

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Thurgood Marshall U.S. Courthouse 40 Foley Square, New York, NY 10007 Telephone: 212-857-8500

MOTION INFORMATION STATEMENT

Docket Number(s): 14-826-CV(L) Caption [use short title]

Motion for: Leave to File a Brief as Amicus Curiae Chevron Corporation v. Donziger

Set forth below precise, complete statement of relief sought:

Legal Momentum seeks leave to file a brief as amicus curiae in support of Appellee, seeking affirmance of the district court's decision that private plaintiffs can obtain equitable relief under RICO.

MOVING PARTY: Legal Momentum (proposed amicus curiae) OPPOSING PARTY: Donziger, et al.

Plaintiff Defendant Appellant/Petitioner Appellee/Respondent

MOVING ATTORNEY: G. Elaine Wood OPPOSING ATTORNEY: Deepak Gupta, Burt Neuborne

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Court-Judge/Agency appealed from: The Honorable Lewis A. Kaplan (SDNY)

Please check appropriate boxes:

Has movant notified opposing counsel (required by Local Rule 27.1): Yes No (explain):

Opposing counsel's position on motion: Unopposed Opposed Don't Know

Does opposing counsel intend to file a response: Yes No Don't Know

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL:

Has request for relief been made below? Yes No
Has this relief been previously sought in this Court? Yes No

Requested return date and explanation of emergency:

Is oral argument on motion requested? Yes No (requests for oral argument will not necessarily be granted)

Has argument date of appeal been set? Yes No If yes, enter date:

Signature of Moving Attorney: /s/ G. Elaine Wood Date: 10/8/14 Service by: CM/ECF Other [Attach proof of service]

Legal Momentum respectfully requests leave under Federal Rule of Appellate Procedure 29 to file a brief *amicus curiae* to defend the District Court’s holding that injunctions are available to in suits brought by private parties under the Racketeer Influenced and Corrupt Organizations Act (“RICO”). *See Chevron Corp. v. Donziger*, 974 F. Supp. 2d 362, 568-70 (S.D.N.Y. 2014).¹ Legal Momentum has obtained consent to file this brief from Plaintiff-Appellee, Chevron Corp., as well as from Defendants-Appellants Steven Donziger, the Law Offices of Steven Donziger, Donziger & Associates, Hugo Gerardo Camacho Naranjo and Javier Piaguaje Payaguaje.

Legal Momentum has a longstanding interest in this issue arising from past litigation the organization has spearheaded to protect and defend women’s constitutional rights. Its brief offers a straightforward analytical framework for resolving the underlying legal question (which differs in significant respects from the arguments presented in either merits brief), and highlights the wide range of circumstances in which the availability of RICO injunctions for private parties has come up in the past—and may come up in the future. *See* Fed. R. App. P. 29(b).

Legal Momentum is a leading non-profit civil rights organization committed to defending women’s rights through legal advocacy and litigation. Its current

¹ In this litigation, Appellee Chevron Corporation is the party advocating the same result on appeal.

clients include women who are survivors of domestic violence, victims of sexual harassment, and others who are vulnerable to retaliation for seeking to establish their rights under the law. Legal Momentum frequently appears as counsel and as *amicus curiae* in federal and state courts on issues relating to women's rights.

Here, the proposed *amicus* brief adds two important contributions to the Court's consideration of one of the issues on appeal. First, Legal Momentum's filing highlights a straightforward point of statutory interpretation that by itself resolves the operative legal question: if one takes as given that injunctions under 18 U.S.C. § 1964(a) are available in actions brought by the Attorney General under 18 U.S.C. § 1964(b), then there is no analytically coherent way to conclude that injunctions under 18 U.S.C. § 1964(a) are somehow *unavailable* in actions under 18 U.S.C. § 1964(c). The parties address this issue in passing, but it is in fact dispositive of the conclusion the District Court reached on this question. The proposed *amicus* brief further explains that the courts to have reached the opposite result have circumvented this logically inexorable interpretation only by literally misreading the statute—specifically, by suggesting that 18 U.S.C. § 1964(b) is the source of authority for injunctions in suits by the Attorney General, when that is simply false as a factual matter.

