

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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CHEVRON CORPORATION, :  
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 Plaintiff, :  
 :  
 v. : 11 Civ. 0691 (LAK)  
 :  
 STEVEN DONZIGER, et al., :  
 :  
 :  
 Defendants. :  
 :  
 :  
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**CHEVRON’S MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION  
FOR AN ORDER OF ATTACHMENT AND OTHER RELIEF**

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### PRELIMINARY STATEMENT

Chevron respectfully seeks a prejudgment attachment of Defendants' assets, pursuant to Fed. R. Civ. P. 64 and N.Y. CPLR 6201, *et seq.*, to preserve its ability to collect the damages for which Defendants are jointly and severally liable. Chevron is likely to prevail on its RICO, fraud and other common law claims. Indeed, this Court already has credited the "ample evidence" that Chevron presented at the outset of this case to establish its probability of success in proving that Defendants engaged in fraud and other tortious conduct. That same evidence, and much more, establishes that Chevron is likely to obtain a judgment entitling it to compensation for, among other things, (1) whatever amounts Defendants unjustly have obtained or may obtain on their fraudulent claims, whether by selling their alleged interests in the claims or by influencing susceptible foreign governments to enforce their fraudulent Ecuadorian judgment, (2) disruption and damage to Chevron's business, and (3) Chevron's costs and fees—all of which is to be trebled under RICO.

If Defendants had a legitimate judgment they believed could withstand honest judicial scrutiny, they would have welcomed the opportunity to litigate recognition and enforcement in this Court, in the sole country where Chevron Corporation is present and has assets to satisfy a judgment. But since they fear further exposure and adjudication of their corrupt practices, they are scheming to enforce the fraudulent Ecuadorian judgment in foreign jurisdictions where they, their counsel and their other conspirators have influence—against separate Chevron affiliates with no connection to the Ecuadorian claims at issue—and to convert alleged future interests in the fraudulent judgment into present cash while keeping any proceeds out of this Court's reach.

In order to ensure that Defendants are not able to render Chevron's RICO and common law claims a practical nullity by dispersing their assets before trial, Chevron seeks prejudgment

attachment of Defendants' assets, particularly their alleged interests in the fraudulent Ecuadorian judgment against Chevron. Many of the Defendants have represented to this Court (directly or indirectly) that they have such "limited resources" they cannot even pay for a defense (*see, e.g., Chevron Corp. v. Salazar*, No. 11-cv-03718 (S.D.N.Y. Aug. 10, 2011), Dkt. 198 at 2, 4; *id.*, Dkt. 245 at 3); thus, they have admitted that they cannot satisfy a substantial judgment against them. And there is ample evidence that Defendants are attempting to frustrate Chevron's ability to recover on a judgment in its favor by making unreachable their only asset with any possible relevance—their interest in the fraudulent Ecuadorian judgment. Defendants have admitted that they intend to shield their interests by diverting any proceeds offshore, to an Ecuadorian "trust" and a byzantine array of shell companies formed in the Cayman Islands, Gibraltar, Switzerland, and elsewhere by various litigation funders attempting to purchase stakes in the corrupt judgment. *See* Ex. 1001;<sup>1</sup> *see also* Exs. 1033-34; 1101 at 3, Sched. 1 § 4.1; Ex. 1112 at Schedule 2; Ex. B at Schedule 4.

Chevron meets the standards set forth in New York's attachment statutes. Procedurally, it can show "[1] that one or more grounds for attachment provided in Section 6201 exist, and [2] that the amount demanded from the defendant exceeds all counterclaims known to the plaintiff." N.Y. CPLR 6212(a). And Chevron satisfies the substantive requirements "[3] that there is a cause of action, [and 4] that it is probable that the plaintiff will succeed on the merits." *Id.*<sup>2</sup>

*First*, Chevron has multiple grounds for prejudgment attachment under CPLR 6201. Defendants include nondomiciliaries of New York with insufficient assets to satisfy a judgment

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<sup>1</sup> Exhibits numbered 1000 through 1168 are attached as exhibits to the concurrently filed Declaration of Kristen L. Hendricks In Support of Chevron Corporation's Motion for an Order of Attachment and Other Relief ("Hendricks Decl.").

<sup>2</sup> While this Court may decide Chevron's attachment motion without lifting the stay of discovery on Counts One through Eight that it imposed when it bifurcated the proceedings with respect to Count Nine (Dkt. 279 at 2), Chevron hereby moves the Court to lift that stay so that the parties may proceed to resolve those claims. *See* Dkt. 364.

against them. *See* CPLR 6201(1). Many of the Defendants, including 37 of the LAPs, Fajardo, Yanza, and the Front, already have taken steps to assign their interest in the fraudulent Ecuadorian judgment—their only asset relevant to satisfying Chevron’s claims against them—to third parties they intend to be beyond the jurisdiction of U.S. courts, using a “trust” and other machinations to frustrate Chevron’s ability to collect on its claims against them, reinforcing the need for an attachment. Defendants, who include foreigners and New York resident Steven Donziger, also have demonstrated their intent to take their most significant asset—their interest in the fraudulent Ecuadorian judgment—and shield any proceeds from it, “with intent to . . . frustrate the enforcement of a judgment that might be rendered in [Chevron’s] favor.” *See* CPLR 6201(3). Where, as here, “[t]here appears . . . to be a strong need for security for the enforcement of a[] judgment,” a court should order attachment even if it finds both sides have “equal chances of success on the merits,” or there is an “uncertainty of plaintiff’s ultimate success.” *Davila Pena v. Morgan*, 149 F. Supp. 2d 91, 94–95 (S.D.N.Y. 2001) (Kaplan, J.); *see also Ay-yash*, 233 F.R.D. at 327 (granting attachment order even while noting “the difficulty of prevailing in civil RICO actions”).

*Second*, Chevron’s demand for damages necessarily exceeds any known counterclaims because Chevron’s RICO and common law damages necessarily include any collection by Defendants on their fraudulent Ecuadorian judgment. Defendants have asserted no counterclaims against Chevron in this litigation.

*Third*, Chevron has stated valid RICO and New York common law claims against Defendants, who are perpetrating an extortion scheme against Chevron in this State. The scheme includes fabricating and submitting fraudulent expert reports, paying bribes to and fabricating the ostensibly “independent” report of the “neutral” Ecuadorian “special master” and then repeatedly

lying about that report and those proceedings to U.S. courts, the U.S. Congress, and U.S. and state regulatory officials, and even fabricating the fraudulent judgment. This extortionate campaign was conceived, directed, funded, and substantially executed by Defendants in this State.

*Finally*, Chevron is likely to succeed on the merits of its RICO and common law claims. This Court already has found “ample evidence of fraud” executed by Donziger and the other Defendants, and noted that “Donziger’s own words may subject him to criminal charges or professional discipline.” *Chevron Corp. v. Donziger*, 768 F. Supp. 2d 581, 636 (S.D.N.Y. 2011) (“PI Order”), *injunction vacated*, *Chevron Corp. v. Naranjo*, No. 11-cv-1150, 2011 WL 4375022 (2d Cir. Sept. 19, 2011); *In re Chevron Corp.*, 749 F. Supp. 2d 141, 147 (S.D.N.Y. 2010). In fact, virtually all of Chevron’s evidence is “undisputed,” and many of Donziger’s co-defendants have chosen to default, rather than try to defend themselves on the merits. PI Order at 655; Dkts. 87, 19. As this Court already has recognized, the evidence of Defendants’ extortion and fraud comes principally from “their own admissions” and remains largely “uncontradicted and unexplained.” PI Order at 594, 595. And additional, recently uncovered evidence demonstrates that Defendants secretly ghostwrote not only the fraudulent court filings of the supposedly “independent” Ecuadorian “special master,” but also the fraudulent \$18.2 billion Ecuadorian judgment itself. Defendants have fretted that revelation of their fraudulent activities could mean that “all of us, your attorneys, might go to jail” (Ex. 11), and they schemed to obstruct discovery exposing their crimes and “cleansing” the Ecuadorian proceedings of their own fraud (Ex. 1093).

Chevron’s need for security over Defendants’ assets is obvious. This Court already has found that there is “no meaningful prospect that Chevron ever could collect any damages” or “recover any amounts paid in satisfaction of the Ecuadorian judgment in the event it ultimately prevailed here.” PI Order at 628. And given the undisputed proof of Defendants’ wrongdoing,

Chevron is entitled to interim relief to ensure that it will be able to collect at least part of any judgment entered here against the LAPs and the other Defendants on its meritorious claims. As the Second Circuit has recognized, a court will issue an attachment order whenever “a statutory ground for attachment exists and both need and likelihood of success are established, [because the court’s] discretion does not permit denial of the remedy for some other reason, at least absent extraordinary circumstances and perhaps even then.” *Capital Ventures Int’l v. Rep. of Arg.*, 443 F.3d 214, 222 (2d Cir. 2006) (Kaplan, J., sitting by designation) (“Capital Ventures I”) (citation omitted).

Accordingly, Chevron respectfully requests that the Court enter an order of attachment.<sup>3</sup>

### **FACTUAL BACKGROUND**

The Court is familiar with the facts of this case, which are covered in detail in prior briefing and in the Amended Complaint. Dkts. 4, 91, 283. Defendants have been asserting various claims in New York and Ecuador against Texaco, Inc. and then Chevron for nearly 20 years.

