

ENTERED

May 21, 2026

Nathan Ochsner, Clerk

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

SERVICIOS OJEDA, C.A.,

Plaintiff,

v.

CHEVRON CORPORATION, *et al.*,

Defendants.

§
§
§
§
§
§
§
§
§

CIVIL ACTION H-25-1762

MEMORANDUM AND OPINION

This breach of contract dispute involves allegedly unpaid invoices for drilling services performed in Venezuela from 2016 to 2020 and a promise to pay those invoices if the drilling company would provide new drilling services beginning in 2023. Servicios Ojeda, C.A. has sued Chevron Corporation and Chevron USA, Inc., for payment for drilling services Servicios provided to various joint ventures between Chevron Corp. and Petróleos de Venezuela, S.A. (“PDVSA” or “Petróleos”), Venezuela’s state-owned oil company. Servicios alleges that Chevron failed to pay over \$24 million in invoices for drilling work done from 2016 to 2020. Servicios alleges that, in 2023, after Chevron decided to resume drilling operations in Venezuela, Chevron promised to pay these Servicios invoices for past work if Servicios agreed to perform new work for Petropiar, S.A., one of Chevron’s joint ventures with Petróleos.

Chevron has moved to dismiss Servicios’s claims for payment of the 2016 to 2020 invoices. (Docket Entry No. 38). The motion to dismiss presents both familiar contract issues under traditional legal principles and complex vicarious-liability issues under Venezuelan law. (*See* Docket Entry Nos. 38, 41, 48). After supplemental briefing and argument, the court ordered the parties to meet and confer on a case-management approach that would sequence the issues to allow the court to first address the issues that did not rest on foreign law. (Docket Entry Nos. 64, 66).

The parties could not agree. Servicios wants discovery into contract formation, enforcement, and privity before filing motions on the vicarious liability issues under Venezuelan law, arguing that the issues are too interconnected to be separated into different phases of discovery and motion practice. (Docket Entry No. 69). Chevron wants the court to resolve what it believes are threshold legal and factual issues before permitting wide-ranging discovery and additional motions. Chevron favors no discovery (and a stay pending the arbitration it seeks) or, in the alternative, targeted discovery followed by successive phases of motion practice on distinct elements of Servicios's claims. (Docket Entry No. 70). Chevron has moved to stay the case pending arbitration. (Docket Entry No. 71). After a review of the parties' case-management approaches, it is apparent that this court must rule on some threshold legal issues, including the motion to stay, before adopting a scheduling order.

The court has carefully reviewed the complaint; Chevron's motion to dismiss, the response, and the reply; the supplemental briefing on choice of law; the expert submissions on Venezuelan law; and the motions on arbitration. The court grants in part and denies in part the motion to dismiss. (Docket Entry No. 38). The court reserves ruling on several issues of Venezuelan law because the present record does not show the principles governing those issues with "reasonable certainty." *In re Avantel, S.A.*, 343 F.3d 311, 321 (5th Cir. 2003). The court denies the motion to stay the case pending arbitration. (Docket Entry No. 71). The parties may begin discovery on the claims and issues that are not dismissed.

The reasons for these rulings are explained in detail below.

I. Background

A. The Factual Allegations

Chevron Corporation is one of the largest integrated oil and gas companies in the world. (*Id.* ¶ 6). Chevron USA Inc. is a wholly owned subsidiary of Chevron Corporation. (*Id.* ¶ 5). Servicios Ojeda, C.A. is a family-owned Venezuelan business. (Docket Entry No. 31 at 1). It has provided drilling services to various joint ventures between Chevron Corporation and Petróleos de Venezuela, S.A. in the Orinoco Belt of Venezuela for about 21 years. (*Id.*). One such joint venture is Petropiar, S.A. (*Id.* ¶ 9).

