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FILED
San Francisco County Superior Court
JAN 3 1 2008
GORDON PARK-LI, Clerk
BY: [signature] Deputy Clerk

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **COUNTY OF SAN FRANCISCO**

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11 LARRY BOWOTO, et al. 12 Plaintiffs, 13 v. 14 CHEVRONTEXACO CORPORATION, et al., 15 Defendants. 16 17	CASE NO. CGC-03-417580 [redacted] ORDER DENYING DEFENDANTS' MOTION FOR SUMMARY ADJUDICATION OF FIRST CAUSE OF ACTION FIRST CAUSE OF ACTION BASED ON UNAVAILABILITY OF ANY REMEDY (Motion No. 4)

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19 This matter came on for a final day of hearing on November 14, 2007. Plaintiffs were
20 represented by Robert D. Newman, Lauren Teukolsky and Marco Simons. Defendants were
21 represented by Robert A. Mittelstaedt, Lara Kollios and David E. Wallach. At the end of the
22 hearing, the Court directed each side to submit a proposed order no later than November 21,
23 2007.

24 Overview

25 With Motion No. 4, Defendants Chevron Corporation, Chevron Investments, Inc. and
26 Chevron U.S.A., Inc. (hereafter collectively referred to as "Defendants" or "Chevron") have
27 moved for summary adjudication as to the First Cause of Action in Plaintiffs' First Amended
28 Complaint ("FAC"). The First Cause of Action not only arises out of the incident involving the

Nigerian villagers at Chevron's offshore oil platform in Parabe in May 1998 and at the villages of Opia and Ikenyan in the Niger Delta in January 1999, but also arises out of Defendants' continued use of the Nigerian military and police to provide security for their oil and gas production facilities. FAC, ¶¶ 97, 101, 116-121. The five Nigerian Plaintiffs – Larry Bowoto, Anthony Lawuru, Benson Edekou, Henry Pabulogba and John Ikenyan – have brought the First Cause of Action on behalf of themselves and a class of others similarly situated in the Niger Delta. FAC, ¶ 101.

Motion No. 4 is not a typical summary adjudication motion in that Chevron does not dispute most of the allegations of illegality in the FAC.[1] Instead, Defendants contend that, even if the alleged acts of wrongdoing did occur in 1998 and 1999, the undisputed evidence establishes that the five Nigerian Plaintiffs are not entitled to any relief (injunctive, declaratory or restitution) for the violations of the Unfair Competition Law ("UCL"), Business & Professions Code § 17200 *et seq.*, alleged in the First Cause of Action.

For the reasons discussed below, the Court denies Defendants' motion for summary adjudication as to the First Cause of Action.

Plaintiffs Have Produced Some Evidence of a Likelihood of Ongoing Harm

Chevron contends that the Nigerian Plaintiffs are not entitled to any injunctive relief under the UCL because "they make no allegation that they or the persons they represent face any real and immediate threat of a recurrence" and "[t]hus, plaintiffs have no standing to obtain injunctive relief." Memorandum in Support of Defendants' Motion at 1. The question of threatened irreparable harm to Plaintiffs raises two issues: whether Chevron's allegedly injurious conduct is likely to continue, and whether the Plaintiffs *themselves* are likely to be subject to harm in the future. The parties dispute whether each of these must be shown for an injunction to issue under the UCL and, if required, whether Plaintiffs have made the requisite showing.

[1] In the related federal court action, the court recently concluded that Plaintiffs' evidence, if credited, is sufficient to hold Chevron legally liable for the injuries arising from the Parabe and the Opia and Ikenyan incidents. *Bowoto v. Chevron Corp.*, 2007 WL 2349336 (Slip. Op.) (N.D. Cal. Aug. 14, 2007).

Plaintiffs Can Show That They Are Likely to Be Injured.

Plaintiffs have presented sufficient evidence to create a triable issue of material fact as to whether they are personally likely to be injured in the future.

There appears to be no dispute that Plaintiffs continue to reside in the Niger Delta, in proximity to Chevron facilities.