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<sup>3</sup> In a summary order stating that its explanatory opinion would follow later, the Second Circuit denied Defendants’ mandamus petition seeking to recuse this Court, but vacated the preliminary injunction and imposed a stay of proceedings on the severed claim for declaratory relief (Count Nine). *See Chevron Corp. v. Naranjo*, No. 11-cv-1150, Dkt. 600 (2d Cir. Sept. 19, 2011). While Chevron awaits the guidance of the Second Circuit’s explanatory opinion, it is entitled to act now to preserve its right to collect on any judgment in its favor on its other claims, especially given Defendants’ recent statements anticipating an imminent Ecuadorian appellate decision and their intention to seek international enforcement of the anticipated judgment. *See e.g.*, Ex. 1002 at 7 (Fajardo says he is “expecting a ruling, hopefully, in the last quarter of this year . . . no later than the first quarter of 2012”); Ex. 1003 (LAPs’ U.S. press agent says that “[t]he appellate court in Ecuador is expected to rule on the trial verdict in the coming weeks”); Ex. 1000 (just after the Second Circuit stayed the Count Nine proceeding, the LAPs announced their intention to pursue enforcement, including “attach[ing] assets, freez[ing] accounts or hold[ing] assets” “anywhere in the world where [Chevron’s] assets may be located,” “as soon as the judgment becomes fully enforceable”); *see also* Exs. 1155-66 (documenting continued instability of Ecuadorian appellate panel). But no appellate affirmance of the fraudulent Ecuadorian judgment, de novo or otherwise, could cleanse the Ecuadorian litigation of its pervasive corruption. That is because there is no factual basis in the Lago Agrio record, beyond the false and fraudulent Cabrera Report, for a finding of liability, or for any damage award. *See AAC* ¶¶ 170-73, Exs. 1030-31, 1037, 1041, 1046, 1052, 1053; *see also* PI Order at 636-37. Thus, if Chevron is unable to obtain an attachment before the LAPs enforce the fraudulent Ecuadorian judgment, Chevron will likely never be able to recover damages on its affirmative claims, no matter how meritorious. Moreover, in the event of any potential delay in the disposition of Chevron’s attachment motion, Chevron respectfully requests that in the interim this Court enter a temporary restraining order, as the Court deems appropriate, prohibiting Defendants and their agents and attorneys from assigning, alienating, transferring, encumbering or otherwise dispersing their interests in the fraudulent Ecuadorian judgment, or otherwise collecting proceeds.

Aware that their claims against Chevron are baseless, they have pursued a campaign of fraud and extortion to try to force Chevron to pay them off anyway. In furtherance of this campaign, Defendants corrupted the Ecuadorian court process, sought to mislead various U.S. government agencies and officials, including this Court and others, and mounted a harassment campaign intended to cause Chevron economic harm. As they admit in their internal strategy documents, they have pursued these criminal activities to achieve their ultimate objective of “pressur[ing]” Chevron to settle. Ex. 1011. Defendants have made outrageous, false allegations—accusing Chevron of causing an Ecuadorian “Chernobyl” and a non-existent cancer epidemic—privately admitting that their claims are false, but nevertheless proclaiming them at every opportunity because, according to Donziger, “If you repeat a lie a thousand times, it becomes the truth.” Ex. 253; *see also* Exs. 1031–32, 1035–1059, 1150–52 (addressing Defendants’ purported evidence of contamination, cancer, and environmental harm).<sup>4</sup>

When Chevron first sought relief in this action, the factual record was already extraordinary for its breadth and specificity, including hours of video in which Defendants openly discussed and engaged in illegal conduct. *See* Dkt. 4. Since then, Chevron has uncovered new evidence further revealing the depths of Defendants’ fraud. Forging the reports of their own expert (Dr. Charles Calmbacher) and then bribing and ghostwriting the report of the Court’s supposedly

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<sup>4</sup> References to exhibits other than those numbered 1000 through 1168 (which are attached to the Hendricks Decl.), use following format: Exhibits numbered 1 through 459 are attached to the Declaration of Kristen L. Hendricks in Support of Chevron Corporation’s Motion for Preliminary Injunction, filed on February 3, 2011 (Dkts. 6–55); Exhibits numbered 465 through 563 are attached to the Second Supplemental Declaration of Kristen L. Hendricks in Support of Chevron Corporation’s Motion for Preliminary Injunction, filed on February 15, 2011 (Dkts. 105–111). Exhibits lettered A through EZ are attached to the concurrently filed Declaration of Kristen L. Hendricks Attaching Exhibits Cited in Chevron Corporation’s Annotated Amended Complaint. Citations to “AAC” are citations to the Annotated Amended Complaint (Ex. A) and documents cited therein, and are provided to direct the Court to additional relevant background. All documents cited in the AAC are in the record as exhibits 1–459 and A–EZ, as noted above. To avoid burdening the Court with duplicative submissions, Chevron is not resubmitting Exhibits 1–459 and 465–563, which are already in the record in this action. Instead, Chevron cites to these exhibits by exhibit number and thereby incorporates them by reference. In addition, Chevron has provided the Court and the parties with disks containing a “hyperlinked” version of the AAC and its exhibits. This version contains embedded links to all of the exhibits cited in the AAC.

“neutral” and “independent” global damages expert (Richard Stalin Cabrera) was only a prelude to ghostwriting portions of the Ecuadorian court’s judgment.<sup>5</sup> Much of this evidence would have been before the Court long ago, but for Defendants’ obstruction and violations of this Court’s orders. *See In re Applic. of Chevron Corp.*, 749 F. Supp. 2d 141, 169, 173 (S.D.N.Y. 2010) (“Donziger 1782”), Dkts. 141, 169, 173.<sup>6</sup> Furthermore, Chevron’s expert witnesses evaluated the scientific record, and their reports, along with damning admissions by the Defendants themselves, further confirm that the environmental allegations at the heart of Defendants’ attacks are false—or in Donziger’s words, “smoke and mirrors and bullshit.” PI Order at 608.

This Court has already found “ample evidence of fraud,” virtually all of which is “undisputed,” and “no meaningful prospect that Chevron ever could collect any damages” or “recover any amounts paid in satisfaction of the Ecuadorian judgment in the event it ultimately prevailed here,” *id.* at 628, 636, 655—which are the principal factual elements entitling Chevron to at-

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<sup>5</sup> The ever-growing record of Defendants’ secret role in drafting the Ecuadorian judgment is compelling and unchallenged. It includes evidence that Defendants had long planned on secretly writing the judgment (Exs. 1018, 1065, 1084, 1099, 1108-09, 1135, 1138-39); the judgment contains anomalies, unique nomenclature, typographical and substantive errors, and even full passages of text that appear verbatim in Defendants’ internal work product but were never made part of the court record (Exs. BC; BD; BE; Ex. 1094 at 159:7-163:17; Ex. 1095 at 79:22-80:19; *see also* Exs. 1097 at 14-16, 1098 at 34; Ex. 1167), including from Defendants’ internal “Fusion Memo” (Exs. 1096-99) and Defendants’ internal Selva Viva Compilation (Ex. 1096 at 9-16); Defendants’ internal correspondence acknowledges that they had interns and advisors prepare portions of the judgment without telling them its purpose (compare Ex. 1076, with Ex. C at 65 (work product created by Katia Fach Gomez, a professor working with the LAPs, copied verbatim in the Ecuadorian Judgment); Exs. 1110 (February 14, 2011 Judgment with sections mirroring Ex. 1076 (an email from K. Fach Gomez to S. Donziger) highlighted), 1140 (e-mail from Fajardo to Donziger addressing Bryan Parker’s involvement in drafting the Alegato and judgment and noting Parker has been given “a research assignment for our legal alegato and the judgment, but without him knowing what he is doing . . .” (ellipses in original)); and the Defendants even ghostwrote the judgment’s language establishing a trust, first reflected in one of Defendants’ internal documents never made part of the court record and then repeated largely verbatim in the judgment (Ex. 1141).

<sup>6</sup> Defendant Donziger repeatedly failed to produce documents responsive to Chevron’s subpoena in *In re Application of Chevron Corp.*, No 10-mc-00002 (S.D.N.Y.) (LAK) (“Donziger 1782”). Accordingly, this Court ordered Donziger to produce additional documents and images of his hard drives. *Id.*, Dkts. 161, 171. Chevron’s review of this material was ongoing at the time of its prior request for relief in this Court. *See* Ex. 1103. Chevron also obtained discovery from Defendants’ co-conspirators, including Andrew Woods, Aaron Page, Laura Garr, and Daria Fisher Page, in *Chevron v. Salazar*. *See, e.g., Salazar*, Dkt. 180 (ordering Woods and Garr to produce withheld documents); *Chevron Corp v. Page*, No. 11-cv-01942-RWT (D. Md. Aug. 31, 2011), Dkt. 24 (ordering Aaron and Daria Page to produce withheld documents) (Ex. 1104). This discovery was required largely because of Donziger’s continued failure to produce responsive evidence in his custody or control. *See Salazar*, Dkt. 180 at 25-27.



tachment. Because this Court is already familiar with so much of the evidence, Chevron will not repeat all the facts here. Instead, Chevron respectfully refers the Court to the concurrently filed Annotated Amended Complaint and the Declaration of Kristen Hendricks and exhibits thereto. While this record is sufficient to establish Chevron's likelihood to prevail on the merits of its claims and its entitlement to an attachment order, Chevron would welcome an opportunity to participate in a hearing if the Court deems it appropriate.

## ARGUMENT

### I. Chevron Meets the Requirements for an Attachment Under New York Law

Straightforward application of New York's attachment statutes—whose remedies Federal Rule of Civil Procedure 64 makes available—entitles Chevron to prejudgment attachment here. New York's statutes require Chevron to demonstrate two procedural requirements: (1) one or more of the grounds for attachment provided for by CPLR 6201, and (2) that the amount demanded by the attachment exceeds Defendants' known counterclaims. *See* CPLR 6212(a). The statutes also require Chevron to demonstrate two substantive requirements: (3) a cause of action; and (4) likelihood of success on the merits of its claims. *Id.*

Courts have additionally required that a plaintiff show that there is "something, whether it is a defendant's financial position or past and present conduct [that] poses a real risk of the enforcement of a future judgment." *Bank of China v. NMB L.L.C.*, 192 F. Supp. 2d 183, 188 (S.D.N.Y. 2002) (quoting *Meridien Int'l Bank Ltd. v. Gov't of Rep. of Liber.*, No. 92 Civ. 7039, 1996 WL 22338, at \*3 (S.D.N.Y. Jan. 22, 1996) (citations omitted)); *see also, e.g., ITC Entm't, Ltd v. Nelson Film Partners*, 714 F.2d 217, 221 (2d Cir. 1983) (reversing order vacating attachment in aid of security where the defendant had insufficient assets in New York). If left to their own machinations, Defendants will seek to disperse and render unrecoverable any funds they are able to procure either by monetizing the fraudulent Ecuadorian judgment through sales of inter-



ests or by collecting in enforcement proceedings against Chevron or any of its foreign or domestic subsidiaries. *See* Dkt. 152 at 2, 14, 42; Ex. 341. Defendants have no other assets that could be meaningful in satisfying a judgment for Chevron against them in this case, and thus Chevron has an immediate and pressing need for attachment here.<sup>7</sup>

#### **A. Chevron Meets the Requirements of CPLR 6201**

Attachment is warranted here to provide security under CPLR 6201, because Defendants include nondomiciliaries of New York with insufficient assets to satisfy a judgment against them and a New York resident who has demonstrated his intent to shield his most significant asset with the intent of frustrating any judgment in Chevron's favor.<sup>8</sup>

##### **1. The Ecuadorian Defendants Are Nondomiciliaries of New York With Insufficient Assets to Satisfy a Judgment**

A purpose served by Section 6201 is to provide security for a potential judgment against a nonresident. *See, e.g., ITC Entm't, Ltd.*, 714 F.2d at 220; *Hotel 71 Mezz Lender v. Falor*, 14 N.Y.3d 303, 312, 900 N.Y.S.2d 698 (2010); David D. Siegel, *N.Y. Practice* § 313 (4th ed. 2011). CPLR 6201(1) allows a plaintiff to obtain an order of attachment when "the defendant is a non-

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<sup>7</sup> Prejudgment attachment is available to secure payment of a future judgment for RICO and common law claims. *See, e.g., Fed. R. Civ. P. 64; Ayyash v. Bank Al-Madina*, 233 F.R.D. 325, 327 (S.D.N.Y. 2005) (Lynch, J.) (granting attachment order in civil RICO action pursuant to CPLR 6201(1)); *City of N.Y. v. Citisource, Inc.*, 679 F. Supp. 393 (S.D.N.Y. 1988) (granting attachment order in civil RICO case pursuant to CPLR 6201(3)).

