

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

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

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PRELIMINARY STATEMENT

Once again, Defendants fail to dispute the overwhelming evidence of their wrongdoing. They submit no party declarations and *no evidence at all* to controvert Chevron's showing of extortion, fraud, and other U.S. torts, much of which comes directly from Defendants' own mouths. In the face of Chevron's massive evidentiary showing, Defendants muster only quibbles over a couple of RICO predicate acts, but never even mention extortion, fraud, or money laundering. And their few attempts to explain away selected pieces of evidence are rife with misrepresentations. Consequently, Defendants' extortion and fraud scheme is effectively an admitted fact, Chevron's likelihood of success a virtual certainty, its need for security to secure payment on its claims obvious, and application of New York's attachment statutes to these Defendants straightforward and compelled.

The evidence of Defendants' culpability is so overwhelming that Defendants have not requested an evidentiary hearing. If the Court nonetheless desires to hold one, Chevron would welcome the opportunity to present its evidence in open court. But given the largely undisputed record here, this is unnecessary. The Court can and should grant Chevron's motion now.

ARGUMENT

I. Defendants Mischaracterize the Relief Chevron Seeks

A. Attachment Is Distinct From the Preliminary Injunction Order on Appeal

Defendants mischaracterize Chevron's attachment motion as an "end run around the Second Circuit's order." Dkt. 365 at 10. Attachment would provide Chevron security to recover in the likely event it prevails on its claims for money damages here.¹ It would not replicate the terms of the preliminary injunction as a general prohibition on Defendants initiating any pro-

¹ See CPLR 6201(1), (3) (permitting attachment against foreign nondomiciliaries and defendants committing acts to frustrate a potential adverse judgment); *In re Amaranth*, 711 F. Supp. 2d 301, 312 (S.D.N.Y. 2010).

ceedings outside Ecuador seeking in any way to recognize the judgment. Rather, it would merely protect Chevron, giving it a priority lien over Defendants' assets, including the Ecuadorian judgment, preventing Defendants from collecting and dissipating any proceeds pending resolution of Chevron's claims. In other words, this is nothing more than a straightforward application of New York's attachment statutes, entitling Chevron to a prejudgment attachment as a party likely to succeed on its damages claims and unable to collect otherwise. As the Second Circuit has observed, "[F]reezing of assets is the very essence of attachment. The argument advanced by [Defendants] would effectively make every order of attachment injunctive and immediately appealable." *Allstate Ins. Co. v. A.R. Medical Rehabilitation, P.C.*, 409 Fed. App'x 489, 490-91 (2d Cir. 2011). "We decline to endorse such an extreme and absurd result." *Id.* Thus, Defendants' protestations that they do not presently threaten enforcement, Dkt. 365 at 9–10, are irrelevant to whether Chevron satisfies the elements of CPLR Article 62.

Furthermore, the vacated preliminary injunction was based on Chevron's declaratory relief claim, not the other eight claims. *See Chevron Corp. v. Donziger*, 768 F. Supp. 2d 581, 638–39 (S.D.N.Y. 2011). In fact, Count 9 could not be the basis for an attachment because it is not a demand for "a money judgment." CPLR 6201. Chevron's other claims do not depend on the unenforceability of the Ecuadorian judgment—for example, the attempts to extort a payment from Chevron based on the fraudulent Cabrera Report. And New York attachment law does not require irreparable harm, since it applies only to actions for a "money judgment." CPLR 6201.

B. Attachment Does Not Implicate Comity

Chevron asks this Court to do what U.S. courts typically do in ordering attachment: temporarily ensure the availability of Defendants' assets while the case proceeds to determine whether plaintiffs must pay damages to Chevron. *See Ayyash v. Bank Al-Madina*, 233 F.R.D. 325, 327 (S.D.N.Y. 2005) (granting attachment in civil RICO action). Nothing requires this

Court to “decide that no court anywhere in the world could recognize a judgment that issues from Ecuador,” nor to “prevent any foreign court from assessing the Ecuadorian judgment under its own laws,” as Defendants claim. Dkt. 365 at 10, 12. There is no anti-suit injunction. An attachment order would simply give Chevron an interim, priority lien on Defendants’ assets.