Second, the brief addresses in detail why the availability of injunctive relief in RICO actions brought by private parties is important to organizations like Legal Momentum. In short, injunctions play a critical role in the scheme of remedies RICO establishes. Forward-looking equitable relief allows victims of heinous criminal conduct to prevent and deter additional violent acts under the ongoing supervision of a court that has already deemed the conduct unlawful. Forcing such victims to file *new* suits for damages over later-arising instances of the same crimes leaves them, by definition, subject to “irreparable harm” without any “[i]nadequate remedy.” *See Pulliam v. Allen*, 466 U.S. 522, 537 (1984) (explaining that the “requirements for obtaining equitable relief against any defendant” include, principally, “a showing of an inadequate remedy at law and of a serious risk of irreparable harm”). Litigants to have sought RICO injunctions in the past include women seeking abortions, migrant workers, human rights advocates, consumer protection groups, and many others. Going forward, this critical remedy will likely continue to play a significant role in similar cases, including potentially in suits by victims of criminal sex-trafficking enterprises.

CONCLUSION

For the forgoing reasons, Legal Momentum respectfully requests that its motion for leave to file the proposed *amicus curiae* brief be granted.

Dated: October 8, 2014

Respectfully submitted,

s/ G. Elaine Wood

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EXHIBIT A

14-826-cv(L)

14-832-cv(CON)

IN THE
United States Court of Appeals
FOR THE SECOND CIRCUIT

CHEVRON CORPORATION,

Plaintiff-Appellee,

—against—

STEVEN DONZIGER, THE LAW OFFICES OF STEVEN R. DONZIGER,
HUGO GERARDO CAMACHO NARANJO, JAVIER PIAGUAJE PAYAGUAJE,
DONZIGER & ASSOCIATES, PLLC,

Defendants-Appellants,

(Caption continued on inside cover)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

**BRIEF FOR LEGAL MOMENTUM AS *AMICUS CURIAE*
IN SUPPORT OF APPELLEE**

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Dated: October 8, 2014

STRATUS CONSULTING, INC., DOUGLAS BELTMAN, ANN MAEST,

Defendants-Counter-Claimants,

PABLO FAJARDO MENDOZA, LUIS YANZA, FRENTE DE DEFENSA DE LA AMAZONIA, AKA Amazon Defense Front, SELVA VIVA SELVIVA CIA, LTDA, MARIA AGUINDA SALAZAR, CARLOS GREFA HUATATOCA, CATALINA ANTONIA AGUINDA SALAZAR, LIDIA ALEXANDRA AGUIN AGUINDA, PATRICIO ALBERTO CHIMBO YUMBO, CLIDE RAMIRO AGUINDA AGUINDA, LUIS ARMANDO CHIMBO YUMBO, BEATRIZ MERCEDES GREFA TANGUILA, LUCIO ENRIQUE GREFA TANGUILA, PATRICIO WILSON AGUINDA AGUINDA, CELIA IRENE VIVEROS CUSANGUA, FRANCISCO MATIAS ALVARADO YUMBO, FRANCISCO ALVARADO YUMBO, OLGA GLORIA GREFA CERDA, LORENZO JOSE ALVARADO YUMBO, NARCISA AIDA TANGUILA NARVAEZ, BERTHA ANTONIA YUMBO TANGUILA, GLORIA LUCRECIA TANGUI GREFA, FRANCISO VICTOR TRANGUIL GREFA, ROSA TERESA CHIMBO TANGUILA, JOSE GABRIEL REVELO LLORE, MARIA CLELIA REASCOS REVELO, MARIA MAGDALENA RODRI BARCENES, JOSE MIGUEL IPIALES CHICAIZA, HELEODORO PATARON GUARACA, LUISA DELIA TANGUILA NARVAEZ, LOURDES BEATRIZ CHIMBO TANGUIL, MARIA HORTENCIA VIVER CUSANGUA, SEGUNDO ANGEL AMANTA MILAN, OCTAVIO ISMAEL CORDOVA HUANCA, ELIA ROBERTO PIYAHUA PAYAHUAJE, DANIEL CARLOS LUSITAND YAIGUAJE, BENANCIO FREDY CHIMBO GREFA, GUILLERMO VICENTE PAYAGUA LUSITANTE, DELFIN LEONIDAS PAYAGU PAYAGUAJE, ALFREDO DONALDO PAYAGUA PAYAGUAJE, MIGUEL MARIO PAYAGUAJE PAYAGUAJE, TEODORO GONZALO PIAGUAJ PAYAGUAJE, FERMIN PIAGUAJE PAYAGUAJE, REINALDO LUSITANDE YAIGUAJE, LUIS AGUSTIN PAYAGUA PIAGUAJE, EMILIO MARTIN LUSITAND YAIGUAJE, SIMON LUSITANDE YAIGUAJE, ARMANDO WILFRIDO PIAGUA PAYAGUAJE, ANGEL JUSTINO PIAGUAG LUCITANT, KEMPERI BAIHUA HUANI, AHUA BAIHUA CAIGA, PENTIBO BAIHUA MIPO, DABOTA TEGA HUANI, AHUAME HUANI BAIHUA, APARA QUEMPERI YATE, BAI BAIHUA MIPO, BEBANCA TEGA HUANI, COMITA HUANI YATE, COPE TEGA HUANI, EHUENQUINTO TEGA, GAWARE TEGA HUANI, MARTIN BAIHUA MIPO, MENCAY BAIHUA TEGA, MENEMO HUANI BAIHUA, MIPO YATEHUE KEMPERI, MINIHUA HUANI YATE, NAMA BAIHUA HUANI, NAMO HUANI YATE, OMARI APICA HUANI, OMENE BAIHUA HUANI, YEHUA TEGA HUANI, WAGUI COBA HUANI, WEICA APICA HUANI, TEPAA QUIMONTARI WAIWA, NENQUIMO VENANCIO NIHUA, COMPA GUIQUITA, CONTA NENQUIMO QUIMONTARI, DANIEL EHUENGEI, NANTOQUI NENQUIMO, OKATA QUIPA NIHUA, CAI BAIHUA QUEMPERI, OMAIHUE BAIHUA, TAPARE AHUA YETE, TEWEYENE LUCIANA NAM TEGA, ABAMO OMENE, ONENCA ENOMENGA, PEGO ENOMENGA, WANE IMA, WINA ENOMENGA, CAHUIYA OMACA, MIMA YETI,