According to the evidence put forth by Plaintiffs, at least one of these incidents involved an attack on persons and villages that, for lack of a better term, were minding their own business. As District Judge Illston has noted, Plaintiffs' evidence shows that the villages of Opia and Ikenyan were attacked by Nigerian soldiers, who killed several unarmed people and "burned the villages of Opia and Ikenyan to the ground." 2007 WL 2349336 at *12. A Chevron installation was "location in the general vicinity of Opia and Ikenyan." *Id.* at *10. While several villagers from Opia had visited that facility "to demand compensation for pollution caused by CNL in the community[,] none of the plaintiffs were among this group." *Id.* According to Plaintiffs' evidence, no one from Ikenyan had any contact with Chevron at all.

Plaintiffs' evidence thus shows that simply residing in the vicinity of Chevron installations in the Niger Delta can subject residents, even those who do not initiate contact with Chevron, to losses of property and other abuses.

Under similar circumstances, the court in *Doe v. Unocal Corp.*, 67 F. Supp.2d 1140 (C.D. Cal. 1999), found that the plaintiffs had shown a credible threat of future harm. In *Unocal*, plaintiffs were residents of the Tenasserim region of Burma, where they had allegedly suffered abuses related to a gas pipeline project. The court held that, "because plaintiffs' allegations and evidence suggest that human rights abuses are ongoing in the Tenasserim region, plaintiffs have demonstrated the existence of a credible threat that they will once again be subjected to human rights violations allegedly committed in furtherance of the pipeline project." *Id.* at 1144. By the same logic, because this Court must assume that attacks such as those alleged at Opia and Ikenyan are ongoing in the Niger Delta, the Nigerian Plaintiffs have demonstrated the existence of a credible threat that they will once again be subject to similar attacks related to Chevron's operations.

The Plaintiffs' Claims for Injunctive Relief Are Not Moot

In their moving papers, Defendants emphasize how the Nigerian Plaintiffs have not been personally subjected in the last eight years to a recurrence of the same incidents that occurred at Parabe in 1998 or Opia and Ikenyan in 1999. But the "mere fact that a defendant refrains from unlawful conduct during the pendency of a lawsuit does not necessarily preclude the trial court from issuing injunctive relief to prevent a posttrial continuation of the unlawful conduct." *Aguilar v. Avis Rent A Car System, Inc.*, 21 Cal.4th 121, 133 (1999).

At times, Chevron appears to be arguing that the Plaintiffs' claims for injunctive relief have been rendered moot by subsequent events. The Supreme Court long ago declared that the "burden is a heavy one" for defendant to prove mootness, that "there is no reasonable expectation that the wrong will be repeated." *United States v. W.T. Grant Co.*, 345 U.S. 629, 633 (1953).

Chevron has not proven, much less alleged, any change in circumstances that would unquestionably moot out Plaintiffs' claims, such as the discontinuance of its oil and gas operations in the Niger Delta. *Compare Madrid v. Perot Systems Corp.*, 130 Cal.App.4th 440, 462-67 (2005)(injunctive relief does not lie against defendants for conduct during California's 2001 declared electricity emergency when Governor declared official end to state of emergency in 2003); *Donald v. Café Royale, Inc.*, 138 Cal.App.3d 168, 184 (1990)(trial court properly denied injunctive relief since defendant had subsequently ceased operating restaurant that was the subject of the lawsuit and a different corporation had opened up another restaurant at that same location). Nor have Defendants presented any evidence that the challenged conduct in this case is the subject of an existing court order. *Compare Feitelberg v. Credit Suisse First Boston, LLC*, 134 Cal.App.4th 997, 1022 (2005)(plaintiffs are not entitled to injunctive relief as 'the business practice challenged here is the subject of a federal consent judgment that compels defendants to stop the offending conduct").

Throughout all the years of litigation in this court and federal court, Defendants have consistently denied any wrongdoing on their part as to what occurred at the offshore oil platform in Parabe or at the villages of Opia and Ikenyan. The Court is not taking any position on which side is right , but the ongoing disagreement between the parties is itself further indication that the

controversy is not moot. *Compare Feminist Women's Health Center v. Blythe*, 32 Cal.Ap.4th 1641, 1658-59 (1995)("it was reasonable for the trial court to conclude that the prohibited conduct would resume unless permanently enjoined" since the "subject of this dispute is so intensely divisive, and the antagonists so passionately committed to their respective positions").