Defendants also assert without explanation that the attachment Chevron seeks is “offensive to the courts of foreign sovereigns and the principles of international comity.” Dkt. 365 at 8. But attachment does not “restrict[] the jurisdiction of the court of a foreign sovereign,” *China Trade v. M.V. Choong Yong*, 837 F.2d 33, 35 (2d Cir. 1987), and Defendants’ comity argument cites no attachment cases. Dkt. 365 at 11-12. Ecuador’s courts are free to continue adjudicating Defendants’ environmental claims and “enter a judgment against Chevron.” Dkt. 365 at 12. But it would distort “comity,” and be an affront to *U.S.* sovereignty, to require a U.S. federal court to refrain from ordering attachment in aid of Chevron’s claims under U.S. laws, simply because Defendants might seek to enforce different, Ecuadorian-law claims against Chevron.² No New York court has denied levying on a sister- or foreign-state judgment as impermissibly “offensive” to that jurisdiction. *See Breezevale v. Dickinson*, 693 N.Y.S.2d 532, 262 A.D.2d 248 (App. Div. 1999); *Motorola Credit v. Uzan*, 739 F. Supp. 2d 636, 641-42 (S.D.N.Y. 2010) (Rakoff, J.).

² Defendants’ “comity” argument, moreover, ignores virtually all of the evidence of fraud in the Ecuadorian judgment itself. Chevron has continued to uncover and file evidence showing that Defendants and others working at their behest secretly participated in the ghostwriting of the Ecuadorian judgment. *See* Ex. 1196 (Exhibits numbered 1169 through 1237 are attached hereto to the concurrently filed Declaration of Mary Beth Maloney). Defendants, while forced to concede that material from their internal files “somehow” appears in the judgment, have not even attempted to explain it in any U.S. pleading subject to Rule 11. *See* Maloney Decl. ¶ 8. The only piece of judgment fraud evidence Defendants contest here (and in the Second Circuit (Dkt. 606))—the Fajardo email discussing an Ecuadorian court decision on trusts—is asserted to be “a cut-and-paste excerpt from a published Ecuadorian Supreme Court decision.” *See* Dkt. 365 at 41. But this is false. Defendants attach no Ecuadorian court decision supposedly “cut-and-paste[d]” in the judgment. Fajardo’s email expressly includes a “transcription” of an Ecuadorian court opinion, but the transcription contains numerous mistakes or paraphrasings *not* found in any published version of the opinion. *See* Maloney Decl. ¶¶ 2-16. The judgment repeats all of these mistakes, exactly as they appear in Fajardo’s email alone, as well as a citation error Fajardo made there citing a case that has nothing to do with trusts. *See id.* Thus, this Fajardo email is particularly damning, and Defendants’ representations to this Court and the Second Circuit are demonstrably false.

C. Personal Jurisdiction Claims Should Not Delay This Motion’s Resolution

Defendants argue that while “the Second Circuit is also considering whether this Court has personal jurisdiction over [Defendants Camacho and Payaguaje],” this Court should not act. Dkt. 365 at 13. But Defendants offer no basis to revisit this Court’s finding of personal jurisdiction over the two appearing LAPs. *Chevron Corp.*, 768 F. Supp. 2d at 639–645.³ And Donziger does not dispute personal jurisdiction, and many defendants—including the Frente, designated to control the judgment trust—have defaulted, waiving any such objections. *See id.* at 639 n.324.

D. Defendants’ Funding Arguments Are Unavailing

Without any evidence—not even a conclusory declaration—Defendants insist attachment will “deprive the Ecuadorian Plaintiffs of the funding necessary” to cover their legal expenses. *See* Dkt. 365 at 13-14; *see also* Dkt. 606-2 at 8. But they ignore the contingency fee and funding arrangements that have thus far fueled their litigation and offer no evidence that their resources have been depleted.⁴ Nor do they explain how attachment would alter existing agreements or interfere with their ability to obtain standard litigation financing. No New York case has recog-

