbon credits are determined by the types and quality of VCM activities and the demand for credits from those activities.

Melaina Dyck et al., The Voluntary Carbon Market Explained, Ch. 5: What are carbon credits? (Oct. 2023).[5] The "voluntary carbon market supports offset activities that are not legally required. . . . a company or individual may voluntarily decide to purchase carbon offsets to counterbalance their own GHG emissions." Ramseur, *supra*, at 1.

"[C]arbon credit projects . . . aim to reduce greenhouse gas emissions or increase carbon sequestration and thereby reduce the amount of carbon dioxide in the atmosphere." *Zero Carbon*, 732 F.Supp.3d at 332; *see also* Dyck et al., *supra*, Ch. 1: What is the voluntary carbon market? (Oct. 2023) (defining a carbon credit project as "a specific activity that removes or reduces GHG emissions in a specific sector following a standard approved methodology").[6]

"To have value on the voluntary carbon market, carbon credits generally must be approved and issued by a reputable credit verification register" such as Verra. *Zero Carbon*, 732 F.Supp.3d at 333.

---

[5] https://vcmprimer.org/chapter-5-what-are-carbon-credits/ [https://perma.cc/Y73F-UQS2].

[6] https://vcmprimer.org/chapter-1-what-is-the-voluntary-carbon-market/ [https://perma.cc/XB4N-LWUA]

> The credits are categorized by the specific environmental purpose they further, and include, *inter alia*, afforestation, reforestation and restoration carbon credits, which establish or increase vegetative cover . . . and "REDD+" credits . . . generated by projects that "reduc[e] emissions from deforestation and forest degradation" in developing countries.

Zero Carbon, 732 F.Supp.3d at 333.

3. "Carbon standards are central to the operation of the voluntary carbon market . . . A carbon standard refers to the complete set of rules, procedures, and methodologies according to which certified carbon credits are generated and issued." Dyck et al., *supra*, Ch. 7: What is the role of carbon standards in the voluntary carbon market (Oct. 2023).[7] Verra's globally recognized VCS Standard "lays out the rules and requirements that projects must follow in order to be certified; in addition, the VCS Program includes three other essential components." Verra, VCS Program, How It Works.[8] These other components are (i) independent auditing to "ensure[] that a project meets the standard's rules and requirements [and] that its methodologies are properly

[7] https://vcmprimer.org/chapter-7-carbon-standards-in-the-voluntary-carbon-market/ [https://perma.cc/47UR-9NN6].

[8] https://verra.org/programs/verified-carbon-standard/#how-it-works (last visited Oct. 30, 2026) [https://perma.cc/5VP9-AN2S].

applied"; (ii) accounting methodologies that "set out detailed procedures and peer-reviewed emission reduction formulas for quantifying the GHG benefits of a project"; and (iii) a registry system in which "all information related to VCS projects is stored and publicly available." *Id.*

"In addition to this system of checks and balances, each VCS Program project undergoes a public comment period during which anyone can indicate whether they believe the project meets VCS Program standards." *Id.* "These comments enter the Verra Registry and must be considered by the project leads." *Id.*; *see also Zero Carbon*, 732 F.Supp.3d at 332-34.

4. Appellants are California-based "vapers." *See* FAC ¶ 11-13 (ER_234). They claim that based on their own independent investigation, ER_51, four Verra-certified forestry projects (located in China and Uruguay) supporting Vuse products' carbon neutral representations "fail to provide genuine, additional carbon reductions." FAC ¶ 4 (ER_232). The district court accurately described this core allegation as a "challenge to scientific efficacy." ER_51. And RJR's brief explains why it necessarily reflects Appellants' disagreement with the scientific methodologies used

by Verra to evaluate and certify carbon-offset projects. *See* Ans. Br. at 37-42.