In general, the "'voluntary discontinuance of alleged illegal practices does not remove the pending charges of illegality from the sphere of judicial power or relieve the court of the duty of determining the validity of such charges where by the mere volition of a party the challenged practices may be resumed.'" *Marin County Bd. of Realtors, Inc. v. Palsson,* 16 Cal. 3rd 920, 929 (1976) (citation omitted); *accord, Aguilar*, 21 Cal.4th at 133.

Here, Chevron has not even presented any evidence that they have discontinued any of the alleged illegal practices. *Compare Scripps Health*, 72 Cal.App.4th at 333 (no reason to order injunctive relief "where defendant has in good faith discontinued the prescribed conduct"); *Cisneros v. U.D. Registry, Inc.*, 39 Cal.App.45h 548, 574 (1995)(trial court did not abuse discretion in denying permanent injunction given that defendant had voluntarily discontinued the wrongful conduct). 28. Viewing the evidence in the light most favorable to the non-moving parties, the Court concludes that Chevron has not met its burden of proof. There are triable issues of material fact as to whether the Nigerian Plaintiffs' claims for injunctive relief are moot.

Defendants' Other Arguments Regarding Injunctive Relief Lack Merit

Defendants have raised three other arguments regarding the Nigerian Plaintiffs' claims for injunctive relief as to the First Cause of Action. Chevron must, however, establish that Plaintiffs are not entitled to any possible injunctive relief for these violations of the UCL. None of Chevron's arguments qualifies as grounds for granting summary adjudication.

Defendants have objected that Plaintiffs are seeking equitable relief against non-parties. However, at the Court's request, Plaintiffs filed a sample proposed order regarding injunctive relief on Plaintiffs' First Cause of Action in December 2006. On its face, nearly all the provisions in the proposed order are directed at the Defendants in this lawsuit. Moreover, as the federal court has found, plaintiffs may be able to prove that CNL is acting as Chevron's agent, such that Chevron has the right to control its security practices. Indeed, the federal court noted that

Chevron "had much more than the usual degree of control over CNL's operations, and particularly in setting security policy" and denied Chevron's motion for summary judgment which asserted that plaintiffs could not demonstrate agency. *Bowoto v. ChevronTexaco Corp.*, 312 F. Supp. 2d 1229, 1244 (N.D. Cal. 2004).

Defendants object that the terms of the proposed injunction will not be effective. The appropriate time for determination of which proposed elements of injunctive relief would be best suited to remedy the alleged harms is at trial. Defendants have presented no evidence to prove what is really an argument by their counsel about the efficacy of an injunctive order in this case. In any event, the Court has reviewed Plaintiffs' proposed order and, viewing the evidence in the light most favorable to the non-moving party, concludes that at least some of the provisions in the proposed order could be effective. In particular, plaintiffs' proposals regarding increased transparency and investigation of security incidents would be likely to have a positive impact on the conduct of Chevron and its alleged agents.

Plaintiffs May Be Entitled to Declaratory Relief

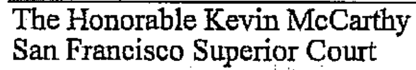
While the Court's conclusion that injunctive relief is available is sufficient to deny Defendants' motion, much of the preceding analysis also applies to the question as to whether the Nigerian Plaintiffs are entitled to declaratory relief for the First Cause of Action.

Chevron is wrong as a matter of law as to whether declaratory relief is generally available for UCL claims. Under Business and Professions Code § 17203, a court is given the discretion to "make such *orders or judgments*, including the appointment of a receiver, as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition" (italics added). Apart from § 17203, the accompanying § 17205 provides that"[u]nless otherwise expressly provided, the remedies or penalties provided by this chapter are cumulative to each other and to the remedies or penalties under all other laws of this state." Code of Civil Procedure § 1060 generally provides that any person may seek declaratory relief in "cases of actual controversy relating to the legal rights and duties of the respective parties."

