STATE OF NORTH DAKOTA	**DISTRICT COURT**
COUNTY OF MORTON	**SOUTH CENTRAL JUDICIAL DISTRICT**

ENERGY TRANSFER LP, *et al.*, Plaintiffs, v. GREENPEACE INTERNATIONAL, *et al.*, Defendants.	Case No.: 30-2019-CV-00180 **GREENPEACE INTERNATIONAL'S RESPONSE TO PLAINTIFFS' EMERGENCY MOTION FOR ANTI-SUIT INJUNCTION**

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[¶1] Defendant Greenpeace International ("International") respectfully requests that the Court deny Plaintiffs' motion in its entirety. Federal courts universally recognize a rebuttable presumption against issuing international anti-suit injunctions. The Eight Circuit—which follows the majority "conservative" approach to comity—instructs that foreign anti-suit injunctions should issue only in the "rarest of cases." State courts are even more reluctant to grant them; North Dakota courts have *never* done so. And *no* court issues such an injunction when, as here, it would prevent a party from seeking a remedy solely available in the foreign jurisdiction. Plaintiffs' unprecedented and untimely Motion seeking to have this Court reach abroad and interfere with the proceedings in a foreign court fails on every ground.

[¶2] ***First***, Plaintiff do not meet the gating requirement of establishing an identity of claims between this action and the foreign one. Plaintiffs' failure to acknowledge, let alone address, the actual claims in the Dutch law tort action is telling. Doing so would have forced Plaintiffs to admit the obvious fact that the actual claims International advances in that action are distinct from the claims before this Court.

[¶3] ***Second***, even if Plaintiffs met the threshold gatekeeping requirement, Plaintiffs fail to establish any of the equitable requirements for the extraordinary remedy they seek. Indeed, Plaintiffs cannot show that the Dutch action threatens this Court's jurisdiction, and they offer no basis for concluding it would threaten any North Dakota policy. This too disposes of this Motion.

[¶4] ***Third***, comity concerns independently preclude Plaintiffs' request. U.S. courts—and especially state courts—exercise judicial modesty, avoiding the exercise of their authority to restrict the jurisdiction of a foreign sovereign's court. Such restraint is particularly warranted when, as here, the foreign court is interpreting and applying the law of foreign causes of action.

[¶5] For these reasons, and the additional grounds set forth below, International respectfully requests the Court deny Plaintiffs' request for an anti-suit injunction.

I. PROCEDURAL BACKGROUND

A. International's Tort Suit Seeks Relief under Dutch and European Law

[¶6] Plaintiffs' Motion is based on a (mis)characterization of the Dutch proceeding. Plaintiffs never discuss the actual legal claims asserted in that foreign action. International's Dutch Summons asserts tort claims pursuant to Dutch Civil Code Article 6:162 (unlawful acts) and Dutch Civil Code Article 3:13 (abuse of rights). Mot. Ex. A ¶¶ 90 & 92. Both torts involve the same factual grounds. *Id*. ¶ 157. However, the abuse of rights claim (*misbruik van recht*) entitles International to certain additional remedies, including attorney's fees. *See e.g., id.* ¶¶ 169, 175.

[¶7] The Dutch Civil Code establishes the tort of *onrechtmatige daad* (literally: unlawful act). A person commits an *onrechtmatige daad* if they violate someone else's right, or commit an act/omission in violation of a duty imposed by law or the expectations of societal conduct, and this act/omission causes damages these norms were intended to prevent. R.M. Hermans Aff. ¶¶ 29–30. Dutch law, European Union law and Conventions, and other international law standards, establish the applicable duties. Mot. Ex. A ¶¶ 93–95. Dutch law and European Union law establish the applicable standard of care. *Id.* ¶¶ 90, 96–130.

[¶8] International's forty-three-page Dutch Summons details Plaintiffs' "tortious acts" in "filing SLAPPs against GPI in a third country (the United States)," including the federal RICO action that was dismissed for failure to state a claim, and "publishing false statements about GPI

[(International)]" stating for example that International engaged in a "pattern of criminal activity" and "facilitated crimes and acts of terrorism." *See, e.g.*, *id*. ¶¶ 70–73, 138.[1]

[¶9] The Dutch Summons alleges Plaintiffs' conduct and statements constitute an *onrechtmatige daad*, and seeks anti-SLAPP relief under Dutch and European Union law. Mot. Ex. A ¶ 148. The Dutch claims rely on determination of legal issues separate and apart from the state court trial and verdict in this case. R.M. Hermans Aff. ¶¶ 42–43 ("The Dutch proceedings do not in any way preclude or impede the North Dakota state court proceedings."); *see also* J. Borg-Barthet Aff. ¶ 17 (explaining that application of the EU Anti-SLAPP Directive "is necessarily the exclusive prerogative" of an EU Member State). The Dutch Summons is also not interdictory of this case. The Prayer for Relief, which seeks remedies specific to Dutch and European Union law, does not seek any injunctive relief as to this Court. Mot. Ex. A at 42–43 (Prayer for Relief).