"Methodologies set out detailed procedures for quantifying the actual greenhouse gas benefits of a project and provide guidance to help project developers determine project boundaries, set baselines, assess additionality, and ultimately quantify the GHG emissions that were reduced or removed." Verra, VCS Frequently Asked Questions.[9] "As a key component of the VCS Program, all methodologies undergo public stakeholder consultation and a comprehensive review process, including a review by a group of independent experts, to ensure technical rigor, consistency, and alignment with program rules." Verra, VCS Program Methodologies.[10] Verra has promulgated numerous technically rigorous

[9] https://verra.org/programs/verified-carbon-standard/vcs-program-details/vcs-frequently-asked-questions/ (last visited Oct. 30, 2026) [https://perma.cc/VM8H-FGVS].

[10] https://verra.org/program-methodology/vcs-program-standard/overview/ (last visited Oct. 30, 2026) [https://perma.cc/VC6U-9KY3].

methodologies for evaluation and certification of various types of carbon-offset projects. *See id.*, VCS Program, Active Methodologies.[11]

B. Appellants' false advertising claims challenge the validity of Verra's scientific methodologies and conclusions

As RJR discusses in its brief, this appeal presents a narrow question of law: whether, as the district court held, the Appellants have failed to plausibly allege that RJR misled consumers by stating the undisputed fact that its Vuse-brand products had been independently certified as "carbon neutral" by third-party organizations.[12]

The implications of this question, however, extend far beyond this appeal. Appellants' false advertising claims are predicated on a challenge to the scientific validity of Verra's widely respected VCS Program methodologies and conclusions. Appellants dispute—based on their own purported investigation—the carbon-reduction efficacy of four specific

---

[11] https://verra.org/program-methodology/vcs-program-standard/vcs-program-methodologies-active/ (last visited Oct. 30, 2026) [https://perma.cc/KQM6-98YU].

[12] This amicus brief focuses on Verra, which certified the carbon-offset credits purchased by RJR. As RJR explains, an additional expert third-party organization, Vertis Environmental Finance Ltd., certified that Vuse had become carbon neutral. *See* Ans. Br. at 2.

Verra-certified projects. If this suit were allowed to proceed, the nation's courthouse doors would be open to *any* consumer or putative class of consumers—and their plaintiffs' bar counsel—seeking to profit by disputing carbon-neutral claims that are based in part on independently certified carbon-offset credits.

The district court expressly found that Appellants' false advertising claims represent "a challenge to scientific efficacy" and "a technical disagreement over carbon-offset projects." ER_51-52. Despite their disclaimers, Appellants' attack on the validity of Verra's scientific methodologies and conclusions is transparent:

- Appellants assert in their opening brief that the four carbon-reduction projects at issue "produced no genuine, additional carbon reductions." Appellants' Br. at 1. They make similar assertions throughout their brief, for example: "the offsets were illusory"; "the offsets were illegitimate"; "the offsets were not additional"; "the 'offsets' Defendants-Appellees used produced no real reductions at all"; "the carbon offset projects did not produce the reductions credited to them;" and "the credited reductions would have occurred anyway and therefore did not offset anything." *Id.* at 1, 6, 19, 23, 24. These claims, among

others, belie Appellants' carefully worded assertions that they are not challenging Verra's VCS Program methodologies or certifications. *See id.* at 11, 24. Indeed, Appellants explain in their brief that "[t]he *illegitimacy* of Defendants'-Appellees' offsets, and the resulting falsity of the Carbon Neutral Representation built upon them, is the *central premise* of Plaintiffs'-Appellants' case." *Id.* at 19 (emphasis added).

● The allegations in Appellants' First Amended Complaint further demonstrate that they are attacking Verra's scientific methodologies and conclusions, and more broadly, the scientific validity of carbon-offset credits in the voluntary carbon market. For example, in the section of the complaint titled "The Reality Behind Defendants' Carbon Neutral Claims," Appellants allege that "the carbon credits Defendants use to offset the Products' emissions overwhelmingly derive from four forestry projects that do not provide genuine, additional carbon reductions." *Id.* ¶ 52 (ER_250). In the section of the complaint titled "Carbon Neutrality and 'Greenwashing,'" Appellants broadly allege that "carbon neutrality claims are particularly susceptible to greenwashing for a number of reasons, including . . . the lack of transparency and reliable standards in the carbon offset market [and] the questionable effectiveness of many

offset projects." FAC ¶ 37 (ER_241). And they excoriate companies that "rely on ineffective or redundant offset projects that fail to deliver genuine environmental benefits." *Id.* ¶ 38.