Petropiar is a Venezuelan “empresa mixta” that operates in the Orinoco Belt. (*Id.* ¶¶ 9–10). It is a state-sanctioned joint venture; Chevron and its subsidiaries cannot operate in Venezuela except as part of an empresa mixta. (*Id.* ¶ 32). The Venezuelan National Assembly must approve the share participation of all empresas mixtas between foreign companies and Petróleos, the state-run oil corporation. Venezuela’s National Gazette must record and publish that approval. (*Id.* ¶ 9 n.3). On October 29, 2007, the Venezuelan National Assembly approved the constitution of Petropiar between Corporación Venezolana del Petróleo, S.A., a subsidiary of the national oil company Petróleos, as the holder of 70 percent of the share capital, and Chevron Orinoco Holdings B.V., as the holder of the remaining 30 percent. (Docket Entry No. 39-6 at 3).¹ Hugo Chavez confirmed Petropiar’s constitution that week, and the National Gazette published the official joint-venture agreement. (Docket Entry No. 39-7 at 2; No. 39-8 at 2).

Servicios has provided drilling and well services to Petropiar since Petropiar’s formation in 2007. (*Id.* ¶ 34). This dispute arises from unpaid invoices for Servicios’s work from 2016 to

¹ This court refers to the Official Gazette because it is incorporated by reference in the complaint. (Docket Entry No. 31 ¶ 9 n.3). In “deciding a 12(b)(6) motion to dismiss, a court may . . . refer to matters of public record.” *Cinel v. Connick*, 15 F.3d 1338, 1343 n.6 (5th Cir. 1994).

2020. (*Id.* at 2). Servicios alleges that it invoiced Petropiar \$20,773,113.77 for drilling and well services, along with \$3,323,698.20 in value-added tax, for a total \$24,096,811.97. (*Id.* ¶ 84). Servicios alleges that throughout this period, the relevant onsite employees and decisionmakers, including those responsible for accepting and approving invoices, were Chevron Corp. employees. (*Id.* ¶¶ 36–41). Servicios alleges that “[a]t least one Chevron Corp. representative was involved in the original approval and invoicing of all 131 of [its] unpaid bills.” (*Id.* ¶ 85). Neither Petropiar nor a Chevron affiliate paid those invoices.

Servicios alleges that international sanctions undermined the parties’ relationship. In 2019, the United States sanctioned Venezuela and Petróleos. (*Id.* ¶ 42). As a result, companies like Chevron and other United States refiners, once reliant on Venezuelan oil, were cut off. (*Id.*). Petróleos’s partners who were outside the United States could still produce oil in Venezuela but were barred from exporting that oil to the U.S. market. (*Id.*).

To mitigate the impact of the sanction on American businesses, the Treasury Department issued General License 7, allowing limited transactions with Petróleos subsidiaries, and General License 8, which permitted American firms such as Chevron to maintain essential operations in Venezuela until July 27, 2019. (*Id.* ¶¶ 43–44). General License 8 was amended several times, allowing companies operating under it to continue working in Venezuela until June 1, 2021. (*Id.* ¶ 45).

“[O]n November 26, 2022, the U.S. Treasury issued General License 41, which authorized Chevron to resume limited oil extraction and exports from Venezuela.” (*Id.* ¶ 55). General License 41 permitted certain activities ““for or related to the operation and management by Chevron Corporation or its subsidiaries of Chevron’s joint ventures in Venezuela involving [Petróleos] or

any entity in which [Petróleos] owns, directly or indirectly, a 50 percent or greater interest’ that are prohibited by the Venezuela Sanctions Regulation.” (*Id.* ¶ 56).

With the ability to resume Venezuelan operations in 2022, Chevron Corporation “needed to identify drilling and well services providers who could competently operate in Venezuela and who could satisfy U.S. compliance requirements.” (*Id.* ¶ 57). Servicios was one such company. “Chevron Corp. was aware that service companies such as [Servicios] were hesitant to take on new work for Chevron Corp. joint ventures, given the joint ventures’ spotty record for paying vendors.” (*Id.* ¶ 59). To induce companies like Servicios to work, “Chevron Corp. planned to centralize new agreements” under a U.S.-based subsidiary, Chevron Global Technology Services Company, “to prove that any new work performed would be guaranteed by Chevron Corp.” (*Id.*).