B. Plaintiffs' Motion for "Emergency" Relief

[¶10] International notified Plaintiffs of its Dutch claims on July 23, 2024—a ***full year*** before Plaintiffs filed their Emergency Motion. Mot. ¶ 7 n.3. As detailed in the Dutch Summons (and ignored in Plaintiffs' Motion, *see* Mot. ¶ 21), the parties then exchanged correspondence. Mot. Ex. A ¶ 86 (Plaintiffs' September 6, 2024, letter); *id.* ¶ 88 (International's November 19, 2024, letter); *id*. (Plaintiffs' December 4, 2024, letter). Following this exchange, on February 11, 2025, before the trial in this case began, International filed the Summons with the Court of Amsterdam, the Netherlands, because months of discussions with Plaintiffs failed to yield results. On July 22, 2025, after sitting on their hands for another ***five months***, Plaintiffs declared an "emergency" and filed this Motion asking this Court to interfere with the Dutch proceeding.

[1] It is undisputed that International has not been accused by any governmental authority—let alone charged or even convicted—with engaging in criminal acts or terrorism associated with the Dakota Access Pipeline.

II. ARGUMENT

A. International Cannot Be Enjoined Due to Lack of Personal Jurisdiction

[¶11] As International has repeatedly explained—including in a motion currently pending before this Court—it is not subject to this Court's jurisdiction. *See* Dkt. No. 5109; *see also Energy Transfer Equity, LP v. Greenpeace Int'l*, No. 1:17-CV-00173-BRW, 2018 WL 4677787, at *6 (D.N.D. July 24, 2018) (holding BankTrack, the Netherlands entity that wrote and published the open letter that International signed along with 500 other organizations, did not subject itself to personal jurisdiction in North Dakota by writing that letter). International again reasserts that objection here. As Plaintiffs acknowledge, a court's exercise of its equitable powers to issue an anti-suit injunction applies only to a "***party subject to its jurisdiction***." Mot. ¶ 9 (emphasis added) (quoting *E. & J. Gallo Winery v. Andina Licores S.A.*, 446 F.3d 984, 989 (9th Cir. 2006)). Because the lack of personal jurisdiction alone defeats Plaintiffs' Motion, this Court's resolution of International's pending motion for judgment as a matter of law would moot any need to consider Plaintiffs' request for injunctive relief.

B. Overseas Anti-Suit Injunctions Are Disfavored and Rarely Granted, Especially by State Courts

[¶12] Although federal courts permit international anti-suit injunctions, they may be issued "only in the rarest of cases." *Goss Int'l Corp. v. Man Roland Druckmaschinen Aktiengesellschaft*, 491 F.3d 355, 359 (8th Cir. 2007) (quoting *Gau Shan Co. v. Bankers Tr. Co*., 956 F.2d 1349, 1354 (6th Cir. 1992)). Federal courts universally recognize a "rebuttable presumption against issuing international antisuit injunctions," *id.* at 360 (quoting *Quaak v. Klynveld Peat Marwick Goerdeler Bedrijfsrevisoren*, 361 F.3d 11, 18 (1st Cir. 2004)), and they refuse to enter injunctions that would "prevent a party from seeking a remedy solely available in the foreign jurisdiction," *Rancho Holdings, LLC v. Manzanillo Assocs., Ltd*., 435 F. App'x 566

(8th Cir. 2011) (per curiam) ("Foreign antisuit injunctions should be issued only in the rarest of cases.").

[¶13] State courts are even more loath to issue international anti-suit injunctions. That is because such orders, while nominally directed to the parties, "effectively restrict[] the jurisdiction of a foreign sovereign's courts." *TSMC N. Am. v. Semiconductor Mfg. Int'l Corp.*, 74 Cal. Rptr. 3d 328, 334 (Cal. Ct. App. 2008) (citation omitted); *Niemeyer v. Niemeyer*, 409 So. 3d 186, 188 (Fla. Dist. Ct. App. 2025) ("Antisuit injunctions involving [international] foreign proceedings implicate an additional layer of concern," including potential for reciprocal action against U.S. interests). Reflecting state courts' general reluctance to enjoin ***foreign*** proceedings, the handful of state court cases Plaintiffs cite involve ***domestic*** anti-suit injunctions, or are otherwise readily distinguishable.[2]

[¶14] Plaintiffs nevertheless ask this Court to enjoin an ongoing suit pending in the Netherlands. They concede, as they must, that "there are no reported decisions of a North Dakota court issuing an anti-suit injunction" of any sort, much less one attempting to bar an action duly filed in a foreign *nation's* courts. Mot. ¶ 9 n.4. They offer no viable reason for this Court to be the very first to take this extraordinary step.