● The briefs filed by Appellants' *amici* also underscore the bond between Appellants' false advertising claims and the carbon offset-related scientific criticisms that are percolating just below their surface.

(i) Referring to Appellants' allegations of "carbon credits that produced no real climate benefit," the State of California argues in its amicus brief that as a matter of pleading, "RJR's 'carbon neutral' marketing claims were therefore at least misleading, if not literally false." Cal. Br. at 19. As RJR's brief notes at p. 51 n.10, California's advocacy position in this case cannot be reconciled with the Governor's 2023 veto message on S.B. 390, which RJR indicates was "a bill that *would have* made sellers and verifiers of offsets liable for credits that failed to deliver their promised benefits."

(ii) The amicus brief submitted by the Sierra Club et al. explains that Appellants' "methodology critique" alleges that "the underlying projects produced no genuine reduction." Sierra Club Br. at 19.

(iii) As You Sow's amicus brief discusses that group's overarching concerns that voluntary carbon market offsets carry "a high risk of not providing real and additional emissions reductions." As You Sow Br. at 8.

(iv) The amicus brief submitted by "Academic Carbon Market Researchers" leaves no doubt about what they view as this suit's true purpose: having a judge and jury second-guess the scientific validity of carbon-offset project methodologies used, and certifications made, by Verra and other independent organizations, and imposing financial liability on environmentally conscious companies like RJR that rely in good faith upon and identify those certifications.

Making their agenda explicit, the academic researchers explain that "this appeal raises important *scientific questions* about the veracity of 'carbon neutrality' marketing claims." Academic Researchers' Br. at 3 (emphasis added). Their brief purports to assist the Court by "summarizing findings from the peer-reviewed scientific literature concerning the *scientific integrity* of voluntary carbon markets." *Id.* at 1 (emphasis added). According to the researchers,

> [i]t is not reasonable to assume, as the district court suggested, that voluntary carbon credits represent real

> climate benefits *or that their issuers employ robust, science-based methodologie*s. The peer-reviewed academic literature has repeatedly and consistently found that the dominant majority of voluntary carbon credits do not represent real climate benefits — including specifically for the type of carbon credits at issue in this case, which were issued by Verra to forest projects.

Id. at 2-3 (emphasis added).

The academic researchers' criticism of the scientific validity of certified carbon-offset credits includes a lengthy discussion, infused with technical jargon, about what they consider to be "significant and widespread problems with the forest carbon credits issued by Verra's VCS." *Id.* at 21. Their brief—which reads like an article from a scientific journal—essentially would transform district courts into science courts whenever the validity of certified carbon-offset projects are being challenged by plaintiffs that supposedly have conducted some sort of "data-driven investigation" of their own. Appellants' Br. at 6.

C. Allowing this suit to proceed would chill environmentally conscious corporations' incentives for investing in carbon-offset projects

1. The global carbon-credit market is robust and growing. In 2025 it had an estimated value of $1.4 billion, based on the estimated purchase prices of credits retired during that year. Guy Turner et al., MSCI,

Carbon Credits Come of Age in 2025 (Jan. 2026).[13] Analysts' projections suggest that the carbon-credit market could be worth between $5 billion and $20 billion by 2030, and between $60 billion and $200 billion by 2050. *Id.* (These figures include the "compliance" as well as the "voluntary" carbon-credit markets.)

Given the nature of carbon-offset projects, investments in carbon-offset credits inure to the benefit of the environment. *See Zero Carbon*, 732 F.Supp.3d at 332-34 (discussing "The Carbon Credits Markets and Approved Projects").