In 2022, Servicios still had not been paid more than \$20 million in invoices for work done from 2016 to 2020. (*Id.* ¶ 60). Servicios “was skeptical that providing work for Chevron Corp.’s stakeholders would render any different outcome and that they would again go unpaid for services rendered.” (*Id.*). “Knowing that [Servicios] was hesitant to enter into another arrangement with Chevron Corp. or its subsidiaries after having been left holding the bag for years-old services,” Armando Castelli, “a Chevron procurement manager,” allegedly acknowledged the unpaid invoices and offered the possibility of paying them if Servicios entered a new agreement to work for Chevron in 2023. (*Id.* ¶ 61). Castelli threatened to withhold the \$24 million payment for the work Servicios had done in 2016 to 2020 unless Servicios agreed to do the new work for Chevron beginning in 2023. (*Id.*).

Chevron representatives allegedly told Servicios that it had to be either “in” or “out.” (*Id.*). If Servicios “remained ‘in’ Chevron Corp.’s stable of service providers,” then Chevron would pay the 2016 to 2020 unpaid invoices—including the invoices owed by the joint ventures like

Petropiar. (*Id.*). “But if [Servicios] opted ‘out’ of additional work, then Chevron Corp.’s employees at Petropiar would continue to string along the debt and Chevron Corp. itself would not satisfy it either.” (*Id.*). Servicios alleges that, “[b]ecause of this pressure from Chevron Corp.’s manager and colleagues and the economic need to collect on its \$24 million of receivables to Petropiar, [its] management entered into a new arrangement to perform drilling and well services for Chevron Corp. and its various Venezuelan joint ventures, including Petroboscan, Petroindependiente, and Petroindependencia.” (*Id.*). In exchange, Servicios alleges that “Chevron Corp. guaranteed the amount owed by Petropiar.” (*Id.* ¶ 87).

Servicios alleges that Chevron Corp. and Chevron USA started to follow through on their promise to pay Servicios’s invoices through a 2023 account reconciliation process. Servicios alleges that in February 2023, “the parties agreed to an in-person meeting in Venezuela, where Chevron Corp. representatives attended to discuss the invoices.” (*Id.* ¶ 66). It alleges that “three of the four attendees were Chevron Corp. employees, including Carlos Miranda, Susana Riera and Monica Colon.” (*Id.*). Servicios resubmitted its 2016 to 2020 invoices, and, throughout February and March 2023, Servicios “continued to communicate with and provide information via email with Chevron Corp.’s representatives at their @chevron.com emails, pursuant to their requests for information.” (*Id.* ¶ 67). Eventually, “Carlos Salazar of [Petróleos] and Armando Castelli, Susana Riera, and Monica Colon of Chevron Corp. invited [Servicios] to a meeting ‘to discuss debt settlement’” (*Id.* ¶ 74). The meeting took place on April 17, 2023, and Servicios walked the Chevron and Petróleos representatives through the outstanding invoices. (*Id.* ¶ 75).

After the meeting, Servicios representatives emailed the Chevron and Petróleos representatives to confirm their discussion. The email stated:

Good evening, Mr. Salazar and Ms. Riera.

I greet you again. This email serves to ratify what was reviewed in our meeting today regarding the reconciliation of the debt help by the Joint Venture, Petropiar, S.A. with my company. As indicated in the meeting:

Amount of Accounts Receivable Invoiced: \$21,714,919.20 + VAT

Amount of Pending Accounts Receivable to be Invoiced for HES: \$404,591.65 + VAT

Amount of Advance Pending to be Discounted: €1,802,6=3.79 (\$1,999,933.11), Payment Notice 1500012898 of 07NOV2016.

Discount Amount Applied Twice: -\$111,782.72, Payment Notice 1500020050 of 25JAN2019 and Payment Notice 1500017703 of 08DEC2018.

The other observations made today at our reconciliation meeting were reviewed by our accountants and accepted.

I look forward to your comments to proceed with the closing of the corresponding reconciliation.

I am attaching the revised Advances and Discounts file.

(*Id.* ¶ 76). The next morning, Susana Riera of Chevron Corp. responded from her @chevron.com email address, stating:

From yesterday's review, we have the following actions pending:

- Of the accounts payable, we still need to amortize the advance payment of \$21.7MM and \$1.8MM.
- Contract Administration will contact you to deliver the HES so that they can proceed with invoicing.
- With reference to payment notice 1500019703 dated 12/08/2018, it was canceled due to a bank rejection. Said notice was expressed in EUROS. See attachment.
- The payment was then sent again, with payment notice 1500020050 dated 01/25/2019, for an amount of \$2MM. See attachment.

