SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

NOREX PETROLEUM LIMITED, Plaintiff, v. LEONARD BLAVATNIK; VICTOR VEKSELBERG; SIMON KUKES; ACCESS INDUSTRIES, INC.; ALFA GROUP CONSORTIUM; RENOVA, INC; OAO TYUMEN OIL COMPANY; TNK-BP LIMITED; and BP PLC, Defendants.	Index No. 650591/2011 (Commercial Division) Hon. Eileen Bransten IAS Part 3 Motion Sequence Nos. 7-11

PLAINTIFF'S OMNIBUS MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANTS' MOTIONS TO DISMISS

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Plaintiff Norex Petroleum Limited ("Norex") by its attorneys, Simpson Thacher & Bartlett LLP, respectfully submits this Omnibus Memorandum of Law, together with the Affidavit of Barry R. Ostrager dated October 26, 2011 ("Ostrager Aff."), in Opposition to Defendants' Joint Motion to Dismiss; BP p.l.c.'s ("BP") Motion to Dismiss; Alfa Group Consortium's ("Alfa") Motion to Dismiss; OAO Tyumen Oil Company ("TNK") and TNK-BP Limited's ("TNK-BP") Motion to Dismiss; and Simon Kukes' Motion to Dismiss. Norex also submits the expert affidavits of Bernard Black ("Black Aff."), William E. Butler ("Butler Aff."), Peter J.M. Lown, Q.C. ("Lown Aff."), and Peter B. Maggs ("Maggs Aff.") in opposition to Defendants' motions to dismiss, and these affidavits are referenced in appropriate places in this Omnibus Memorandum of Law.

By its complaint, Norex seeks to recover damages arising out of brazen wrongdoing initiated, orchestrated, and overseen by Defendants Leonard Blavatnik and Victor Vekselberg—multi-billionaire Russian expatriates who are New York residents. Defendants Blavatnik and Vekselberg are, respectively, the owners of Defendants Access Industries, Inc. ("Access") and Renova, Inc. ("Renova"), both of which are companies organized under the laws of New York and whose principal places of business are in New York. Defendant Alfa systematically and continuously does business in New York, and together with Access and Renova, wholly owns Defendant TNK. Defendants Blavatnik and Vekselberg both sat on TNK's board at all times relevant to this lawsuit. Defendant BP is a multinational corporation that does significant business in New York and directs public and investor relations from its New York office. BP is the largest non-U.S. company that trades on the New York Stock Exchange. Finally, Defendant Kukes, the former President and CEO of TNK, is an American citizen who incontestably maintained his domicile in New York City with his family at the time this case originally commenced. Defendants Blavatnik, Vekselberg, Access, Renova and BP do not dispute that they are subject to personal jurisdiction in this Court. For the

reasons particularized in detail, *infra*, the remaining defendants are also clearly subject to the personal jurisdiction of this Court.[1]

PRELIMINARY STATEMENT

This case arises out of Defendants' misappropriation of Norex's majority interest in and rightful profits from Yugraneft's oil field, which has caused Norex over a billion dollars in damages. Contrary to Defendants' insistence that Norex has had multiple opportunities to "litigate its loss of control of Yugraneft," Norex *never* has had a single hearing on the merits of its claims in any court. For numerous reasons, Norex's claims can and should be adjudicated in this Court, which has jurisdiction over all the defendants—five of whom do not contest jurisdiction and the balance of whom raise jurisdictional challenges that lack any merit.

First, Defendants' *forum non conveniens* challenge must fail in this Court just as it failed in the United States Court of Appeals for the Second Circuit on a full factual record that included multiple depositions of experts on Russian law. The Black affidavit, submitted herewith, particularizes in great detail why the Second Circuit was entirely correct when it held that there is no alternative forum to New York for this case because, as a procedural matter, Norex is unable to prosecute its claims in Russia. Indeed, Professor Black, a renowned expert on Russia, concludes that "[t]here is no reasonable basis for doubting that . . . [t]he flagrantly pro-TNK decisions in the Chernogorneft and Yugraneft takeovers were without basis in Russian law and bear the hallmarks of corruption." Black Aff. ¶ 75. And because the availability of Russia as an alternative forum was fully litigated on the merits by the parties to this case, Defendants are collaterally estopped from relitigating that issue. The unavailability of an alternative forum is the most important factor in New

[1] **The term "Billionaire Oligarchs" refers to Defendants Blavatnik and Vekselberg. The term "AAR" refers to Alfa and the Billionaire Oligarchs' New York companies, Access and Renova. "AAR/TNK" refers to the AAR Defendants (Access, Alfa, and Renova) together with their then-wholly owned and controlled company, TNK (OAO Tyumen Oil Company), through which the Billionaire Oligarchs committed many of the wrongful acts alleged in its first amended complaint ("Complaint"). TNK-BP is a joint venture formed by TNK and BP in 2003. As alleged in the Complaint, TNK may now be known as and/or be a part of OAO TNK-BP Holdings.**

York's *forum non conveniens* analysis. Additionally, because the principal defendants are New York residents and multi-nationals who do not contest jurisdiction in New York and who planned, orchestrated, and directed from New York the conspiracy alleged in the Complaint, Defendants cannot meet their "heavy burden" of showing that other, secondary *forum non conveniens* factors tip the scale in favor of disturbing Norex's choice of forum.

The Second Circuit's holding has more vitality now than it did when it was rendered. BP's recent experiences with the Russian judicial system confirm the wisdom of the Second Circuit's rejection of Russia as an adequate alternative forum: Just weeks ago, as part of a pressure campaign Defendant TNK directed at BP, its joint venture partner in TNK-BP, TNK orchestrated court-ordered raids on BP's Moscow offices by special forces with machine guns.[2] This is precisely what occurred to Norex at the hands of TNK a decade ago.

The raids on BP's Moscow offices only stopped when British Prime Minister David Cameron personally intervened during a meeting with his counterpart, Russian President Dmitry Medvedev, in Moscow.[3] Similarly, in 2008, then TNK-BP CEO Robert Dudley (currently BP's CEO) was forced to flee Russia as a result of another internal TNK-BP dispute, with the Billionaire Oligarchs again using the local judicial system, described as the "legal department of TNK," to do their bidding.[4] BP decried the proceedings that led to Dudley's expulsion as a "farce" that "lack[ed]. . . any semblance of due process, including [a Russian] court's acceptance of clearly falsified documents and bogus testimony."[5]

BP's first-hand experience with Russia's "legal nihilism" stretches back to the days of BP's

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[2] Black Aff., Ex. 53 (Charles Clover & Sylvia Pfeifer, *Armed Forces Raid BP's Moscow Offices*, Fin. Times (Aug. 31, 2008)).
[3] Black Aff., Ex. 55 (Louise Armitstead, *David Cameron: 'UK Companies Put Off Russia Because of Corruption,'* Telegraph (Sept. 12, 2011)).
[4] Black Aff., Ex. 17 (Report on Foreign Affairs to U.K. House of Commons (28 Feb. 2000), at www.parliament.the-stationery-office.co.uk/pa/cm199900/cmselect/cmfaff/101/10102.htm (statement of Georgii Tal)) (hereinafter, "House of Commons Report").
[5] Black Aff., Ex. 43 (*Court Bars Dudley from Post for Sham Labor Violations*, Telegraph (Aug. 18, 2008)).

initial half-billion dollar investment in the Russian oil market.[6] In 1997, BP purchased a substantial stake in the Russian oil holding company Sidanko, whose most valuable subsidiary was a Russian oil company named Chernogorneft. Chernogorneft, together with Norex, owned and operated Yugraneft's lucrative oil field. One year later, the Billionaire Oligarchs forced Chernogorneft into bankruptcy and purchased its assets, including its minority interest in Yugraneft, for a fraction of its value, taking advantage of what BP's then-CEO, Lord Browne, characterized as a "rigged legal system."[7] BP tried to fight back against TNK, even "prevail[ing] on British Prime Minister Tony Blair to write to his Russian counterpart, Vladimir Putin, to express concern." Black Aff. ¶ 26. "All this effort was to no avail," as TNK proceeded to "acquire[] Chernogorneft . . . for [a] laughably low price[], in [an] opaque bankruptcy 'auction[].'" *Id.* ¶ 30.

It is thus unsurprising—though still noteworthy—that BP chose not to subscribe to the defendants' "joint" memorandum of law or assert its own *forum non conveniens* challenge. In light of BP's own troubled history with TNK in Russia, BP simply could not credibly do so. Indeed, BP knows all too well that Norex would "ha[ve] no reasonable possibility, either at the time of the Yugraneft takeover or now, of obtaining an impartial decision from the Russian arbitrazh courts (especially the courts in Tyumen oblast)[8] against TNK once TNK's controllers decided to complete a corporate raiding of Yugraneft." *Id.* ¶ 3.

For their part, the other Defendants would, in essence, have this Court hold that New York residents are free to direct from their offices in New York the confiscation of property and to corrupt foreign legal proceedings at will and then avoid justice in New York on the ground that they can only be sued in the foreign legal system that they have corrupted. In fact, without irony, Alfa Bank, a core

[6] Black Aff., Ex. 59 (Richard Sakwa, *Dmitry Medvedev's Challenge*, Open Democracy (May 7, 2008)).
[7] Black Aff., Ex. 11 (John Browne, *Beyond Business: An Inspirational Memoir from a Visionary Leader* (2011)) (hereinafter "Browne Memoir").
[8] An "oblast" is a Russian geographic and political region, similar to a U.S. state. Black Aff. ¶ 2, n.1.

asset of Defendant Alfa Group, and TNK both conceded that the Russian judicial system is corrupt, noting in their offering disclosures in 2006 and 2002, respectively, the "uncertain nature of the independence of the judiciary and the level of its immunity from economic, political or nationalistic influences." *See* Ostrager Aff., Exs. A (Alfa Bank Offering Circular 2006) at 119; B (TNK Preliminary Offering Circular 2002) at BP-431 (same).

Second, BP's attempt to airbrush its checkered past with the Billionaire Oligarchs and AAR/TNK and sever its connection to the alleged conspiracy cannot be reconciled with the public record and the limited documents BP has already produced in discovery in this case. For example, BP recently produced an excerpt from a detailed report on TNK's malfeasance that it had commissioned during the height of TNK's forced bankruptcy of Chernogorneft, and that it provided to the CIA. The CIA verified the principal claims in the report, which alleged, among other things, that: "TNK CEO Simon Kukes admitted bribing local officials." Black Aff., Ex. 21 (Declassified "Secret" CIA Memorandum ("CIA Memo")), at BP-1159. Norex separately obtained this report through a Freedom of Information Act ('FOIA") Request.

BP's decision to join forces with the AAR/TNK Defendants by joint venturing with TNK constituted a willful and knowing entry into the ongoing conspiracy to divest Norex of its controlling interest in and rightful profits from Yugraneft. When BP invested $6.5 billion dollars into the joint venture, BP had already recognized in its internal communications that "the notorious TNK" was responsible for "the events that befell Norex"—namely, the unlawful seizure of Yugraneft.[9] Those communications, together with contemporaneous public reports, confirm BP's firsthand knowledge of TNK's corruption of the Russian judicial system, its awareness of TNK's unlawful treatment of Norex relating to the seizure of Yugraneft, and BP's agreement to participate in this wrongdoing through TNK-BP. Indeed, BP demanded that the TNK-BP formation agreement make clear that

[9] Black Aff., Ex. 39 (Email from Sam Bennett to others within BP (Feb. 27, 2002)), at BP-220.

AAR would indemnify BP with respect to any and all claims Norex had arising from the misappropriation of Yugraneft, over which TNK-BP assumed full control. BP's self-described "pragmatic" decision to join forces with TNK and the Billionaire Oligarchs with full knowledge of the plan to deprive Norex of its controlling interest in and related profits from Yugraneft, coupled with BP's subsequent independent acts in furtherance of that conspiracy, make BP jointly and severally liable for all acts of its co-conspirators under clearly-established New York law.

Third, Defendants' argument that previous Russian court proceedings preclude the prosecution of this case is also without merit. The *only* Russian court case that addressed Norex's controlling interest in Yugraneft (the so-called "Know-How Case") did not afford Norex, a Cypriot company whose principal place of business is in Alberta, Canada, a full and fair hearing. Norex was never heard in that case because the Know-How court did not have personal jurisdiction over Norex *and* Norex was never properly served in that action. Given the serious legal and factual questions regarding service of process in the Know-How Case, the Second Circuit held that "the Russian default judgment in the Know-How Case cannot be given preclusive effect by an American court" under principles of international comity, a holding that is binding on this Court. Moreover, no defendant contests that Norex owns at least a 20% stake in Yugraneft—the reduced ownership stake established by the illegitimate Know-How Case default judgment. Thus, assuming, *arguendo*, the Know-How Case bears on the validity of Norex's claims—it does not—Defendants' failure to give Norex even its reduced share of the profits generated by Yugraneft over the last decade, let alone the opportunity to monetize its substantial ownership stake in the company, independently supports a *prima facie* claim for hundreds of millions of dollars in damages.

Fourth, Defendants' attempt to paint the Second Circuit's dismissal of the federal RICO action as a "final adjudication on the merits"—and thus *res judicata* here—is simply wrong. The

U.S. Supreme Court has recognized that an adjudication "on the merits" is one that "passes directly on the substance of a particular claim." The Second Circuit opinion, by contrast, turned solely on the question of the extraterritorial reach of the federal RICO statute and had absolutely nothing to do with the claims Norex is asserting in this Court. None of the pendent, non-RICO claims asserted in the federal action was before the Second Circuit, as the federal district court declined to exercise pendent jurisdiction over Norex's non-federal claims based upon its dismissal of the RICO claims. And, critically, the Second Circuit expressly acknowledged Norex's right to file a subsequent state court action on the related non-federal claims when it agreed to stay the issuance of its mandate so that Norex could refile in New York state court under the savings clause of CPLR 205(a). Defendants' statute of limitations argument, which turns on their erroneous contention that the Second Circuit's dismissal of the RICO case was a final adjudication on the merits—and therefore bars Norex from utilizing the savings clause of CPLR 205—falls with that flawed premise.

Finally, neither Blavatnik, Vekselberg, Access, Renova, nor BP contests this Court's jurisdiction, and the defendants that do—i.e., TNK, TNK-BP, Kukes, and Alfa—are, under settled principles, subject to personal jurisdiction in New York due to the acts in New York committed in furtherance of the conspiracy by their New York resident co-conspirators, the Billionaire Oligarchs. Moreover, personal jurisdiction over Kukes exists because he was a New York domiciliary at the time Norex commenced its federal action in February 2002. Further, Alfa is independently subject to the jurisdiction of the New York courts because Alfa and its affiliate companies continuously and systematically do business in the State. Indeed, Alfa essentially concedes that it is subject to jurisdiction in New York by admitting that its affiliates do business in the state.