<sup>8</sup> Defendants Donziger, the Law Offices of Steven Donziger, Donziger & Associates, PLLC, Pablo Fajardo Mendoza, Luis Yanza, Frente de Defensa de la Amazonía ("the Front"), Selva Viva, Stratus Consulting, Douglas Beltman, and Ann Maest are named in Chevron's RICO and state law claims. AAC ¶¶ 7–17. All but the latter three (the "Stratus Defendants") are subjects of this motion. The 47 plaintiffs in the Lago Agrio action (the "Lago Agrio Plaintiffs" or "LAPs") are defendants to Chevron's state law claims. All but two of the LAPs have defaulted, none has appeared for duly noticed depositions, and the record is silent as to their participation in the corrupt acts that give rise to the RICO claim. Nonetheless, the Lago Agrio Litigation and multiple acts in United States courts have been undertaken in the LAPs' names or on their behalf by the RICO Defendants or those acting in concert with them. And as recently as November 2010, some or all of the LAPs signed powers of attorney that, according to Defendant Fajardo, "ratified and approved each and every action to date performed by me or by any other persons authorized by me to act in defense of the Ecuadorian Plaintiffs' interests in the *Lago Agrio* Litigation and in all other related actions." Ex. EJ. Any relief Chevron obtains by means of this action or otherwise necessarily applies to the LAPs, as they are directly subject to liability under Chevron's state law claims, because they may not retain the benefits of fraudulent actions undertaken on their behalf by their agents. *See In re Payroll Express Corp.*, 186 F.3d 196, 208 (2d Cir. 1999) ("[A] principal may not disclaim knowledge of the agent's fraud and yet attempt to retain a benefit obtained by the fraud." (citing Restatement (Second) of Agency § 282 cmt. h (1958))).

domiciliary residing without the state, or is a foreign corporation not qualified to do business in the state.” This element is readily satisfied here: the LAPs, Fajardo, and Yanza are nondomiciliaries of New York, Dkt. 206-18, and Selva Viva and the Front are entities not authorized to do business in New York. *See Itel Containers Int’l Corp. v. Companhia de Navegacao Lloyd Brasileiro*, No. 90 Civ. 8191 (CES), 1991 WL 12131, at \*3 (S.D.N.Y. Jan. 25, 1991); *see also Osrecovery, Inc. v. One Groupe Int’l, Inc.*, 305 F. Supp. 2d 340, 348 (S.D.N.Y. 2004).<sup>9</sup>

Further, there is no evidence to suggest that the nondomiciliary Defendants have sufficient assets in New York to satisfy a judgment under RICO (which calls for treble damages) or the other state-law claims. *See, e.g., Davila Pena*, 149 F. Supp. 2d at 93–94 (attachment proper where nondomiciliary defendant did not have sufficient New York assets to satisfy eventual judgment) (citing *Cargill, Inc. v. Sabine Trading & Shipping Co.*, 756 F.2d 224, 227 (2d Cir. 1985)). The only asset potentially substantial enough to satisfy a meaningful portion of a judgment in Chevron’s favor is the nondomiciliary Defendants’ interest in the Judgment itself, including any proceeds Defendants are able to obtain as a result of their threatened plan to attempt to enforce the Judgment against Chevron’s foreign (or even domestic) subsidiaries.<sup>10</sup> By the terms of the Judgment (which the evidence shows the LAPs secretly wrote), the LAPs and the Front have an actual or intended interest in the Judgment. PI Order at 621. The Judgment orders the LAPs to establish a trust in Ecuador to hold and administer the “compensation that the defendant has been ordered to pay,” giving them a first right to damages. Ex. C at 186; *see also*

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<sup>9</sup> This Court has found that Defendants Camacho and Piaguaje are subject to the Court’s jurisdiction. Dkt. 181 at 90–99, and that the defaulting Defendants have waived any personal jurisdiction objections, *id.* at 99–100.

<sup>10</sup> The Front has asserted the value of the Judgment is \$18.2 billion. *See* Exs. 1133–34. In a September 22, 2011 interview on Ecuadorian television, Fajardo also asserted the LAPs’ right to pursue enforcement of the “\$18 billion” Judgment. *See* Ex. 1105 (“On Monday the judge in New York vacated the order that barred Ecuador from collecting an \$18 billion judgment from Chevron for the environmental contamination in the Ecuadorian Amazon. This now opens the road to enforcement. Because Kaplan’s ruling blocked us in the United States, not in the rest of the world.”). Moreover, this Court has recognized that “there is good reason to believe the defendants quickly will move to enforce th[e] [J]udgment and seize assets simultaneously in multiple jurisdictions.” PI Order at 622–23.

Ex. 1141, 1097–98. The Front, as the beneficiary of the trust required by the Judgment, also has an identifiable asset subject to attachment. *See id.*; *see also* PI Order at 621. Yanza and Fajardo have future identifiable interests in the Judgment. Yanza, as the co-founder of the Front and “coordinator” of the “Asamblea of the Afectados,” and Fajardo, as counsel of record for the Front and the purported lead counsel for the LAPs, have control over any damages to which the Front or the LAPs are beneficiaries. By agreement, Fajardo will also receive 10% of the Judgment. Ex. 1106 at § 3(a); Ex. 1107 at 23. Selva Viva, to the extent it has any interest in the Judgment proceeds not known to Chevron, also has an attachable asset.

To the extent Defendants intend to assign their interest in the Judgment to third parties, the Judgment proceeds will become even harder to reach, increasing Chevron’s need for security through attachment. *See Davila Pena*, 149 F. Supp. 2d at 94 (finding attachment necessary and considering whether “assets will be kept in any jurisdictions where they readily could be applied to any judgment”). Without attachment, the Judgment proceeds will blow to the four winds—or at least to the (1) Cayman Islands, where Treca Financial Solutions, a Cayman island-based subsidiary of Burford Capital Limited and Burford Group Limited (collectively “Burford”) is based; (2) Gibraltar, where Russell DeLeon and his company, Torvia Limited, are based; and (3) other jurisdictions including the British Virgin Islands and Switzerland, where other third parties with a purported interest in the Judgment are based. *See* Exs. B at 2, 70; Ex. 1033; Ex. 1034; Ex. 1101 at 3, Schedule 1 § 4.1; *In re Amaranth Natural Gas Commod. Litig.*, 711 F. Supp. 2d 301, 312 (S.D.N.Y. 2010) (ordering attachment of hedge fund’s assets where plaintiffs sought \$6 billion in damages and “the Fund seeks to transfer nearly forty percent of its remaining assets to entities from whom plaintiffs will not be able to recover”).

These locations are known shelters from U.S. tax laws. *See* Dhammika Dharmapala and

James R. Hines, Jr., *Which Countries Become Tax Havens?*, Nat'l Bureau of Economic Research (Working Paper 12802, Dec. 2006). They have bank secrecy laws that generally prohibit the discovery of bank records despite a federal subpoena, which would further frustrate Chevron's future attempts to collect on a favorable judgment. *See* Cayman Islands Confidential Relationships (Preservation) Law (1995 Revision) (prohibiting disclosure of financial information and subjecting violators to potential civil liability, criminal fines, or even imprisonment); Swiss Federal Banking Act, Art. 47 (same); *see also* *Minpeco, S.A. v. Conticommodity Services*, 116 F.R.D. 517, 524–25, 529–30 (S.D.N.Y. 1987) (refusing to compel discovery from Swiss banks based on Switzerland's "substantial" interest in bank secrecy); *United States v. Simon*, No. 10-cr-56RM, 2010 WL 3980210, at \*3 (N.D. Ind. Oct. 8, 2010) (noting Gibraltar is a tax haven "because of [its] secrecy laws").

It is no accident that the proceeds from the Judgment will flow to these locations. After Joseph Kohn's acrimonious separation from their legal team, *see, e.g.*, Ex. 162 at 5–6, Defendants secured new funding from litigation investment firms, attorneys, and freelance investors. Much of their new funding came from New York-based Burford Advisors through Treca Financial Solutions, which is organized under the laws of the Cayman Islands. *See* Ex. B at 2, 3 (§ 2.1(a)). Donziger, Yanza, Fajardo, Patton Boggs, and Treca executed a funding agreement in October of 2010 ("Treca Funding Agreement"), providing Defendants with \$4 million in immediate cash and further potential funding tranches totaling a combined \$15 million. Ex. B at 3 (§ 2.1); *see also* Ex. 337. (The list of Claimants contained in Schedule 1 of the funding agreement contains only 37 of the 47 living LAPs, not including LAP Representative Hugo Gerardo Camacho Naranjo.) In exchange for this investment, Treca seeks to receive more than \$1 billion. *See* Ex. B at 3 (§ 2.1), Schedule 2, Schedule 3 at 11; *see also* Ex. 337.