"A motion for summary adjudication shall be granted only if it completely disposes of a cause of action. . . ." Code of Civ. Proc. § 437c(f)(1). Since triable issues of material fact exist as

to the Nigerian Plaintiffs' claims for injunctive and declaratory relief under the First Cause of Action, the Court need not decide whether these Plaintiffs would be entitled to any restitution. Defendants' Motion No. 4 is denied.

Dated: 1/30/08



By:
The Honorable Kevin McCarthy
San Francisco Superior Court

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

LARRY BOWOTO, et al.,

Plaintiffs,

v.

CHEVRONTEXACO CORPORATION, et al.,

Defendants.

CASE NO. CGC-03-417580

[~~PROPOSED~~] ORDER DENYING DEFENDANTS' MOTION FOR SUMMARY ADJUDICATION OF FIRST CAUSE OF ~~ACTION BASED ON COLLATERAL ESTOPPEL~~, INAPPLICABILITY OF CALIFORNIA'S UCL, ~~AND THE ACT OF STATE DOCTRINE (Motion No. 2)~~
EXTRATERRITORIALITY

Defendants have moved for summary adjudication of plaintiffs' first cause of action under the Unfair Competition Law ("UCL"), codified at Cal. Bus. & Prof Code § 17200, *et seq*. The Court heard defendants' motion on November 21, 2007. The basis for defendants' motion was twofold: (1) the UCL does not apply extraterritorially to injuries that occurred in Nigeria; and (2) applying the UCL in the circumstances of this case would be unconstitutional.[1]

[1] Defendants also moved for summary adjudication on the grounds that the Act of State doctrine requires dismissal of plaintiff's claim. In a separate order, this Court held that Judge Illston's determination that the Act of State doctrine does not apply to this case had preclusive effect. Accordingly, because the Court has already disposed of defendants' Act of State argument, it is not dealt with here. Defendants also argued in their motion that plaintiffs were collaterally estopped from pursuing the first cause of action, but defendants withdrew that argument and it was separately resolved.

Having considered the parties' arguments and briefs, the Court concludes that: (1) plaintiffs have presented sufficient evidence of California conduct to raise a triable issue whether the application of the UCL is appropriate in this case; and (2) application of the UCL in this case is not unconstitutional. Accordingly, defendants' motion for summary adjudication (No. 2) is DENIED.

Extraterritoriality

Defendants assert that plaintiffs have failed to point to sufficient in-state conduct to warrant the application of the UCL in this case. They point out that all of the injuries at issue occurred in Nigeria, and claim that the relevant decisions leading to the injuries also occurred in Nigeria. Plaintiffs acknowledge that all of the injuries at issue in this case occurred in Nigeria, but assert that the California-based defendants had sufficient control over CNL's operations, particularly with respect to its security policies and practices, to warrant application of the UCL.

The law is well-settled that a UCL claim may proceed on the basis of unlawful conduct – regardless of where the injury occurs – so long as some of the challenged conduct occurred in California or some benefit of the challenged conduct accrues to a California defendant. *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 243 (2001) (UCL applied to extraterritorial injury where defendant was based in California and some management decisions were made in California); *Norwest Mortgage, Inc. v. Superior Court*, 72 Cal.App.4th 214, 243 (1999) (UCL applied to extraterritorial injury where some of the challenged conduct occurred in California); *Clothesrigger, Inc. v. GTE Corp.*, 191 Cal.App.3d 605, 614-15 (1987) (out-of-state plaintiffs who were overcharged for long distance calls were permitted to bring UCL claim against defendants who were headquartered in California because the alleged fraudulent and unfair practices "emanated from California"); *Trueposition, Inc. v. Sunon, Inc.*, 2006 U.S. Dist. LEXIS 32918, *14-*15 (E.D. Pa. 2006) (Pennsylvania resident permitted to proceed with UCL claim because defendant was based in California and some of the purchase orders for defendant's products

(continued...)

specified that California law governed); *Florida v. Tenet Healthcare Corp.*, 420 F.Supp.2d 1288, 1311 (S.D. Fla. 2005) (UCL applied to extraterritorial injury where some profits from unfair practice accrued to California corporation).