³ Even if the Second Circuit were somehow to find no personal jurisdiction over the LAPs under CPLR §§ 301 and 302, attachment of their assets provides an alternative basis for jurisdiction. “[A] situation can occur in which the necessary contacts to satisfy due process are present, but *in personam* jurisdiction will not be obtained in this State because the statute does not authorize it.” *Banco Ambrosiano, S.P.A. v. Artoc Bank & Trust, Ltd.*, 464 N.E.2d 432, 435 (1984) (citations omitted). And, in New York, *quasi in rem* jurisdiction “remain[s] a viable method for subjecting a nondomiciliary to suit in this State,” even though such jurisdiction nonetheless must meet the modern due process requirement of minimum contacts. *Id.* (citing C.P.L.R. § 301); *see also* *Cargill, Inc. v. Sabine Trading & Shipping Co., Inc.*, 756 F.2d 224, 228 n.2 (2d Cir. 1985).

⁴ Funding agreements and bank account records produced by Donziger show that the LAPs have ample resources now. *See* Ex. 1197–98 (DeLeon: \$1,750,000, \$1,250,000); Ex. 1199 (Kramer: \$150,000). And the LAPs have been active participants in offensive Section 1782 proceedings. *See, e.g., In re Yaiguaje*, No. 11-mc-80087-CRB (N.D. Cal. Apr. 27, 2011) (seeking discovery from the Mason Investigative Group, Inc.); *In re Yaiguaje*, No. 10-mc-80324 (N.D. Cal. Dec. 30, 2010) (seeking discovery from Diego Borja). The LAPs have also spent substantial funds filing repetitive motions. *See Chevron Corp. v. Donziger, et al.*, No. 11-CV-1150 (2d Cir. Apr. 22, May 12, June 21, July 11, Aug. 8 & 16, and Dec. 8, 2011) Dkts. 48; 135; 295; 440; 493; 498; 537; 608; *see also* Dkts. 237; 263; 314; 326; *see also* *Chevron Corp. v. Salazar*, No. 11-CV-03718 (S.D.N.Y. June 2, 7 & 14, Aug. 30, Sept. 2, 2011) Dkts. 4; 12; 14; 31; 48; 250; 274; Dkts. 608-1; 608-2; 618; *In re Applic. of Naranjo*, No. 11-2259 (2d Cir. June 2, 2011) Dkt. 1-1 (recusal).

nized financial hardship as a limitation on, much less a complete defense to, a valid attachment, especially where, as here, the defendant has made no evidentiary showing. *See Corporacion Nacional del Cobre de Chile v. Orrego Hirsch*, 673 N.Y.S.2d 681, 682-83 (App. Div. 1998) (reversing modification of attachment on “unsubstantiated and bald assertions of poverty”); *Vergari v. Lockhart*, 144 Misc. 2d 860, 871 (N.Y. Sup. Ct. 1989).

Claiming the “only means” of obtaining funding is to assign an interest in the judgment, Dkt. 365 at 14, Defendants ignore alternative financing arrangements, including: (1) contingency fee agreements in which they promise to pay a percentage of any proceeds,⁵ *see* Robert L. Rossi, *Attorneys’ Fees* § 2.11 (3d ed. 2011); (2) loans whereby investors take a secondary position to Chevron’s priority lien on the judgment—akin to a second mortgage, *see Fireman’s Fund Ins. Co. v. D’Ambra*, 766 F.2d 95, 96-97 (2d Cir. 1985); and (3) agreements to assign an interest *after* resolution of this action and release of the attachment levy, *see* CPLR section 6224.⁶

II. Chevron Satisfies the Legal and Statutory Requirements for Attachment

Defendants’ admitted intention to assign their interest in their principal asset—the Ecuadorian judgment—justifies Chevron’s need for an attachment. *See, e.g., Thornapple Assocs., Inc. v. Sahagen*, No. 06 Civ. 6412 (JFK), 2007 WL 747861, at *8 (S.D.N.Y. Mar. 12, 2007).

And Defendants’ interest in the judgment is subject to attachment here because (1) Defendants are subject to personal jurisdiction in New York, and (2) by Chevron, the purported obligor under the Ecuadorian judgment, is present in New York. *See* Mot. at 18; *see also Breezevale*, 693

⁵ The LAPs have contingency agreements with many lawyers and advisors, including Patton Boggs LLP and F. Gerald Maples, P.A., the LAPs’ legal representatives in this proceeding and the related appeal. *See* Exs. 1200, 1203, 1204, 1205, 1206; Dkt. 355-36 (Ex. 1118); Dkt. 355-33 (Ex. 1107); *see also* Dkt. 355-37 (Exs. 1120, 1122); Dkt. 355-32 (Ex. 1106); Dkt. 355-36 (Ex. 1117). Numerous “investors” stand to profit. *See* Ex. 1207.