On October 31, 2010, at the same time they executed the Treca Funding Agreement and the Intercreditor Agreement, the parties were finalizing an agreement with Torvia Limited, a company incorporated under the laws of Gibraltar and owned by Russell DeLeon, a person of interest in an ongoing federal criminal investigation (“Torvia Agreement”).<sup>11</sup> *See* Ex. 1143. Torvia initially invested \$2 million in the litigation on March 4, 2010 and further transferred \$1.25 million to Donziger on August 17, 2010 for a 3% cut of the “Net Plaintiff Recovery” from the Judgment. *See* Ex. 1144 at 4, 5, § 2; *see also* Ex. 1143. On May 16, 2011, following this Court’s entry of a Preliminary Injunction, Donziger and his co-conspirators entered an agreement with DeLeon to invest another \$1 million. *See* Ex. 1101 (§ 2.1), Schedule 3.

In November 2010, Jonaks Limited (“Jonaks”), organized under the laws of the British Virgin Islands, and SATEE GmbH (“SATEE”), organized under the laws of Switzerland, also agreed to invest \$200,000 and \$300,000, respectively, in exchange for a pro rata share of the net recovery (“Jonaks-SATEE Agreement”). Ex. 1112 at Schedule 2; Ex. B at Schedule 4. Orin Kramer, who previously transferred \$150,000 to Donziger on February 17, 2010, Ex. EO, is also a party to the Jonaks-SATEE Agreement. *Id.* By this agreement Kramer will pay \$150,000 for case-related expenses in exchange for a cut of the fraudulent Ecuadorian judgment. Ex. 1112. Kramer, Jonaks, and SATEE, are just a few of the investors in the litigation who, by the terms of the Intercreditor Agreement, would expect to receive a percentage of the net recovery. *See e.g.*, Ex. 1113 at 3 (§ 2.1), Schedule 3 (\$1,000,000 from U.S. investor the New Orleans Group); Ex. 1114 at 3 (§ 2.1), Schedule 3 (\$250,000 from U.S. investor David Sherman); Ex. 1115 at 3 (§ 2.1), Schedule 3 (\$250,000 from U.S. investor Glen Krevlin); Ex. 1116 at 3 (§ 2.1), Schedule 3

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<sup>11</sup> After reportedly becoming a billionaire in the online poker business, DeLeon fled to Gibraltar, where he resides today. In 2010, his associate Anurag Dikshit was convicted in the Southern District of New York of violating the Wire Wager Act and forfeited \$300 million to the United States. *See* Ex. 1111.

(\$50,000 from U.S. investor Russell O. Wiese).<sup>12</sup>

Moreover, it is presently unknown whether a trust has been set up as the fraudulent Ecuadorian judgment directs,<sup>13</sup> and the LAPs' counsel's evasive response as to whether any trust has actually been established, Hr'g Tr., *Chevron Corp. v. Naranjo*, No. 11-1150-cv(L) (2d Cir. Sept. 16, 2011), at 33:12–34:15, further shows the continuing need for security. *See Davila Pena v. Morgan*, 149 F. Supp. 2d 91, 94 (S.D.N.Y. 2001) (finding “[d]efendant’s nonresident status and his evasive response to [his ability to satisfy any judgment likely to be rendered in this action] lead the Court to infer that there is a continuing need for security”).

Thus, because the nondomiciliary Defendants do not have assets in New York sufficient to satisfy any award, much less treble damages, attachment of their interest in the fraudulent Ecuadorian judgment is crucial to Chevron’s ability to ultimately enforce a judgment in its favor.

## **2. Donziger Has Demonstrated an Intent to Frustrate Enforcement of an Adverse Judgment**

Attachment of Donziger’s assets is proper because he has demonstrated an “intent to defraud his creditors or frustrate the enforcement of a judgment that might be rendered in plaintiff’s favor, [and] has assigned, disposed of, encumbered or secreted property, or removed it from the state or is about to do any of these acts.” CPLR 6201(3); *see also* Ex. 1122 at § 3(h)–(i); Ex. B at § 8, Schedule 4 §§ 1.3, 1.20, 3.2, 3.2.7. Because “[f]raudulent intent is rarely susceptible to

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<sup>12</sup> The litigation funders identified above and parties to the Burford Funding Agreement are not the only ones who will claim a stake in the fraudulent Ecuadorian judgment, further dissipating it and thereby forcing Chevron to seek compensation from multiple jurisdictions in the event of judgment in its favor here. By the terms of the Intercreditor Agreement and a “Master Agreement,” lawyers and advisors to the litigation are also scheduled to receive a percentage of the “Total Contingency Fee Payment,” which equals 20% of any amount paid to plaintiffs as a result of the Lago Agrio Litigation. Ex. B at Schedule 4 § 3.2.7; Ex. 1107; *see also* Ex. 1132. These lawyers and advisors include: the Ben Barnes Group (Ex. 1117 at Schedule 2; Exs. 1015–16), F. Gerald Maples (Ex. 1118), Downey McGrath Group, Inc. (Ex. 1119 at Schedule 2), and CSL Strategies LLC and Mark Fabiani LLC (Ex. 1120 at Schedule 2; Exs. 1012–13).

<sup>13</sup> Recent discovery has elicited one document suggesting Donziger may have set up a trust in Ecuador, though its purpose is unknown. Ex. 1121 (Invoice from Neidl and Asociados to Donziger for \$74,400. Under “Description of Service/Concept” it reads “Legal Services rendered in Ecuador. Case: Ecuador v. Chevron Texaco. Trust for Funding Agreement between FDA and Third Parties.”).

direct proof[,]” courts “have developed ‘badges of fraud’ to establish the requisite actual intent to defraud.” *In re Kaiser*, 722 F.2d 1574, 1582 (2d Cir. 1983) (citations omitted); *see also Arzu v. Arzu*, 597 N.Y.S.2d 322, 325, 190 A.D.2d 87 (App. Div. 1993) (“[I]t is not always practicable to establish by proof the existence of a fraudulent intent on the part of the debtor even when in reality it exists. Direct proof of the fact can rarely be obtained, and when it is established it must ordinarily be inferred from circumstances.”) (quotation marks and citation omitted). Such badges of fraud include “a questionable transfer not in the ordinary course of business,” and “secrecy in the transfer.” *N.Y. Dist. Council of Carpenters Pens’n Fund v. KW Const., Inc.*, No. 07 Civ. 8008 (RJS), 2008 WL 2115225, at \*4 (S.D.N.Y. May 16, 2008).

Donziger has attempted to render any proceeds from his most significant asset—whatever direct or indirect interest he possesses in the Ecuadorian judgment—unreachable by a United States court through a series of fraudulent maneuvers. By agreement dated January 5, 2011, between Donziger & Associates, PLLC, on the one hand, and Fajardo, Ernel Chavez (on behalf of the Front), and Yanza, acting as “duly authorized representatives” of Plaintiffs on the other, Donziger’s firm is to receive 31.5% of an amount equal to 20% of all “Plaintiff Collection Monies.” Ex. 1122 § 3(a); Ex. 1107 at 6, 23; *see also* Ex. B (Burford Funding Agreement recognizing Donziger’s interest) at Schedule 4 §§ 1.3, 3.2.7. Donziger, however, has attempted to keep that money outside of the United States. Agreements between Burford, Donziger, and other litigation funders require holding funds collected by parties<sup>14</sup> enforcing the Judgment in trust “*where those proceeds are received.*” Ex. B at 8 (§ 7.5), Schedule 4 § 2.2 (emphasis added).

This, despite the fact that numerous parties to these agreements—such as Donziger, Patton Boggs LLP, and Emery Celli Brinckerhoff & Abady LLP—are based or have offices in New

<sup>14</sup> As set forth in the agreement, the parties are: (1) Burford; (2) Torvia Limited, incorporated under the laws of Gibraltar; (3) Patton Boggs; (4) Donziger & Associates, PLLC; (5) Emery Celli; (6) Fajardo; (7) Erik T. Moe; (8) H5, incorporated in California; and (9) the Front.



York. Because Defendants are attempting to secret the judgment proceeds in trusts around the world, Chevron would be forced to pursue these assets all over the world to recover on its claim against Donziger. *See Graubard Mollen Dannett & Horowitz v. Kostantinides*, 709 F. Supp. 428, 432 (S.D.N.Y. 1989) (attachment ordered where defendants’ “accounts, by nature, are liquid and can be easily transferred from the jurisdiction by a simple telephone call” and “if plaintiff were then to recover a judgment against the defendants, plaintiff would be in the inauspicious position of having to chase defendants” to other venues). Such maneuvers to evade Chevron’s ability to collect on its claims reinforce the propriety and necessity of an attachment.

**B. The Amount Demanded Exceeds All Known Counterclaims Against Chevron**

To obtain an attachment a plaintiff must show that “the amount demanded from the defendant exceeds all counterclaims known to the plaintiff.” CPLR 6212(a). The amount at issue in this case is necessarily more than any amount Defendants could obtain by enforcement of the fraudulent Ecuadorian judgment, as Chevron’s RICO and other damage claims by their nature include any amounts derived from enforcement of the fraudulent Ecuadorian Judgment—in addition to attorney’s fees, business damages, and other damages—all of which, insofar as they are recovered pursuant to RICO, will be trebled. *See Am. Compl.* at 163–65. In any event, the LAPs have asserted no counterclaims against Chevron in this litigation. Moreover, in calculating the requirements of CPLR 6212(a), “courts are to examine only the amount of the counterclaims *that the plaintiff concedes are just.*” *Bank Leumi Trust Co. of N.Y. v. Istim, Inc.*, 892 F. Supp. 478, 482 (S.D.N.Y. 1995) (emphasis original) (finding that because the plaintiff contends that the defendant’s counterclaims “are entirely without merit, this requirement is satisfied”).

**C. Defendants’ Interest in the Ecuadorian Judgment Is Attachable Property**

New York law provides that: “All property in which the defendant is known or believed to have an interest then in . . . shall be subject to the levy,” and a person against whom a levy is



directed “shall forthwith transfer or deliver all such property” to the sheriff or marshal.<sup>15</sup> CPLR 6214(b). And, such property need not be physical: “Any . . . property against which a money judgment may be enforced as provided in section 5201 is subject to attachment” (*id.* § 6202), and section 5201(b) in turn allows for enforcement “against any property which could be assigned or transferred, whether it consists of a present or future right or interest . . . .”