This week you will receive the open items, and therefore we would consider the financial reconciliation of Servicios Ojeda complete.

Nothing further to add.

Sincerely yours,
 Susana Riera
 Finance - Accounts Payable & Treasury
 Petropiar, S.A.

(*Id.* ¶ 77).

Servicios alleges that, through this email, Chevron Corp. “representatives exhibited their unequivocal written acknowledgement of the justness of [its] debt” in a way that “reflect[s] Chevron Corp.’s willingness or intention to pay for past due amounts owed by its joint venture.” (*Id.* ¶ 79). Servicios alleges that despite this acknowledgement, Chevron never paid. Servicios alleges that it made “numerous formal requests to Chevron Corp. and Petropiar representatives for payment.” (*Id.* ¶ 88). On June 14, 2023, Servicios sent a declaration of debt to Carlos Miranda and Armando Castelli. On October 29, 2024, and March 25, 2025, Servicios sent written letters to Chevron executive, Martin Philipsen, the General Manager of Petropiar, to intervene. (*Id.*). Payment remains outstanding.

B. Procedural History

Servicios sued Chevron Corporation and Chevron USA to enforce their promise to pay the 2016 to 2020 invoices. (Docket Entry Nos. 1, 31). Servicios asserts: (1) two Texas breach-of-contract counts based on an alleged direct contract with Chevron Corp. or, alternatively, a contract between Servicios and Petropiar as Chevron Corp.’s agent; (2) breach of the Texas Uniform Fraudulent Transfer Act; (3) suit on a sworn account allegedly directly between Servicios and Chevron Corp.; (4) quantum meruit; and (5) a Venezuelan law claim for breach of a contract between Servicios and Chevron Corp. or, alternatively, against Chevron Corp. based on an alter ego or agency theory. (Docket Entry No. 31 ¶¶ 115–82).

The defendants moved to dismiss the complaint, (Docket Entry No. 14), and moved to stay discovery pending the resolution of the motion to dismiss, (Docket Entry No. 27). The court stayed discovery, and Servicios amended its complaint. (Docket Entry No. 31 (First Amended Complaint)). The defendants again moved to dismiss, with prejudice, for failure to state a claim. (Docket Entry Nos. 37, 37-1). The court held two oral arguments on the motion to dismiss. (Docket Entry Nos. 56, 66). At the first argument, the court explained that there were several choice-of-law issues on which it needed additional guidance from the parties and then ordered supplemental briefing. (*See* Docket Entry Nos. 53, 57). The parties submitted their supplemental briefs, (Docket Entry Nos. 60, 61), as well as a chart that outlined Servicios's liability theories, the parties' contentions, and the applicable law, (Docket Entry No. 62).

At the second oral argument, the parties argued the motion to dismiss. The court stated on the record its assessment that many of the issues the parties discussed were ultimately "significant factual disputes" for which "[s]ummary judgment is clearly going to be needed." (Docket Entry No. 64 at 19:16–20). After hearing the parties' arguments, the court ruled that there were "certain questions that [it] could resolve on [the] motion to dismiss, not many," and that "discovery is indeed going to be very helpful" as the parties "move to summary judgment" on issues that could not be resolved earlier. (*Id.* at 29:9–12, 29:16–24). The court ordered the parties to "propose an order that (i) sets the date of a motion hearing in which the parties' experts will present on the relevant Venezuelan law; and (ii) allows for limited discovery into issues of actual or apparent authority and corporate structure necessary to resolve whether the defendants are party to the alleged contract." (Docket Entry No. 66).

As noted, the parties disagreed on what approach to follow. Servicios favors broader discovery that covers the issues of contract formation, enforcement, and privity, arguing that the

issues are interconnected and cannot be separated into different phases of discovery and motion practice. (Docket Entry No. 69). Chevron favors no discovery, or limited discovery with successive phases of motion practice on distinct elements of Servicios's claims, arguing that the court must address threshold legal and factual issues before permitting wide-ranging litigation. (Docket Entry No. 70). Chevron also moved to stay the litigation pending arbitration. (Docket Entry No. 71).