BACKGROUND

Norex entered the Russian oil market in 1991 by partnering with Chernogorneft to form Yugraneft, a joint venture that developed a lucrative oil field in the Tyumen region of Western

Siberia and in which Norex rightfully holds a majority interest. Compl. ¶ 31. Chernogorneft was a major subsidiary and the "jewel in the crown" of Sidanko, a Russian oil company. Ostrager Aff., Ex. E (Cable from American Embassy in Moscow to U.S. Secretary of State). As Russia was undergoing rapid privatization in the 1990s, BP, the U.K.'s largest corporation, wanted to "get access to some of Russia's massive resources." Black Aff., Ex. 11 (Browne Memoir) at 138. Therefore, in 1997, BP invested more than half a billion dollars in Sidanko, acquiring a 10% equity interest in Sidanko and, with it, a stake in Sidanko's prized subsidiary, Chernogorneft, which had a 40% interest in Yugraneft. *Id.* As previously indicated, Defendants' unlawful seizure of Yugraneft forms the basis of the Complaint in this action.

Norex's majority interest in Yugraneft was a result of the initial capital contributions of the two original joint venture partners two decades ago. Norex contributed $1.2 million in charter capital plus valuable cold-weather oil field technology and know-how to the Yugraneft joint venture. Chernogorneft, on the other hand, agreed to provide the joint venture with oil field rights and $800,000 in charter capital. Compl. ¶ 31. In exchange for their respective in-kind contributions, as well as each partner's cash contributions to Yugraneft's charter fund, Norex received 60% of Yugraneft's shares, and Chernogorneft received 40% of the shares. *Id*.

For many years, Norex's joint venture with Chernogorneft proved beneficial to both Norex and Chernogorneft. *Id.* ¶ 32. In 1998, however, Yugraneft's fortunes began to change dramatically when the Billionaire Oligarchs, from the perches of their Manhattan apartments, sought to acquire control of Chernogorneft and later Yugraneft. After the collapse of the Soviet Union in the early 1990s, the Billionaire Oligarchs took advantage of the resulting power vacuum by obtaining control of various oil assets located in Russia and, in particular, Western Siberia. *See* Black Aff. ¶¶ 19-20. Through Defendant TNK, an entity the Billionaire Oligarchs controlled via their New York

companies, Access and Renova, the Billionaire Oligarchs, together with their co-conspirator Alfa (controlled by another Russian Billionaire Oligarch, unnamed co-conspirator Mikhail Fridman), targeted Yugraneft's lucrative oil field. Compl. ¶¶ 32-34.

Through a series of machinations, detailed below, the Billionaire Oligarchs ultimately wrested control of Yugraneft from Norex by: (1) forcing Chernogorneft into bankruptcy (despite its solvency) and acquiring its assets for a fraction of its value, giving TNK a minority interest in Yugraneft; (2) corrupting a regional Siberian court proceeding that diluted Norex's 60% controlling interest in Yugraneft to 20%, thereby increasing TNK's newly acquired minority stake to 80% (the "Know-How Case"); (3) forcibly seizing with armed militiamen Yugraneft's oil field and its corporate offices; (4) stripping Yugraneft's assets, and, ultimately, together with BP, redirecting Yugraneft's profits to Defendants and, finally, (5) through BP and TNK's joint venture, TNK-BP, entirely withholding all dividends from Norex, whose interest in Yugraneft had already been wrongfully diluted from 60% to 20%. The Billionaire Oligarchs not only directed this conspiracy from the comfort of their New York offices and homes, but on information and belief, they also used New York banks to wire monies overseas for the express purpose of bribing Russian officials, including judges of the Tyumen courts. Compl. ¶ 43. Indeed, BP, before deciding to join forces with TNK, provided a detailed report on the Billionaire Oligarchs' corruptive tactics to the CIA, which the CIA investigated and verified, including, among other things, that "TNK President Kukes said that he bribed local officials." Black Aff., Ex. 21 (CIA Memo), at BP-1159. BP has also produced in discovery other background reports it commissioned on AAR/TNK in 1999 and 2001, all of which similarly evidence BP's contemporaneous awareness of AAR/TNK's well-established corruptive practices in the region. *See* Ostrager Aff., Exs. C (Trident Report) at BP-003 ("Alfa Group is believed to be very much in control of the entire government system and judiciary in its 'home

region' of Tyumen"); D (Background Investigation and Assessment of Tyumen Oil Company) at BP-1542 ("[AAR] employ private security groups and enjoy the unlimited support of local enforcement agencies, which they are able to manipulate to achieve desired business objectives."); *see also* Black Aff.¶ 40 ("Corruption is the most likely explanation for the pro-TNK decisions, taken ex parte and with astonishing speed, by the Khanty-Mansiysk courts.").

A. TNK Gains a Minority Interest in Yugraneft by Forcing Chernogorneft into Bankruptcy and Subsequently Taking It Over

In authorizing BP's half-billion dollar investment in Sidanko, and derivatively Sidanko's subsidiary, Chernogorneft, which had a 40% stake in the lucrative Yugraneft oil field, BP then-CEO Lord Browne warned his board of directors that the investment was a "gamble." Black Aff., Ex. 11 (Browne Memoir), at 138. He was soon proven right. BP, of course, was not alone in its pursuit of Russia's "massive resources" and the oil-rich Chernogorneft. The following year, the Billionaire Oligarchs and Alfa, through their then jointly owned entity, TNK, forced Chernogorneft into bankruptcy using a corporate raiding tactic—the "ordered" bankruptcy. Professor Black notes that the "ordered" bankruptcy has been widely used by corporate raiders such as TNK in Russia to fraudulently deprive property owners of their property.[10]

The Chernogorneft bankruptcy proceeding began in October 1998, when a TNK-affiliated creditor sued Chernogorneft for an unpaid bill of $50,000. Black Aff. ¶ 32. Chernogorneft and BP immediately agreed to pay the $50,000, but were rebuffed. Three months later, observers were stunned when a regional judge appointed by Leonid Roketsky, who was both the Governor of the Tyumen Region and TNK's then Chairman,[11] declared Chernogorneft bankrupt. *Id.*

Blavatnik, orchestrating the takeover from his New York office, initially pressed for TNK

[10] The term "ordered bankruptcy" is used to define a hostile takeover tactic common in Russia. Black Aff., ¶ 2. The ordered bankruptcy, "in the sense of 'ordered by someone powerful,'" involves the "opaque sale of [a company's] assets at low prices to the person who ordered the bankruptcy." *Id.*
[11] Black Aff., Ex. 23.

itself to be the external manager of the bankruptcy. Black Aff., Ex. 22 (Letter from Leonard Blavatnik (on TNK letterhead) to Stephen Glazer of the U.S. Export-Import Bank (Apr. 14, 1999)). Ultimately, TNK succeeded in getting the bankruptcy court to appoint an external manager with close ties to TNK. Black Aff., Ex. 4. The court-appointed external manager then rejected BP's offer to pay all creditors *in full*. Ostrager Aff., Exs. F (Aug. 25, 1999 letter from M. Townshend, Director of International Affairs, BP to U.S. Export-Import Bank) (discussing BP's offer to pay creditors in full); Ex. G (Nov. 30, 1999 letter from Creditors' counsel to U.S. Export-Import Bank) (discussing how external manager rejected BP's offer to pay creditors).

Moreover, rather than holding a competitive auction for Chernogorneft's assets, Governor Roketsky and his judges gave TNK effective control over the proceedings by holding a closed auction in which only TNK-affiliated companies could participate. Black Aff., Ex. 10. TNK bought Chernogorneft for $176 million at the closed auction, a fraction of Chernogorneft's then-reported actual value. Black Aff., Exs. 4, 21 (CIA Memo) at BP-1159 (noting that TNK's winning bid was "about one-third of Chernogorneft's value according to oil analysts"); Black Aff. ¶ 30 ("Sidanko was blocked by armed force from delivering court orders postponing the Chernogorneft 'auction'"). By all published reports, including contemporaneous statements by BP, the bankruptcy was a "farce,"[12] a "sham" and a "perversion of justice." Black Aff., Ex. 15.

It is well documented that Defendants AAR and TNK used the "ordered" bankruptcy as a tactic in hostile takeovers in Russia many times before Chernogorneft's 1998 bankruptcy. Black Aff. ¶ 47 n.48. This particular illegitimate bankruptcy, however, captured the attention of the world press because co-Defendant BP, as well as other high-profile entities and individuals, like the European Bank for Reconstruction and Development and George Soros, were among the creditors of Chernogorneft's parent company, Sidanko. BP, concerned about losing its half-billion dollar

[12] Black Aff., Ex. 43.

investment, publicly expressed its outrage at these corrupt Russian bankruptcy proceedings, describing "the entire bankruptcy process as invalid," and fuming about TNK's ability to capture Chernogorneft at "a ridiculous price" through the "illegal sale." Ostrager Aff., Ex. H (Nov. 26, 1999 internal BP email) at BP-235. BP further noted that officials of Chernogorneft's parent company, Sidanko, "were prevented by armed guards from entering the [Chernogorneft] offices to serve an injunction," making it "just another day in Russia!" *Id.* Unable to obtain an impartial hearing in Russia, BP reached out to then-Prime Minister Tony Blair to intervene with his Russian counterpart, President Vladimir Putin. Black Aff., Ex. 12 (Letter From U.K. Prime Minister Tony Blair to Russian Prime Minister Vladimir Putin (Sept. 7, 1999)). Blair was unsuccessful.

The European Bank for Reconstruction and Development (EBRD) also complained to no avail to then Russian Prime Minister Sergei Stephasin about "irregularities" in the procedures followed in the Chernogorneft bankruptcy by the Tyumen bankruptcy manager, and questioned whether the bankruptcy was in fact "bona fide" given that BP's offer to purchase all creditor claims at full value had been inexplicably rejected by the court. Black Aff., Exs. 13 (Letter from Noreen Doyle, Deputy Vice President of EBRD, to Russian Prime Minister Sergei V. Stepashin (July 29, 1999)); 14 (Letter from Charles Frank, First Vice President of EBRD to Chairman Georgii Tal of the Russian Federal Bankruptcy Service (Oct. 15, 1999)). In response to these protestations of impropriety and partiality by the Tyumen bankruptcy manager, the Russian Federal Bankruptcy Service removed the manager's license—an order that was promptly ignored by the local Tyumen courts. Black Aff. ¶ 29 ("In one of a series of manifestly partial actions, the local Tyumen oblast courts ignored this order.").

The Director of the Federal Bankruptcy Service, Georgii Tal, referred to the local Tyumen courts as "the legal department of TNK" and called the Chernogorneft bankruptcy proceedings a

"fraud." Black Aff., Exs. 17 (House of Commons Report); 18 (Alexei Nikolsky, *Former Director of the Federal Financial Recovery Service Murdered*, Vedomosti, Apr. 29, 2004). Mr. Tal was later gunned down in the streets of Moscow, "likely 'in connection with [his] work at the [Bankruptcy Service].'" Black Aff. ¶ 29.

Ultimately, however, Chernogorneft remained in the hands of the Billionaire Oligarchs, and BP, with all its power, resources and connections, could do nothing to stop it. Indeed, years later, Lord Browne, BP's former CEO, described the bankruptcy as an example of a "naïve foreign investor caught out by a rigged legal system." Black Aff., Ex. 11 at 140. By September 1999, the Billionaire Oligarchs, AAR and TNK, under the leadership of TNK's new President and CEO, Defendant Kukes, had assumed full control of Chernogorneft's assets, including its minority interest in Yugraneft.

B. The Billionaire Oligarchs, AAR, and TNK Gain Majority Control Over Yugraneft

As of June 2001, Norex continued to hold a majority interest in Yugraneft's shares and therefore maintained its voting power over almost all decisions, such as the election of Yugraneft's General Director and the issuance of dividends. However, shortly thereafter, Norex experienced the blunt force of the Billionaire Oligarchs' grasp on the Russian judicial system: On June 25, 2001, the Billionaire Oligarchs, acting through TNK, filed suit in a Tyumen court claiming that the 60% share of Yugraneft that Norex acquired ten years earlier was based on over-valued technical "know-how" and should be declared invalid (the "Know-How Case"). Through that action, the Billionaire Oligarchs sought to transform Norex's majority stake into a minority one. Not only was Norex never properly served with the complaint in the Know-How Case, *see* Maggs Aff. ¶¶ 41-51, but on information and belief, the Billionaire Oligarchs wired funds from New York banks to bribe Russian officials in order to influence the Know-How proceedings. Compl. ¶ 43. As a result, the day after

TNK filed its claim, the arbitrazh court in Tyumen accepted TNK's false representations regarding service of process and issued an ex parte interim order barring Norex from voting most of its shares, effectively giving TNK majority control over Yugraneft.[13] Professor Black, a principal drafter of the Russian Joint Stock Company law, states that this "ex parte court order . . . barring Norex from voting its Yugraneft shares" was "patently without basis in the Russian Joint Stock Company (JSC) law." Black Aff. ¶ 39. The next day, TNK then forged minutes of a shareholder meeting and "elected" a TNK official, Alexander Berman, the General Director of Yugraneft.[14] Black Aff., Ex. 31 (July 26, 2002 Letter from First Deputy Minister of Ministry of Internal Affairs of the Russian Federation to Russian Ministry of Foreign Affairs) at BP-1040 ("[T]he management of [TNK] fabricated the Protocol of the shareholders' meeting.").

Two days later, at the direction of the Billionaire Oligarchs, Berman, six TNK attorneys, and sixteen TNK militia members dressed in fatigues and carrying AK-47 machine guns forcibly entered Yugraneft's corporate offices, falsely declared that Berman had been elected Yugraneft's General Director, and took control over Yugraneft's oil field. Compl. ¶¶ 47-49. TNK's private armed militia members returned to Yugraneft's offices with machine guns on July 6, 2001, cut off Yugraneft's phone and internet service, and occupied Yugraneft's oil field and field office, causing Yugraneft's foreign employees to flee the country. *Id.* at ¶ 50. TNK, like other Russian corporate raiders during this time period, routinely used sham shareholder meetings as "legal 'cover' for a physical attack on

[13] The interim order specifically prohibited Norex from voting its shares in Yugraneft attributable to its contributions of technical "know-how." The Russian court made the order permanent and reduced Norex's shares in the company to twenty percent in January 2002. The court did not have personal jurisdiction over Norex because Norex was not properly served. *See* Maggs Aff. ¶¶ 41-51; *see also Norex Petroleum Ltd. v. Access Indus., Inc.*, 416 F.3d 146, 161-62 (2d Cir. 2005) (holding that Know-How Case has no preclusive effect because there was a serious factual and legal dispute as to whether the Russian court in the Know-How Case had personal jurisdiction over Norex).