C. Plaintiffs Fail to Meet the Threshold Gatekeeping Element

[¶15] Reflecting their disfavor, courts refuse to even consider granting an anti-suit injunction unless certain threshold requirements are met. Plaintiffs seeking an anti-suit injunction

[2] *London Market Insurers v. American Home Assurance Co*., 95 S.W.3d 702 (Tex. App. 2003) and *GigSmart, Inc. v. AxleHire, Inc*., 226 N.E.3d 1073 (Ohio Ct. App. 2023) both rest on a state court's authority to enjoin parallel litigation pending in sister state courts. *National Industries Group (Holding) v. Carlyle Investment Management L.L.C.*, 67 A.3d 373 (Del. 2013), approved an international anti-suit injunction, but in circumstances inapplicable here. First, the injunction was entered in a default action against a sophisticated corporate defendant who intentionally failed to appear despite notice of the proceeding. *Id*. at 378–79. Second, the injunction enjoined the defendant from pursuing an action in Kuwait in violation of a contractual foreign-selection clause, which the court found "is not an issue of comity. It is a matter of contract enforcement and giving effect to substantive rights that the parties have agreed upon." *Id.* at 387.

must first demonstrate: "(1) the parties are the same in the foreign and domestic lawsuits, and (2) resolution of the case before the enjoining court is ***dispositive*** of the action to be enjoined." *Canon Latin Am., Inc. v. Lantech (CR), S.A.*, 508 F.3d 597, 601 (11th Cir. 2007) (cleaned up) (emphasis added). More simply, the threshold requirement for an anti-suit injunction is that the U.S. and foreign actions involve "the same parties over the same claim." *Id.* (citation omitted).

[¶16] Here, Plaintiffs try to sidestep this basic requirement by arguing that "the second 'gatekeeping' inquiry is satisfied here" "considering the ***substantial overlap*** in issues and arguments between this case and the Dutch Action." Mot. ¶ 16 (emphasis added). But Plaintiffs' Motion identifies a mere ninety words from International's forty-three-page single spaced Dutch Summons that it contends "substantially overlap" with this case. *Id.* That is hardly "substantial overlap." But in any case, it is not sufficient to say the two suits are "similar," "somewhat similar" or "sufficiently similar." *Canon Latin Am.*, 508 F.3d at 602. Rather, the critical question is "whether or not the first action is *dispositive* of the action to be enjoined." *Id.* (citation omitted); *see id.* at 601 n.8 (rejecting two decisions that had misconstrued the requirement that the U.S. action be "dispositive" and phrased the test in terms of "substantially similar" as inconsistent with the "interest of international comity and judicial restraint"); *see also, e.g.*, *Paramedics Electromedicina Comercial, Ltda. v. GE Med. Sys. Info. Techs., Inc*., 369 F.3d 645, 652 (2d Cir. 2004) (citing *China Trade & Dev. Corp. v. M.V. Choong Yong*, 837 F.2d 33, 35 (2d Cir. 1987)) (requiring that "resolution of the case before the enjoining court [be] ***dispositive*** of the action to be enjoined" (emphasis added)); *MWK Recruiting Inc. v. Jowers*, 833 F. App'x 560, 564 (5th Cir. 2020) (explaining that anti-suit injunctions cannot be based merely on the fact that a foreign action had a "logical relationship" to or shared "underlying operative facts" with the domestic suit, as

that would "erroneously increase the frequency of antisuit injunctions" and make them "much more commonplace" (cleaned up)).

[¶17] Plaintiffs' Motion does not get out of the gate. Plaintiffs do not contend (much less show), that this North Dakota case is somehow ***dispositive*** of the Dutch Action. Nor could they, given the different claims, facts, and governing legal principles at issue in that action. In any event, Plaintiffs' Motion also fails even under their erroneous "substantial overlap" standard: there is no substantial overlap between the claims here and those in the Dutch action.

[¶18] As described above, International's Dutch action is in the nature of an anti-SLAPP action, targeting Plaintiffs' tortious actions both in and outside the courtroom designed to chill International's speech. No such claims are at issue in North Dakota. To the contrary, the Court granted Plaintiffs' Motion in Limine ("MIL") 15 and ruled: "North Dakota state law does not directly recognize SLAPP or anti-SLAPP suits." Dkt. 4224, at 7. This Court specifically excluded consideration of any aspect of the anti-SLAPP claim pending before the Court of Amsterdam. Similarly, this Court did not address—much less adjudicate—*Plaintiffs'* statements falsely stating that International had engaged in "criminal activity."