Here, in the parallel federal action, Judge Illston already denied summary judgment to defendants on the grounds that a reasonable juror could find that CNL was the agent of California-based defendants based on the "more than the usual degree of direction and control which a parent exercises over its subsidiary." *Bowoto v. Chevron*, 312 F. Supp. 2d 1229, 1246 (N.D. Cal. 2004). Judge Illston specifically held that defendants "had much more than the usual degree of control over CNL's operations, ***and particularly in setting security policy.***" *Id.* at 1244 (emphasis added). This holding is germane here because plaintiffs allege that the unfair practice is the use of an unreasonably dangerous GSF to provide security. If defendants had an unusual degree of control over CNL's security policy, this is sufficient California conduct to warrant the application of the UCL even though the injury occurred in Nigeria.

Plaintiffs have submitted a substantial amount of evidence that the California-based defendants had an unusual degree of control over CNL's security department, and over CNL's operations generally. Plaintiffs have submitted evidence that Chevron and COPI promulgated specific security policies that applied to CNL, and Corporate Security was intimately involved with CNL's Security Department, including performing audits and making recommendations for improvement. Plaintiffs' Statement of Undisputed and Disputed Facts ("PSUDF") Vol. II ¶¶ 245-270; Vol. III ¶¶ 839-866. Under Chevron's policies, CNL was required to report security threats to defendants. Vol. III ¶ 839-846. Chevron's Risk Manager submitted a memo assessing Nigeria's security situation to a COPI employee in San Ramon. *Id.* ¶ 774.

Chevron developed guidelines for "crisis management" in California. *Id.* ¶ 848. Corporate Security performed audits of CNL's Security Department. *Id.* ¶ 851-856. In 2004, CNL's Managing Director requested that an employee from Corporate Security be assigned to Nigeria. A Chevron employee was assigned to CNL's Security Department for two years, and Corporate Security paid his salary and supervised him. *Id.* ¶ 858. COPI has convened Crisis Management Teams in California to deal with security situations at CNL. *Id.* ¶¶ 859-860.

To ensure compliance with the Foreign Corrupt Practices Act (FCPA), defendants had to approve all payments that CNL made to Nigerian military personnel, and in fact approved numerous payments. Vol. III ¶¶ 788-823; Vol. II ¶¶ 68-102. CNL paid the GSF who executed the Parabe, Opia and Ikenyan attacks. Vol. III ¶¶ 824-838. Whenever CNL paid the GSF for services rendered, it did so only for work that was "incidental to normal CNL activities." *Id.* ¶ 831. Moreover, CNL only paid the GSF for performing services that a CNL employee had requested. *Id.* ¶ 832. Pursuant to defendants' policies, both COPI and Chevron had to approve CNL's payments to the GSF for Parabe, Opia and Ikenyan. Thus, plaintiffs have raised a genuine issue whether the California-based defendants approved the payments for the attacks.

Chevron's Board of Directors, in San Francisco, considered and rejected shareholder proposals regarding the use of the GSF. *Id.* ¶¶ 867-875. In 1997, the Board recommended rejecting a proposal that Chevron develop guidelines on maintaining investments in countries with a history of human rights abuses, such as Nigeria. *Id.* ¶¶ 867-869. In 1998, the Board recommended rejecting a proposal to include in Chevron's code of conduct an "explicit commitment to human rights social justice." *Id.* ¶¶ 870-875. These examples show that the Board had the authority – in California – to adopt shareholder proposals to regulate the use of the GSF, but chose not to exercise it.

Plaintiffs have also presented extensive evidence of the California-based defendants' control over CNL's operations generally. For example, defendants have managed, provided services to, and bestowed numerous direct benefits on CNL. PSUDF Vol. II ¶¶ 393-454; Vol. III ¶¶ 704-746. From California, Chevron set the base salaries, foreign location premiums, vacation time and other terms and conditions for expatriate CNL employees. Vol. II ¶¶ 271-299; Vol. III ¶¶ 728-29, 876-77. Defendants controlled the selection of expatriate employees for CNL, sometimes flying CNL employees to San Ramon to assist. Vol. II ¶¶ 300-314; Vol. III ¶¶ 723-25. Numerous COPI employees transferred (or "rotated") from California into high-level jobs at CNL, and then transferred back to COPI in California. *Id.* ¶¶ 319-332.