[14] Yugraneft had actually held a real meeting that same day, June 26, 2001, for which Yugraneft had given proper notice to all shareholders. At that meeting in Moscow, the Russian bailiff refused to allow TNK representatives to vote their shares because TNK's shares were recorded on Yugraneft's share register as owned by Chernogorneft, and not TNK. The bailiff also barred Norex from voting its shares that had been enjoined by the interim court order in the Know-How Case. However, because TNK could not vote its shares, Norex nevertheless still had enough shares to re-elect its choice for General Director.

the target's headquarters by armed men." Black Aff. ¶ 37.

Norex persuaded the local prosecutor to send a warning letter to TNK regarding the forged minutes. "The investigation was quickly closed, and the prosecutor who sent it was reprimanded by his superior and soon fired." *Id.* ¶ 41. Norex then persuaded the Ministry of Internal Affairs to investigate. *Id.* ¶ 42. The Ministry concluded that "[TNK] fabricated the Protocol of the shareholders' meeting of [Yugraneft]" and used these fabricated minutes to "invade[] [Yugraneft's] head office and the production facilities." Black Aff., Ex. 31 (Letter from First Deputy Minister of Ministry of Internal Affairs of the Russian Federation to Russian Ministry of Foreign Affairs), at BP-1040. However, when the Ministry of Internal Affairs referred this matter to the prosecutors' office for criminal proceedings, it was quashed as well. Black Aff. ¶ 43. When a Moscow court later held that TNK's minutes were fabricated and that TNK's hand-picked General Director was not legally elected, TNK simply ignored the Moscow court order. *Id.* ¶ 44.[15]

C. Aware of the Billionaire Oligarchs' Unlawful Seizure of Yugraneft, BP Nevertheless Joins the Conspiracy Against Norex

Clearly disappointed by the TNK "ordered" bankruptcy of Chernogorneft, BP found itself in a precarious position. Although BP clearly understood, in the words of an internal e-mail, the Billionaire Oligarchs' orchestration of the "events that befell Norex"—i.e., the theft of Yugraneft—BP also recognized the enormous value of Yugraneft's oil reserves, and BP wanted to maintain and expand its oil interests in Russia. *See* Black Aff., Ex. 39 (Email from Sam Bennett to others within BP (Feb. 27, 2002)) at BP-220 ("While our history is intertwined with the events that befell Norex, we long ago parted company on the road to where we find ourselves to-day."). Therefore, faced with

[15] Defendants make no reference to this *Moscow* court decision—the so-called Kondrashina case—in their detailed procedural history of Russian court cases. It is no accident that the one relevant court case not decided in the first instance by the Tyumen courts, "the legal department of TNK," unambiguously supports Norex's version of events. Black Aff. ¶ 47. Indeed, "the court's assessment of which set of minutes was the true set was simple: among other indicia, the Norex set included the Yugraneft seal and was attested to by a notary; the TNK version had neither the Yugraneft seal nor a notary attestation." *Id.* ¶ 44 n.45.

continuing a losing battle with AAR/TNK and the loss of hundreds of millions of dollars from its investment in Sidanko/Chernogorneft as opposed to obtaining "access to more reserves and Russian employees," and "a Russian profile," BP chose to join forces with its chief antagonist for no reason other than sheer "pragmatism." Black Aff., Ex. 11 (Browne Memoir) at 143, 146. As Lord Browne has since explained, "[BP] wanted to get into Russia but there were very few ways of doing that." *Id.* at 143.

Therefore, on August 29, 2003, in order to advance its corporate interests in Russia, BP embraced the opportunity to form a business relationship with AAR/TNK. As part of a plan to organize TNK-BP, a 50-50 joint venture that absorbed TNK and Sidanko's assets, BP paid $6.5 billion to the Billionaire Oligarchs and AAR to true up BP's share of TNK's contributed assets to 50%. BP did not make this investment casually. First, BP invested "more than 25,000 man hours on due diligence" of TNK. *Id.* at 146. Second, BP took the extraordinary step of seeking and obtaining a full indemnification from AAR for the events relating to TNK's seizure of Yugraneft. Ostrager Aff., Ex. I (Excerpt of TNK-BP Formation Agreement) at BP-370. This indemnification agreement is the "smoking gun" that demonstrates BP's full understanding of TNK's checkered history vis-à-vis the "events that befell Norex" in connection with TNK's seizure of Yugraneft and marks BP's entrance into the conspiracy.

Thus, in 2003, BP, fully aware of the Billionaire Oligarchs' theft of Yugraneft's oil field from Norex, was able to recover its valuable interests in Chernogorneft and simultaneously pursue a growth strategy for BP in Russia. TNK, for its part, gained "credibility in the eyes of Western investors" and access to BP's enviable distribution channels across the world. Black Aff., Ex. 11 (Browne Memoir) at 146. TNK-BP eventually assumed control over all of Yugraneft's assets and, as an ongoing concern, remains enormously profitable, generating since its inception total income

exceeding $25 billion, distributing over $20 billion in dividends to BP and AAR, and having paid more than $90 billion in duties and excise taxes to the Russian government since 2003. Ostrager Aff., Ex. J (BP website). Notwithstanding that Norex concededly has a substantial interest in Yugraneft (despite the corrupt Know-How Case that purportedly reduced Norex's share to 20%, *see* Compl. ¶ 51), TNK-BP hasn't paid a penny to Norex of the billions of dollars of dividends that have been distributed to the shareholders of TNK-BP. Compl. ¶ 53. Indeed, over the past decade, the AAR/TNK Defendants and BP have conspired to ensure that Yugraneft refrains from paying tens of millions of dollars in annual dividends owed to Norex.

D. BP Learns the Hard Way that TNK Has Not Changed and, Like Norex, Finds Itself at TNK's Mercy

Since BP formed its partnership with TNK in 2003, BP has had significant issues with TNK. As former BP CEO Lord Browne colorfully put it, before the Dudley affair, TNK-BP experienced a "low-level guerilla war carried on inside the company," but, "[o]verall BP prospered." Black Aff., Ex. 11 (Browne Memoir) at 150. In 2008, however, "things appeared to begin to unravel," *id.*, when then TNK-BP CEO Robert Dudley—BP's homegrown choice for the job—resisted the Billionaire Oligarchs' and AAR's attempts to expand TNK-BP's business into rogue countries like Cuba, Sudan, North Korea, Syria, Iran and Myanmar because these nations were hostile to the United States. Black Aff., Ex. 40.

In response to Dudley's resistance, AAR began a sustained "campaign of harassment" against Dudley, which, according to BP's then-Chairman, Peter Sutherland, involved "manipulation of elements of the Russian state." Black Aff., Ex. 48. For example, due to the Billionaire Oligarchs' influence within the government, the Russian authorities refused to grant Dudley a renewal work visa. Dudley was ultimately forced to flee Russia and hide out in a secret location because, as BP's then-CEO Tony Hayward explained, "he fe[lt] that he may [have] need[ed] to think about his safety .

. . Not a day went by [in Russia] without some sort of harassment [by AAR]." Black Aff., Ex. 46 (Russell Hotten, *TNK-BP Chief in "Secret Location" Amid Safety Fears*, Telegraph (July 25, 2008)).

Since Dudley's departure, things have only gotten worse for BP in Russia. Indeed, while BP and TNK were attempting to negotiate a resolution of their dispute over the control of TNK-BP in the wake of Dudley's ouster, Russian police raided BP's lawyers' offices in Moscow in 2008. Black Aff., Ex. 44. More significantly, earlier this year, AAR/TNK asserted that BP could not independently transact with Rosneft, the Russian state-owned oil company, claiming that the TNK-BP joint venture agreement mandates that BP may only conduct business in Russia through TNK-BP. After BP refused to include TNK-BP in the transaction and the deal unraveled, a group of TNK-BP's minority shareholders, "most likely prompted by TNK," sued BP, accusing it of scuttling a profitable deal between TNK-BP and Rosneft worth billions of dollars. Black Aff., Ex. 53 (Charles Clover & Sylvia Pfeifer, *Armed Forces Raid BP's Moscow Offices*, Fin. Times (Aug. 31, 2011)). Most recently, TNK-BP was asked to join the minority shareholders' lawsuit against BP, a "move [that] highlights AAR's pursuit of its own damages claim in the UK and the ongoing tensions between the partners." Black Aff., Ex. 51.

In the past few weeks alone, in connection with that lawsuit, armed Russian Special Forces agents again raided BP's Moscow offices. Black Aff., Exs. 52-54. Citing these raids, British Prime Minister David Cameron recently raised concerns about the Russian legal system and its endemic "obstacles of bureaucracy, regulation, and corruption" with his counterpart, Russian President Dmitry Medvedev, at a meeting to discuss U.K-Russian relations. Black Aff., Ex. 55. Whether it chooses to admit it or not, BP is now suffering the consequences of its "Faustian bargain" with AAR/TNK. Today, BP and its co-Defendants may make unlikely bedfellows, but before the disintegration of their own partnership, they conspired for years to deprive Norex of its rightful share

of the enormous profits from Yugraneft's oil field. Thus far, they have succeeded.

ARGUMENT

Under well-settled New York law, a court ruling on a motion to dismiss is required to: (a) "accept the facts as alleged in the complaint as true"; (b) "accord plaintiffs the benefit of every possible favorable inference"; and (c) "determine only whether the facts as alleged fit within any cognizable legal theory." *ABN AMRO Bank, N.V. v. MBIA Inc.*, 17 N.Y.3d 208, 227 (2011) (internal citations omitted)*; see also Leon v. Martinez*, 84 N.Y.2d 83, 87-88 (1994) (same); *People v. N. Y. City Transit Auth.*, 59 N.Y.2d 343, 348 (1983) (same).

I. Defendants Have Failed to Meet Their Heavy Burden of Proof that This Case Should Not Continue in This Court.

The Second Circuit's 2005 holding that Russia is not an adequate alternative forum for Norex's claims should be dispositive of the issue of whether New York is the proper forum for this case. In an attempt to relitigate the issue here, Defendants disregard the Second Circuit's holding, as well as the extensive briefing, factual record, and oral argument that led to that holding. Under New York's well-established doctrine of collateral estoppel, however, they are precluded from doing so. *See Buechel v. Bain*, 97 N.Y.2d 295, 303-04 (2001) (holding that collateral estoppel applies where an issue was necessarily decided and there was a full and fair opportunity to contest the decision now having controlling effect). Indeed, because, as the Second Circuit recognized, Norex is precluded from bringing *any* of its claims in Russia due to the tainted ruling in the corrupt Know-How Case, New York case law dictates that Defendants be collaterally estopped from arguing that Russia is an available forum for the litigation of Norex's claims. *Id.* Since the Second Circuit's ruling, Norex has discovered substantial evidence that Defendants manipulated the Russian court system, including with respect to BP itself, as well as bribery of the Russian courts in the province of Siberia (Tyumen) where the "Know-How" case was initiated.

And, because of Defendants' substantial New York connections and the substantial nexus the acts giving rise to this case has to New York, Defendants should not be allowed to disturb Norex's choice of forum. Under CPLR 327(a), a court may• but is not required to• dismiss or stay an action when the court "finds that in the interest of substantial justice the action should be heard in another forum." CPLR 327(a). There can be no question in this case that in the interest of substantial justice this action should be heard in this Court.

A defendant challenging the propriety of the forum under CPLR 327 bears the "heavy burden" of showing that certain private or public interest factors "militate against accepting the litigation." *Am. BankNote Corp. v. Daniele*, 45 A.D.3d 338, 339-40 (1st Dep't 2007); *see also Anagnostou v. Stifel*, 204 A.D.2d 61, 61 (1st Dep't 1994) ("Generally, unless the balance is strongly in favor of the defendant, the plaintiff's choice of forum should rarely be disturbed.") (internal citations omitted). Those factors, as recently articulated by this Court, are: "1) the burden on the New York courts; 2) the potential hardship to the defendant; 3) the unavailability of an alternative forum; 4) the residence of the parties; and 5) the location of the events giving rise to the transaction at issue." *Nordkap Bank AG v. Standard Chartered Bank*, 32 Misc. 3d 1216(A), 2011 WL 2764279, at *3 (Sup. Ct., N.Y. County May 6, 2010) (Bransten, J.). As previously indicated and outlined below, the unavailability of an alternative forum is the most important factor.

On a motion to dismiss for *forum non conveniens*, as with any other motion to dismiss, the court must take the allegations of the Complaint as true. *See Georgia-Pacific Corp. v. Mutlimark's Int'l Ltd.*, 265 A.D.2d 109, 112 (1st Dep't 2000) (finding a sufficient New York nexus where the complaint alleged a global conspiracy that utilized a New York bank as a "clearing agent" for its money transfers); *Reid v. Ernst & Young Global Ltd.*, 13 Misc. 3d 1242(A), 2006 WL 3455259, at *3 (Sup. Ct., N.Y. County Nov. 15, 2006) (finding a sufficient New York nexus where the complaint

alleged that defendants plotted from their New York office even though conduct was also alleged in Rome, Oslo and Hong Kong). As discussed in detail below, Defendants have fallen short of meeting their "heavy burden," and their motion to dismiss for *forum non conveniens* should be denied. *See Nordkap Bank AG*, 2011 WL 2764279, at *5.

A. *There Is No Available Alternative Forum*

As the New York Court of Appeals established nearly thirty years ago, "the availability of another suitable forum is [the] most important" factor in any *forum non conveniens* analysis under New York law. *Islamic Republic of Iran v. Pahlavi*, 62 N.Y.2d 474, 481 (1984). In deciding this question in Norex's favor in the prior federal action, the Second Circuit held that "[e]xpert opinions from both sides reveal that Russian courts would likely deem the core issues underlying plaintiff's claims [to be] largely precluded by the Know-How Case," and that any potential corruption prosecution that might restore Norex's ability to sue Defendants is far too remote to render an alternative forum available. *Norex Petroleum Ltd.*, 416 F.3d at 159-60 (vacating and remanding trial court dismissal for *forum non conveniens*); *see* Ostrager Aff., Ex. K (Kostin Depo. Tr.) at 203:20-23, 204:3-9, 204:12-13.[16]

In addition to the Second Circuit's dispositive holding, there is another, no less compelling reason that Russia does not provide a suitable alternative forum. Because of Defendants' *own* conduct, the Russian court system is even *less* accessible now to Norex than it was at the time of the Second Circuit's ruling. Norex has not only alleged, but has marshaled substantial evidence, that Defendants manipulated the Russian court system. *See* Black Aff., Exs. 17 (House of Commons Report) ("Federal Bankruptcy Service chief Georgii Tal . . . described the West Siberian Arbitration

[16] "Q: Is it correct that Norex cannot sustain a claim under Article 1100.2 for unjust enrichment so long as the [Know-How] decision is in legal force? . . . A: Well, as far as this concerns the claims besides the decision, I think this is a correct assumption. Q: And isn't it true under Article 1103 that Norex cannot sustain a claim for either unjust enrichment or some other tort claim so long as the [Know-How] decision is still in legal force? . . . A: I believe the answer is the same as the previous."