[¶19] Contrary to Plaintiffs' unsubstantiated suggestion, the Dutch Summons does not seek to "relitigate issues already decided" by this Court. Mot. ¶ 2. The Summons does not even mention the Court's order denying summary judgment, the jury's verdict, or a judgment issued by this Court. *Contra id.* ¶¶ 2, 18. Nor will addressing the merits of International's suit require the Dutch court to "second guess" this Court. J. Borg-Barthet Aff. ¶ 16; *see* R.M. Hermans Aff. ¶ 44 (explaining that "a possible granting by the Dutch court of GPI's claim against Energy Transfer does not require a finding that the judgment of the North Dakota state court is incorrect" and that "[b]oth decisions can exist independently of one another").

[¶20] *Prime Success, L.P. v. Sinovac Biotech Ltd.*, No. 25-CV-4989, 2025 WL 1715609 (S.D.N.Y. June 19, 2025)—a 2025 decision that denied an anti-suit injunction in a case involving a much closer set of facts than those present here—illustrates the basic flaws in Plaintiffs' Motion. In *Prime Success*, the court denied the injunction because it would not be "dispositive" of a foreign action in Antigua, notwithstanding the fact that the U.S. trial court's decision involved a "prediction about the merits" of the foreign suit. 2025 WL 1715609, at *3 (first quoting *Paramedics Electromedicina Comercial*, 369 F.3d at 653; then quoting *Biediger v. Quinnipiac Univ.*, 691 F.3d 85, 107 (2d Cir. 2012)). Here, of course, the Court made no such predictions about the issues raised in International's Dutch suit. In fact, it either did not consider them (e.g., Plaintiffs' defamatory statements) or excluded them from consideration (e.g., MIL 15).

D. Equitable Considerations

[¶21] Even if this threshold requirement were satisfied (and it is not):

> a court may not enjoin a party from seeking relief from another court without also weighing (1) the threat to the enjoining court's jurisdiction posed by the foreign action; (2) the potential frustration of strong public policies in the enjoining forum; (3) the vexatiousness of the foreign litigation; (4) the possibility of delay, inconvenience, expense, inconsistency, or a race to judgment; and (5) other equitable considerations.

Eletson Holdings, Inc. v. Levona Holdings Ltd, 731 F. Supp. 3d 531, 599 (S.D.N.Y. 2024) (quotation marks omitted).[3] Even when there is an identity of parties and claims, "[i]f the foreign proceeding poses no threat to the enjoining court's jurisdiction and will not frustrate the strong public policies of the enjoining forum or otherwise undermine the integrity of proceeding before the enjoining forum, no injunction is appropriate." *Id.*[4]

[3] Plaintiffs' sequencing of these factor pieces together decisions from two different courts. Mot. ¶ 11.

[4] Plaintiffs contend that they need only satisfy *one* of these five factors. Mot. ¶ 11. But they cite only the Ninth Circuit's decision in *E. & J. Gallo*, which adopted an approach that has not been followed by other courts. *See, e.g.*, *Eletson*, 731 F. Supp. 3d at 599 (requiring that at least one of the first two factors be satisfied). The Eighth Circuit has rejected the Ninth Circuit's "liberal approach" to anti-suit injunctions, *Goss*, 491 F.3d at 360, and Plaintiffs identify

[¶22] No equitable factor justifies granting the Plaintiffs' Motion here. To the contrary, as discussed in the next section addressing comity, it would be inequitable to enjoin International from continuing with its ongoing Dutch suit.

1. Factor 1 [threat to U.S. court's jurisdiction]

[¶23] The Dutch Summons does not seek interdictory relief, and Plaintiffs do not even attempt to show that the Dutch action "threatens" to divest this Court of jurisdiction. *See* Mot. ¶¶ 17–27 (only addressing above factors (2), (3) & (4)). In fact, even when a foreign remedy would "effectively nullify the remedy [a party] legitimately procured in the United States courts," the Eighth Circuit has ruled that while perhaps "objectionable" to that party, "it does not threaten United States jurisdiction or any current United States policy." *Goss*, 491 F.3d at 367.

2. Factor 2 [frustration of strong forum policy]

[¶24] Given Plaintiffs' failure to address the first factor, they must establish that International's Dutch action will somehow frustrate a policy interest of North Dakota. *Eletson*, 731 F. Supp. 3d at 599.

[¶25] Plaintiffs cannot do so. The sole "policy interest" Plaintiffs identify is in purportedly ensuring the "finality of jury verdicts." Mot. ¶ 17.[5] Without ***any citation*** in support, Plaintiffs contend that International "ask[s] a Dutch Court to make a collateral determination that this Court wrongfully denied GPI's motions to dismiss and motions for summary judgment, and

no reason for this Court to adopt it. Regardless, even under the "liberal" approach, Plaintiffs' Motion would fail, as they do not satisfy any of the factors.