The motion to dismiss, (Docket Entry No. 37), and the motion to stay the case pending arbitration, (Docket Entry No. 71), are ready for ruling.

II. The Legal Standards

A. The Motion to Dismiss

Rule 12(b)(6) allows dismissal if a plaintiff fails “to state a claim upon which relief can be granted.” FED. R. CIV. P. 12(b)(6). Rule 12(b)(6) must be read in conjunction with Rule 8(a), which requires “a short and plain statement of the claim showing that the pleader is entitled to relief.” FED. R. CIV. P. 8(a)(2). “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

Rule 8 “does not require ‘detailed factual allegations,’ but it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation.” *Id.* (quoting *Twombly*, 550 U.S. at 555). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* “The plausibility standard is not akin to a ‘probability requirement,’ but it asks for more than a sheer possibility that a defendant has acted unlawfully.” *Id.* (quoting *Twombly*, 550 U.S. at 556). “Conversely, when the allegations in a complaint, however true, could not raise a claim of

entitlement to relief, this basic deficiency should be exposed at the point of minimum expenditure of time and money by the parties and the court.” *Eli Lilly & Co. v. Revive Rx, LLC*, 812 F. Supp. 3d 708, 723 (S.D. Tex. 2025) (quoting *Cuvillier v. Taylor*, 503 F.3d 397, 401 (5th Cir. 2007)).

B. Foreign Law

To determine foreign law, a court may consider “any relevant material or source” whether or not presented by the parties. FED. R. CIV. P. 44.1. The determination “must be treated as a ruling on a question of law.” *Id.* “[D]ifferences of opinion among experts on the content, applicability, or interpretation of foreign law do not create” factual issues on which this court must defer. *Access Telecom Inc. v. MCI Telecomms. Corp.*, 197 F.3d 694, 713 (5th Cir. 1999); *see also* 9A WRIGHT & MILLER, FEDERAL PRACTICE & PROCEDURE § 2444 (3d ed. 1998). But “[i]n determining whether a party has adequately proved the substance of foreign law, the district court is given wide latitude.” *In re Avantel, S.A.*, 343 F.3d 311, 322 (5th Cir. 2003). “[W]hen the parties have failed to conclusively establish foreign law, a court is entitled to look to its own forum’s law.” *Banco de Credito Indus., S.A. v. Tesoreria General*, 990 F.2d 827, 836 (5th Cir. 1993) (first citing *Cantieri Navali Riuniti v. M/V Skyptron*, 802 F.2d 160 (5th Cir. 1986); and then citing *Symonette Shipyards Ltd. v. Clark*, 365 F.2d 464, 468 (5th Cir. 1966)).

III. The Motion to Stay Pending Arbitration

Chevron Corp. and Chevron USA move to stay pending arbitration. (Docket Entry No. 71). They argue that Servicios asserted a new argument in the supplemental briefing. This new argument is that “a contract—the alleged oral promise to pay in exchange for signing and providing services under the [Master Services Agreement]—was formed when Servicios Ojeda signed the [Master Services Agreement] on April 12, 2023.” (Docket Entry No. 71 at 3). The defendants argue that because Servicios revised its contract-formation theory in response to this court’s order

requiring the parties to specify the relevant theories of contract formation, they were not given notice that the arbitration clause in the Master Services Agreement applied. (*Id.* at 4). Servicios responds that the defendants knew about the relevance of the arbitration clause since the allegations in the First Amended Complaint but moved to dismiss on the merits, waiving their right to arbitrate. (Docket Entry No. 77 at 10–12).