Defendants,

ANDREW WOODS, LAURA J. GARR, H5,

Respondents.

CORPORATE DISCLOSURE STATEMENT

Legal Momentum is a non-profit corporation organized pursuant to the laws of the District of Columbia. Legal Momentum has no parent corporation and no publicly held corporation owns 10% or more of any stock in Legal Momentum.

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STATEMENT OF INTEREST¹

Legal Momentum, the Women’s Legal Defense and Education Fund, submits this brief *amicus curiae*, pursuant to Federal Rule of Appellate Procedure 29, in support of the District Court’s ruling below that private parties can win injunctive relief under the federal Racketeer Influenced and Corrupt Organizations (“RICO”) statute. *See Chevron Corp. v. Donziger*, 974 F. Supp. 2d 362, 568-70 (S.D.N.Y. 2014).²

Legal Momentum is the oldest civil rights organization dedicated to advancing and protecting the legal rights of all women and girls. For more than 40 years, it has used the power of the law to define and defend these rights, making historic contributions through litigation and advocacy to advance economic and personal security. Formerly known as NOW Legal Defense and Education Fund, the organization was instrumental in leading the fight to enact the landmark federal Violence Against Women Act. Legal Momentum has also litigated numerous high-profile cases in defense of vital civil rights and frequently appears as counsel

¹ No party, party’s counsel or any person other than *amicus* or its counsel authored this brief in whole or in part. No party, party’s counsel, or any person other than *amicus* or its counsel contributed money intended to fund preparing or submitting this brief. *See* Fed. R. App. P. 29(c)(5); Local Rule 29.1(b).

² Legal Momentum has concurrently filed a Motion for Leave of Court to File a Brief *Amicus Curiae*. In this litigation, Appellee Chevron Corporation is the party advocating the holding endorsed here by *amicus*.

and as *amicus curiae* in federal and state courts. Its current clients include women and girls who are survivors of domestic violence, victims of sexual harassment, and others who are vulnerable to attack or retaliation for seeking to exercise their rights under the law.

Legal Momentum was an early and successful advocate for the use of injunctive relief under RICO, beginning in the 1980s. In response to waves of violent anti-abortion harassment around reproductive healthcare facilities, Legal Momentum filed suit in multiple jurisdictions to obtain RICO-based injunctions against defendants who systematically and repeatedly violated women's constitutional rights using nakedly criminal tactics. In *National Organization for Women, Inc. v. Scheidler*, Legal Momentum won such an order from the district court to restrain the commission of violent crimes by Joseph Scheidler, the Pro-Life Action League, and others, and successfully defended that ruling in the Seventh Circuit. *See Nat'l Org. For Women, Inc. v. Scheidler*, 267 F.3d 687 (7th Cir. 2001), *rev'd on other grounds*, 537 U.S. 393 (2003). *Scheidler* and cases that have followed it are correct.