[5] The jury's verdict here is not in fact final, as it is not yet embodied in any court-issued judgment. *See, e.g.*, N.D.R.Civ.P. 58. Plaintiffs' motion to enter judgment, and International's own competing motions to reduce the verdict or enter judgment in its favor, remain pending. See *Laker Airways Ltd. v. Sabena, Belgian World Airlines*, 731 F.2d 909, 927–28 (D.C. Cir. 1984) (explaining that propriety of an anti-suit injunction depends in part on whether domestic court has entered judgment).

that the jury's verdict is without merit." Mot. ¶ 18. But International has done nothing of the sort. To the contrary, International's tort claims turn on different facts and issues, which have never been litigated in this case. *See* R.M. Hermans Aff. ¶¶ 41–45; J. Borg-Barthet Aff. ¶¶ 16–17. While International's claims relate, in part, to Plaintiffs' conduct of this litigation, they do not require a re-assessment of the jury's verdict. As illustrated by the fact that the Dutch Summons issued before the trial in this case began, International's claims under Dutch and European do not turn on the merits of the verdict or any decision that this Court may render. *See* R.M. Hermans Aff. ¶¶ 41–44; J. Borg-Barthet Aff. ¶ 16. Instead, International seeks remedies flowing from the distinct legal wrongs that it alleges Plaintiffs committed. R.M. Hermans Aff. ¶¶ 42–43.

[¶26] In these respects, this case is nothing like the two decisions on which Plaintiffs rely, *Laker Airways Ltd. v. Sabena, Belgium World Airlines*, 731 F.2d 909 (D.C. Cir. 1984) and *Quaak v. Klynveld Peat Marwick Goerdeler Bedrijfsrevisoren*, 361 F.3d 11 (1st Cir. 2004). *See* Mot. ¶ 18. In *Laker Airways*, the federal court's injunction prevented the defendants from securing an injunction in the U.K. that would have terminated the U.S. action. 731 F.3d at 938. In *Quaak*, similarly, the federal court's injunction precluded a Belgian action whose sole purpose was to "arrest" the U.S. action by prohibiting the discovery that was "essential to the continued prosecution of this action." 361 F.3d at 20. International's Dutch action has no similar effect here. Subject to its personal jurisdiction objection, International has participated in the post-trial process in good faith, and it will continue to do so. *See, e.g.*, Dkt. Nos. 5041 (motion to reduce damages); 5109 (motion for judgment as a matter of law). This Court can and will proceed to final judgment regardless of anything that happens in the Netherlands—just as it has in the more than five months since International first filed that action.

3. Factor 3 [vexatiousness]

[¶27] Plaintiffs also fail to establish that International's Dutch action is "vexatious and oppressive." *Contra* Mot. ¶¶ 20–21. Plaintiffs acknowledge that, to meet that standard, International's suit must be "without reasonable or probable cause or excuse; harassing; annoying." *Id.* ¶ 20 (quoting *Microsoft Corp. v. Motorola, Inc.*, 696 F.3d 872, 886 (9th Cir. 2012)). International indisputably has legitimate claims as set forth in its forty-three page Dutch Summons. Mot. Ex. A; *see* R.M. Hermans Aff. ¶ 27 ("In my opinion, there can be no doubt that the damages GPI has suffered – and continues to suffer – have been incurred in the Netherlands."). Plaintiffs do not even attempt to establish that International's Dutch suit is without merit.

[¶28] Instead, Plaintiffs rely on the proposition that it is "duplicative." *Id.* ¶ 21. Again, that is incorrect: the Dutch action raises different claims, concerns different issues, and involves different remedies. *See supra* ¶¶ 18–20. However, even if the Dutch action *were* duplicative (which it is not), that alone would not make it "vexatious." As one of Plaintiffs' primary authorities recognizes, where foreign litigation is duplicative of domestic litigation that has resulted in a final judgment, "res judicata and collateral estoppel may be pled" in the foreign action. *Laker Airways*, 731 F.3d at 928 n.54. For that reason, even if an action is duplicative, a further "showing of harassment, bad faith, or other strong equitable circumstances should ordinarily be required" before a court issues a foreign anti-suit injunction. *Id*.

[¶29] Here, Plaintiffs appear to assert that "timing" of the Dutch action satisfies these requirements, claiming that because International brought suit before the trial here commenced, International was somehow attempting to use this suit to evade trial here. Mot. ¶ 21. But Plaintiffs do not say how, exactly, the Dutch suit could have accomplished that. And indeed, if that were the vexatious effect of the Dutch action, Plaintiffs should have (and presumably would have) filed

this Motion for an anti-suit injunction when International actually filed suit—and not ***months*** after both the Dutch suit was filed or the trial here was completed.