CNL's Directors simultaneously held positions with California-based Chevron and COPI. For example, Kirkland simultaneously served as a CNL Director and as a member of Chevron's

Executive Committee. Vol. III ¶ 747. Matzke, located in San Ramon, simultaneously served as a CNL Director and as COPI's President. *Id.* ¶¶ 748-49; *see also id.* ¶¶ 750-52 (Robertson and Wilcox were CNL Directors who simultaneously held positions with COPI and Chevron); Vol. II ¶¶ 238-243. Chevron and COPI had extensive financial control over CNL. Vol. II ¶¶ 338-364, 455-56, 475-483. CNL's budget is set in San Ramon. Vol. III ¶ 708. Chevron's Executive Committee made decisions about whether and under what terms CNL could borrow money for its operations. *Id.* ¶¶ 732-33. Defendants' employees in San Ramon controlled CNL's expenditures for regular operations and the development of new fields. *Id.* ¶¶ 740-41. COPI's San Ramon Business Unit decided which community development projects CNL would fund. Vol. III ¶ 735.

Judge Illston further found, based on the same evidence that plaintiffs submit in connection with the present motion,[2] that the California-based defendants "benefited directly from CNL's oil production, which was made possible – or at least protected – by the military's wrongful use of force to quell unrest among Nigerians." *Id.* at 1246. This conclusion bolsters the Court's conclusion that the UCL applies in this case. *Cf. Florida v. Tenet Healthcare Corp.*, 420 F.Supp.2d 1288, 1311 (S.D. Fla. 2005) (UCL applied to extraterritorial injury where some profits from unfair practice accrued to California corporation). In short, Judge Illston's conclusions are fatal to defendants' instant motion: defendants' California-based conduct in controlling the security policy of CNL, and the fact that defendants "benefitted in a very direct way from CNL's revenues" warrant the application of the UCL.

Constitutional Arguments

Defendants' constitutional arguments lack merit. First, neither foreign affairs field preemption nor foreign affairs conflict preemption is present here. *Zschernig* "field preemption" applies only when a State acts outside of its "traditional competence" and seeks to regulate matters of foreign policy. *Zschernig v. Miller*, 389 U.S. 429 (1968); *Am. Ins. Ass'n v.*

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[2] Plaintiffs have submitted substantial evidence that defendants profited both directly and indirectly from CNL in California. PSUDF Vol. II ¶¶ 225-30, 480-81; PSUDF Vol. III. ¶¶ 737-39, 902-930. Furthermore, CNL sold all of its share of the oil produced by its operations in Nigeria to Chevron International Trading (CIT), a division of CUSA located in California. Vol. III ¶¶ 931-938.

Garamendi, 539 U.S. 396, 420 n.11 (2003); *Cruz v. United States of America.*, 387 F.Supp.2d 1057, 1075-76 (N.D. Cal. 2005). Here, California's UCL does not seek to regulate matters of foreign policy.

Zschernig also does not apply because plaintiffs seek only the uniform enforcement of a generally applicable state law that does not purport to regulate foreign policy, or single out any foreign country for special treatment. *Cf. Cruz*, 387 F. Supp.2d at 1076 (cases that apply *Zschernig* preemption "involve state 'regulations that amount to embargoes or boycotts' passed with the express intent to coerce foreign states into altering their political and social policies," such as a Massachusetts statute that restricted business in Burma) (collecting cases); *see also Amarel v. Connel*, 202 Cal.App.3d 137, 146-47 (1988) (preemption rejected because laws at issue, including UCL, were facially neutral). Thus, field preemption does not apply here.