The New York Court of Appeals has held that contingent, intangible rights—like an interest in a judgment—may be attached as property. In *ABKCO Indus., Inc. v. Apple Films, Ltd.*, 39 N.Y.2d 670, 675, 385 N.Y.S.2d 511 (1976), the court allowed attachment of an interest in a licensing agreement that would generate profits from sales. As the court explained, such an intangible right was attachable property because it had standalone “economic significance” as it was freely “assignable.” *Id.* at 674; *see also* Siegel, *N.Y. Practice* § 489 (“CPLR 5201, abetted by *ABKCO*, licenses the pursuit of any assignable asset.”). Likewise, other cases under New York law have recognized that intangible, transferable interests constitute attachable property that may be levied against, for they have value that can satisfy an eventual judgment to a plaintiff. *See, e.g., Motorola Credit Corp. v. Uzan*, 739 F. Supp. 2d 636, 642 (S.D.N.Y. 2010) (Rakoff, J.) (reverse-piercing the veil of defendant’s alter ego and granting turnover order of alter ego’s “right to collect” on a “potential recovery in a pending arbitration award”); *Hotel 71*, 14 N.Y.3d at 314 (treating “defendants’ ownership/membership interests in 22 out-of-state limited liability companies” as “akin to intangible contract rights [that are] clearly assignable and transferable” and “[t]hus, . . . are ‘property’ for purposes of CPLR 6202”). Here, there can be no doubt, given Defendants’ attempts to monetize and assign interests in the Ecuadorian judgment

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<sup>15</sup> While the New York attachment statutes refer to the “sheriff” as the one who executes an attachment order, the U.S. Marshal may carry it out. *See* 28 U.S.C. § 564.

to various entities, that these interests have economic value and are thus attachable property.<sup>16</sup>

Moreover, Defendants' interests in the judgment are located in New York and can be attached here. "[T]he situs of . . . intangible property" like an interest "is in New York where there is to be found the other party . . . upon whom rests the obligation of performance." *ABKCO*, 39 N.Y.2d at 675 (finding a New York situs where a British defendant had a licensing agreement with a New York company); *see also Hotel 71*, 14 N.Y.3d at 314-16. To the extent Defendants here seek satisfaction of the fraudulent Ecuadorian judgment, Chevron is the obligor and Chevron is present in New York.<sup>17</sup> In any event, Defendants' interests in the judgment may be attached regardless of where those interests are said to be located because this Court has already recognized personal jurisdiction over Defendants. *See id.* at 312 (noting that "a court with personal jurisdiction over a nondomiciliary present in New York has jurisdiction over that individual's tangible or intangible property, *even if the situs of the property is outside New York*") (alterations omitted; emphasis added)).

#### **D. Chevron Has a Cause of Action Against Defendants**

The "standard for determining whether a cause of action exists for purposes of attachment under [CPLR 5121(a)] is a liberal one. Unless the plaintiff's papers clearly establish that the plaintiff must ultimately be defeated, a cause of action exists." *Thornapple Assocs., Inc. v. Sahagen*, No. 06 Civ. 6412 (JFK), 2007 WL 747861, at \*3 (S.D.N.Y. Mar. 12, 2007) (internal

<sup>16</sup> New York law permits attaching judgments issued in foreign fora, including judgments that have not yet been finalized. *See Orient Overseas Container Line v. Kids Intern. Corp.*, No. 96 Civ. 4699 (DLC), 1998 WL 531840, at \*2, 4 (S.D.N.Y. Aug. 24, 1998); *see also JPMorgan Chase Bank, N.A. v. Motorola, Inc.*, 846 N.Y.S.2d 171, 47 A.D.3d 293 (App. Div. 2007); *Breezevale Ltd. v. Dickinson*, 693 N.Y.S.2d 532, 262 A.D.2d 248 (App. Div. 1999); *ABKCO*, 39 N.Y.2d at 385.

<sup>17</sup> It is long-established in New York that a plaintiff can attach its own obligation to pay a defendant it is suing on a debt, judgment, or potential claim it owes or may owe that same defendant. *See, e.g., Wehle v. Conner*, 83 N.Y. 231, 238 (1880) (where "judgment debtor was also one of the attaching creditors," attachment "allowable" because "[t]he law which permits the issue of such attachment awards it to all creditors who bring themselves within its provisions. By what right can we assume to draw distinctions and withhold the privilege given to all from particular classes or persons?"); *accord, Motorola Credit Corp. v. Uzan*, 739 F. Supp. 2d 636, 641 (S.D.N.Y. 2010) (Rakoff, J.) (granting post-judgment turnover order under New York law relieving prevailing plaintiff of obligation to pay arbitration award to defendant's alter ego).

citations omitted).

Defendants Fajardo, Yanza, the Front, Selva Viva, and all the LAPs except Defendants Camacho and Piaguaje have defaulted. Dkt. 206-18 (Clerk's Certificate Certifying Default); PI Order at 595, 645 n.369. They have, therefore, admitted all allegations against them as to liability and are no longer able to contest the viability of Chevron's claims. *See Greyhound Exhibit-group, Inc. v. E.L.U.L. Realty Corp.*, 973 F.2d 155, 158–59 (2d Cir. 1992). As for the other Defendants against whom attachment is sought (Donziger and the LAP Representatives Camacho and Piaguaje), the factual and legal sufficiency of Chevron's claims is addressed below.

**E. Chevron Is Likely to Succeed on the Merits of Its RICO and Other Claims**

To show a likelihood of success on the merits for purposes of attachment, a plaintiff need only present facts sufficient to establish a prima facie case. *See Considar, Inc. v. Redi Corp. Estab.*, 655 N.Y.S.2d 40, 41, 238 A.D.2d 111 (App. Div. 1997). “[P]laintiff must be given the benefit of all legitimate inferences and deductions that can be made from the facts stated.” *Id.* (citation omitted); *Davila Pena v. Morgan*, 149 F. Supp. 91, 94 (S.D.N.Y. 2001) (the “more likely than not” standard of a preliminary injunction does not apply to attachment motion).

In its original application for a TRO and preliminary injunction, Chevron demonstrated its strong likelihood of success on the merits of its RICO and other fraud-based and common law claims. Dkt. 5 at 31–62; Dkt. 91 at 18–27. At that time, the Court noted the “ample evidence of fraud,” virtually all of which was “undisputed.” PI Order at 636, 655. This Court subsequently issued an 80-page opinion containing extensive factual findings broadly confirming Chevron's allegations. *See Chevron Corp. v. Donziger*, 768 F. Supp. 2d 581 (S.D.N.Y. 2011) (“PI Order”). And in a prior order in earlier proceedings seeking discovery from Donziger, this Court had also made findings that Donziger and his co-conspirators had committed fraudulent conduct. *See In re Applic. of Chevron Corp.*, 749 F. Supp. 2d 141 (S.D.N.Y. 2010) (“Donziger 1782”). As the

Court noted, “neither Donziger nor any of the other key actors has denied Chevron’s allegations or attempted here to explain or justify under oath their recorded statements and written admissions.” *Id.* at 595. On appeal before the Second Circuit, Defendants similarly offered scant challenge to Chevron’s factual allegations and evidentiary submissions. *See* Case No. 11-1150-cv, Dkt. 163. Thus, while the Second Circuit vacated the injunction issued by this Court, *Chevron Corp. v. Naranjo*, 2011 WL 4375022, at \*1, this Court’s factual findings remain undisturbed. Further, since this Court issued its opinion in March 2011, Chevron has obtained even stronger evidence, much of it similarly undisputed, such as that Defendants secretly participated in drafting the judgment itself. Accordingly, Chevron satisfies this prong of the attachment analysis.<sup>18</sup>

### **1. The Wrongful Conduct at Issue Here Constitutes Racketeering**

Defendants’ criminal acts violate RICO, under which “a plaintiff must establish that a defendant, through the commission of two or more acts constituting a pattern of racketeering activity, directly or indirectly participated in an enterprise, the activities of which affected interstate or foreign commerce.” *DeFalco v. Bernas*, 244 F.3d 286, 306 (2d Cir. 2001). That is precisely what Chevron’s FAC alleges and what the evidence shows.

*a. The RICO Defendants have formed an “enterprise.”* The term “enterprise” includes, as relevant here, “any . . . group of individuals associated in fact although not a legal entity.” 18 U.S.C. § 1961(4). The Supreme Court has explained that this definition is “expansive,” *Boyle v. United States*, 556 U.S. 938, 129 S. Ct. 2237, 2243, (2009). These Defendants worked together for years in order to extort money from Chevron. They have shared workplans, held planning meetings, and defined roles for individual members of the enterprise—their extensive and ongoing coordination is abundantly clear from this Court’s description of their conduct. *See* Donziger

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<sup>18</sup> While the Second Circuit has stayed the injunction issued pursuant to the Recognition Act, it has not suggested there is any evidentiary or legal infirmity with Chevron’s other claims—which appellants did not challenge. *See Chevron Corp. v. Naranjo*, No. 11-cv-1150, Dkt. 600 at 2 (Ex. 1102); *id.*, Hr’g Tr. of Sept. 16, 2011 (Ex. 1014).

1782 at 150–59; PI Order at 601–20. This constitutes an “enterprise.”<sup>19</sup>

*b. The targets of this motion “operated and managed” the enterprise.* “[T]o conduct or participate, directly or indirectly, in the conduct of [an] enterprise’s affairs,’ [under] § 1962(c), one must participate in the operation or management of the enterprise itself.” *Reves v. Ernst & Young*, 507 U.S. 170, 185, 113 S. Ct. 1163 (1993). This “is not limited to those with primary responsibility for the enterprise’s affairs” or “those with a formal position in the enterprise,” but extends to those playing “some part in directing the enterprise’s affairs.” *Id.* at 179.

This Court has aptly described Donziger as the “field general” of the effort (PI Order at 611), and there is no dispute about his leading role. His own attorney has argued that “litigating and trying this case without Steven Donziger is like staging a production of *Hamlet* without Hamlet. This case is *about* Donziger[.]” *Donziger, et al. v. Chevron Corp.*, No. 11-2260, Dkt. 87 at 4 (2d Cir. June 29, 2011). This Court has also found that Donziger and Fajardo are “close associates” (Donziger 1782 at 150 n.32), and that “Donziger, Fajardo, [Luis] Yanza and the [Front] have worked closely together at all relevant times.” PI Order at 602. And this Court has found that Fajardo is “counsel of record” for the LAPs in the Lago Agrio Litigation, Yanza heads the Front, and Selva Viva “is an entity created by the [Front] to administer litigation funds,” which is “managed by Yanza, and its president is or was Donziger.”<sup>20</sup> *Id.* at 625. *See also id.* at 611 (recognizing that “the Cabrera report in fact was planned by Fajardo and other LAP representatives”); Ex. 1024 (forensic analysis revealing Cabrera’s filings were written by Fajardo); Ex. 1129 (Fajardo identifies himself as “Plaintiffs’ lead counsel in Ecuador”); Exs. 1146-47

<sup>19</sup> There is no dispute that the enterprise’s activities have had at least “a minimal effect on interstate commerce,” as RICO requires. *DeFalco*, 244 F.3d at 309. AAC ¶¶ 18, 30, 145–46, 25–32, 158, 181, 223, 244, 264, 276, 301.