[¶30] Once again, the contrast with the principal case on which Plaintiffs rely—*Microsoft*—illustrates how far short their showing here falls. *See id.* ¶ 20. There, Microsoft and Motorola were litigating a contract dispute in federal district court concerning certain patent rights. *Microsoft*, 696 F.3d at 889. Motorola then filed an action in Germany raising the same issues, and it secured an injunction that would preclude Microsoft from selling its products in Germany. *Id.* Affirming the federal court's anti-suit injunction against this German action, the Ninth Circuit held the German suit was "vexatious" because it was designed to put "external pressure on Microsoft to enter into a 'holdup' settlement before the [U.S.] litigation [was] complete." *Id.* at 886; *see id.* (characterizing the German suit as "a procedural maneuver designed to harass Microsoft with the threat of an injunction removing its products from a significant European market and so to interfere with the court's ability to decide the contractual questions already properly before it."); *see also, e.g.*, *Ganpat v. E. Pac. Shipping PTE, Ltd.*, 66 F.4th 578, 582–83 (5th Cir. 2023) (holding foreign suit was vexatious when it resulted in the plaintiff being continually jailed in an attempt to coerce him to give up his U.S. action). Plaintiffs provide no evidence whatsoever that International's Dutch suit could have any similar effect on the proceedings here. International's Dutch suit sets out legitimate claims and is not vexatious or oppressive.

4. Factor 4 [delay, expense or inconsistency]

[¶31] Plaintiffs also cannot establish that allowing International's Dutch action to go forward will somehow result in "delay" or "unnecessary expense and duplicative efforts." *Contra* Mot. ¶ 22. This Court is not waiting for the Dutch court to rule, so there is no basis to suggest the Dutch action will delay this proceeding. And Plaintiffs' mere assertions that the Dutch Action was

filed for the purpose of relitigating the issues in this action and creating "inconsistent rulings," Mot. ¶ 24, does not make it so. As detailed above, there is no process whereby a U.S. court would adjudicate a Dutch law tort claim, *see* J. Borg-Barthet Aff. ¶ 17, and in fact this Court ruled that North Dakota law does not address the anti-SLAPP issues that are the subject of International's claims. Nor did this Court address Plaintiffs' defamatory statements. Rather than respond to International's actual claims, Plaintiffs point to a press release explaining that under Dutch tort law, Energy Transfer could be subject to a claim for *monetary damages* for its tortious conduct. Mot. ¶ 24 & Ex. E. That is entirely true. More importantly, it is not the function of this Court to grant Plaintiffs worldwide immunity for their tortious conduct—such as making defamatory statements that International is a "criminal organization."

[¶32] Plaintiffs' cited authorities are inapplicable here. According to Plaintiffs, this case is on all fours with *Custom Polymers PET, LLC v. Gamma Meccanica SpA*, 185 F. Supp. 3d 741 (D.S.C. 2016). Mot ¶¶ 22–24. If anything, that decision shows why this Court should deny Plaintiffs' Motion. *Custom Polymers* involved two-mirror image contract claims in Italy and South Carolina. As the court noted, "the parties agree[d] that judicial economy would not be served by allowing both [the South Carolina] action and Italian action to proceed concurrently." *Custom Polymers*, 185 F. Supp. 3d at 756. The court also noted the "interdictory nature of the Italian action" because the Italian seller had filed a motion to stay the U.S. action, and that the Italian seller had, in the parties' contract, consented to jurisdiction and application of South Carolina law. *Id*. at 754, 759. Here, by contrast, no such mirror-image claims are at issue, International pursues a claim in the Netherlands that it did not (and could not) pursue here, and it has taken no similar steps to evade contractual obligations and somehow interdict this North Dakota action. The two cases are proceeding in tandem.

[¶33] *H-D Michigan, LLC v. Hellenic Duty Free Shops S.A.*, 694 F.3d 827 (7th Cir. 2012) is equally inapposite. There, Harley-Davidson obtained a U.S. TRO against a Greek dealership (DFS) for selling unauthorized Harley-Davidson products. *Id*. at 831–32. In the meantime, DFS obtained an ex parte order in Greece, which in contradiction of the TRO allowed DFS to continue distributing the unauthorized products. *Id*. at 833. Immediately upon learning of the ex parte order, Harley-Davidson filed petitions in the US and Greece. *Id*. at 834. The US court granted an anti-suit injunction and the Greek court issued an order that dissolved its own order and enforced the US TRO. *Id*. at 834. The Court of Appeals found that DFS was not prejudiced by the anti-suit injunction because the Greek court had already ruled by the time it issued. *Id*. at 847 ("Rightly or wrongly, the Greek court fully heard DFS's defense to the Harley Davidson petitions.")