Foreign affairs conflict preemption also does not apply because defendants have not pointed to a federal action, such as a statute, treaty or executive agreement, that is "fit to preempt" California law. *Am. Ins. Ass'n v. Garamendi*, 539 U.S. 396, 416 (2003). Although defendants claim that this *litigation* generally might impact foreign policy, this kind of argument has no place in a preemption analysis. ((Such an argument, if it applies at all, is more relevant in the Act of State context, but the Court has already declined to apply the Act of State doctrine in light of Judge Illston's ruling in the federal action.)

Finally, defendants' claim that application of the UCL would unconstitutionally implicate the Commerce and Due Process Clauses lacks merit. As a preliminary matter, the Court is not convinced that the plaintiffs' challenge to Chevron's involvement in rights abuses regulates commerce at all. *Cf., Healy v. The Beer Institute*, 491 U.S. 324 (1989) (Connecticut statute regulated the sale of beer in other states). That the application of the UCL in this case might have some impact on interstate commerce is not sufficient to raise a constitutional barrier – if this were so, none of the UCL cases cited in the foregoing section would have been decided correctly (such as *Norwest* and *Wershba*). *See Edgar v. Mite Corp.*, 457 U.S. 624, 640 (1982) ("Not every exercise of state power with some impact on interstate commerce is invalid.").

1 *Edgar* states that the Commerce Clause "precludes the application of a state statute to
2 commerce that takes place wholly outside of the State's borders, whether or not the commerce has
3 effects within the State." 457 U.S. at 642–43. Because plaintiffs have pointed to sufficient in-
4 state conduct to warrant application of the UCL, this case does not run afoul of the Commerce
5 Clause. *Kearney v. Salomon Smith Barney, Inc.*, 39 Cal. 4th 95, 107 (2006); *Gravquick A/S v.*
6 *Trimble Navigation Int'l Ltd.*, 323 F.3d 1219, 1224 (9th Cir. 2003). Chevron argument also fails
7 because it is located in California. "The limits on a State's power to enact substantive legislation
8 are similar to the limits on the [personal] jurisdiction of state courts." *Edgar*, 457 U.S. at 643.
9 In *Bethlehem Steel Corp. v. Bd. of Commissioners*, 276 Cal.App. 2d 221 (1969), which
10 defendants cite, the law at issue discriminated against foreign nations, and was found to be "an
11 impermissible attempt by the state to structure national foreign policy." *Id.* at 229. The UCL
12 does no such thing. *See Amarel*, 202 Cal. App. 3d at 146-47. Moreover, *Bethlehem Steel* applied
13 dormant foreign affairs authority, not the Commerce Clause.
14 Defendants' reliance on *BMW of North America, Inc. v. Gore*, 517 U.S. 559 (1996), and
15 its progeny, is also misplaced. These cases apply only to prohibit the imposition of punitive
16 damages – which plaintiffs do not seek here – based on out-of-state conduct whose victims are
17 not before the court. As the Supreme Court noted, it is "proper" for a state to adjudicate, and
18 even impose punitive damages based on, out-of-state conduct if the victims are included in the
19 case before the court. *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 421-22 (2003).
20 Moreover, *BMW* is inapplicable because defendants' principal places of business are in California
21 and plaintiffs have adduced evidence of defendants' participation from California in the unfair
22 business practice. *Neibel v. Trans World Assurance Co.*, 108 F.3d 1123, 1131 (9th Cir. 1997).
23 Finally, "the general rule" is that a court with personal jurisdiction over a defendant may
24 issue an injunction requiring the defendant to act outside the court's territorial jurisdiction. *Allied*
25 *Artists Pictures Corp. v. Friedman*, 68 Cal. App. 3d 127, 137 (1977); 43A C.J.S. *Injunctions* §
26 291 (2004). Indeed, in 1992, the legislature enlarged the scope of UCL injunctive relief to
27 encompass out-of-state activity. *Stop Youth Addiction Inc. v. Lucky Stores, Inc.*, 17 Cal. 553, 570
28

(1998). For these reasons, defendants' constitutional arguments lack merit, and the Court denies their motion for summary adjudication (No. 2) in its entirety.

Dated: 1/30/08

By: ______________________
The Honorable Kevin McCarthy
San Francisco Superior Court