Court as 'the legal department of TNK'"); 21 (CIA Memo) at BP-1159 ("TNK President Kukes said that he bribed local officials.").

The recent travails of BP—which, tellingly, has not joined Defendants' Joint Brief nor independently moved to dismiss under *forum non conveniens*—illustrate full well that Defendants' longstanding interference with the Russian judicial system effectively denies their Western adversaries access to justice there. *See* Black Aff. ¶ 11 ("Defendant BP has been more than once the victim of TNK's extreme tactics . . . consistent with Norex's allegations about TNK's actions."). Just two months ago, as BP's dispute raged with its partners in TNK-BP, a Tyumen court ordered raids on BP's Moscow offices by special forces with machine guns. Such raids were, in BP's words, part of a revived "pressure campaign against BP's business in Russia" and serve as a stark reminder of the insidious sway the Billionaire Oligarchs have over the Russian judicial system, and in particular the courts of the Tyumen region of Western Siberia, which function as the "legal department of TNK." Black Aff., Exs. 17 (House of Commons Report); 53 (Charles Clover & Sylvia Pfeifer, *Armed Forces Raid BP's Moscow Offices*, Fin. Times (Aug. 31, 2011)).

Defendants' meddling with Russian justice is so open and notorious that AAR/TNK did not end its violent raids on *its own partner* until British Prime Minister David Cameron personally appealed to Russian President Dmitry Medvedev. Black Aff., Ex. 54. If BP—a global giant—could not shield itself from the other Defendants' corrosive influence on the Russian courts without the direct involvement of the British head of state, what chance would Norex, a small, foreign concern, have to obtain justice in Russia? *See* Black Aff. ¶ 3. Therefore, even without the Second Circuit's binding determination that Russia is not an available forum for the litigation of Norex's instant claims, Defendants' continuous and ongoing corruption of various Russian courts in Tyumen makes it impossible for Norex to achieve a full and fair hearing in Russia. *See Intertec Contracting A/S v.*

Turner Steiner Int'l, S.A., 6 A.D.3d 1, 5 (1st Dep't 2004) (no adequate alternative when other forum would be "an unsuitable forum for the resolution of plaintiffs' claims"); *Banco Nacional Ultramarino v. Chan*, 169 Misc. 2d 182, 192 (Sup. Ct., New York County 1996) (no adequate alternative when other forum would "undermine plaintiff's ability" to prove case and deprive plaintiff of "the use of the procedures for discovery allowed in this jurisdiction").

B. *This Case Arises Largely out of Conduct Orchestrated and Coordinated from New York by New York Residents*

Norex also has made a compelling showing that both Norex's claims and the Defendants themselves have very substantial ties to New York. First, the majority of the Defendants are incontestably subject to New York jurisdiction. *See* Compl. ¶¶ 5-8, 14-16. Defendants Blavatnik and Vekselberg live in New York City, and own and control Access and Renova, two companies organized under the laws of New York, whose principal places of business are in New York.[17] Further, the Billionaire Oligarchs have chosen to actively engage in the civic life of New York, donating *tens of thousands of dollars* to various political campaigns from bids for New York City office to the candidacies of multiple former and current members of the New York congressional delegation. Ostrager Aff., Exs. L & M (Blavatnik Political Contributions); N (Vekselberg Political Contributions).

Similarly, BP, an international conglomerate, does significant business in New York; its New York office is dedicated to public and investor relations; and BP is the largest non-US company listed on the New York Stock Exchange. None of the Billionaire Oligarchs, Access, Renova, or BP

[17] In particular, Defendant Blavatnik's Access, in an all-cash deal, recently bought Warner Music Group ("Warner")—headquartered in New York City—for a reported $3.3 billion. *See Blavatnik's Access Industries to Buy Warner Music*, Forbes.com, May 6, 2011, at http://www.forbes.com/2011/05/06/warner-music-to-be-acquired-by-access-industries-marketnewsvideo.html. Indeed, Blavatnik has had a longstanding relationship with New York-headquartered Warner, having served on its board of directors from 2004 to 2008 and having purchased a Manhattan townhouse from its Chairman, Edgar Bronfman, Jr., in 2007 for $50 million. *See* Zack O'Malley Greenburg, *Blavatnik Close to Winning Billionaire Battle for Warner Music*, Forbes, May 5, 2011, at http://www.forbes.com/sites/zackomalleygreenburg/2011/05/05/blavatnik-close-to-winning-billionaire-battle-for-warner-music/.

contests personal jurisdiction in New York. Of the remaining corporate Defendants, Alfa has offices in and continuously and systematically does business within New York State. *See* Compl. ¶¶ 10, 14-16; *see also NordKap Bank AG*, 2011 WL 2764279, at *4 ("Defendant[] has a branch office in the state, further eroding its argument for *forum non conveniens*."). Defendant Kukes, an American citizen, has extensive ties to New York, where he frequently travels to, among other things, visit his family. Kukes maintained his domicile in New York with his family from 2000-2005, including at the time this action was commenced in February 2002.

Second, as detailed in the Complaint, Defendants plotted, orchestrated and implemented their scheme from their New York offices and residences, including the violent *coup de grâce* eventually executed by armed Russian militiamen. *See* Compl. ¶¶ 33, 43, 47, 51; *see also Reid*, 2006 WL 3455259, at *3 (finding a New York nexus where defendants "schemed" from New York to execute their plan in Hong Kong). Norex specifically alleges that Defendants bribed Russian officials—an integral component of Defendants' conspiracy to divest Norex of its majority ownership of Yugraneft—by wiring critical funds from New York. *See* Compl. ¶¶ 43, 51; *see also Am. BankNote Corp.*, 45 A.D.3d at 339-40 (finding New York a convenient forum because "defendants' bank accounts, allegedly a central part of the claimed fraudulent scheme and the means" of implementation were located in New York); *Banco Nacional Ultramarino*, 169 Misc. 2d at 192 (finding New York a convenient forum because defendants used "New York banking institutions [as] the means of disbursement" in their plot).

C. *Neither the Courts Nor Defendants Would Be Burdened by This Case Continuing in New York*

Defendants cannot credibly assert that the continued litigation of this case in New York would meaningfully inconvenience them or unnecessarily burden this Court. Defendants include several of the world's wealthiest billionaires and BP, the largest non-U.S. company listed on the New

York Stock Exchange. *See* Compl. ¶¶ 5, 7, 10, 14, 15. Defendants' formidable wealth gives them more than "ample resources to bring witnesses to New York if needed . . . which makes any hardship minimal." *Nordkap Bank AG*, 2011 WL 2764279, at *4; *see also Intertec Contracting A/S*, 6 A.D.3d at 6 (denying *forum non conveniens* motion to dismiss where genesis of action was in Sri Lanka). Further, most of the Defendants are New York residents and those who are not New York residents have extensive contacts with New York. New York case law clearly supports the retention of this case in New York under these circumstances. *See Mionis v. Bank Julius Baer & Co., Ltd.*, 9 A.D.3d 280, 282 (1st Dep't 2004) (holding that New York was the appropriate forum where "defendant companies are foreign [but] they have a New York branch, . . . individual defendants are New York residents," and "any hardship in bringing witnesses or documents to New York would be minimal, since both parties consist, at least in part, of multinational corporations with ample resources").

The possibility of internationally-located witnesses also does not override Norex's choice of forum, especially where, as here, Defendants have "failed to come forward with the names or potential testimony of such witnesses or any basis, other than sheer speculation, to believe that any such testimony will be unobtainable in New York." *Anagnostou*, 204 A.D.2d at 62. Of particular significance is the fact that Norex's trial witnesses in this case will largely be limited to the resident New York Defendants and BP.

Finally, even if this Court should later determine that Norex's claims are governed by Russian law, New York courts have routinely rejected the notion that the necessity of applying foreign law should result in a *forum non conveniens* dismissal and have repeatedly held that New York courts are fully capable of interpreting and applying the law of foreign countries. *See Intertec Contracting A/S*, 6 A.D.3d at 6 (application of Sri Lanka law not an undue burden); *Mionis*, 9 A.D.3d at 282 (application of Greek law not an undue burden); *Yoshida Printing Co., Ltd. v. Aiba*, 213

A.D.2d 275, 275 (1st Dep't 1995) (application of Japanese law not an undue burden). The courts of this state also have repeatedly found that the actual or potential need to translate evidence, whether documentary or testimonial, cannot satisfy a defendant's "heavy burden" of demonstrating that a plaintiff's selection of New York as the forum is not in the interest of substantial justice. *See Am. BankNote Corp.*, 45 A.D.3d at 339 (need to translate documents and testimony not an undue burden); *Mionis*, 9 A.D.3d at 282 (same); *Yoshida*, 213 A.D.2d at 275 (same); *Thales Cryogenics, B.V. v. Tri-Gem Int'l., Inc.*, 13 Misc. 3d 1222(A), 2006 WL 2944663, at *4 (Sup. Ct., Nassau County 2006) (same).

In short, none of the private and public factors relied upon by New York courts in a *forum non conveniens* analysis favor Defendants. Norex cannot pursue its claims in Russia, as the Second Circuit has already determined, let alone obtain a fair hearing there. The preclusive effect of that finding, coupled with the ample connections between the case, Defendants, and this Court, as well as the absence of any showing of undue burden for Defendants or this Court, mandates that Norex's choice of forum should be undisturbed.

II. BP Is Liable for the Prior Illegal Acts of Its Co-Conspirators and Independently Is Liable Under Various Tort Theories.

At the pleading stage, a complaint alleging conspiracy need only plead a primary tort "plus the following four elements: (1) an agreement between two or more parties; (2) an overt act in furtherance of the agreement; (3) the parties' intentional participation in the furtherance of a plan or purpose; and (4) resulting damage or injury." *Abacus Fed. Sav. Bank v. Lim*, 75 A.D.3d 472, 474 (1st Dep't 2010); *see also Levin v. Kitsis*, 82 A.D.3d 1051, 1052 (2d Dep't 2011) (holding that "a plaintiff may plead the existence of a conspiracy in order to connect the actions of the individual defendants"). Here, no Defendant disputes that the Complaint sufficiently alleges that the AAR/TNK Defendants, including Kukes: (1) entered into a corrupt agreement to deprive Norex of its rightful

ownership of and profits from Yugraneft, *see* Compl. ¶¶ 1, 2, 33-34, 40; (2) actively and intentionally participated in multiple overt acts in furtherance of their agreement, including bribery of government officials, willful corruption of court proceedings, forgery, and seizure of property through the use of heavily-armed militias, *see id.* ¶¶ 37, 43-45, 47-50; and (3) caused over a billion dollars in damages to Norex, *see id.* ¶¶ 51-53, 59. Nor does any Defendant meaningfully contest that Norex has adequately pled its various tort claims as against the other, non-BP defendants. *See* Jt. MOL at 27 n.22 (adopting, without discussion, *BP*'s arguments with respect to the various tort claims).

Moreover, beyond the complaint itself, multiple sources of documentary evidence—many produced by BP—support Norex's conspiracy allegations. *See, e.g.*, Black Aff., Exs. 17 (House of Commons Report) ("Federal Bankruptcy Service chief Georgii Tal . . . described the West Siberian Arbitration Court as 'the legal department of TNK'"); 21 (CIA Memo) at BP-1159 ("TNK President Kukes said that he bribed local officials."); 31 (Letter from First Deputy Minister of Ministry of Internal Affairs of the Russian Federation to Russian Ministry of Foreign Affairs) at BP-1040 ("[T]he management of [TNK] fabricated the Protocol of the shareholders' meeting . . . . [and] invaded the head office and the production facilities that belonged to [Yugraneft].").

While BP does not take issue with the conspiracy-related allegations against its co-defendants, it argues that, as a matter of law, BP cannot be their co-conspirator because it allegedly joined the conspiracy after its inception. BP further argues that Norex alleges no facts demonstrating its intentional participation in any actions in furtherance of the conspiracy. On both accounts, as detailed below, BP misstates the law and misrepresents its own conduct.

A. *BP Knowingly Joined the Corrupt Agreement to Divest Norex of Its Ownership Interest in and Profits from Yugraneft*

From the beginning of its involvement with TNK, BP had firsthand knowledge of the AAR/TNK Defendants' wrongdoing vis-à-vis Norex. BP also knew full well that the formation of

TNK-BP would prejudice Norex and perpetuate that wrongdoing. Nonetheless, after a meeting between BP's Robert Dudley and the Billionaire Oligarchs, BP decided to join forces with "the notorious TNK"[18] in order to recoup its Chernogorneft-related losses and pave the way for future Russian investments. Black Aff., Ex. 39 (Email from Sam Bennett to others within BP (Feb. 27, 2002)), at BP-220.

In 2002, before the formation of TNK-BP, BP acknowledged internally that its own history was "intertwined with the events that befell Norex" "dat[ing] back to the good (bad) old days." *Id.* In fact, BP was so concerned about Norex's meritorious claims against TNK, and the AAR/TNK Defendants were so eager to bring BP into their conspiracy, that AAR/TNK expressly agreed in TNK-BP's formation documents to indemnify BP for any losses incurred as a result of the Norex RICO litigation. Ostrager Aff., Ex. I (Excerpt of TNK-BP Formation Agreement) at BP-370. While BP was privately seeking indemnification for any liability resulting from Norex's claims against AAR/TNK, BP had already determined that its "official response" to those claims should be that they had "nothing to do with us." Black Aff., Ex. 39 (Email from Sam Bennett to others within BP (Feb. 27, 2002)) at BP-220. In sum, BP understood that in creating TNK-BP with various Defendants, BP agreed, in exchange for its purchase of 50% of TNK's assets in Russia, to share in profits from the valuable Chernogorneft oil assets—and continue to divert profits from Yugraneft's lucrative oil field that had been stolen from Norex, its rightful owner.