⁶ The law review article Defendants cite is highly critical of litigation funding via assignment of interests in future recoveries, on ethical and other grounds. Ex. 1208 at 625, 627. Commentators have noted ethical concerns regarding Defendants’ relationship with Burford. *See* Ex. 1202 at 2. Defendants’ reference to a North Carolina State Bar ethics opinion addressing funds to generate a plaintiff’s living expenses is irrelevant. Dkt. 365 at 14.

N.Y.S.2d 532 (attaching judgment against Exxon in New York); *see also Hotel 71Mezz Lender LLC v. Falor*, 14 N.Y.3d at 312. “[P]roceeds of the judgment of a court of another state, even if that judgment has not been domesticated in New York, may be attached or levied in New York by a creditor of the judgment creditor if the debtor on the sister-state judgment is subject to process here.” *JPMorgan Chase Bank, N.A. v. Motorola, Inc.*, 846 N.Y.S.2d 171, 47 A.D.3d 293, 313 (App. Div. 2007) (collecting cases); *EM Ltd. v. Rep. of Argentina*, No. 03 cv. 2507, 2009 WL 2568433 at *5-8 (S.D.N.Y. Aug. 18, 2009). It is also uncontested that Chevron’s claims (including treble damages under RICO) exceed any counterclaims. *See* CPLR 6212(a).

Defendants fail to cite any support for their false assertion that a judgment not yet enforceable is unattachable as an intangible interest. To the contrary, in *Uzan*, Judge Rakoff ordered the defendants to turn over to plaintiffs all property in which it had “an interest, real or inchoate, tangible or intangible,” including a “*potential* recovery in a pending arbitration against the Government of Turkey, including the proceeds of any award in [defendant’s] favor.” 739 F. Supp. 2d at 641-42 (emphasis added); *see also Supreme Merch. Co. v. Chem. Bank*, 70 N.Y.2d 344, 351, 514 N.E.2d 1358 (1987) (“even claims that depend on further action by the debtor may constitute ‘property’”). And their unsupported assertion that a plaintiff cannot attach its own obligation to pay a defendant whom it is suing on a debt, judgment, or potential claim it owes or may owe that same defendant is wrong: New York and other states’ courts have endorsed this.⁷

⁷ Defendants’ effort to distinguish *Wehle v. Conner*, 83 N.Y. 231 (1880), fails. There, the defendants as the judgment debtor already had property with the sheriff at the time it sought attachment. The court held that meant only that “no formal levy or notice is necessary to subject it to the lien of the attachment,” not that attachment would have been prohibited had it not already been in the sheriff’s hands: “The 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?” Other states agree. *See, e.g., G. B. Hurt v. Fuller Canneries Co.*, 263 Pa. 238 (Pa. 1919) (allowing plaintiff to attach judgment obtained by defendant against plaintiff); *Pasquinelli v. Southern Macaroni*, 272 Pa. 468 (Pa. 1922) (holding plaintiff can properly attach judgment he owes defendant from related case in another jurisdiction); *see also Grayson v. Veeche*, 1823 WL 1471 (La. 1823) (attachment where debtor brought suit against his

A. The Evidence of Donziger’s Asset Manipulations Satisfies CPLR 6201(3)

Donziger’s prior and promised course of conduct is sufficient “circumstantial evidence,” of his “intent” to “frustrate the enforcement of a judgment that might be rendered in [Chevron’s] favor.” *Bogoni v. Friedlander*, 176 A.D.2d 527, 528 (App. Div. 1991) (quoting CPLR 6201(3)); *see also JSC Foreign Econ. Ass’n Technostroyexport v. Int’l Dev. and Trade Servs., Inc.*, 305 F. Supp. 2d 482, 487 (S.D.N.Y. 2004) (finding intent “usually inferred from the circumstances”).⁸ Donziger does not deny that his direct or indirect interest in the fraudulent Ecuadorian judgment is his only asset relevant to satisfying a judgment here. *See Bank Leumi Trust Co. of N.Y. v. Istim, Inc.*, 892 F. Supp. 478, 485 (S.D.N.Y. 1995) (6201(3) attachment citing defendant’s lack of “significant assets anywhere in the United States”).⁹