The question is whether the defendants “knowingly relinquish[ed] the right to arbitrate by acting inconsistently with that right.” *Morgan v. Sundance, Inc.*, 596 U.S. 411, 419 (2022). “[S]ubstantial invocation of the judicial process is merely one way of demonstrating that a party waived its right; after all, substantial invocation of the judicial process is an intentional abandonment of a known right.” *Garcia v. Fuentes Rest. Mgmt. Servs. Inc.*, 141 F.4th 671, 676 (5th Cir. 2025). “Substantial invocation” requires a party to, “at the very least, engage in some overt act in court that evinces a desire to resolve the arbitrable dispute through litigation rather than arbitration.” *In re Mirant Corp.*, 613 F.3d 584, 589 (5th Cir. 2010) (quoting *Subway Equip. Leasing Corp. v. Forte*, 169 F.3d 324, 329 (5th Cir. 1999)). Relevant here, “[a] party waives arbitration by seeking a decision on the merits before attempting to arbitrate.” *Forby v. One Techs., L.P.*, 909 F.3d 780, 784 (5th Cir. 2018) (quoting *In re Mirant*, 613 F.3d at 589); accord *Petroleum Pipe Ams. Corp. v. Jindal Saw, Ltd.*, 575 F.3d 476, 480 (5th Cir. 2009).

A. The Defendants’ Awareness of Arbitrability

The first question is whether the defendants were “aware of [their] right to compel arbitration when [they] filed [their] 12(b)(6) motion to dismiss.” *Forby*, 909 F.3d at 784. The defendants argue that they were not aware of their right to arbitrate because the complaint only vaguely and in passing referred to the Master Services Agreement and because “[o]nly the [supplemental brief]—which the Court directed ten months into the case—squarely anchors

Plaintiff's claims to the MSA and its arbitration clause." (Docket Entry No. 78 at 4–5). The defendants' argument is not persuasive.

In the First Amended Complaint, Servicios alleges that it "was pressured to agree to perform additional services through a master agreement with Chevron Global Tech" and that if it "remained 'in' Chevron Corp.'s stable of service providers, then its invoices would be satisfied by Chevron Corp.—including payments for the amount of the invoices owed by the joint ventures like Petropiar." (Docket Entry No. 31 ¶ 61). Servicios then alleges that "[b]ecause of this pressure," it "entered into a new arrangement to perform drilling and well services for Chevron Corp. and its various Venezuelan joint ventures." (*Id.*). Servicios later repeated its allegation that "Castelli was the Chevron Corp. procurement manager who had stated that Chevron Corp. would true-up [Servicios] for these past due debts once [Servicios] agreed to the new master services agreement." (*Id.* ¶ 73). The First Amended Complaint includes allegations that Servicios's "execution of the MSA was the consideration for, or a material term of, Chevron's alleged promise to pay Petropiar's debt." (Docket Entry No. 71 at 4).

The subsequent motions practice confirms that the defendants knew that the Master Services Agreement was material to Servicios's claims. In response to the defendants' motion to dismiss, Servicios repeatedly referred to the allegations in paragraphs 61 of its First Amended Complaint, citing it eleven times. (Docket Entry No. 41 at 3, 4, 5, 6, 8, 14, 18 (excluding from this count instances in which paragraph 61 was included in a citation range (i.e. ¶¶ 57–88))). Servicios's reliance on the allegations in paragraph 61 did not go unnoticed. The defendants' reply twice quoted the allegation that "Plaintiff was pressured to agree to perform additional services through a master agreement with Chevron Global Tech." (Docket Entry No. 51 at 3, 4 (quoting Docket Entry No. 31 ¶ 61))). First, the defendants cited this allegation to argue that Servicios had

sued the wrong entity, asserting that Servicio’s claim is truly against “Chevron Global Tech” and that “[t]he ‘master agreement’ with Chevron Global Tech cannot be reconciled with Plaintiff’s breach of contract claims against Chevron Corp.” (*Id.* at 3). Second, in arguing their statute-of-frauds defense, the defendants asserted that “the agreement for Plaintiff to perform additional services is governed by the ‘master agreement with Chevron Global Tech.’” (*Id.* at 4 (quoting Docket Entry No. 31 ¶ 61)). These arguments, especially the second one, undermine any suggestion that the defendants did not know that the Master Services Agreement “was the consideration for, or a material term of, Chevron’s alleged promise to pay Petropiar’s debt.” (Docket Entry No. 71 at 4).