Amicus curiae Atlantic Legal Foundation does not contend that every carbon-offset project is highly or equally efficacious in removing or reducing carbon or other greenhouse gas emissions. This is exactly why Verra's elaborate, carefully constructed, widely used VCS Program is designed to evaluate carbon-offset projects in accordance with published scientific methodologies to determine whether they qualify for certification under the rigorous VCS Standard.

---

[13] https://www.msci.com/research-and-insights/blog-post/carbon-credits-come-of-age-in-2025 [https://perma.cc/Z4SN-78RA].

Insofar as there are concerns or disagreements about the scientific efficacy of particular carbon-offset projects, or about Verra's or other third-party organizations' certification methodologies in general, they should be addressed by and among scientists. Such science-based disputes should not be used by the plaintiffs' bar as the basis for false advertising suits or adjudicated by lay jurors.

Allowing this or similar suits to proceed would chill voluntary corporate investments in carbon-offset credits. The threat of potential state-law liability and enormous damages awards to expansive classes of consumers claiming to have been motivated by "carbon neutral" product representations would be a very significant—and not the only—deterrent for investing in carbon-offset credits and projects. For example, there would be the threat of shareholder suits in the wake of such damages awards if, as Appellants contend, every "marketer" that makes carbon neutral claims somehow must independently investigate the scientific efficacy of each certified carbon-offset project in which they invest through purchase of carbon-offset credits. Confronted with the threat of litigation, corporations might simply abandon voluntary efforts to become carbon neutral, at least in part through purchase of carbon-

offset credits. Such reluctance would adversely affect not only the environment, but also "an overwhelming majority of consumers [who] actively seek out environmentally sustainable products." FAC ¶ 31 (ER_240).

2. There is no shortage of potential "greenwashing" suits like this one. According to MSCI carbon-market analysts, "[a]s of Dec. 31, 2025, more than 10,200 projects were registered across the 18 major carbon-credit registries tracked by MSCI." Turner et al., *supra.* If the scientific efficacy of Verra-certified carbon-offset projects can be challenged by filing false advertising suits like this, so can a multitude of carbon-offset projects approved by other independent carbon-crediting organizations.

This case presents the Court with a timely and important opportunity to curb the swelling wave of such suits. *See, e.g.*, *Dib v. Apple, Inc.*, *supra*, at *6-7 (discussing *Blackburn v. Etsy, Inc.*, No. CV 23-5711 PA (MARX), 2023 WL 9105662 (C.D. Cal. Oct. 12, 2023) & *Berrin v. Delta Air Lines, Inc.*, No. 2:23-CV-04150-MEMF-MRW, 2024 WL 3304815 (C.D. Cal. Mar. 28, 2024)).

Dib v. Apple, a putative consumer class action now on appeal to this Court (No. 26-1801), illustrates the growing threat of false advertising suits

involving carbon credits.[14] The plaintiffs in *Dib* seek damages based on Apple's statements that it is "carbon neutral for corporate emissions" and that "certain Apple Watch models are 'carbon neutral.'" *Dib*, *supra*, at *2. "According to Plaintiffs, both of Apple's representations are false and misleading because those representations rely on the legitimacy of carbon credits that are insufficient to confer the necessary offset to render Apple, or Apple Watches, carbon neutral." *Id.*

The district court explained that "[b]etween 2022 and 2024, Apple retired more than a million carbon credits through projects certified by Verra . . . ." *Id.* at *3. But "[u]sing 'spatial overlay analysis' of public satellite data, Plaintiffs conclude that each of the four projects has produced fewer carbon offsets than Verra granted." *Id.* The court "note[d] that Plaintiffs never attribute the various 'analyses' referenced in the FAC to any scientist, expert, or scientific organization. Instead, the FAC is replete with Plaintiffs' use of the passive voice to support its 'conclusions.'" *Id.*

[14] Appellants' Statement of Related Cases here states that *Dib* "is an appeal brought by the same counsel from the dismissal of consumer-protection claims challenging environmental marketing representations, which raises closely related questions concerning the pleading standard applicable to such claims." Appellants' Op. Br. at 33.