[¶34] International's Dutch action creates no similar threat of directly contradicting any judgment that may ultimately be issued here. Even if it did, the Greek court's ultimate respect for the U.S. courts' action in that case confirms that any overlap could be readily avoided: if any judgment of this Court were somehow applicable to International's action in the Netherlands, Plaintiffs can ask the Dutch court to adhere to it. *See* R.M. Hermans Aff. ¶ 41; J. Borg-Barthet Aff. ¶ 23; *see also Laker Airways*, 731 F.3d at 928 n.54; *see also China Trade & Dev. Corp. v. M.V. Choong Yong*, 837 F.2d 33, 37 (2nd Cir. 1987) ("The possibility that a United States judgment might be unenforceable in Korea is no more than speculation about the race to judgment that may ensue whenever courts have concurrent jurisdiction.").[6]

[6] Plaintiffs also rely on *Rich v. Butowsky*, No. 18-681, 2020 WL 7016436 (D.D.C. Mar. 31, 2020). That case did not involve an international injunction, and it applies a preliminary injunction standard that Plaintiffs themselves say is inapplicable. *See* Mot. ¶ 11 n.5 ("The traditional four-factor test for a preliminary injunction does not apply in the context of an anti-suit injunction.").

[¶35] Finally, Plaintiffs point to *Laker Airways* to discuss the concern with a race to judgment or inconsistent rulings. But in fact, that court ruled that "the possibility of an 'embarrassing race to judgment' or potentially inconsistent adjudications does ***not*** outweigh the respect and deference owed to independent proceedings." *Laker Airways*, 731 F.2d at 928–29 (emphasis added) (footnote omitted) (collecting cases). The court also cautioned that such concerns are over-blown because as a procedural matter, "there will seldom be a case where parties reach inconsistent judgments." *Id*. at 729. Plaintiffs' Motion provides no basis to think that this case will be one of those rare instances. They cannot secure this extraordinary relief based on mischaracterizations of International's actual claims and mere conclusory statements.

5. Factor 5 [other equitable considerations]

[¶36] Plaintiffs, for no good reason, waited more than five months after International filed its Dutch action—and a full year after International notified Plaintiffs of its claims—to file this so-called emergency motion. Surely, if Plaintiffs' enumerated issues were of real concern, they would have acted months ago. *Cf. H-D Michigan*, 694 F.3d at 833-34 (Harley-Davidson filed emergency motion for anti-suit injunction just *six days* after it learned of the foreign ex parte order).

E. The Court Should Deny the Motion as a Matter of Comity

[¶37] Finally, the critical factor courts consider in whether to issue an anti-suit injunction is "comity," which is "the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens or other persons who are under the protection of its laws." *Med. Arts Bldg. Ltd. v. Eralp*, 290 N.W.2d 241, 243 (N.D. 1980) (quoting *Hilton v. Guyol*, 159 U.S. 113, 164 (1895)). Plaintiffs themselves recognize "the general presumption in favor of international comity" and "the strong presumption in favor of international comity." Mot.

¶¶ 28; 31. The Eight Circuit follows the majority "conservative" approach to comity, which recognizes that "foreign antisuit injunctions [should] be issued sparingly and only in the rarest of cases." *Goss*, 491 F.3d at 359–60 (quoting *Gau Shan*, 956 F.2d at 1354). Courts recognize that U.S. jurisdiction is not threatened, and an injunction is not warranted, just because a foreign suit "is merely a threat to [a U.S. plaintiff's] interest in prosecuting its [domestic] lawsuit." *Gau Shan*, 956 F.2d at 1356.

[¶38] In particular, U.S. courts should not enjoin an overseas action that seeks "to prevent [an overseas party] from seeking a remedy available solely" in its home country. *Goss*, 491 F.3d at 365; *accord Canon Latin Am*., 508 F.3d at 602 (rejecting international anti-suit injunction where it would bar claim that "hinges on statutory rights that are unique to [that nation] and that cannot be resolved by a judgment of the [domestic] court"); *Canadian Filters (Harwich) Ltd. v. Lear-Siegler, Inc.*, 412 F.2d 577, 579 (1st Cir.1969) (vacating an international anti-suit injunction "where the subject matter of the foreign suit is a separate, independent foreign patent right"); *Sperry Rand Corp. v. Sunbeam Corp.*, 285 F.2d 542, 545 (7th Cir. 1960) (vacating the injunction because "disposition of the cause pending in the District Court [would not] dispose of the German case or other threatened cases in foreign courts," which "involv[ed] specific foreign rights arising under and enforceable only through the laws of those foreign countries").