Donziger’s prior course of conduct,¹⁰ admissions in defense of this motion, and silence in

judgment creditor, and caused the amount of the judgment lately recovered against him to be attached); *Richardson v. Gurney* 9 La. 285 (La. 1836) (holding that money due on judgment proper object of attachment); *U.S. Nat. Bank v. Rawson*, 43 P.2d 184 (Or. 1935); *Haas v. LeFebre*, 502 N.W.2d 617 (Wis. App. 1993); *Gallun v. Weil*, 92 N.W. 1091 (Wis. 1903); *Harriman v. Richardson*, 273 F. 752, 754 (D.C. Cir. 1921); *Norco Realty Corp. v. Margulies*, 154 A.2d 757 (Conn. Super. Ct. 1959); *Oren Lyman v. Wood*, 42 Vt. 113 (Vt. 1869); *U.S. Steel Corp. v. Commercial Contract*, 168 F. Supp. 375, 379 (D.N.J. 1958); *La Varre v. Int’l Paper*, 37 F.2d 141, 149 (E.D.S.C. 1929); *Norton v. Norton*, 3 N.E. 348, 354 (Ohio 1885) (cases collected at Exs. 1210–22).

⁸ As explained above, while unsatisfied, that interest is sited in New York. Under CPLR 6201(3) Donziger’s fraudulent transfers or assignments of his interest justify an attachment. Donziger’s argument that, despite his contingency fee arrangement, he has no attachable interest in the fraudulent judgment is legally irrelevant at this stage. *See* Dkt. 365 at 25. Donziger’s interest in the judgment under Rule 64 is also distinguishable from his interest in the judgment for purposes of intervention under Rule 24(a). The “the word ‘interest’ as it is used in Rule 24(a) has been construed very narrowly . . .” Dkt. 327–6–7. Rule 64 and CPLR 6201 *et seq.* merely require that the prejudgment debtor hold an assignable or transferrable asset. *See* Dkt.354 at 17 (citing *ABKCO Indus. v. Apple Films*, 39 N.Y.2d 670, 385 N.Y.S.2d 511 (1976)). *See* Dkt. 355-57 (Ex. 1122).

⁹ Defendants’ cases suggesting assignment does not show fraudulent intent do not apply where the damages at issue are far beyond the scope of defendant’s assets. *See, e.g., Jannuzzo v. de Cuevas*, 216 A.D.2d 37, 627 N.Y.S.2d 919, 919 (1995) (finding 6201(3) attachment proper where “defendant was attempting to frustrate the judgment by assigning art work that constituted the bulk of her assets in this State”); *Mishkin v. Kenney & Branisel, Inc.*, 609 F. Supp. 1254, 1256 (S.D.N.Y. 1985).

¹⁰ Donziger has orchestrated a series of asset transfers, before and after Chevron commenced this action, exchanging his “equity stash” for cash. He concedes the October 2010 and January 2011 agreements. Dkt. 365 at 24. He also assigned a piece of his 31.5% contingency fee to Russell DeLeon in exchange for \$250,000. Ex. 1223 at 4095:2-4096:17; bank records with \$250k transfer—Ex. 1224; Exs. 1225, 1226; *see Bank Leumi*, 892 F. Supp. at 484 (finding that “preferential payment” of an honest debt “may be evidence of a larger scheme to . . .

response to Chevron's fraud allegations leave no doubt that he intends to continue his asset assignments and is capable of secreting assets beyond U.S. borders, thereby frustrating enforcement of an adverse judgment.¹¹ See Dkts. 45-2; 355-17; 355-40; 365 at 14; *Fireman's Fund Ins. Co. v. Kapralos*, 942 F. Supp. 836, 841-42 (E.D.N.Y. 1996).