Legal Momentum's sole interest in this litigation is to preserve these rulings. Permanent injunctive relief under RICO is a remedy critical to civil rights

organizations fighting to stop a proven wrongdoer from continuing to cause unlawful, irreparable harm.

SUMMARY OF ARGUMENT

This brief addresses just one question of the many on appeal in this case: whether courts are authorized to issue permanent injunctions in RICO actions brought by private parties. The answer is “yes.”

In light of the blanket consensus that the Attorney General can seek permanent equitable relief in public enforcement actions under the statute, there is no analytically coherent way to conclude that private parties cannot do the same. Congress expressly gave courts the power, under Section 1964(a) of RICO, to issue permanent injunctions. If public actors can rely on that grant of judicial authority to seek equitable relief—and everyone agrees that they can and regularly do—then private actors can too. The text and structure of the statute are dispositive of the question presented here, on this basis alone.

The contrary outcome urged by Appellants makes no sense as a matter of policy and is contrary to RICO’s basic purpose. The damages remedy Appellants favor addresses only *past* injuries, while injunctions prevent ongoing and *future* harm, in circumstances where monetary loss is difficult to quantify or injury is irreparable. Appellants’ position, in substance, is that victims of horrific,

systematic criminal conduct *should* be made to suffer “irreparable harm” where monetary compensation affords no “adequate remedy.” Congress intended nothing of the sort. When organized groups pursue concerted plans to carry out violence, intimidation, or other unlawful conduct, and private plaintiffs can satisfy the exacting burden of establishing a RICO violation, injunctions authorized under Section 1964(a) can by definition be the sole practical way to effectively enforce a judgment condemning rampant and repeat criminal conduct.

It should thus come as no surprise that potential RICO injunctions have arisen repeatedly in suits to protect the legal rights of a wide array of injured individuals, including, *inter alia*, litigation brought by:

- reproductive healthcare workers;
- women seeking to exercise their Constitutional rights;
- migrant laborers;
- victims of human rights abuses; and
- consumer protection organizations.

New forms of abuse and criminal activity continue to emerge today to threaten the economic and physical safety of women and girls. Human trafficking is just one current, but horrific example. Erasing the possibility of injunctive relief under RICO would significantly impair the efforts of brave victims and civil rights

organizations to seek personal safety and protection, and basic justice, through the U.S. court system.

ARGUMENT

I. THE PLAIN LANGUAGE OF RICO AUTHORIZES PERMANENT INJUNCTIVE RELIEF FOR THE ATTORNEY GENERAL AND PRIVATE LITIGANTS ALIKE

RICO's remedies provision, codified at 18 U.S.C. § 1964, contains three relevant sections. Section (a) authorizes district courts generally to “issu[e] appropriate orders,” including “imposing reasonable restrictions on the future activities . . . of any person”—*i.e.*, forward-looking permanent injunctions. Section (b) authorizes the Attorney General to file RICO actions, and provides that “[p]ending final determination thereof, the court may at any time” issue *temporary* equitable remedies such as “restraining orders or prohibitions.” Importantly, Section (b) contains no specific authorization for courts to issue *permanent* injunctions in suits brought by the Attorney General; no need, because courts were already granted that power in Section (a). Section (c) authorizes RICO actions by private parties, and provides treble damages and attorneys’ fees for successful plaintiffs. Like Section (b), Section (c) contains no specific authorization for injunctions; again, no need, because courts were already granted that power in Section (a).

Appellants' theory is that even though Section (a) expressly gives courts authority to issue forward-looking injunctions, and courts retain that power in Attorney General suits under Section (b), the power somehow ceases to apply in private party suits brought under Section (c). Their claim is essentially that the additional damages remedies listed in Section (c) serve to retract the unambiguous Congressional authorization for courts to grant the equitable relief listed in Section (a).³ There is no basis in the statutory text for this position.

Regardless, considering Sections (a), (b) and (c) together forecloses once and for all any possibility that Section (a) remedies are unavailable in Section (c) cases. It is beyond dispute that permanent injunctions—again, a remedy listed only under Section (a), and omitted from Section (b)—are among the remedies permitted to the Government.⁴ So they must also be permitted to private litigants.

As the Seventh Circuit explained in *Scheidler*:

³ Without using the term, Appellants are in substance making a form of *expressio unius est exclusio alterius* argument. Perhaps they have avoided expressly invoking that principle because it is inapplicable to cases, such as this one, where the statute actually *does* enumerate the disputed form of relief. See *Frank G. v. Board of Educ.*, 459 F.3d 356, 370 (2d Cir. 2006).