<sup>20</sup> The Front and Selva Viva are liable under RICO through the conduct of their agents, as those agents were principals in the organization, were operating on their behalf, and sought to obtain a substantial benefit for the organization. *See USA Certified Merchs., LLC v. Koebel*, 262 F. Supp. 2d 319, 328–30 (S.D.N.Y. 2003); *Local 875 Int’l Bhd. of Teamsters Pension Fund v. Pollack*, 992 F. Supp. 545, 567–69 (E.D.N.Y. 1998) (“RICO liability may be imputed to a corporation where an agent acts on behalf of a corporate entity with that entity’s knowledge.”).

(emails of the as-filed Cabrera Report to Donziger with metadata demonstrating that member of Defendants’ Ecuadorian legal team saved the document the day before it was filed); Ex. EJ (Fajardo has broad authority to act on behalf of the LAPs); Ex. R (Yanza managed payments to Cabrera); AAC, §§ B.1, B.3.<sup>21</sup>

## 2. Defendants Have Engaged in Multiple Acts of Racketeering

Defendants have engaged in multiple crimes constituting “racketeering activity.” *See* 18 U.S.C. § 1961(1).

*a. Defendants have committed extortion.* “Extortion” is defined in the Hobbs Act as “the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right.” *Id.* .§ 1951(b)(2). “These same elements are required under New York law.” *Feeley v. Whitman Corp.*, 65 F. Supp. 2d 164, 174 (S.D.N.Y. 1999).<sup>22</sup> Extortion needs neither physical violence nor threats—fear of economic loss is sufficient. *United States v. Middlemiss*, 217 F.3d 112, 118 (2d Cir. 2000).

As this Court has recognized, Defendants’ campaign is an “effort to use the Lago Agrio litigation to obtain a very large payment from Chevron,” PI Order at 601, and Defendants have done this through fear of economic loss from a vexatious litigation campaign, threatened and actual criminal indictments, and negative publicity intended to hurt Chevron’s bottom line. For example, in addition to corrupting the Ecuadorian court, Donziger and his co-conspirators intend to engage in a “multiplicity of suits” seeking enforcement of their fraudulent judgment to “create[]

<sup>21</sup> The Stratus Defendants are also operators of the enterprise, as they acted with substantial discretion in designing and carrying out a major element of the extortionate scheme, the fabrication and promotion of the “independent” Cabrera Report. *See* Ex. 157 at 1; Ex. D at 2496; Exs. 1124–26. Because they are not a direct subject of this motion, however, they are not discussed in detail here.

<sup>22</sup> New York law defines extortion as “compe[lling] or induc[ing] another person to deliver [that person’s] property to himself or to a third person by means of instilling in him a fear that, if the property is not so delivered, the actor or another will” commit various wrongful acts, including damaging the victim’s property, accusing the victim of a crime, or otherwise materially harming the victim. N.Y. Penal Law § 155.05(2)(e). Extortion and attempted extortion of greater than \$1 million are felonies under New York law and thus are racketeering acts under section 1961(1). *See* §§ 155.42, 110.00, 155.05(2)(e) (larceny includes extortion).

settlement pressures above and beyond anything warranted by the merits.” PI Order at 627; *see also* Donziger 1782 at 162 (finding that the “criminal prosecution [of two Chevron attorneys] appears to have been instigated by Donziger and others working with him for the base purposes of coercing Chevron to settle and undermining a significant element of its defense in Ecuador, the release it obtained from the GOE”); Exs. 1042–43, 1060–61, 1084, 1090–92. Defendants have also conducted a media campaign “in the United States and elsewhere[,] promoting critical attention to Chevron by U.S. and New York State public officials.” PI Order at 601; AAC ¶¶ 346-52; Exs. 1063–64, 1066–75, and 1077–83, 1133–34, 1154. The express intent of this campaign, which is based on falsehoods and fabricated claims, is to cause “pain” and put Chevron “in a position where, to survive intact in American society as a reputable company with a competitive edge, they will be forced to settle the lawsuit.” Ex. AB.

*b. Defendants have committed mail and wire fraud.* The elements of mail and wire fraud are “(i) a scheme to defraud, (ii) to get money or property, (iii) furthered by the use of interstate mail or wires.” *United States v. Autuori*, 212 F.3d 105, 115 (2d Cir. 2000); *see also* 18 U.S.C. §§ 1341, 1343. A “scheme to defraud” in the context of mail and wire fraud, requires “a plan to deprive [the victim] ‘of something of value by trick, deceit, chicane or overreaching.’” *Autuori*, 212 F.3d at 115 (quoting *McNally v. United States*, 483 U.S. 350, 358, 107 S. Ct. 2875 (1987)). As this Court has noted, deception was central to Defendants’ plan: “Donziger made clear . . . that everything the plaintiffs were doing was to be concealed from Chevron, his ‘goal [being] that they don’t know shit.’” Donziger 1782 at 151. Defendants’ use of the mails and wires in this regard is apparent from the record, and this Court has found that Donziger “consulted with lawyers and others in Ecuador by e-mail and other means of communication, all from New York.” PI Order at 643. *See* AAC Appendix B (detailing Defendants’ uses of the mails and

wires); *id.* ¶¶ 353–57; *see also* PI Order at 609 (“Email exchanges among Donziger, Beltman, and other Stratus consultants confirm that Stratus drafted substantial portions of the Cabrera report and its annexes.”).

*c. Defendants have engaged in obstruction of justice and witness tampering.* Obstruction of justice under 18 U.S.C. § 1503 requires (i) a pending judicial proceeding; (ii) of which defendant had knowledge or notice; and (iii) that the defendant acted with the wrongful intent or improper purpose to influence the proceeding, whether or not successful. *United States v. Quattrone*, 441 F.3d 153, 170 (2d Cir. 2006). Section 1503 “embraces the widest variety of conduct that impedes the judicial process.” *United States v. Kumar*, 617 F.3d 612, 620 (2d Cir. 2010) (quotations omitted). *See also United States v. Coiro*, 922 F.2d 1008, 1017 (2d Cir. 1991) (obstruction of justice is a proper RICO predicate act where “the evidence established that [Defendant’s] activities designed to prevent detection and prosecution of the organization’s illegal activities were part of a consistent pattern that was likely to continue for the indefinite future, absent outside intervention.”).

Under 18 U.S.C. § 1512(b), a defendant commits witness tampering where he (i) knowingly (ii) engages in intimidation, threats, misleading conduct, or corrupt persuasion toward another (iii) with intent to influence, delay, or prevent testimony or cause any person to withhold a record, object, document, or testimony (iv) from an official proceeding. The witness’s testimony need not be altered—the crime is the attempt to do so. *United States v. Capo*, 791 F.2d 1054, 1069–70 (2d Cir. 1986), *rev’d on other grounds on reh’g*, 817 F.2d 947 (2d Cir. 1987).

This Court has noted Defendants’ ongoing efforts to obstruct proceedings in U.S. courts. PI Order at 610 (“[T]here is extensive evidence that counsel for the LAPs and Donziger made Herculean and perhaps questionable efforts in the Section 1782 proceedings to prevent or delay



the disclosure of material proving the roles of Stratus and other U.S. consultants in the Cabrera report.”). And the District of Colorado found that it “was not given the truth” about Stratus’s knowledge that its work had been used in the Cabrera Report. Ex. 1025. As detailed in Chevron’s prior briefs, and in its Amended Complaint, the record of wrongful, obstructive tactics is extensive. *See* Dkts. 5, 91; AAC ¶¶ 266-323, 359-60, 361-65; *see also* Exs. 1131, 1094-96.

Indeed, Defendants continued to lie to *this* Court even in the Count Nine proceedings. In one particularly blatant example, the two appearing LAPs asserted that they needed more time so that they could obtain and review the Crude outtakes Chevron had obtained from Berlinger. 11-cv-3718, Dkt. 198 at 4-5. But in truth, Donziger and his colleagues had had the entire set of these outtakes in their possession for nearly a year, had digitized the files for easier access, had reviewed the files, and had prepared analyses of their content. Exs. 1017, 1062.

*d. Defendants have engaged in money laundering.* 18 U.S.C. § 1956(a)(2) prohibits the transfer or attempted transfer of funds from the United States to a foreign country “with the intent to promote the carrying on of specified unlawful activity,” including RICO predicate acts such as extortion, mail fraud, and wire fraud. The specified unlawful activity need not be completed or successful; rather, it is sufficient that a transfer of funds was made to “carry on” the activity. *See United States v. Bodmer*, 342 F. Supp. 2d 176, 191 (S.D.N.Y. 2004).

As detailed in Appendix B to the FAC, Defendants and their co-conspirators have moved substantial funds from the United States to other countries to support their fraudulent scheme. *See* AAC, Appx. B at 14, 16, 18, 21, 24, 26, 29–33, 35, 39, 44, 46, 49, 51, 58, 82, 84, 88, 92, 99–101, 109, 114, 118, 120, 123–24, 126, 128-30, 132–33, 136; *see also* Ex. 1027; *see also* 1018–20; 1027; 1148. These transfers include hundreds of thousands of dollars in payments to Cabrera, including over \$100,000 made through a “secret account” and never reported to Lago Agrio

court or disclosed to Chevron. Exs. R, S, 137, 10–20, 1148. Defendants and their co-conspirators have also orchestrated international wire transfers from DeLeon and the Burford Group, who are “investors” in the global extortion scheme. Ex. 427; 428 at 6; Ex. 429 at 1; Ex. 6 at 619:16-620:3, 622:9-623:24; *see also* Ex. 1026 at 2.