B. *BP Actively Participated in and Committed Overt Acts in Furtherance of the Conspiracy*

After making the strategic decision to join the illegal conspiracy against Norex, BP actively participated in the conspiracy to deprive Norex of its interest in and profits from Yugraneft.

[18] Indeed, BP knew the full extent of TNK's "notorious" acts from its own privately commissioned investigations, which revealed that TNK's German Khan "threatened . . . mayor Timoshkov with a gun right in [his] office." *See* Ostrager Aff., Ex. T (BP 1999 Background Report on TNK) at BP-1528; *see also* Compl. ¶ 37 ("Khan threatened to 'run over Yugraneft like a steamroller' as 'we eliminate those who go against us.'").

Specifically, BP:

- Negotiated the formation of TNK-BP to house, among other assets, the assets stolen from Norex;
- Restructured and shifted Yugraneft's assets within TNK-BP in a manner designed to frustrate Norex's potential access to the profits it is rightfully owed; and
- Refused to pay Norex one cent of the hundreds of millions of dollars in profits and dividends to which Norex is, and has been, entitled.

See Compl. ¶¶ 52-53. Limited discovery has already confirmed BP's active participation in the conspiracy it belatedly joined. Norex wrote directly to BP's then-CEO, Lord John Browne, requesting that BP cease reorganizing and shifting Yugraneft's assets for the purpose of frustrating Norex's potential access to Norex's interests. Black Aff., Ex. 33 (June 1, 2004 letter from L. Kondrashina to Lord Browne) at BP-1033. BP summarily dismissed Norex's entreaty, refused to comment on the issue, and instead continued to restructure Yugraneft's assets in furtherance of the conspiracy. Ostrager Aff., Ex. O (June 24, 2004 letter from A. Graham to L. Kondrashina), at BP-830. Later that year, Norex also implored TNK-BP CEO Robert Dudley to pay the dividends legally due to Norex. Ostrager Aff., Ex. P (Dec. 15, 2004 letter from P. Murray to Lord Browne) at BP-1104-1105. Notwithstanding the fact that all Defendants *admit* that Norex still owns *at least* twenty percent of Yugraneft, BP rejected Norex's request. *See* Compl. ¶¶ 51, 53.

In light of these actions, many of which have already been confirmed by limited discovery, as well as BP's knowing entry into the conspiracy, Norex has sufficiently pled BP's "intentional participation with a view to furtherance of the common design" of Defendants' conspiracy. *Bedard v. La Bier*, 20 Misc. 2d 614, 616-17 (Sup. Ct., Clinton County 1959) ("[I]t is not essential to one's liability for ensuing damages that he shall have joined in the beginning, or should have complete knowledge of all aims of the conspirators or take part in each branch of the conspiracy or even that he know of all steps taken toward the common design."); *see also* Compl. ¶¶ 51-53. And, under

settled principles, BP is liable for all of the acts of its co-conspirators. *See generally Salinas v. United States*, 522 U.S. 52, 64 (1997) (affirming "the common law principle that, so long as they share a common purpose, conspirators are liable for the acts of their co-conspirators"); *see also Epstein v. Haas Sec. Corp.*, 731 F. Supp. 1166, 1188 n.19 (S.D.N.Y. 1990) (applying New York law and holding that liability for joining a conspiracy "may include acts previously done by co-conspirators in pursuance of the conspiracy") (quoting 20 N.Y. Jur. 2d *Conspiracy-Civil Aspects* § 10, at 12-13 (1982)); *Gray v. Heinze*, 82 Misc. 618, 622 (Sup. Ct., Monroe County 1913) ("Every person who enters into the common design is in law a party to every act previously or subsequently done by any of the others in pursuance of it.").

C. *BP Bears Independent Liability for Its Own Tortious Conduct Against Norex*

Even assuming, *arguendo*, and contrary to well established case law, that BP could not be held liable for the acts of its co-conspirators, BP would still be liable under Norex's various tort claims, notably Norex's claim for unjust enrichment. By joining forces with TNK and AAR, creating TNK-BP to house Yugraneft, and ultimately diverting to itself profits that rightfully belonged to Norex, BP was directly and unjustly enriched at Norex's expense. The case law on which BP relies to contest the propriety of Norex's claims of unjust enrichment is inapposite. Those cases involve detached stakeholders who engaged in no independent wrongdoing and did nothing more than own interests in companies which improperly received benefits. *See Martes v. USLIFE Corp.*, 927 F. Supp. 146, 149 (S.D.N.Y. 1996) (finding no basis for unjust enrichment where defendant "simply owned stock" in a company that had been allegedly unjustly enriched); *Levin v. Kitsis*, 82 A.D.3d 1051, 1053 (2d Dep't 2011) (finding no basis for unjust enrichment where defendant's company received a mortgage interest through no improper action on her part). Here, BP was not a mere shareholder collecting dividends or receiving a security interest, but rather, BP was an active participant in restructuring Yugraneft's assets to divert to itself Yugraneft profits that

rightfully belonged to Norex at a time when BP clearly knew that Norex had been cheated out of its controlling interest in Yugraneft. Norex has supported with documentary evidence, including internal BP communications, Norex's allegations that BP was enriched at Norex's expense. It would therefore be against "equity" and "good conscience" to permit BP to retain its ill-gotten gains. *See Georgia Malone & Co., Inc. v. Rieder*, 86 A.D.3d 406, 408 (1st Dep't 2011).

BP also asserts that Norex's unjust enrichment claim must fail because, according to BP, Norex cannot assert a claim for unjust enrichment while "simultaneously alleging the existence of . . . the Yugraneft shareholder agreement [between Norex and Chernogorneft, which created Yugraneft]" that purportedly "covers this dispute." BP MOL at 12-13. Norex's unjust enrichment claim against BP relates to tortious and illegal actions that extend well beyond the Yugraneft shareholder agreement, and are in no way "covered" by that agreement, to which BP is not even a party. *See Clark-Fitzpatrick, Inc. v. Long Island R.R. Co.*, 70 N.Y.2d 382, 389 (1987) (holding that where a written agreement between the parties does *not* "clearly cover[] the dispute between [them]," a party may "seek an action sounded in quasi contract [i.e., unjust enrichment]"). These bad acts include Defendants' corruption of the Russian judicial system, forcible seizure of Yugraneft and its valuable oil field, and Defendants' ongoing efforts to deprive Norex of its rightful share of the profits from Yugraneft's oil field.

III. Defendants Are Barred from Arguing that the Default Judgment Against Norex Has Any Preclusive Effect in This Court.

Defendants argue that the default judgment against Norex in the Russian Know-How Case somehow precludes Norex from litigating its claims in this Court. This contention is without merit for at least three independent reasons.

First, the Second Circuit expressly held, on a substantially more developed factual record than exists in these proceedings, including extensive jurisdictional discovery and several expert

depositions, that "the Russian default judgment in the Know-How Case cannot be given preclusive effect by an American court" under principles of international comity—a decision to which this Court is constitutionally obligated to give full faith and credit. *Norex Petroleum Ltd.*, 416 F.3d at 161; *see Matter of Frontier Ins. Co.*, 27 A.D.3d 274, 275 (1st Dep't 2006) ("New York courts must give full faith and credit to a federal court judgment."). This is so because the same parties litigated to final judgment the identical issue of whether the Russian default judgment in the Know-How Case is entitled to preclusive effect on a record that included eight expert reports, as well as the depositions of some of those experts.

Second, Defendants nevertheless suggest that the tainted Know-How Case default judgment should be recognized under principles of *res judicata* and collateral estoppel. Defendants have simply misstated the law. While this Court is constitutionally obligated to accord full faith and credit to a judgment rendered by an *American* court, recognition of a judgment of a foreign country is based exclusively on principles of international comity—an entirely different, discretionary standard.

Third, even if this Court did not recognize the preclusive effect of the Second Circuit's decision—as it must—Norex alleges that (1) Norex was never properly served in the Know-How Case and that (2) the proceedings in the Know-How Case were corrupted by Defendants. Each of these allegations is independently sufficient to preclude recognition of the default judgment in the Know-How Case at the pleading stage under well-established New York law.

A. *This Court Is Bound by the Second Circuit's Decision Not to Accord Preclusive Effect to the Know-How Default Judgment*

When recognition of the Know-How Case is measured by the correct standard—international comity—it is clear that this Court should not grant the illegitimate Know-How Case default judgment any deference here. The Second Circuit unambiguously held that "the Russian default judgment in the Know-How Case cannot be given preclusive effect by an American court" on comity

grounds because Defendants failed to adequately rebut the critical allegation that Norex was never properly served in that case. *Norex Petroleum Ltd.*, 416 F.3d at 161. Defendants now attempt to relitigate this issue by advancing the same arguments that were specifically rejected by the Second Circuit on a full factual record. For example:

Arguments Advanced by the Defendants in the Federal Case that Were Expressly Rejected by Second Circuit Court of Appeals:[19]	**Identical Arguments Advanced in this Court by the Same Defendants:**
"Norex declined to participate. The court's ruling in the Know-How Case confirms this: 'Norex [has] been notified of the place and time of the hearing in compliance with article 10 of the Hague Convention of 1965." Brief for Defendants-Appellees at 8 n.3.	"Norex 'declined to participate [in the Know-How case] despite having been notified of the place and time of the hearing in compliance with article 10 of the Hague Convention of 1965.'" Jt. MOL at 17 (quoting the ruling in the Know-How Case).
"[Norex] declined to participate in those proceedings even to contest the court's jurisdiction, and allowed the time periods for normal appeals and collateral attacks to lapse before filing the instant case in this District." Brief for Defendants-Appellees at 25.	"Norex still could have appealed that ruling, including as to service or on other grounds, such as alleged corruption. Norex did not – filing its federal action instead." Jt. MOL at 18.
"Norex simply did not like the outcome, and is seeking a second bite at the apple." Brief for Defendants-Appellees at 3 n.3.	"Norex may not use this Court to relitigate the Know-How Case." Jt. MOL at 16.

In rejecting these arguments, the Second Circuit expressly held that "the district court could not rely on the preclusive effect of the Russian default judgment [in the Know-How Case] as a ground for dismiss[al]," regardless of whether Norex had actual notice, monitored the proceedings, or could have appealed in Russian courts. *Norex Petroleum Ltd.*, 416 F.3d at 162. This Court must honor the Second Circuit's holding because this issue was conclusively determined, and there was a full and fair opportunity for Defendants to contest the decision in the federal courts of the United States. *See Buechel*, 97 N.Y.2d at 304 (holding that "defendants are barred from now once again litigating the validity" of arguments that "after extensive" proceedings were "found to be invalid").

[19] Brief for Defendants-Appellees, *Norex Petroleum Ltd. v. Access Indus., Inc.*, 416 F.3d 146 (2d Cir. 2005) (No. 04-cv-1357) (hereinafter, "Brief for Defendants-Appellees").

Indeed, the Second Circuit expressly noted the parties' "extensive" submissions and discovery, which included eight expert reports, as well as the depositions of some of those experts. *Norex Petroleum Ltd.*, 416 F.3d at 153.

B. *Defendants Misleadingly Argue That the Default Judgment Against Norex Must Be Given Preclusive Effect Under Inapplicable Principles of Res Judicata and Collateral Estoppel*

"New York distinguishes between judgments rendered by her sister states, to which it is constitutionally obligated to give full faith and credit, and those rendered by foreign countries, which it will recognize only as a matter of comity." *Fairchild, Arabatzis & Smith, Inc. v. Prometco (Produce & Metals) Co.*, 470 F. Supp. 610, 615 (S.D.N.Y. 1979); *see CIBC Mellon Trust Co. v. Mora Hotel Corp.*, 296 A.D.2d 81, 96 (1st Dep't 2002) (same). Defendants ignore this critical distinction and the two cases Defendants rely upon to support the purported "res judicata effect of the Know-How Case" are completely inapposite as neither of these cases involved recognition of a foreign country's judgment. Jt. MOL at 19.

Ionescu v. Brancoveanu determined the preclusive effect of a New Jersey default judgment on a New York case between the same parties regarding the same rights and obligations. The *Ionescu* court explained that one State's recognition of another *State's* default judgment was rooted in the full faith and credit clause of the United States Constitution, which sought to "avoid[] relitigation of issues in one State which have already been decided in another." 246 A.D.2d 414, 416 (1st Dep't 1998) (internal citation omitted). In relying on *Ionescu*, Defendants misleadingly trade on the "foreign judgment" language, which in the full faith and credit context refers to a "foreign," sister state court's judicial determinations—and not the judgments of a foreign nation's courts, to which the full faith and credit clause of the U.S. Constitution is inapplicable. Defendants not only ignore the Constitutional rationale of *Ionescu's* holding, but in quoting from it, they have excised the "sister state" language of the opinion in an attempt to misleadingly broaden its scope. *See id.* at 416-17; Jt.

MOL at 16. Defendants' use of *Robbins v. Growney* is even more strained. Not only did *Robbins* not involve the recognition of a foreign country's default judgment, but it did not even involve the recognition of a sister state's default judgment.[20]

C. *The Discretionary Principle of Comity Is Inappropriate Here Under Well-Established New York Law*

Again, while this Court need look no further than the Second Circuit's ruling denying preclusive effect to the default judgment in the Know-How Case, an independent analysis confirms that it would be inappropriate to grant preclusive effect to the Know-How Case under New York law for two separate and independently sufficient reasons: 1) the Know-How court lacked jurisdiction over Norex, and 2) AAR/TNK has a documented track record of manipulating the Russian judicial system, especially in the context of a hostile takeover of a smaller foreign company. Under New York law, comity is a discretionary doctrine, and this Court is therefore under no obligation to recognize foreign judgments that are rendered in a manner that is contrary to the public policy of the State of New York. *See Byblos Bank Europe, S.A. v. Sekerbank Turk Anonym Syrketi*, 10 N.Y.3d 243, 247 (2008) (holding that comity is not "a matter of absolute obligation" and need not be applied when repugnant to public policy). Specifically, "[l]ack of personal jurisdiction and the procurement of the judgment by fraud" are well-established "grounds for nonrecognition" in New York. *Fairchild, Arabatzis & Smith, Inc.*, 470 F. Supp. at 615; *CIBC*, 296 A.D.2d at 221-22; *Matter of Weil*, 202 A.D.2d 838, 839 (3d Dep't 1994).