⁴ Even when parties vigorously litigate the question whether a particular form of relief is available in a RICO public enforcement action, they *assume* that Section (a) remedies apply in actions brought under Section (b), and fight instead over the meaning of Section (a)'s language. See, e.g., *United States v. Philip Morris USA, Inc.*, 396 F.3d 1190, 1193 (D.C. Cir. 2005) (explaining that

Although no one doubts that permanent injunctions are . . . available to the government, the government's ability to seek permanent, as opposed to interim, equitable remedies comes from the general grant of authority . . . in § 1964(a), not from anything in § 1964(b). . . . Given that the government's authority to seek injunctions comes from the combination of the grant of a right of action to the Attorney General in § 1964(b) and the grant of district court authority to enter injunctions in § 1964(a), we see no reason not to conclude, by parity of reasoning, that private parties can also seek injunctions under the combination of grants in §§ 1964(a) and (c).

Nat'l Org. For Women, Inc. v. Scheidler, 267 F.3d 687, 696-97 (7th Cir. 2001).

Put differently, Section (c)'s authorization for private RICO suits (and additional remedies therein) is equivalent to Section (b)'s authorization for government RICO suits (and additional remedies therein). And Section (a) remedies *are* in fact available in Section (b) suits. So there is no principled way to conclude otherwise for Section (c) suits—*i.e.*, to reach the illogical result that Sections (b) and (c), which are identically situated with respect to Section (a), have opposite relationships to the remedies listed generally in Section (a), such that Section (b) somehow incorporates them while Section (c) excludes them. *See, e.g.*,

in public RICO suit seeking \$280 *billion* in disgorgement, defendant moved to dismiss because the express terms of Section (a) do not authorize that particular form of equitable relief). It would come as a great surprise to a long litany of defendants in government-filed RICO suits that their arguments over what equitable remedies Section (a) authorizes were entirely beside the point, because only Section (b) remedies are available in suits brought by the Attorney General.

Bruesewitz v. Wyeth LLC, 131 S. Ct. 1068, 1081 (2011) (rejecting reliance on legislative history where statutory “text and structure” dictate opposite interpretation).

Appellants are wrong to suggest that there exists a sweeping consensus among the federal courts in favor of any such plainly erroneous interpretation. *See* Donziger Br. 117. Only two Circuit panels have squarely addressed the question whether injunctions are available in private RICO actions. The Seventh Circuit, in *Scheidler*, invoked the reasoning presented here to conclude that injunctive relief must be available to private plaintiffs. *See* 267 F.3d at 696-97. In an earlier decision, the Ninth Circuit, in *Religious Technology Center v. Wollersheim*, 796 F.2d 1076, 1081-88 (9th Cir. 1986), reached the opposite result. But it did so, as *Scheidler* notes, only by “apparently misread[ing] § 1964(b) when it states that § 1964(b) explicitly ‘permits *the government* to bring actions for equitable relief.’” 267 F.3d at 696 (quoting *Wollersheim*; emphasis in original). In other words, the *Wollersheim* panel found that because Congress had granted the Attorney General the right to seek permanent injunctive relief in Section (b), the failure to mention permanent injunctive relief in Section (c) meant that private litigants did not have a similar right. The problem, of course, is that the premise is squarely wrong as a factual matter. With the facts straight—Congress *did not* state that the Attorney

General, specifically, had the right to permanent injunctive relief—the textual analysis in *Wollersheim* collapses.

Notwithstanding Appellants’ contrary assertions, no Circuit beyond the Seventh or Ninth has directly addressed the question of whether equitable remedies are available to private parties under RICO. *Dixie Carriers, Inc. v. Channel Fueling Serv., Inc. (In re Fredeman Litig.)*, 843 F.2d 821, 829 (5th Cir. 1988) (discussed in Donziger Br. 118 n.27), flags the issue in *dictum* and suggests sympathy with the Ninth Circuit in *Wollersheim*—but does so only upon taking *Wollersheim*’s fallacy as true, and repeating the factually erroneous claim that § 1964(b) independently grants authority for permanent equitable relief in RICO public enforcement actions. *See Fredeman*, 843 F.2d at 829. Another case Appellants invoke, *Trane Co. v. O’Connor Securities* (discussed in Donziger Br. 118), is a three-page opinion dismissing an appeal of the denial of a RICO injunction as moot. 718 F.2d 26, 27-29 (2d Cir. 1983) . The panel’s analysis does not mention, let alone account for, the characteristics of the statute discussed here.