### **3. Defendants Have Injured Chevron**

A RICO claim lies where defendants’ pattern of racketeering or individual predicate acts “injure the plaintiff in his business or property.” *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 495, 105 S. Ct. 3275 (1985). Defendant’s conduct must be a proximate cause of plaintiff’s injury. *Bridge v. Phoenix Bond & Indem. Co.*, 553 U.S. 639, 658, 128 S. Ct. 2131 (2008).

Here, Defendants’ conduct, including the fraudulent scheme as a whole and the individual predicate acts, has injured Chevron in its business and property—that was, after all, Defendants’ intent. *See* Ex. 14 at 19; Ex. 1 (CRS-261-00-CLIP-01); Ex. 2 at 350; Ex. 91 at 52; Ex. 4; AAC ¶ 337. This Court has also found that Defendants’ intend to inflict further injury on Chevron. PI Order at 627 (finding “significant risk that assets would be seized or attached, thus disrupting Chevron’s supply chain, causing it to miss critical deliveries to business partners, damaging Chevron’s business reputation as a reliable supplier and harm to the valuable customer goodwill Chevron has developed over the past 130 years, and causing injury to Chevron’s business reputation and business relationships.”). *Id.* at 627-29; *see also* Exs. 1028-32. These are cognizable injuries under RICO. *See, e.g., Stochastic Decisions, Inc. v. DiDomenico*, 995 F.2d 1158, 1167 (2d Cir. 1993) (legal fees); *Terminate Control Corp. v. Horowitz*, 28 F. 3d 1335, 1343 (2d. Cir. 1994) (lost profits); *Securitron Magnalock Corp. v. Schnabolk*, 65 F.3d 256, 262 (2d Cir. 1995) (“injury to reputation and/or loss of goodwill”).

### **4. Defendants Are Engaged in a Conspiracy to Violate RICO**

In addition to violating Section 1962(c) of RICO, Defendants have engaged in a conspir-

acy to violate RICO and thus are also liable under Section 1962(d), which makes it unlawful to “conspire to violate any of the provisions” of Section 1962. 18 U.S.C. § 1962(d). To be liable under Section 1962(d), a “conspirator must . . . adopt the goal of furthering or facilitating the criminal endeavor.” *Salinas v. United States*, 522 U.S. 52, 65 (1997). This showing “need not be overwhelming,” *id.* (internal citations and quotation marks omitted), and the plaintiff need not even establish an overt act in furtherance of the conspiracy by each defendant. *Id.* at 63–64. Here, there is no dispute that each Defendant had a goal to further or facilitate the criminal enterprise, which each Defendant knowingly joined and furthered. *See, e.g.*, AAC ¶¶ 366–71.<sup>23</sup>

## **5. Defendants Have Committed Numerous Torts**

### **a) Extensive Evidence Establishes Defendants’ Fraud**

“Under New York law, “the essential elements of a . . . fraud claim include a material, false representation, an intent to defraud thereby, and reasonable reliance on the representation, causing damage to the plaintiff.”” *Turtur v. Rothschild Registry Int’l, Inc.*, 26 F.3d 304, 310 (2d Cir. 1994). Fraud can be perpetrated in connection with litigation. *See G-I Holdings v. Baron & Budd*, 238 F. Supp. 2d 521, 542 (S.D.N.Y. 2002); *see also Eisen*, 974 F.2d at 253. And fraud lies where the defendant deceives a third party to the plaintiff’s detriment. *N.B. Garments (PVT.), Ltd. v. Kids Int’l Corp.*, No. 03 Civ. 8041 (HB), 2004 U.S. Dist. LEXIS 3774, at \*3 n.5 (S.D.N.Y. Mar. 10, 2004) (“New York law has, since the 1800’s, allowed for fraud claims based on third-party reliance.”); *Buxton Mfg. Co. v. Valiant Moving & Storage, Inc.*, 657 N.Y.S.2d 450, 451, 239 A.D.2d 452 (App. Div. 1997); *see also Hyosung Am., Inc. v. Sumagh Textile Co.*, 25 F. Supp. 2d 376, 383 (S.D.N.Y. 1998) (distinguishing contrary Second Circuit authority).

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<sup>23</sup> In contesting Chevron’s RICO claim on extraterritoriality grounds, Defendants mischaracterize it. There is no issue of extraterritorial application here, where U.S. defendants, acting under the direction of a U.S. “field general” (Donziger), work with other defendants operating in the U.S. to target a U.S. victim. PI Order at 611, 643; *see also* 11-CV-00691 Dkt. 324 at 8–12; Dkt. 333 at 15–18.

Chevron has provided substantial evidence of Defendants' fraud; indeed, several federal courts have already recognized it. *See, e.g., Chevron Corp. v. The Weinberg Group*, No. 1:11-mc-00409-JMF (D.D.C.) (Sept. 8, 2011), Dkt. 24 ("there is more than sufficient evidence of a prima facie case that the [cleansing consultant's] work was part of a fraud upon the Ecuadorian court"); *Chevron Corp. v. Champ*, 2010 WL 3418394, at \*6 (W.D.N.C. Aug. 30, 2010) (finding that Defendants' conduct "would in fact be considered fraud by any court."); *In re Chevron Corp.*, 633 F.3d 153, 167 (3d Cir. 2011); *Chevron Corp. v. E-Tech Int'l*, No. 10cv1146-IEG, 2010 WL 3584520, at \*6 (S.D. Cal. Sept. 10, 2010); *In re Chevron Corp.*, Nos. 10-MC-21 JH/LFG, 10-MC-22 JH/LFG (D.N.M. Sept. 13, 2010).

Defendants repeatedly presented evidence and made statements to Chevron and to various tribunals—including U.S. courts, the Congress, and several regulatory bodies—that they knew to be false. *See* Ex. DM, Ex. 1 (CRS-193-00-CLIP-01); Ex. 2 at 252. Ex. 136 at 88:6–91:6, 115:15–24, 118:15–21; 123; Ex. 140; AAC ¶¶ 68, 109–21, 187–89, 235, 244–59, 357, 392. For example, Defendants repeatedly asserted that they did not have a close relationship with Cabrera and that claims to the contrary were "simply ridiculous." Ex. 212 at 140166-140167; Exs. 213; 251-53; 255; 257; 274; Ex. 1025. Even Donziger now concedes that these denials were "not accurate." Ex. 6 at 2291:10–25.

There is also no doubt that these misrepresentations were material because "a reasonable man would attach importance to" the misrepresented facts. *List v. Fashion Park, Inc.*, 340 F.2d 457, 462 (2d Cir. 1965). The Cabrera Report is a central piece of Defendants' scheme to defraud, it was incorporated (although disclaimed) into the fraudulent judgment, has played a key role in Defendants' fraudulent publicity campaign, and many Ecuadorian and U.S. courts have attached importance to the relationship between Defendants and Cabrera. Ex. C at 57–58; Exs.

199; 217; 219; 221; 1023 (“Summary Report of Expert Examination,” purportedly written by R. Cabrera). Indeed, Defendants *still* prominently feature the Cabrera report on their website, and *still* tout it as the work of “court-appointed independent expert, Richard Cabrera.” Ex. 251.

Defendants intended to defraud Chevron, the courts, and others when it made those false representations. For example, Donziger admitted that his goal was to secure an expert who would “play ball with us and let us take the lead *while projecting the image that he is working for the court.*” Exs. 1, 2 at 76 (emphasis added). And Donziger and Page discussed manufacturing damages claims not based on evidence, but in order to “make media/court/CVX itself start thinking in terms of billions.” Ex. 1068. These false representations all served the ultimate objective of “jack[ing] up” the damages estimate, which was then leveraged into a fraudulent judgment. Exs. 1, 2 at 253. These material misrepresentations have had their intended effect, even if Defendants have not yet achieved their ultimate objective of forcing Chevron to pay them off. Chevron has been forced to engage in costly litigation to unearth the truth. *Cf. Hazel-Atlas Co. v. Hartford Co.*, 322 U.S. 238, 245, 64 S. Ct. 997 (1944). And various third parties relied on Defendants’ false statements. For example, the Ecuadorian court in issuing its \$18 billion judgment against Chevron relied extensively on Defendants’ false representations presented through, among other things, the fabricated Cabrera Report and the expert reports that purported to “cleanse” it. *See, e.g.*, AAC ¶¶ 325-26; *see also* PI Order at 601 (recognizing that Donziger and the LAPs “obtain[ed] and formulat[ed] expert reports for submission in the Lago Agrio case”); Ex. 1100. Defendants’ wrongdoing, abetted by Ecuadorian judges at the behest of and in collusion with other Ecuadorian officials (*see* Exs. 1084–92, 1130, 1136–37), has so thoroughly corrupted the proceedings that there is no way an Ecuadorian appellate can “cleanse” the judgment—try as it might—other than by throwing the case out completely. *See Aoude v. Mobil Oil*

*Corp.*, 892 F.2d 1115, 1121 (1st Cir. 1989) (“A malefactor, caught red-handed, cannot simply walk away from a case, pay a new docket fee, and begin afresh. History is not so glibly to be erased. Once a litigant chooses to practice fraud, that misconduct infects his cause of action, in whatever guises it may subsequently appear.”). Additionally, as recently reported by the New York Times, then-Attorney General Cuomo unwittingly relied on the Defendants’ and their co-conspirators’ false representations when he “subtly threatened to investigate Chevron,” regarding its disclosures about the case. Ex. 1069.

Chevron has suffered real and concrete harms due to the Defendants’ fraudulent claims, including the expenditure of millions in litigation costs and fees in defending against this sham litigation. AAC ¶¶ 337–38. These injuries are manifest and immediate.

**b) Defendants Have Been and Continue to Be Unjustly Enriched**

A claim for unjust enrichment arises when “it is against equity and good conscience to permit the defendant to retain what is sought to be recovered.” *Paramount Film Distrib. Corp. v. State*, 285 N.E.2d 695, 698, 30 N.Y.2d 415, 334 N.Y.S.2d 388 (1972). It is “axiomatic” that “[w]hen a court is called upon to exercise its equitable powers,” “it may provide whatever relief is necessary and proper to do *complete justice* under the circumstances between the parties.” *United States v. William Savran & Assocs., Inc.*, 755 F. Supp. 1165, 1182 (E.D.N.Y. 1991) (emphasis added). Courts have recognized that a claim of unjust enrichment is appropriate against a defendant who “knowingly further[s] the scheme to defraud” and is “enriched” at the plaintiff’s expense. *Eastman Kodak Co. v. Camarata*, No. 05-CV-6384L, 2006 WL 3538944, at \*14–15 (W.D.N.Y. Dec. 6, 2006); *see also Minnelli v. Soumayah*, 839 N.Y.S.2d 727, 728, 41 A.D.3d 388 (App. Div. 2007) (extortionate behavior may constitute “unjust enrichment”).