Here, there can be no recognition of the Russian default judgment based on principles of comity because Norex has sufficiently pleaded that it was never properly served in the corrupt

[20] In *Robbins*, the plaintiff obtained a default judgment against a corporation and then tried to pierce the corporate veil to recover against the corporation's principals, who raised the defense that the default judgment had been obtained by fraud. Because the same court had already rejected an earlier motion by the corporation and one of its principals, as a real party in interest, to vacate the default judgment on fraud grounds, the appellate court held that the affirmative defense of fraud should be stricken under principles of *res judicata*. *Id.* Clearly, *Robbins* does not stand for the proposition that a foreign country's default judgment must be given preclusive effect in this Court, let alone support the proposition that Norex's "allegations of corruption do not overcome the res judicata effect of the Know-How Case." Jt. MOL at 19.

Know-How Case—a fatal jurisdictional defect. *See* Compl. ¶¶ 42, 51; *Macchia v. Russo*, 67 N.Y.2d 592, 595 (1986) (holding that "[n]otice received by means other than those authorized by statute does not bring a defendants within the jurisdiction of the court"); *Long Island Minimally Invasive Surgery, P.C. v. Lester*, 12 Misc. 3d 1183(A), 2006 WL 1993769, at *2 (Sup. Ct., Nassau County July 13, 2006) (noting that a "lack of personal jurisdiction exists where [a party] was not properly served with process"). Indeed, as the extensive record in the federal action established, instead of properly serving Norex pursuant to the controlling treaties, TNK instead sent Norex an envelope containing blank sheets of paper. *See* Expert Declaration of Sergey B. Zaitsev at 45, *Norex Petroleum Ltd. v. Access Indus., Inc.*, 416 F.3d 146 (2d Cir. 2005) (No. 04-cv-1357). Tellingly, Defendants stop short of asserting that Norex was ever *properly* served in the Know-How Case. Instead, Defendants attempt to confuse this straightforward issue by making factual arguments based on legally flawed positions regarding the sufficiency of actual and/or constructive notice. *See Norex Petroleum Ltd.*, 416 F.3d at 160 (when improperly served, a "defendant is always free to ignore the judicial proceedings, risk a default judgment, and then challenge that judgment on jurisdictional grounds in a collateral proceeding") (quoting *Ins. Corp. of Ireland v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 706 (1982)); *Macchia*, 67 N.Y.2d at 595 (holding that "the fact that [a party] has received prompt notice of the action is of no moment"); *Feinstein v. Bergner*, 48 N.Y.2d 234, 241 (1979) (holding that "actual notice of the suit does not cure this defect, since notice received by means other than those authorized by statute cannot serve to bring a defendant within the jurisdiction of the court"); *Slutzky v. Aron Estates Corp.*, 157 Misc. 2d 749, 753 (Sup. Ct., Rockland County 1993) (holding that "[t]he fact that [the defendant] received notice of the action . . . does not cure the jurisdictional defect"); Maggs Aff. ¶ 51; ("Even assuming that DHL packets . . . contained trial date information [which Norex disputes], there can be no doubt that under Russian law there was a fatal

defect of service of process in the Know-How Case."); Black Aff. ¶ 47 ("Many takeovers involve improper or no service, followed by ex parte proceedings. One common tactic, used against Yugraneft, is sending an empty envelope.").

Further, it would be an affront to justice to grant comity to a ruling as tainted as the default judgment in the Know-How Case, which Defendants corrupted as part of their conspiracy to deprive Norex of its rightful ownership of and profits from Yugraneft. Norex specifically alleges, and limited discovery supports, that Defendants bribed Russian officials in order to influence the Know-How Case, resulting in a default judgment against Norex notwithstanding that it was never properly served. *See* Compl. ¶¶ 41-45. Again, it is no surprise that BP does not subscribe to these arguments in the non-BP defendants' Joint Brief. BP knew before it partnered with TNK in August 2003 that Norex's allegations of corruption have evidentiary support. Indeed, as part of the limited discovery in this case, BP recently produced a CIA memorandum confirming that Kukes, in his capacity as TNK's Chairman and CEO, "bribed local officials." Black Aff., Ex. 21 (CIA Memo) at BP-1159. To allow Defendants to continue to avoid accountability by granting comity to a corrupted decision would be contrary to justice and the public policy of this state.

IV. Norex Has More Than Adequately Pleaded Russian Law Claims.

Even if Russian law applies to some of Norex's claims, the Complaint more than adequately states claims for tort liability and unjust enrichment under Russian law. *See* Maggs Aff. ¶ 24 ("[T]he facts, as alleged, state at least two types of claims under Russian law: claims for (1) obligations from causing harm [tort liability] and (2) unjust enrichment."); Butler Aff. ¶¶ 4-7 ("[T]he Complaint's allegations state a claim for tort liability" and "unjust enrichment" "against all named Defendants.").

Defendants devote very little of their briefing to this issue—just 3 pages out of more than 100 pages in total—and for good reason. Defendants cannot credibly contend that the allegations that Defendants conspired to divest Norex of its majority ownership of Yugraneft fail to state claims

under Russian tort and unjust enrichment law. Indeed, such claims of intentional and fraudulent misappropriation of property would be actionable under the laws of any ordered society. Two of the most credentialed and authoritative American scholars of Russian law, who, between them, have close to 100 years worth of experience studying and teaching Russian law, and collectively have published thousands of books, articles, treatises, etc., on the subject, both conclude that the facts as alleged in the complaint state claims under Russian law against all Defendants. Further, because the Complaint's factual allegations state claims equally under both New York and Russian law, this Court can simply apply New York law. *See Int'l Bus. Machs. v. Liberty Mut. Ins. Co.*, 363 F.3d 137, 143 (2d Cir. 2004) ("In the absence of substantive difference . . . a New York court will dispense with choice of law analysis; and if New York law is among the relevant choices, New York courts are free to apply it.").

A. *Norex's Allegations State a Claim for Unjust Enrichment Under Russian Law*

Russian law, like New York law, imposes liability for unjust enrichment. Butler Aff. ¶ 19; Maggs Aff. ¶ 35. Under Russian law, a person who, without grounds established by law, acquires or retains property at the expense of another person (i.e., the victim) is obliged to return to the victim the property unfoundedly acquired or retained. Butler Aff. ¶ 19; Maggs Aff. ¶ 35. The Complaint alleges that Defendants "acquired" majority control over Yugraneft through a series of unlawful acts, and therefore such appropriated property must be returned to Norex in the form of restitution. Butler Aff. ¶ 20; Maggs. ¶ 35. The Complaint further alleges that Defendants secured majority control over Yugraneft through illegal means which allowed Defendants to receive dividends without a "legal basis for doing so," another form of unjust enrichment under Russian law. *See* Butler Aff. ¶ 20; Maggs Aff. ¶ 37. In this case, because Defendants "received revenues in the form of the acquisition of stocks, dividends paid on those stocks, or other benefits that can be expressed in monetary valuation without a legal basis for doing so," they are liable for unjust enrichment. Butler Aff. ¶ 20;

see also Maggs Aff. ¶ 37.

Defendants concede that unjust enrichment is a cognizable claim under Russian law, but assert that Norex has failed to state a claim because Defendants' takeover of Yugraneft through "open and legitimate means" was sanctioned by Russian courts. Jt. MOL at 29. In other words, Defendants contend that the alleged conspiracy to rob Norex of Yugraneft by, among other things, corrupting the Russian courts, is not unlawful because those same Russian courts sanctioned the robbery. Defendants' argument simply ignores one of the core allegations of Norex's complaint• that Defendants "corrupt[ed] Russian court proceedings and government officials." Compl. ¶ 2.

For example, the Complaint alleges, and documentary evidence supports, that, after obtaining a minority stake in Yugraneft through the fraudulent Chernogorneft bankruptcy, the Billionaire Oligarchs bribed Russian officials with funds that they directed and wired from New York in order to influence the outcome of the Know-How Case and gain majority control over Yugraneft. *See* Black Aff., Ex. 21 (CIA Memo) at BP-1159. Given that Defendants improperly and unduly influenced the same Russian courts that sanctioned their unlawful takeover of Yugraneft, Defendants' contention that Norex cannot assert a claim for unjust enrichment is unavailing. Again, it is noteworthy that BP does not join the other defendants' argument here. BP cannot credibly do so given its knowledge of the AAR/TNK defendants' corruption of the Russian courts as reflected in several BP internal documents. *See, e.g.*, Ostrager Aff., Exs. C (Trident Report) at BP-003 ("Alfa Group is believed to be very much in control of the entire government system and judiciary in its 'home region' of Tyumen") and BP-026 ("Tyumen Oblast . . . is known to be Alfa's domain and 'property.'"); D (Background Investigation and Assessment of Tyumen Oil Company) at BP-1542 ("BP Amoco is playing the game on a Russian pitch, by Russian rules, officiated by corrupt politicians in TNK's

pockets.").

Apparently recognizing the preclusive effect of the Second Circuit's decision not to recognize the Know-How Case, Defendants contend that the Russian court proceedings preceding the Know-How Case sanctioned Defendants' actions as lawful and therefore negate any claim of unjust enrichment under Russian law. However, all of the pre-Know-How Case decisions recognized Norex's majority control over Yugraneft—the misappropriation of which constitutes Norex's core allegation of harm.[21] The Russian case that deprived Norex of its majority control over Yugraneft was the Know-How Case. And the one case Defendants cite that post-dated the Know-How Case simply gave effect to the tainted default judgment in the Know-How Case. Therefore, even if this Court were to consider these other decisions, they have no bearing on the Complaint's allegations of unlawful behavior regarding the Know-How Case itself, which support a claim for liability under Russian law. *See* Butler Aff. ¶ 20; Maggs Aff. ¶¶ 35. Defendants' circular argument that Norex cannot allege unlawful behavior under Russian law because Russian courts corrupted by the Defendants sanctioned Defendants' wrongful actions should be rejected.

B. *Norex's Allegations State a Claim for Tort Liability Under Russian Law*

Defendants' contention that Norex does not state a claim for tort liability under Russian law because Russian courts have sanctioned Defendants' takeover of Yugraneft is illogical. Russian law, like New York tort law, imposes liability for "obligations as a consequence of causing harm." Butler Aff. ¶ 13; *see also* Maggs Aff. ¶ 25. Article 1064 of the Civil Code addresses the "general grounds of responsibility for causing of harm" and provides that "[h]arm caused to the person or property of a citizen, and also harm caused to the property of a juridical person, shall be subject to compensation in

[21] The so-called TNK-NV I decision recognized Norex's 60% ownership interest in Yugraneft (Jt. MOL at 3), the so-called TNK-NV II decision recognized the Norex-controlled management of Yugraneft (Jt. MOL at 3), the so-called Shareholders Meeting Litig. Decision also recognized that Norex's properly registered shares gave it majority control over Yugraneft (Jt. MOL at 3-4), the so-called Chernogorneft Bankr. Sale Litig. III and IV decisions recognized Norex's majority control over Yugraneft (Jt. MOL at 4), the two cases relating to Norex's right of first refusal to buy Yugraneft shares from Chernogorneft also recognized Norex's majority control over Yugraneft (Jt. MOL at 4).

full by the person who caused the harm." Butler Aff. ¶ 13; *see also* Maggs Aff. ¶ 25. Under Article 1064, a party must show four elements: (1) unlawful behavior or failure to act; (2) fault of the person causing harm; (3) causation; and (4) harm. Butler Aff. ¶ 13. Norex's Complaint sufficiently alleges facts that, taken as true (as they must be on a motion to dismiss), easily satisfy the four elements of Article 1064 and establish tort liability under Russian law. Specifically, under Russian law, as under New York law, it is unlawful to bribe government officials, forge shareholder documents, and send armed militia to raid offices and oil fields, thereby causing harm to Norex. *See* Butler Aff. ¶ 14-16; Maggs Aff. ¶¶ 27-30.

Defendants do not directly contest the legal sufficiency of Norex's Russian law claims and Norex's numerous allegations of unlawful behavior by the Defendants. Instead, Defendants argue that Norex has failed to allege one of the elements for tort liability—unlawful behavior—because the tortious acts in question have been deemed lawful by Russian courts. This argument fails for the same reasons that Defendants' unjust enrichment argument does. The Complaint alleges that Defendants corrupted Russian court proceedings as part of their conspiracy to rob Norex and take majority control of Yugraneft. Defendants cannot now rely on those same corrupted Russian court proceedings as a defense. To the extent that Defendants assert that there were court proceedings that upheld actions by the Defendants that the Complaint does not allege were corrupted, such proceedings were merely derivative of corrupted court decisions.

Additionally, there is no material conflict between Norex's claims under New York and Russian law because Norex's factual allegations equally establish liability under both New York and Russian law. *See* Maggs Aff. ¶¶ 26, 29, 32. That Russian law may not have an express Civil Code provision titled either "tortious interference with contract" or "conversion" is irrelevant because the factual allegations that support those causes of action under New York law likewise support a cause

of action under the Russian Civil Code. Maggs Aff. ¶ 32 ("[C]laims that would be classified under common law as tortious interference with contract, tortious interference with business, and conversion are classified under Russian law as violations of Article 1064."). For example, Russian jurisprudence supports civil liability for converting shares in a company under the very facts alleged to support Norex's New York conversion cause of action. *Id.* ¶¶ 31-32 (citing the Federal Arbitrazh Court, which held that "misappropriation of stock violated the general tort provisions of Article 1064."). And, since there is no conflict between Russian law and New York law on the facts alleged in the Complaint, this Court may apply New York law to Norex's claims. *See Int'l Bus. Machs.*, 363 F.3d at 143.

C. *Norex Adequately Alleges Russian Law Claims Against BP*

BP's contentions that the Russian law claims fail against BP because (1) the allegations are not specific enough to meet *Russian* pleading standards, and (2) the concept of conspiracy liability does not exist in Russian law are both without merit. First, it is well established that New York law governs the pleading standards in this case, irrespective of what substantive law applies. *See Reid*, 2006 WL 3455259, at *6 (holding that pleading requirements "are a matter of procedure governed by the law of the forum"). Second, Article 1080 of the Russian Civil Code unequivocally imposes joint and several liability on those who jointly cause harm on terms similar to conspiracy liability. Maggs Aff.¶ 30. Indeed, the non-BP Defendants' own expert concedes as much in his affidavit in support of Defendants' Joint Memorandum of Law. *See* Dyakin Aff. ¶¶ 72 ("Article 1080 of the RCC provides for several and joint liability for tort damages which were jointly inflicted by more than one person . . . . Thus, claims relating to conspiracy could be pursued as tort claims against more than one defendant"). Here, Norex has more than adequately pled that BP has acted in concert with its joint tortfeasors in unlawfully depriving Norex of its rightful dividends, thereby subjecting BP to liability to Norex under Russian law.