The defendants’ professed ignorance is also undermined by the scope of the arbitration clause on which they now rely. *See MC Asset Recovery, LLC v. Castex Energy, Inc.*, No. CIV A 4:07-CV-076-Y, 2009 WL 900745, at *7 (N.D. Tex. Apr. 3, 2009) (weighing in favor of waiver the movant’s argument that “the arbitration clause at issue is extremely broad”). The Master Services Agreement’s arbitration provision is capacious, covering “matters which occur in connection with this Contract, which flow from this Contract, or which would not have arisen or occurred but for the entering into this Contract or a Service Order or the performance of or failure to perform obligations under this Contract.” (Docket Entry No. 72-1 § 1.2(B)). Any “Dispute” that meets one of these criteria must be arbitrated. (*Id.* § 22.5; *see id.* § 1.1 (defining “Dispute” as “any dispute, conflict, or controversy arising out of this Contract”)). The arbitration agreement delegates arbitrability issues to the arbitrator by adopting the UNCITRAL Arbitration Rules, (*see* Docket Entry No. 71-1 § 22.5); *Brittania-U Nigeria, Ltd. v. Chevron USA, Ltd.*, 866 F.3d 709, 714–15 (5th Cir. 2017), making the defendants’ burden of moving to stay the case in this court pending arbitration even lighter, (*see* Docket Entry No. 71 at 11 n.10 (arguing that “[w]ith

delegation, this court must stay its hand and refer claims to arbitration in almost all cases’’)). In light of the breadth of the arbitration agreement, the two allegations in the First Amended Complaint that allege a “connection” or “but for” relationship between Servicios’s contract claims and the Master Services Agreement lead the court to conclude that the defendants were “aware of [their] right to compel arbitration” after Servicios filed its operative complaint. *Forby*, 909 F.3d at 784.²

The defendants knew of their right to arbitrate when Servicios filed its First Amended Complaint. The question is whether the defendants’ conduct after the First Amended Complaint “demonstrated a desire to resolve the dispute in litigation rather than arbitration.” *Id.*

B. Substantial Invocation of the Judicial Process

The defendants moved to dismiss the First Amended Complaint with prejudice, submitted substantial expert reports with voluminous exhibits on Venezuelan law, and litigated additional issues raised by the court. The defendants argue that these acts are not enough to waive arbitration because challenging a pleading sufficiency “is consistent with preserving a right to arbitrate”; the court has not ruled on the motion to dismiss; and there has been no discovery. (Docket Entry No. 78 at 7–9). The court is persuaded that the defendants substantially invoked the judicial process, for a combination of three reasons: (1) the defendants moved for a complete dismissal with prejudice, (Docket Entry No. 37-1); (2) the defendants relied on the Master Services Agreement

² The fact that the defendants were not party to the contracts that Servicios signed with other Chevron entities and joint ventures does not weigh in their favor. *See Garcia*, 141 F.4th at 681–82 (citing *Williams v. Cigna Fin. Advisors, Inc.*, 56 F.3d 656, 661–62 (5th Cir. 1995)). The defendants moved to dismiss Servicios’s claims based on a forum-selection clause in Servicios’s contract with Petropiar, to which the defendants are not a party. (See Docket Entry No. 38 at 21–24). The defendants knew how to invoke dispute-resolution provisions in contracts to which they were not a party. The defendants do not claim that they were unaware of the Master Services Agreement or that it was not in their “files.” *Garcia*, 141 F.4th at 681–82. No facts rebut the finding that the defendants’ “failure” to arbitrate was “poor foresight.” *Id.* at 680.

to seek the complete dismissal with prejudice, (Docket Entry No. 51 at 3, 4 (quoting Docket Entry No. 31 ¶ 61)); and (3) the defendants moved to arbitrate only after the court denied the motion to dismiss in part and ordered that discovery could begin, (Docket Entry Nos. 63, 66).

First, the defendants moved for a full dismissal on the merits. In assessing whether moving to dismiss invokes the judicial process so as to waive arbitration, “[c]ourts distinguish between perfunctory motions to dismiss that raise procedural concerns and motions to dismiss that seek a full decision on the merits.” *Maldonado v. Firstservice Residential, Inc.*, No. CV H-20-1484, 2021 WL 966064, at *5 (S.D. Tex. Mar. 15, 2021) (citing *Electrostim Med. Servs., Inc. v. Health Care Serv. Corp.*, No. 11-CV-2745, 2012 WL 5373462, at *6 (S.D. Tex. Oct. 30, 2012)).