As here, the district court in *Dib* found that the plaintiffs' "failed to plausibly allege sufficient facts to survive a motion to dismiss." *Id.* at *9. In so holding, the court made the following observation, equally applicable here:

> Plaintiffs provide no objective information to explain why their work was reasonable or accurate, let alone more reasonable, or more accurate than the *body of science that serves as the foundation for the standards set forth by Verra and in turn used by Apple*. Plaintiffs failed to allege that the methodology underlying their work is accepted in any scientific circles, or that anyone else—scientist or otherwise—has endorsed the accuracy of their work. . . . [T]his type of *attack on a marketer's methodology* may not even support a false advertising claim, especially where, like here, the methodology relied upon by Defendants has been painstakingly explained and *scrutinized within the scientific community*.

Id. at *9 (emphasis added).

3. The Environmental Defense Fund (EDF) is one of the nation's leading environmental organizations. In *Dib*, EDF filed a district court amicus brief *in support of* Apple's motion to dismiss. EDF's brief minces no words about the chilling effect of carbon offset-related false advertising suits:

> Consumer protection law should not be applied to *deter advertisers of carbon-related claims* from relying on the methodologies and information from crediting bodies and third-party auditors with extensive expertise in the relevant project sectors. If the law were to do so, *companies would likely not invest* in urgent global climate mitigation projects via carbon credits. It is for exactly these reasons that a *lawsuit*

> *like this poses considerable danger for the market*—and, indeed, for corporate climate action generally.

Amicus Curiae Brief of Environmental Defense Fund In Support of Defendant's Motion to Dismiss First Amended Complaint, at 7, *Dib v. Apple, Inc.*, No. 5:25-cv-02043-NW-NMC (N.D. Cal. July 18, 2025) (emphasis added).

The same dangers articulated by EDF pervade this suit.

CONCLUSION

The Court should affirm the district court's judgment.

Respectfully submitted,

s/ Lawrence S. Ebner
LAWRENCE S. EBNER
Counsel of Record
ATLANTIC LEGAL FOUNDATION
1701 Pennsylvania Ave., NW
Washington, D.C. 20006
(202) 729-6337
lawrence.ebner@atlanticlegal.org

November 3, 2026

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Form 8. Certificate of Compliance for Briefs

Instructions for this form: http://www.ca9.uscourts.gov/forms/form08instructions.pdf

9th Cir. Case Number(s) — 26-1806

I am the attorney or self-represented party.

This brief contains 4,044 words, including 0 words manually counted in any visual images [NONE], and excluding the items exempted by FRAP 32(f). The brief's type size and typeface comply with FRAP 32(a)(5) and (6).

I certify that this brief *(select only one)*:

[ ] complies with the word limit of Cir. R. 32-1.

[ ] is a **cross-appeal** brief and complies with the word limit of Cir. R. 28.1-1.

[**X**] is an **amicus** brief and complies with the word limit of FRAP 29(a)(5), Cir. R. 29-2(c)(2), or Cir. R. 29-2(c)(3).

[ ] is for a **death penalty** case and complies with the word limit of Cir. R. 32-4.

[ ] complies with the longer length limit permitted by Cir. R. 32-2(b) because *(select only one)*:
- [ ] it is a joint brief submitted by separately represented parties.
- [ ] a party or parties are filing a single brief in response to multiple briefs.
- [ ] a party or parties are filing a single brief in response to a longer joint brief.

[ ] complies with the length limit designated by court order dated _____.

[ ] is accompanied by a motion to file a longer brief pursuant to Cir. R. 32-2(a).

Signature: s/*Lawrence S. Ebner*
Date: Nov. 3, 2026
*(use "*s/[typed name]*" to sign electronically-filed documents)*