Moreover, just as Norex has adequately alleged an independent unjust enrichment claim against BP under New York law, so too has it pled such a claim under Russian law. *See* Maggs Aff. ¶ 24; Butler Aff. ¶ 7. Pursuant to Article 1102 of the Russian Civil Code, any person who acquires property at the expense of another has been unjustly enriched; moreover, there is liability regardless of who actually caused the unjust enrichment. Here, Norex has alleged not only that BP was unjustly enriched at Norex's expense, but also that BP in fact caused such unjust enrichment. *See* Maggs Aff. ¶ 37; Compl. ¶¶51-53. Thus, Norex has more than sufficiently pleaded a claim for unjust enrichment against BP under Russian law.

V. Norex's Claims Are Timely.

A. *New York's "Savings Statute" Applies to This Action Because the Second Circuit's Dismissal of Norex's Federal Action Was Not a "Final Judgment Upon the Merits"*

New York's "savings statute," CPLR 205(a), clearly applies to Norex's claims, the merits of which have never been adjudicated by *any* court. Defendants do not contest that Norex's federal action was "timely commenced," that Norex's present action is based "upon the same transaction or occurrence," or that Norex both filed its current action and properly served Defendants, all of whom stipulated to service, within six months after the termination of the federal action. *See* CPLR 205(a). Rather, Defendants erroneously suggest that CPLR 205(a) does not apply to Norex's action by improperly characterizing the Second Circuit's dismissal of the federal action as a "final judgment upon the merits" that precludes Norex from receiving the benefit of New York's savings statute. *See* Jt. MOL at 11-13; BP MOL at 21.

Defendants' suggestion that Norex's federal action was "dismissed on the merits" blatantly mischaracterizes the Second Circuit's decision. The Second Circuit decision—which overruled prior Second Circuit precedent by holding that the federal RICO statute has no extraterritorial application—was based purely on a construction of the federal RICO statute and did not in any way

address the underlying merits of any of the other claims Norex asserted in its federal court pleading.[22] Indeed, because the district court made clear that it "decline[d] to exercise supplemental jurisdiction of the Plaintiff's claims asserted under Russian law" after dismissing Norex's RICO claims on jurisdictional grounds, the *merits* of Norex's non-RICO claims were never briefed by the parties, let alone considered by the Second Circuit. *Norex Petroleum Ltd. v. Access Indus., Inc.*, 540 F. Supp. 2d 438, 449 (S.D.N.Y. 2007).

Thus, contrary to Defendants' distortion of the Second Circuit's opinion (*see* Jt. MOL at 12; BP MOL at 21), in stating that the "remainder of Norex's *claims*" were "without merit," the Second Circuit could only have been referring to Norex's remaining *contentions* regarding the application of the RICO statute. *Norex Petroleum Ltd. v. Access Indus., Inc.*, 631 F.3d 29, 33 (2d Cir. 2010). Indeed, the decision's preceding sentence, which states that "contrary to Norex's *claims*," the occurrence of some domestic conduct "cannot support a claim of domestic application [of the RICO statute]," *id.*, makes clear that the Second Circuit used the word "claims" to refer to Norex's remaining *arguments* in support of its reading of the RICO statute, rather than Norex's pendent, non-RICO *causes of action*.[23]

Significantly, the Second Circuit granted Norex's Motion for Stay of Issuance of Mandate, thereby recognizing that the dismissal of Norex's federal action was not "on the merits" and would not preclude the refiling of a complaint in this Court. *See* Ostrager Aff., Ex. Q (Motion for Stay). In its motion papers, Norex made clear that it sought a stay of the issuance of the Second Circuit's mandate in order to "avoid potentially triggering the running of relevant 'savings action statutes,'"

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[22] While Norex's appeal to the Second Circuit was pending, the U.S. Supreme Court issued *Morrison v. National Australia Bank Ltd.*, 130 S. Ct. 2869 (2010), overruling the Courts of Appeals of every federal circuit by holding that federal securities fraud statutes generally have no extraterritorial reach. The Second Circuit's dismissal of Norex's federal action was based solely upon the Second Circuit's reading of the *Morrison* decision.

[23] As Defendants recognize, *res judicata* will only apply to bar subsequent actions where the prior action was "concluded by a final judgment on the merits." Jt. MOL at 20. There is no question that the Second Circuit's dismissal of Norex's federal RICO claim, based solely upon a statutory construction of RICO's extraterritorial application, was not an adjudication on the merits, and *res judicata* therefore does not apply to bar Norex's non-RICO claims in this action.

including CPLR 205(a), "which permit[s] Norex to refile this matter in an alternative forum." *Id.* ¶ 5. Had the Second Circuit believed that its dismissal was "on the merits," it would have denied Norex's motion as moot, as that Court was well aware that the district court had declined to exercise jurisdiction over Norex's non-RICO claims. If, as Defendants argue, the Second Circuit opinion operated as *res judicata* to bar Norex's non-RICO claims in this Court, the Second Circuit's stay of the issuance of the mandate would make absolutely no sense.

Defendants' suggestion that the Second Circuit's dismissal of Norex's federal action pursuant to Federal Rule of Civil Procedure 12(b)(6) (rather than pursuant to Rule 12(b)(1), as under the lower court's decision) somehow changes the character of the dismissal is equally unavailing. The Second Circuit did not consider, let alone engage in an analysis of, the merits of Norex's non-RICO claims. As the U.S. Supreme Court has recognized, an adjudication "on the merits" is one that "passes directly on the substance of a particular claim." *Semtek Int'l Inc. v. Lockheed Martin Corp.*, 531 U.S. 497, 501-02 (2001) (internal citations omitted); *see also Sellan v. Kuhlman*, 261 F.3d 303, 311 (2d Cir. 2001) (noting that the "well settled meaning" of the phrase "adjudicated on the merits" is "a decision finally resolving the parties' claims . . . based on the substance of the claim advanced"). Similarly, the Second Circuit itself has made clear that a court's "choice of labels" in dismissing a case should not "distort [the] substance, especially where the consequence would be so drastic as to deprive a party of the opportunity to be heard." *Criales v. Am. Airlines, Inc.*, 105 F.3d 93, 97 (2d Cir. 1997). There can be no doubt that the Second Circuit's dismissal, which was based solely upon a statutory construction of the territorial reach of the federal RICO statute, did not "pass[] directly on the substance" of Norex's non-RICO claims.[24]

[24] The Second Circuit's decision to label its dismissal of Norex's claims as one pursuant to Federal Rule 12(b)(6) was guided by the U.S. Supreme Court's decision in *Morrison.* The Supreme Court itself recognized in *Morrison* that the arbitrary labeling of the dismissal as one under Rule 12(b)(6) rather than 12(b)(1) did not change the underlying legal

B. *Alberta Limitations Law Does Not Apply to Norex's Claims Under CPLR 202 Because Alberta Limitations Law Is Substantive in Nature*

Defendants argue that under CPLR 202, New York's "borrowing statute," Norex's claims are barred under the limitations law of Alberta—Norex's principal place of business. In setting forth this argument, Defendants ignore the fact that Alberta's limitations law is *substantive*, and that the applicability of substantive law is governed by New York choice of law principles—and *not* CPLR 202. The Supreme Court of Canada has made clear that Canadian limitation periods, including Alberta's, are "substantive in nature . . . . and have the effect of cancelling the substantive rights of plaintiffs and of vesting a right in defendants not to be sued." *Castillo v. Castillo* (2005), 3 S.C.R. 870, at ¶¶ 34-35.[25] Indeed, according to the Director of the Alberta Law Reform Institute, a principal drafter of Alberta's current limitations law, Alberta's limitations law "extinguish[es] the right and [does] not merely bar[] the remedy," and is therefore "unequivocally substantive." Lown Aff. ¶¶ 11, 21; *see also Tanges v. Heidelberg N. Am.*, 93 N.Y.2d 48, 55 (1999) (holding that a statute of limitations is procedural where it "does not extinguish the underlying right, but merely bars the remedy" and vice versa). Thus, Alberta limitations law could apply *only* after a thorough choice of law analysis, *and not* pursuant to CPLR 202. *See Zanfardino v. E-Systems, Inc.*, 652 F. Supp. 637, 639 (S.D.N.Y. 1987) (holding, in contract dispute, that where "the statute of limitations is viewed as substantive, the choice of law clause will be invoked," but where "the statute of limitations is viewed as procedural, the issue must be analyzed under . . . CPLR 202"); *Tanges*, 93 N.Y.2d at 53.

Under New York choice of law principles, which turn principally on the "locus of the tort," there can be no doubt that Alberta's law does not apply—and Defendants do not argue otherwise.

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analysis and that remand to the lower court was therefore unnecessary because it "would only require a new Rule 12(b)(6) label for the same Rule 12(b)(1) conclusion." *Morrison*, 130 S. Ct. at 2877.

[25] *See* Lown Aff., Ex. 3.

See Cooney v. Osgood Mach., Inc., 81 N.Y.2d 66, 73-74 (1993).[26]

C. *Norex's Claims Are Timely Under New York Law*

Because CPLR 205(a) clearly applies to this case, the relevant date for statute of limitations purposes is the date on which Norex first filed its federal action against each Defendant—February 26, 2002 as to the Billionaire Oligarchs, Kukes and the AAR/TNK Defendants (collectively, the "non-BP Defendants") and December 21, 2005 as to BP. As Defendants recognize, the applicable New York limitation periods are three to six years. See Jt. MOL at 10; BP MOL at 22-24. The non-BP Defendants do not, because they cannot, argue that Norex's claims are untimely under the limitation periods of New York or Russia when the February 26, 2002 savings date is applied.

BP, on the other hand, argues that Norex's claims are time-barred under New York law even if the applicable savings date is December 21, 2005, when Norex first named BP in its first amended federal complaint. BP contends that, under New York law, Norex's causes of action against BP accrued when Norex first sustained damages, which, according to BP, occurred "no later than June 2001 when the AAR/TNK Defendants allegedly illegally took control of Yugraneft." BP MOL at 22. BP's illogical argument finds no support in New York case law, which makes clear that "[t]he [s]tatute of [l]imitations begins to run. . . *when all the facts necessary to the cause of action have occurred*." *Aetna Life & Cas. Co. v. Nelson*, 67 N.Y.2d 169, 175 (1986) (emphasis added). Here, *at the earliest*, it was not until BP joined forces in 2003 with the other Defendants to unlawfully deprive Norex of its rightful interest in Yugraneft that "all the facts necessary to the cause of action ha[d] occurred." Thus, as of December 2005, Norex's claims against BP were all undoubtedly timely

[26] Indeed, Defendants in fact acknowledge that New York and Russian law are the only possible substantive laws governing Norex's claims, which relate to a New York-based conspiracy to misappropriate a Russian oil field. Jt. MOL at 26; 31-32; BP MOL at 6-16. To the extent that *any* foreign jurisdiction's statute of limitations could apply here, it would only be Russia's. The Russian statute of limitations for Norex's claims is three years. Maggs Aff. ¶¶ 34, 38.

under the applicable New York statutory periods of three to six years.[27] BP makes no argument that Norex's claims are out of time under the applicable Russian limitations period.

D. *Even if CPLR 202 Were to Dictate "Borrowing" Alberta's Limitations Law, Norex's Claims Are Nevertheless Timely Under Alberta Law*

Even assuming, *arguendo*, that CPLR 202 applies to "borrow" Alberta's limitations laws—it clearly does not—Norex's claims are nevertheless timely under Alberta law. Defendants contend that Norex's claims are time-barred under Alberta law by suggesting that CPLR 202 "is applied *notwithstanding* CPLR 205(a)," Jt. MOL at 11 (emphasis added), and that the relevant date for statute of limitations purposes is *March 7, 2011* (i.e., the date Norex filed its initial complaint in this Court), rather than the original filing date of Norex's federal action under CPLR 205(a). Defendants are wrong on both accounts.

First, Defendants' refusal to harmonize CPLR 202 and 205 is unsupported by the case law. Indeed, the very case upon which Defendants rely for the proposition that CPLR 205(a) is of no consequence when applying CPLR 202, *Icelandic Airlines, Inc. v. Canadair, Ltd.*, actually supports Norex's position that prior to applying both the New York and the "borrowed" statute of limitations under CPLR 202, courts will *first* apply CPLR 205(a) to the plaintiff's claims to fix the relevant tolling period. 104 Misc. 2d 239, 244 (Sup. Ct., New York County 1980) (applying CPLR 205 analysis first to hold that plaintiffs' action commenced on the filing of an earlier federal action and thereafter applying "borrowed" statute of limitations under CPLR 202); *see also Drummy v. Oxman*, 280 A.D. 800, 800 (2d Dep't 1952) (holding that "the time at which the action is deemed commenced under the law of New York governs"). Similarly, here, because CPLR 205(a) applies to the filing of this case, the relevant tolling date for statute of limitations purposes under CPLR 202 is

[27] BP itself *admits* that Norex's unjust enrichment and money had and received claims "would have been timely commenced in December 2005." BP MOL at 24. Thus, because Norex can avail itself of CPLR 205(a), *see supra* pp 43-45, the relevant date for statute of limitations purposes is December 2005, which—as BP admits—is well within the permissible statutory period.

the date on which Norex first filed its federal action against each Defendant—February 26, 2002 as to the non-BP Defendants and December 21, 2005 as to BP.

Second, when CPLR 205 and 202 are applied in the manner intended by the drafters of these sections,[28] it is clear that Norex's action is undoubtedly timely under Alberta law. The non-BP defendants *admit* that Alberta's two-year statute of limitations began to run on "June 28, 2001, when [Norex] learned that a Russian court had enjoined its shares in the Know-How Case" and thus should have known of its alleged injury, or, at the latest, by "February 26, 2002, when it filed its federal complaint." Jt. MOL at 11. Because, pursuant to CPLR 205, the relevant date for statute of limitations purposes is the date that Norex filed its initial federal complaint under CPLR 205(a)—February 26, 2002, less than a year after the Know-How court enjoined Norex's Yugraneft shares—Norex's action against the Non-BP Defendants is unquestionably timely under Alberta law.