Defendants have already been enriched in myriad ways by their fraudulent scheme against Chevron—including in the form of fees and publicity generated as a result of their

scheme. AAC ¶¶ 146, 246–59, 328, 337. Donziger has paid himself over \$1 million, and Fajardo and Yanza have received thousands of dollars as international environmental celebrities and prize winners. Ex. 162 at 16. These enrichments have unmistakably come at Chevron’s expense. And Defendants will be enriched many times these amounts, from Chevron directly, if they are able to collect on their fraudulent judgment in whole or in part.

**c) Defendants Have Tortiously Interfered With Contracts**

The elements of a claim for tortious interference in New York are: “(1) the existence of a valid contract between the plaintiff and a third party; (2) the defendant’s knowledge of the contract; (3) the defendants’ intentional procurement of the third-party’s breach of the contract without justification; (4) actual breach of the contract; and (5) damages resulting therefrom.” *Sokol Holdings, Inc. v. BMB Munai, Inc.*, 726 F. Supp. 2d 291, 304 (S.D.N.Y. 2010). A plaintiff “need not show actual malice to prove a claim of tortious interference with an existing contract.” *Id.* at 304–05. The “critical inquiry” “is whether the breaching party would have breached its obligations without the involvement of the interfering party.” *Antonios A. Alevizopoulos & Assocs. v. Comcast Int’l Holdings, Inc.*, 100 F. Supp. 2d 178, 187 (S.D.N.Y. 2000).

Defendants have tortiously interfered with the 1998 Final Release between Ecuador, Petroecuador, and TexPet, which served to “release, absolve and discharge TEXPET” of environmental damage in Ecuador. *See* AAC ¶¶ 56–57; *see also* PI Order at 598 (“the release by Ecuador seems to have been intended to put an end to any claims or litigation”); Exs. 1008–10. Defendants intentionally sought to ensure that the ROE would breach its contractual obligations to TexPet, and they were able to do this by, among other things, manufacturing false evidence of liability through the Cabrera Report, seeking the criminal prosecution of Chevron’s attorneys, and by drafting portions of the fraudulent judgment itself. *See* n.5, *supra*; AAC § B.2.

There is no question that the ROE has breached the 1998 Final Release by, among other

things, attempting to eviscerate the rights of TexPet and its affiliates to be free of the environmental claims that Defendants have brought, and generally supporting Defendants' efforts to extort billions from Chevron for the very environmental claims covered by the release. Exs. 1127, 1153; *see also* AAC ¶¶ 83-84, 200-13, 325, 399; *see generally* Ex. 1123. These breaches have caused substantial damage to Chevron, as it has been deprived of the benefits of the 1998 Final Release. In addition, Chevron's business and business reputation have been seriously harmed by Defendants' interference with the release. *See* AAC ¶¶ 324-338; Ex. 1149.

**d) Chevron Has Established a Trespass to Chattels**

A claim of trespass to chattels arises under New York law for “‘intentionally . . . using or intermeddling with a chattel in the possession of another,’ where ‘the chattel is impaired as to its condition, quality, or value.’” *Register.com, Inc. v. Verio, Inc.*, 356 F.3d 393, 404 (2d Cir. 2004) (quoting Restatement (Second) of Torts § 217(b)) (1965).

Here, Defendants have sought to interfere with Chevron's funds and destroy its business and business reputation as part of their extortionate scheme. *See* AAC ¶¶ 337, 404-05. For example, Donziger expressly admitted that their scheme was to “‘increase the leverage and increase the cost to Chevron” and to pressure Chevron through “the cost of all the hassle they have to put up with from the environmental groups” and “the cost of their sullied reputation.” Ex. 91 at 52; *see also* Exs. 1012-13. Defendants have been successful in damaging the condition, quality, and value of Chevron's business and business reputation and interfering with Chevron's use of its own resources. *See* AAC ¶¶ 246-59, 337, 404-05.

Chevron's goodwill and business reputation fall within the definition of chattel, which courts have interpreted broadly to include anything in which “the possessor has a legally protected interest.” *Compuserve Inc. v. Cyber Promotions, Inc.*, 962 F. Supp. 1015, 1022-23 (S.D. Ohio 1997). Courts applying New York law have expressly recognized that intangible property



rights can form the basis of a trespass to chattels claim. *See, e.g., In re JetBlue Airways Corp. Privacy Litig.*, 379 F. Supp. 2d 299, 328–29 (E.D.N.Y. 2005); *see also* Black’s Law Dictionary (9th ed. 2009) (defining “chattel” as “a tangible good or an intangible right (such as a patent)”).

**e) The LAPs Are Liable for the Torts of Their Co-Conspirators**

Under New York law, “[i]f an underlying, actionable tort is established, . . . plaintiff may plead the existence of a conspiracy . . . to demonstrate that each defendant’s conduct was part of a common scheme.” *World Wrestling Fed’n Entm’t, Inc. v. Bozell*, 142 F. Supp. 2d 514, 532 (S.D.N.Y. 2001) (citation and internal quotations omitted). As this Court has noted, civil conspiracy is “a vehicle for holding co-conspirators vicariously liable for torts committed by others in furtherance of a conspiracy.” Dkt. 278 at 10; *see also Levin v. Kitsis*, 920 N.Y.S.2d 131, 133–34, 82 A.D.3d 1051 (App. Div. 2011); *AM Cosmetics Inc. v. Solomon*, 67 F. Supp. 2d 312, 322 (S.D.N.Y. 1999).

Chevron has established multiple underlying tort claims against Defendants and their co-conspirators, and the substantial injuries from those torts. *See* Sections I.E., *supra*. Chevron has also established the “what, when, where and how” of the conspiracy. *DDR Constr. Servs., Inc. v. Siemens Indus., Inc.*, 770 F. Supp. 2d 637, 660 (S.D.N.Y. 2011); *see* Section I.E., *supra*. There is no plausible argument that any Defendant in this case—including the LAPs—was involved “unintentionally.” Indeed, the LAPs have purportedly delegated broad authority to Fajardo and “ratified and approved each and every action to date performed by [him] or by any other persons authorized by [him] to act in defense of the Ecuadorian Plaintiffs’ interests in the *Lago Agrio* Litigation and in all other related actions.” Ex. EJ; *see also* n.8, *supra*. Thus, the LAPs are liable for the same tortious violations as the other Defendants.

**II. Alternatively, in the Event of Any Potential Delay in Resolving Chevron's Motion, the Court Should Enter a TRO Preventing Defendants From Dispersing Their Interest in the Judgment or Otherwise Collecting Proceeds**

Pursuant to CPLR 6210 and Federal Rule of Civil Procedure 64, Chevron is entitled to a temporary restraining order barring Defendants, their agents, employees, and attorneys, from transferring their interest in the Ecuadorian judgment or seeking to convert it into proceeds, until an order of attachment is issued or denied. New York's attachment statute allows the court "without notice to the defendant," to "grant a temporary restraining order prohibiting the transfer of assets" so as to preserve the assets of the defendant pending the Court's decision on the motion for attachment. *See* CPLR 6210. "The temporary restraining order is designed to protect the plaintiff during the period which will elapse from the time the plaintiff moves for an order of attachment to the time the sheriff is able to levy upon each garnishee under the order, after it has been granted." 12 Jack B. Weinstein, Harold L. Korn & Arthur R. Miller, *New York Civil Practice* ¶ 6210.01, "Provision Enables Plaintiff to Proceed on Notice with Protection," (2d ed. 2005); *see also N.Y. Janitorial Serv., Inc. v. Easthampton Dewitt Corp.*, 420 N.Y.S.2d 100, 101, 100 Misc. 2d 814 (N.Y. Sup. Ct. 1979) (similar).

Although this Court can and should rule on Chevron's attachment motion now, Defendants will undoubtedly argue that this Court should delay any decision until the Second Circuit issues its opinion in the related *Salazar* case. At a minimum, however, Chevron should not be prejudiced by any delay in resolution of this attachment motion, whether occasioned by a desire to await the Second Circuit's ruling or otherwise. Therefore, if the Court were to decide to defer ruling until after receiving the Second Circuit's guidance or for any other reason, it should enter a TRO now. Defendants' efforts to conceal and encumber the proceeds from the judgment through assignments to third parties, illustrates the significant risk Chevron runs of these Defendants becoming judgment-proof absent a temporary restraining order preventing the assign-

ment and dissipation of Defendants' assets pending the decision on the attachment motion. Moreover, Defendants should be temporarily restrained from seeking to convert their judgment interest into proceeds (*e.g.*, by attaching or seizing Chevron's assets), before they must ultimately "transfer or deliver" this property to the United States Marshal. *See* CPLR 6214(b) (before a person formally transfers or delivers the attached property to satisfy an attachment order, the person "is forbidden to make or suffer any sale, assignment or transfer of, or any interference with any such property"); *see also* *Capital Ventures Int'l v. Republic of Argentina*, 652 F.3d 266, 270 (2d Cir. 2011) ("Capital Ventures II") (Lynch, J.) ("Under New York law, an attachment bars 'any sale, assignment or transfer of, or any interference with' the property attached." (*quoting* CPLR § 6214(b)). Because Chevron faces immediate and irreparable injury, loss, and damages, as the Court deems appropriate, Defendants should be temporarily restrained from assigning, alienating, transferring, encumbering or otherwise dispersing their interest in the fraudulent Ecuadorian judgment, or otherwise collecting on such proceeds, pending this Court's ruling on Chevron's attachment motion.

### CONCLUSION

For the foregoing reasons, Chevron respectfully requests that the Court issue an order of attachment directing Defendants to transfer their interest in the Ecuadorian judgment to the U.S. Marshal. Chevron also respectfully requests that in the event the Court wishes to defer ruling on this motion until the Second Circuit issues its decision in connection with the preliminary injunction and declaratory relief claims, the Court issue a Temporary Restraining Order enjoining and restraining Defendants, their agents, employees, and attorneys from alienating, transferring, encumbering or otherwise dispersing their interest in the Ecuadorian judgment until such time as the motion for attachment is determined.

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Respectfully submitted,

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