Appellants mischaracterize other cases as well. The Fourth and Sixth Circuits have *not* “strongly suggested” that equitable relief is not available to private parties under RICO. *See Donziger Opening Br. 117*. In *Wheeling-Pittsburgh Steel Corp. v. Mitsui & Co.*, 221 F.3d 924, 927 n.2 (6th Cir. 2000), the

Sixth Circuit did, in fact, reference *Wollersheim*—but only in a footnote to illustrate how federal courts consult legislative history to interpret statutes. *Johnson v. Collins Entm't Co.*, 199 F.3d 710 (4th Cir. 1999), is equally unhelpful. The appeal in that case concerned the question whether, under the *Burford* doctrine of federal court abstention, the district court had erred by issuing an injunction *under state law*. *Id.* at 715-18. Nothing in the Fourth Circuit's opinion comes close to identifying, grappling with, or answering the dispositive principles of statutory interpretation concerning RICO's remedies provisions addressed in *Scheidler* and this brief.⁵

Like the District Court below, and like several other lower courts in recent years, this Court should follow *Scheidler* rather than *Wollersheim*. *See, e.g., Huyer*

⁵ In the remaining Circuits where the question of equitable relief under RICO has arisen, the Courts of Appeals have expressly declined to offer a view. *See Potomac Elec. Power Co. v. Elec. Motor & Supply, Inc.*, 262 F.3d 260, 267 n.4 (4th Cir. 2001) (“reserv[ing] for another day the question of whether relief which goes beyond a purely compensatory measure of money damages is available in private civil RICO actions”); *Lincoln House, Inc. v. Dupre*, 903 F.2d 845, 848 (1st Cir. 1990) (“[I]t is not clear whether injunctive or other equitable relief is available at all in private civil RICO actions” but the court need not resolve the issue, because “this is not a case in which to exercise that power.”); *Northeast Women's Ctr., Inc. v. McMonagle*, 868 F.2d 1342, 1355 (3d Cir. 1989) (“[W]e will not reach to decide the RICO issue” because an injunction could be granted under state law.); *Bennett v. Berg*, 685 F.2d 1053, 1064 (8th Cir. 1982) (“[W]e do not reach the difficult question whether . . . equitable relief is available to private plaintiffs pursuant to 18 U.S.C. § 1964.”).

v. Wells Fargo & Co., 295 F.R.D. 332, 344 (S.D. Iowa 2013) (“[T]he Court finds the Seventh Circuit’s *Scheidler* analysis compelling” and adopts it.); *In re Managed Care Litig.*, 298 F. Supp. 2d 1259, 1283 (S.D. Fla. 2003) (“[T]he Court will follow the persuasive interpretation of the *NOW v. Scheidler* decision in the Seventh Circuit as it appropriately tracks the plain language of the statute.”); *Motorola Credit Corp. v. Uzan*, 202 F. Supp. 2d 239, 243-44 (S.D.N.Y. 2002) (Rakoff, J.) (same). The interpretation of RICO’s remedies provision urged by Appellants contradicts the statute’s plain text and structure, as numerous authorities have recognized and none have managed to explain away.

II. INJUNCTIVE RELIEF IS A CRITICALLY IMPORTANT RICO REMEDY FOR PRIVATE PARTIES

Courts have long recognized that in cases of repeated and ongoing harmful conduct, retrospective relief alone is inadequate because it “would relegate the plaintiff to filing a separate claim for damages each time it is injured anew.” *Northeast Women’s Ctr., Inc. v. McMonagle*, 665 F. Supp. 1147, 1153 (E.D. Pa. 1987), *aff’d in part, rev’d in part*, 868 F.2d 1342 (3d Cir. 1989); *see also Lee v. Bickell*, 292 U.S. 415, 421 (1934) (affirming equitable relief on ground that “the multiplicity of actions necessary for redress at law [is] sufficient, without reference to other considerations, to uphold the remedy by injunction”); Douglas Laycock, *The Death of the Irreparable Injury Rule*, 103 Harv. L. Rev. 687, 714-15 (1990)