BP, for its part, suggests that the applicable two-year statutory period began to run in August 2003, when BP entered into the TNK-BP Agreement. However, it also admits that the relevant accrual date under Alberta law is when "plaintiff *knows*, or ought to *know*, that an injury occurred, [and] was attributable to defendant's conduct." BP MOL at 19 (emphasis added). Norex did not know, and has never pled, that it knew of BP's intent not to recognize Norex's rightful interest in Yugraneft as of the formation of TNK-BP. In fact, as late as December 2004, Norex, "encouraged by the BP participation in TNK," still expressed hope that BP would prevail upon its partners to treat Norex fairly. Ostrager Aff., Ex. P (Dec. 15, 2004 letter from P. Murray to R. Dudley) at BP-1104. Obviously, Norex did not "know" that its injury was "attributable to [BP's] conduct" until 2005, when BP confirmed its intent to conspire with TNK to jointly deprive Norex of its rightful share of

[28] CPLR 205(a)'s "broad and liberal purpose is not to be frittered away by any narrow construction." *Gaines v. City of N.Y.*, 215 N.Y. 533, 39 (1915) (Cardozo, J.). That purpose is to "insure to the diligent suitor the right to a hearing in court till he reaches a judgment on the merits." *Graziano v. Pennell*, 371 F.2d 761, 763 (2d Cir. 1967). Thus, applying CPLR 205(a) to Norex's action—which was timely commenced against all Defendants in the Southern District of New York—prior to "borrowing" a foreign limitations period under CPLR 202 furthers the underlying purpose of CPLR 205(a).

dividends based upon Norex's ownership interest in Yugraneft. *See* Ostrager Aff., Ex. R (Jan. 20, 2005 letter from P. Murray to Lord Browne) at BP-1103 ("We are asking you as the head of BP to look into this situation and insure that the dividends are distributed in a fair and transparent man[ner]."). [29] For this reason, and the others discussed above, Defendants have failed to meet their burden of establishing that Norex's claims are out of time under the laws of *any* jurisdiction. *See Bano v. Union Carbide Corp.*, 361 F.3d 696, 710 (2d Cir. 2004) (applying New York law).

VI. This Court Has Personal Jurisdiction Over All Defendants.

Defendants Blavatnik, Vekselberg, Access, Renova and BP do not—and cannot—contest that this Court has personal jurisdiction over them. Moreover, because of the multiple tortious acts committed by the Billionaire Oligarchs in New York in furtherance of the conspiracy, this Court also has personal jurisdiction over their co-conspirators, TNK and TNK-BP ("TNK Defendants"), Kukes, and Alfa. *See* Compl. ¶¶ 3, 5-21, 33-40, 43-53; *Chrysler Capital Corp. v. Century Power Corp.*, 778 F. Supp. 1260, 1266 (1991). This Court has personal jurisdiction over Kukes for the additional reason that he was a New York domiciliary at the time Norex initially commenced its federal action in February 2002, which, under CPLR 205(a), serves as the commencement date for this action. Finally, this Court has personal jurisdiction over Alfa for the additional reason that it systematically does business in New York. *See* Compl. ¶¶ 10, 12; CPLR 301, 302(a)(1).

A. *This Court Has Personal Jurisdiction Over Defendants Under CPLR 302(a)(2) Because Their Co-Conspirators Committed Torts Within the State*

Norex clearly alleges in the Complaint that the Billionaire Oligarchs committed tortious acts in New York in furtherance of the conspiracy, including, without limitation, conspiring to force Chernogorneft into a fraudulent bankruptcy, directing TNK to forge documents, wiring funds from

[29] Under well-settled New York law, the "statute of limitations is normally an affirmative defense, on which the defendant has the burden of proof . . . includ[ing] showing when the cause of action accrued." Where, as here, "it does not conclusively appear that a plaintiff had knowledge of facts from which the injury could reasonably be inferred, the complaint should not be dismissed on motion and the question should be left to the trier of fact." *Bano*, 361 F.3d at 710.

New York banks in order to bribe and unduly influence Russian officials in the Know-How Case, and sending armed private militiamen to storm Yugraneft's corporate offices and oil field. Compl. ¶¶ 1-3, 31-53. Acts committed in New York as part of a broader illegal scheme or conspiracy elsewhere constitute a tortious act within the state giving rise to the exercise of long-arm jurisdiction under CPLR 302(a)(2). *See Reeves v. Phillips*, 54 A.D.2d 854, 854-55 (1st Dep't 1976) (exercising personal jurisdiction over a Texas resident and board member where decision to hinder a "take-over" bid was made by a board meeting in New York); *Am. Broadcasting Cos. v. Hernreich*, 40 A.D.2d 800, 800-01 (1st Dep't 1972) (exercising personal jurisdiction where bribes at issue were "not consummated in New York" but defendant committed acts in New York in furtherance of the conspiracy to commit bribery). Such acts include the transfer of funds in furtherance of the conspiracy. Indeed, in *Banco Nacional Ultramarino. v. Chan*, the court stated that "it would be a travesty to permit the use of our institutions to channel stolen funds . . . by those who would imprudently claim they are beyond our borders!" 169 Misc. 2d at 187, 188-89 (holding that long-arm jurisdiction existed where defendant's New York account "was the conduit through which the fraudulent scheme advanced").[30]

Moreover, New York law is clear that courts may exercise long-arm jurisdiction over an out-of-state defendant who commits a tortious act within New York through an agent, including a co-conspirator. *See* CPLR 302(a)(2); *see also Chrysler Capital Corp.*, 778 F. Supp. at 1266 ("It is well-established that acts committed in New York by the co-conspirator of an out-of-state defendant pursuant to a conspiracy may subject the out-of-state defendant to jurisdiction under CPLR

[30] *See also Gulf Coast Dev. Group LLC v. Lebror*, No. 02 Civ. 6949, 2003 WL 22871914, at *4 (S.D.N.Y. Dec. 4, 2003) (exercising personal jurisdiction over Israeli resident where proceeds from alleged criminal enterprise were earned in New York, deposited in New York bank accounts, and conveyed to Israeli resident); *Catauro v. Goldome Bank for Sav.*, 189 A.D.2d 747, 748 (2d Dep't 1993) (exercising personal jurisdiction over defendant who transferred funds from New York bank to Missouri bank in furtherance of conversion); *Morgenthau v. A.J. Travis Ltd.*, 184 Misc. 2d 835, 843 (Sup. Ct., N.Y. County 2000) (exercising personal jurisdiction under CPLR 302(a)(2) over New Jersey non-domiciliary who received funds that had been transferred from New York).

302(a)(2).") (collecting cases); *Am. Broadcasting Cos.*, 40 A.D.2d at 801. To establish personal jurisdiction over a defendant based upon the tortious acts of his co-conspirators in New York, a plaintiff must (1) make a prima facie showing of conspiracy, (2) allege facts warranting the inference that the out-of-state defendant is a co-conspirator, and (3) allege that a co-conspirator of the defendant committed tortious acts pursuant to the conspiracy within the state. *See In re Sumitmo Copper Litig.*, 120 F. Supp. 2d 328, 338-39 (S.D.N.Y. 2000) (citations omitted).

None of the Defendants contesting personal jurisdiction suggests that Norex has not made a *prima facie* showing of conspiracy or that they were a part of that conspiracy. *See supra*, pp 26-27. The Complaint unambiguously alleges that New York domiciliaries Blavatnik and Vekselberg—who at all relevant times exercised control over TNK; its CEO and President, Kukes; and TNK-BP—performed multiple acts in New York in furtherance of the conspiracy. Those acts undoubtedly inured to the financial benefit of all Defendants and were conducted with the knowledge and consent of TNK, Kukes, Alfa, and TNK-BP, warranting the inference that they were part of the conspiracy. *See In re Sumitomo Copper Litig.*, 120 F. Supp. 2d at 338-40 (exercising personal jurisdiction over defendants under CPLR 302(a)(2) where out-of-state defendants benefitted from defendants' acts in New York because they furthered the conspiracy's goals); *cf. de Capriles v. Lugo*, 293 A.D.2d 405, 406 (1st Dep't 2002).

B. *This Court Has Personal Jurisdiction Over Kukes Because at the Time the Action Commenced, He Was a New York Domiciliary*

This Court has personal jurisdiction over Kukes for the additional reason that he was a New York domiciliary at the time Norex commenced its federal action. New York law is clear that a defendant who is a New York domiciliary *at the time an action is commenced* is amenable to the jurisdiction of the New York courts no matter where that defendant was served with process. *See* CPLR 301, 313; *see also Milliken v. Meyer*, 311 U.S. 457, 462 (1940) (holding that "[d]omicile in

the state is alone sufficient to bring an absent defendant within the reach of the state's jurisdiction for purposes of a personal judgment"). Tellingly, Kukes did not contest personal jurisdiction in the federal action precisely because he was domiciled in New York at the time of its commencement in February 2002—the operative commencement date for this action pursuant to CPLR 205.

An investigation of publicly available records bears this out. Kukes maintained two residences in New York at 106 Central Park South, New York, NY 10019 at the time this action originally commenced. *See* Ostrager Aff., Ex. S (Kukes Deed Record). As of February 2002, Kukes lived in an apartment at this address, which he bought for $1.475 million in 2000 and lived in with his wife, Clara Kukes, and their children. *See* Kukes Aff. ¶ 7; *see also* Ostrager Aff., Ex. S (Kukes Deed Record). Upon information and belief, between 2000 and 2005, Kukes filed New York State tax returns and paid New York property taxes. In 2005, Kukes divorced his wife and transferred his interest in their apartment to her. Public records suggest that his wife and children continue to live in New York.[31]

C. *This Court Has Personal Jurisdiction Over Alfa Under CPLR 302(a)(1) Because Alfa Does Business in New York*

Not only may this Court exercise personal jurisdiction over Alfa based upon the tortious acts of its co-conspirators in New York, but it may also exercise personal jurisdiction over Alfa for the additional reason that it systematically does business in New York. It is well established that a foreign defendant may subject itself to personal jurisdiction under CPLR 302(a)(1) by "doing business" within the state, including through the conduct of an agent, affiliate or subsidiary. *See Taca Int'l Airlines, S.A. v. Rolls-Royce of England, Ltd.*, 15 N.Y.2d 97, 102 (1965); *cf. Delagi v. Volkswagenwerk AG*, 29 N.Y.2d 426, 430-31 (1972); *Frummer v. Hilton Hotels Int'l*, 19 N.Y.2d

[31] Kukes now tries to rewrite history: although he has transferred his interest in the property to his ex-wife, he is still listed in the White Pages as living at 106 Central Park South, Apt. 4A; he continues to maintain a New York telephone number, and admits in his affidavit to visiting his wife in New York even after the divorce and staying with her at 106 Central Park South, Apt. 4A. Kukes Aff. ¶ 7.

533, 535-36 (1967). A defendant is deemed to "do business" within the state where its subsidiary does business in New York and is a "mere department" of the foreign defendant, *see Taca Int'l Airlines, S.A.*, 15 N.Y.2d at 102, or where a "valid inference of agency" arises between the out-of-state defendant and another entity that engages in business in New York. *Delagi*, 29 N.Y.2d at 431. Norex's Complaint alleges that (1) "Alfa continuously and systematically transacts business within New York State," (2) "[o]fficers of Alfa and its affiliate companies frequently travel and do business in New York, including but not limited to, the purchase of controlling shares of companies listed on the New York Stock Exchange and NASDAQ, such as Vimpelcom and CTC Media, Inc.," (3) "Alfa and its affiliate companies [such as Storm LLC] also regularly do business in New York by agreeing to arbitrate and/or litigate disputes in New York," and (4) "Alfa, through Alforma Capital Markets, part of the Alfa Banking Group, has an office and does business in New York." Compl. ¶ 10.

Alfa concedes that the New York contacts of Alforma Capital Markets and Storm LLC can be imputed to Alfa if they are "Alfa-Consortium's agents" or if those entities are considered a "mere department" of Alfa Consortium. Alfa MOL at 12. The "agency" and "mere department" tests are, by definition, functional and fact intensive inquiries. Thus, because Norex's allegations are "not frivolous" and constitute a "sufficient start" in determining whether the Court has personal jurisdiction over Alfa, Alfa's motion to dismiss should be denied and Norex should, at a minimum, be granted jurisdictional discovery.[32] *See HBK Master Fund L.P. v. Troika Dialog USA, Inc.*, 85 A.D.3d 665, 666 (1st Dep't 2011) (holding that "[p]laintiffs made a 'sufficient start' in demonstrating

[32] In opposing a motion to dismiss on the ground that discovery on the issue of personal jurisdiction is necessary, plaintiff need not make a prima facie showing of jurisdiction, but instead must only set forth "a sufficient start, and show[ ] their position not to be frivolous." *Peterson v. Spartan Indus.*, 33 N.Y.2d 463, 467 (1974); *Marist Coll. v. Brady*, 84 A.D.3d 1322, 1323 (2d Dep't 2011). Norex has, *at a minimum*, made allegations supporting personal jurisdiction as to TNK, TNK-BP, Kukes and Alfa that are "not frivolous" and provide a "sufficient start" for jurisdictional discovery. *See Peterson*, 33 N.Y. 2d at 467; *Akodes v. Pyatetsky*, 31 Misc. 3d 1238(A), 2011 WL 2274184, at *5 (Sup. Ct., Kings County July 9, 2011) (denying motion to dismiss and ordering jurisdictional discovery after finding that allegations that defendants, "by virtue of their membership in [defendant corporation]," "may have conspired" with tortfeasor constituted a sufficient start).

that the Russian defendants were doing business in New York through their direct or indirect subsidiaries to warrant further discovery on the issue of personal jurisdiction, including whether the parents exercised control over the subsidiaries").[33]

CONCLUSION

For the foregoing reasons, the Court should deny all Defendants' motions to dismiss, and provide such further relief as this Court deems just and proper.

Dated: New York, New York
October 26, 2011

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[33] Moreover, under General Associations Law § 13, a foreign unincorporated association such as Alfa is a juridical entity capable of being sued. *See Gross v. Cross*, 28 Misc. 2d 375, 376-77 (Sup. Ct., New York County 1961) (holding that a foreign unincorporated association can be sued pursuant to General Associations Law § 13); *Rodier v. Fay*, 7 N.Y.S.2d 744, 745 (Sup. Ct., Bronx County 1938) (same). Section 13 also requires that a plaintiff filing suit against an unincorporated association allege that every member of that association ratified or approved the conduct alleged. *See Martin v. Curran*, 303 N.Y. 276, 281-82 (1951). Defendants' contention that Norex has not met this requirement runs directly contrary to the purpose of CPLR 3211(d), which allows that, in opposing a motion to dismiss, if "facts essential to justify opposition may exist but cannot then be stated, the court may deny the motion," and "permit further affidavits to be obtained, or disclosure to be had." CPLR 3211(d). Norex has already alleged wrongful acts by Alfa's Chairman, Mikhail Fridman and another beneficial owner of Alfa, German Khan, in furtherance of the illegal conspiracy to deprive Norex of its rightful ownership of Yugraneft, including threats of violence and corruptive acts by the "notorious" German Khan. See Compl. ¶¶ 10, 34, 37, 43-44, 51. Based on these allegations, pursuant to CPLR 3211(d), at the very least, this Court should order targeted discovery into Alfa's complex structure to determine its true composition and membership.