[¶39] Although not addressing an anti-suit injunction, the North Dakota Supreme Court has similarly recognized the importance that the principles of comity play in granting voluntary recognition to the laws of other nations. *Hansen v. Scott*, 2004 ND 179, ¶ 8, 687 N.W.2d 247.

[¶40] Plaintiffs' Motion must be denied under these standards. International's Dutch Summons seeks relief unavailable in this action, and only available to it under Dutch law and European law standards as interpreted by the Amsterdam Court. *See* J. Borg-Barthet Aff. ¶ 17;

see also R.M. Hermans Aff. ¶¶ 41–45. International's lawsuit asserts torts pursuant to Dutch Civil Code Article 6:162 and Article 3:13 interpreted in accordance with the European Convention on Human Rights and the EU's 2024 Anti-SLAPP Directive. Mot. Ex. A ¶¶ 90–130; *see also* R.M. Hermans Aff. ¶¶ 19–25 (describing the Dutch and European law governing International's claims); J. Borg-Barthet Aff. ¶¶ 7–16 (describing the nature and purpose of the EU Anti-SLAPP Directive). It asserts a cause of action for "unlawful acts" and "abuse of rights," based on Plaintiffs' pursuit of two separate SLAPP actions against International (including the dismissed federal RICO case) a claim that this Court could not adjudicate in North Dakota. *See id.* ¶¶ 148–55; Dkt. No. 4224, at 7 ("North Dakota state law does not directly recognize SLAPP or anti-SLAPP suits."). The Dutch Summons also alleges reputational harm due to statements made by Plaintiffs about International, including extra-judicial statements in media campaigns that were not before this Court. Mot. Ex. A ¶¶ 68, 84, 138. The Dutch Summons expressly seeks damages for harm International sustained in the Netherlands, thus falling within the jurisdiction of the Amsterdam Court. *Id.* ¶¶ 139–44. Where, as here, a foreign action "hinges on statutory rights that are unique to [the Netherlands] and that cannot be resolved by a judgment of" the domestic court, on issues that were not before the domestic court, an anti-suit injunction should be denied. *Cannon Latin Am.*, 508 F.3d at 602.

[¶41] Plaintiffs' contrary arguments are unavailing. Plaintiffs' argument that comity concerns are absent because "[t]his case involves only private parties," Mot. ¶ 29, ignores the important foreign *rights* at issue in the Dutch proceeding. It is simply false to say that "no public international issues are implicated here" and that "and no international laws or treaties are implicated." *Contra* Mot. ¶ 29. Courts typically reject anti-suit injunctions—on all the grounds noted above—in cases that involve only private parties. *See*, *e.g.*, *Goss*, 491 F.3d at 355 (denying injunction where plaintiffs and defendants were private corporations); *Canon Latin Am.*, 508 F.3d

597 (same); *Rancho Holdings*, 435 Fed. App'x 566 (denying injunction in case involving private companies and individuals). This is true even in circuits that do not follow the Eighth Circuit's "conservative" approach to comity. *MWK Recruiting*, 833 F. App'x 560 (vacating anti-suit injunction in case involving private employer and former employee).

[¶42] Nor, for all the reasons explained above, can Plaintiffs claim that some overriding domestic interest compels ignoring these important comity concerns. *See supra* ¶¶ 24–27. Unlike the cases on which Plaintiffs rely (Mot. ¶¶ 29–32), International's foreign action does not concern identical issues, seek to divest this Court of authority to hear Plaintiffs' claims or otherwise violate any domestic policy. *See, e.g.*, *Ganpat*, 66 F.4th at 580 (affirming anti-suit injunction against corporate defendant that "evade[d] service" in U.S. action and instead attempted to bring a competing countersuit "litigating the same issues simultaneously before the court in India"); *Quaak*, 361 F.3d at 290 (affirming injunction against foreign action intended to stop U.S. action); *BAE Sys. Tech. Sol. & Servs., Inc. v. Republic of Korea's Def. Acquisition Program Admin*., 195 F. Supp. 3d 776, 782 (D. Md. 2016) (preliminarily enjoining defendant from pursuing parallel suit in South Korea addressing identical breach of contract issues).

[¶43] Instead, the Dutch Summons seeks resolution of issues that *were not heard and could not be resolved* in this case. Plaintiffs do not and cannot argue that allowing another jurisdiction to enforce its own SLAPP or abuse-of-process laws violates any North Dakota policy. It is no threat to this Court's jurisdiction to permit the Amsterdam Court to decide whether acts and statement by Plaintiffs constitute tortious conduct under Dutch law.

III. CONCLUSION

[¶44] As Plaintiffs concede, "there are no reported decisions of a North Dakota court issuing an anti-suit injunction." Mot. ¶ 9 n.4. For the foregoing reasons, the proposed injunction is unwarranted and should be denied.

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