(“A legal remedy is inadequate if it would require ‘a multiplicity of suits.’”).⁶ Where a plaintiff’s only available remedy is damages, the court’s jurisdiction ceases when the defendant compensates the victim for *past* bad acts; but when an injunction limits a defendant’s ongoing conduct in the *future*, the court retains the inherent power to enforce its decree with contempt sanctions. *See EEOC v. Local 638*, 81 F.3d 1162, 1168-71 (2d Cir. 1996) (contempt proceeding brought to enforce Title VII-based permanent injunction); *United States v. Local 1084-1, Int’l. Longshoremen’s Ass’n*, 44 F.3d 1091, 1093 (2d Cir. 1995) (contempt proceeding brought to enforce RICO-based consent decree); *United States v. Dist. Council of N.Y.C.*, 941 F. Supp. 349 (S.D.N.Y. 1996) (same); 13 Joseph T. McLaughlin, *Moore’s Federal Practice* § 65.80 (3d ed. 2014) (effectiveness of injunctive remedy “due in large measure to the court’s power to punish disobedience by civil contempt”).

⁶ *See also Valley View Health Care, Inc. v. Chapman*, 992 F. Supp. 2d 1016, 1042 (E.D. Cal. 2014) (“If there is the possibility of future wrongful conduct, a legal remedy is inadequate.”); *Blue Sky Entm’t, Inc. v. Gardiner*, 711 F. Supp. 678, 697 (N.D.N.Y. 1989) (legal remedy inadequate when “in order to obtain [effective relief] plaintiffs ‘would be required to pursue damages each time [they were] injured’” (citation omitted)); *Iowa Ctr. Assocs. v. Watson*, 456 F. Supp. 1108, 1113 (N.D. Ill. 1978) (“In order to achieve similar results [as an injunction], [plaintiff] would be forced to rely on a continuing series of lawsuits.”).

Injunctions thus fill a critical remedial void—one particularly important for a statute like RICO, aimed at halting and preventing organized and ongoing criminal activities. Yet Appellants claim that a successful RICO plaintiff—who by definition will have been unlawfully subjected to systematic and recurring abuse—is always “relegate[d]” to filing a new suit from the ground up for any subsequent unlawful acts of the same type. Injunctions enforceable with just a contempt motion, Appellants contend, are never allowed. *Cf. SEC v. Blinder, Robinson & Co.*, 855 F.2d 677, 680 (10th Cir. 1988) (invoking the availability of “the quick remedy of contempt” as a reason to grant an injunction).

Embracing that position would have sweeping negative effects far beyond the dispute between the parties here. The difference between damages and injunctive relief matters a great deal for private plaintiffs including but not limited to civil rights organizations. In the past, injunctions have proven to be a singularly effective mechanism for thwarting *inter alia* the efforts of anti-abortion activists to blockade clinics or otherwise prevent women from obtaining services. *See McCullen v. Coakley*, 134 S. Ct. 2518, 2538 (2014) (recognizing the “virtues of targeted injunctions” in the abortion protest context); *Madsen v. Women’s Health Ctr., Inc.*, 512 U.S. 753, 768-73 (1994) (approving of an injunction in this context); *Planned Parenthood of the Columbia/Willamette, Inc. v. Am. Coal. of Life*

Activists, 290 F.3d 1058, 1087-88 (9th Cir. 2002) (en banc) (affirming injunction issued under Freedom of Access to Clinic Entrances Act). Equitable relief under RICO, in particular, has been especially valuable. For decades, plaintiffs (including *amicus*) have litigated numerous suits to obtain RICO-based injunctions in order to prevent activists from carrying out coordinated campaigns to shut down clinics, assault doctors, and intimidate women. *See, e.g., Libertad v. Welch*, 53 F.3d 428, 432 (1st Cir. 1995); *McMonagle*, 868 F.2d at 1345; *Planned Parenthood of the Columbia/Willamette, Inc. v. Am. Coal. of Life Activists*, 23 F. Supp. 2d 1182, 1184 (D. Or. 1998); *Michiana Abortion Clinic, P.C. v. Kirts*, No. 4:91-cv-60, 1995 WL 254381, at *1 (W.D. Mich. Jan. 9, 1995); *Feminist Women's Health Ctr. v. Roberts*, No. C86-161Z, 1989 WL 56017, at *1 (W.D. Wash. May 5, 1989).