B. Chevron Is Likely to Succeed on Its U.S. Federal and State Law Claims

1. Chevron Is Likely to Succeed on Its RICO Claims

Defendants argue Chevron has not shown Donziger acted with the requisite "wrongful intent or improper purpose," to establish claims for obstruction of justice or witness tampering and assert that Chevron must meet a more stringent standard than a prima facie showing. Dkt. 365 at 16. But a court "must give the plaintiff the benefit of all legitimate inferences that can be drawn from the facts," when determining "that a claim for money judgment exists and that the movant is likely to succeed on the merits." *Nat'l Audubon Soc., Inc. v. Sonopia Corp.*, No. 09 Civ. 975 (PGG), 2009 WL 636952, at *3 (S.D.N.Y. 2009) (citation omitted). And Defendants offer no conceivable proper purpose for threatening and lying to witnesses, willfully violating this Court's orders, and conspiring to conceal evidence from numerous federal courts. See AAC, ¶¶ 311-323. Even Defendants' cited cases hold that "intent" is a "nexus requirement," inferable from conduct, tying liability to acts "that would have the natural and probable effect of interfering with a judicial or grand jury proceeding" *United States v. Quattrone*, 441 F.3d 153, 171

frustrate the enforcement of a judgment and if such a plan is established, attachment will be available"). And he secured \$800,000 in funding in exchange for a stake in the judgment in February and March 2011, after Chevron's complaint was filed and a TRO against the Defendants was entered. See Dkt. 355-36 (Exs. 1114, 1115, 1116); Ex. 1227; *JSC Foreign Econ. Ass'n*, 305 F. Supp. 2d at 487 (asset sell-off during pending motion for preliminary injunction demonstrates "intent" under Section 6201(3)); *Allstate Ins. Co. v. Rozenberg*, 771 F. Supp. 2d 254, 269 (E.D.N.Y. 2011) (evidence of "money laundering scheme" is "prima facie showing" Defendants "secreted assets for the purpose of evading creditors"). Defendants' claim that their pre-RICO filing funding agreements "cannot constitute evidence of fraudulent intent," Dkt. 365 at 24, is thus belied by the facts. Defendants' case law also does not support this so-called timing "rule." See *Bank of China v. NBM L.L.C.*, 192 F. Supp. 2d 183, 188 (S.D.N.Y. 2002) (finding "intent to defraud" from acts *before* suit filed).

¹¹ Donziger failed his burden to respond to the evidence and prove intent. *Mishkin*, 609 F. Supp. at 1256 & n.5.

(2d Cir. 2006); *see also United States v. Thomson*, 76 F.3d 442, 453 (2d Cir. 1996).¹²

2. Chevron Is Likely to Succeed on Its New York State Law Claims

Defendants raise cursory objections to Chevron's state law claims. Rather than dispute the evidence supporting Chevron's fraud allegations, for example, they assert Chevron may not "re-litigate the merits" of the Lago Agrio Litigation. Dkt. 365 at 17. But Chevron's fraud claims do not depend on the so-called "merits" of the case in Ecuador. Defendants' sole case stands for the unrelated point that a witness is not civilly liable for false testimony. *Cattani v. Marfuggi*, 895 N.Y.S.2d 772 (N.Y. Sup. Ct. 2009). They do not try to apply this principle to baseless criminal and civil investigations, slanderous press campaigns, or their other misconduct.¹³

Defendants also misrepresent *their own* claims. They say the "Ecuadorian Plaintiffs could not cause Ecuador to breach the terms of the Release by bringing personal claims to which the Release did not apply." Dkt. 365 at 19. But there are no "personal claims" in the Lago Agrio Litigation, only representational claims for alleged public harms. Ex. 86 at 13-14. Defendants seek to have it both ways by holding Chevron liable for TexPet's conduct while denying Chevron the benefits of TexPet's release.¹⁴ *See* Dkt. 365 at 19.

Defendants' attack on Chevron's trespass to chattels similarly fails. Defendants' acknowledge that Chevron seeks damages to its reputation and goodwill, while arguing such damages do not deprive Chevron of "the use of intangible assets." Dkt. 365 at 19. Similarly, Defendants do not deny that they have obtained "fees and publicity" from their fraud. *Id.* at 20.