When courts have granted injunctive relief under RICO, they have done so on the ground that no other remedy would be sufficient to protect the plaintiffs' rights or prevent their antagonists from carrying out dedicated schemes of illegal activity. *See Scheidler*, 267 F.3d at 706-708 (upholding the district court's injunction because it as "tailored to prohibit the specific types of illegal conduct that the defendants have engaged in on past protest missions"); *Nat'l Org. For Women, Inc. v. Scheidler*, No. 86 C 7888, 1999 WL 571010, at *15 (N.D. Ill. July 28, 1999) ("This court finds that the defendants, as an enterprise, have continued to

engage in illegal behavior that violates civil RICO . . . and thus there is a significant governmental interest in ordering an injunction to enjoin such illegal conduct. The injunction should be national in scope, for plaintiffs have shown that injunctions that are geographically limited do not prevent defendants from engaging in illegal conduct.”). In all such cases, by definition, a damages award alone would have been “inadequate.” *See Pulliam v. Allen*, 466 U.S. 522, 537 (1984) (explaining that the “requirements for obtaining equitable relief against any defendant” include, principally, “a showing of an inadequate remedy at law and of a serious risk of irreparable harm”).

Plaintiffs in a number of other contexts have also sought equitable relief under RICO in order to protect themselves from continuing harm. These groups include the following:⁷

- *Laborers and labor migrants*, who have brought RICO claims against employers seeking injunctions to restrain orchestrated schemes of worker exploitation. *See Javier H. v. Garcia-Botello*, 239 F.R.D. 342, 347 (W.D.N.Y. 2006) (RICO action by migrant farm workers alleging that farm owners failed to disclose terms of

⁷ In virtually none of these cases did the court hold that plaintiffs were legally barred from even seeking an injunction on the threshold point of statutory interpretation pressed by Appellants here. The sole exception is the Ninth Circuit opinion in *Republic of Philippines v. Marcos*, where the panel deemed itself bound by *Wollersheim*, which had been decided in the same Circuit a year earlier. 818 F.2d 1473, 1480 (9th Cir. 1987).

employment and to provide accurate wages, and seeking injunctive relief); *Magnifico v. Villanueva*, 783 F. Supp. 2d 1217, 1221-22 (S.D. Fla. 2011) (RICO action by Philippine citizens alleging company recruited them to work in the United States under forced labor conditions, and seeking injunctive relief); *Adhikari v. Daoud & Partners*, 697 F. Supp. 2d 674, 679-81 (S.D. Tex. 2009) (RICO action by Nepali citizens alleging military contractors engaged in labor trafficking, and seeking permanent injunctive relief).

- *Human rights victims*, who have similarly brought a series of RICO actions seeking forward-looking equitable relief to forestall harm that damages alone could not remedy. *See Republic of Philippines v. Marcos*, 818 F.2d 1473, 1477 (9th Cir. 1987) (RICO suit against former president of Philippines seeking injunction to freeze assets); *Doe v. Unocal Corp.*, 963 F. Supp. 880, 883 (C.D. Cal. 1997) (RICO suit against Burmese government officials for a campaign of violence and forced relocation, in connection with the building of an oil pipeline, and requesting injunctive relief).
- *Consumer groups and other commercial plaintiffs*, who have similarly sought the protection of RICO injunctions. *See Bennett v. Berg*, 685 F.2d 1053, 1055-58 (8th Cir. 1982) (RICO action brought by residents of retirement community, contending their community was subject to mismanagement and self-dealing and requesting equitable relief in the form of corporate reorganization); *Huyer v. Wells Fargo & Co.*, 295 F.R.D. 332, 335 (S.D. Iowa 2013) (RICO suit brought by borrowers against a bank, challenging its scheme of performing and charging mortgages for repeated “drive-by inspections” of delinquent mortgagors, and requesting injunctive relief to prevent future fraudulent practices); *Motorola Credit Corp. v. Uzan*, 202 F. Supp. 2d 239, 242

(S.D.N.Y 2002) (RICO suit by sellers of cellular telephone equipment against Turkish businessmen, alleging fraud and extortion of over \$2.7 billion, and requesting “extensive preliminary injunctive relief”).

In sum, RICO injunctions for private parties serve a key role in the statute’s scheme of remedies: they allow plaintiffs to secure reasonably obtainable relief against later-arising recurrences of abhorrent conduct deemed illegal by a federal judge. Taking that relief for private plaintiffs off the table *in all cases* would have wide-ranging and devastating implications far beyond this appeal.

CONCLUSION

For the foregoing reasons, Legal Momentum respectfully submits that the decision of the District Court on the issue addressed herein should be affirmed.

Dated: October 8, 2014

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Rule 32(a)(7)(B) of the Federal Rules of Appellate Procedure because it contains 3,953 words, excluding the parts of the brief exempted by Rule 32(a)(7)(B)(iii).

This brief complies with the typeface requirements of Rule 32(a)(5) and the type style requirements of Rule 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in Times Roman 14-point font.

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