¹² Defendants' response to the extensive evidence of their misconduct is to point to the fact that in his email urging "political, professional, even personal pressure" on the court, Aaron Page added the empty disclaimer, "which we can legally and ethically maintain." Dkt. 365 at 41. But pressuring a court is inherently unethical, and Defendants ignored the ethical and legal boundaries. Ex. 1228; *see* Dkt. 365 at 16; Dkt. 355-2 (Ex. 1011).

¹³ Defendants cannot take refuge in the fact that the Ecuadorian court was a participant in their fraud. Dkt. 365 at 18. Chevron does not assert that the Ecuadorian court was entirely a "victim" of the fraud, as Defendants put it, merely the party that invoked or relied upon the false statements to *Chevron's* detriment. Dkt. 324 at 24-25.

¹⁴ Defendants deny the ROE has violated the Final Release, but largely ignore evidence of ROE support for Defendants, even while relying on documents the ROE obtained. *See* Dkt. 355-45 (Ex. 1153); Dkt. 365 at 33.

Finally, there is ample evidence that Defendants have engaged in conspiracy.¹⁵

C. Defendants’ “Unclean Hands” Defense Fails on the Law and the Facts

As the Supreme Court explained in *Grupo Mexicano de Desarrollo v. Alliance Bond Fund, Inc.*, 527 U.S. 308 (1999), attachment is a legal remedy; as a result, unclean hands is not a defense. Defendants cite no case since *Grupo* where any New York court has denied an attachment because of unclean hands. Aside from the factual infirmities of their claims, they cannot show the injury the defense requires. *See Nat’l Distillers & Chem. v. Seyopp*, 17 N.Y.2d 12, 15-16 (1966). And the Second Circuit has said the doctrine does not apply “‘if the defendant has been guilty of misconduct that is more unconscionable than that committed by [the] plaintiff.’” *Dunlop-McCullen v. Local 1-S, ALF-CIO-CLC*, 149 F.3d 85, 90 (2d Cir. 1998) (quoting Wright & Miller, Fed. Prac. & Proc.: Civil § 2946, at 112). Defendants’ proven misconduct is far “more unconscionable” than anything Defendants’ allege Chevron did. And their allegations—of supposed testing irregularities, purported *ex parte* judicial contacts, and alleged involvement in tapping the Lago Agrio judge soliciting bribes—are false. *See Maloney Decl.* ¶¶ 17–63.¹⁶

CONCLUSION

Chevron respectfully requests that this Court now grant its attachment motion.

¹⁵ *See. e.g.*, Ex. 1229 (CRS481-00-CLIP-03, CRS-083-CLIP-03, CRS-083-CLIP-04.2); Ex. 1230 at 1–2, 4, 6; Ex. 1223 at 581:10-583:10, 585:4-587:18, 588:23-589:12, 590:10-591:20.

¹⁶ Concerning the joint judicial inspection process in Ecuador, testing was conducted transparently as part of the adversarial process (as opposed to the later single “global damages” expert assessment secretly hijacked by the LAPs). Chevron conducted its testing according to applicable standards, Defendants never suggested otherwise during the Lago Agrio case, and whatever they now allege obviously did not harm their case. Concerning alleged *ex parte* judicial contacts, Chevron’s lead counsel in Ecuador (Adolfo Callejas) testified that they “did not have substantive meetings with the judges presiding over the Lago Agrio trial outside the presence of the other party.” Ex. 1231 at 85:24-87:2. Concerning the bribery solicitation scandal, in which Lago Agrio Judge Juan Núñez and other Ecuadorian officials were recorded meeting with would-be remediation contractors Borja and Hansen, Chevron was not involved in the meetings or the recordings (*see* Dkt. 366-13), and Defendants’ internal correspondence admits as much (*see e.g.* Ex. 1190 at 2 (LAPs’ counsel Aitan Goelman, a former S.D.N.Y. A.U.S.A., reports to Donziger that the Borja-Escobar tapes “do not discredit Chevron itself, and in fact corroborate them . . . it seems clear from the tapes that Chevron is telling the truth when they claim not to have instructed Borja to make the first 3 tapes and not to have even known about these conversations until June.”)).

Dated: December 20, 2011

Respectfully submitted,

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