The Fifth Circuit has been clear that a “full-throated attempt to win [a] case on the merits in federal court,” such as a motion for dismissal with prejudice, weighs heavily in favor of finding waiver. *Forby*, 909 F.3d at 783; *see Mirant*, 613 F.3d at 589; *Petroleum Pipe*, 575 F.3d at 480. But the Fifth Circuit has also recognized that motions to dismiss are “distinguishable.” *Forby*, 909 F.3d at 783. These distinguishable motions include motions that seek both dismissal or summary judgment and, in the alternative, to compel arbitration, *see Keytrade USA, Inc. v. Ain Temouchent M/V*, 404 F.3d 891, 897 (5th Cir. 2005), and motions to dismiss procedural or ancillary issues, *see Pacheco v. PCM Const. Servs., L.L.C.*, 602 F. App’x 945, 948 (5th Cir. 2015) (per curiam); neither gives the movant “a sense of the court’s view of the case” before the motion to arbitrate, *Forby*, 909 F.3d at 783. The Fifth Circuit has also cautioned that courts should not find waiver if the moving party seeks to dismiss claims that are “non-arbitrable.” *Mirant*, 613 F.3d at 591 (citing *Sweater Bee by Banff, Ltd. v. Manhattan Indus., Inc.*, 754 F.2d 457, 463 (2d Cir. 1985)).

The cases that the defendants cite show how these guidelines play out in practice. In *Pumphrey*, the Fifth Circuit found no waiver because the motion to dismiss was based on Rule

9(b)’s “heightened pleading standard,” which “is a non-merits argument.” *Pumphrey v. Triad Life Scis., Inc.*, No. 24-60028, 2024 WL 4100495, at *3 (5th Cir. Sept. 6, 2024) (per curiam). In addition, had the court granted a dismissal with prejudice, it “would have likely been an abuse of discretion.” *Id.* In *Maldonado*, the court found no waiver in part because the moving party’s motion to dismiss was “targeted” to address “claims for damages and injunctive remedies” that the arbitration clause “permitted” the parties “to pursue in federal court.” *Maldonado*, 2021 WL 966064, at *6. In both of these cases, the court did not find waiver because the motion to dismiss was not a “full-throated attempt to win . . . on the merits in federal court.” *Forby*, 909 F.3d at 783.

With one exception, the cases the defendants cite follow this trend.³ *See, e.g., Elite Precision Fabricators, Inc. v. Gen. Dynamics Land Sys., Inc.*, No. CV H-14-2086, 2015 WL 9302843, at *13 (S.D. Tex. Dec. 18, 2015) (“General Dynamics filed its Motions to Dismiss concurrently with its Motions to Compel Arbitration.”); *Rojas v. Ross Dress for Less, Inc.*, No. 1:19-CV-812-RP, 2020 WL 13442036, at *2 (W.D. Tex. Dec. 8, 2020) (no motion to dismiss for failure to state a claim); *Butler v. Z&H Foods, Inc.*, No. 4:19-CV-02759, 2021 WL 630942, at *4 (S.D. Tex. Jan. 29, 2021) (“Neither party filed any motions before the Motion was filed, nor have any such motions been filed since.”), *aff’d*, No. 21-20086, 2021 WL 4073110 (5th Cir. Sept. 7, 2021); *Streety v. Parsley Energy Operations, LLC*, No. MO:20-CV-49-DC-RCG, 2022 WL 2782819, at *12 (W.D. Tex. May 3, 2022) (the movant “did not seek a decision on the merits before attempting to arbitrate”), *report and recommendation adopted*, No. MO:20-CV-00049-DC,

³ One case that the defendants cite provides some support for their position. *See Trade SDB Trade Int’l, L.P. v. E&E Grp., LLC*, No. CV H-08-226, 2008 WL 11397907, at *6 (S.D. Tex. May 15, 2008) (compelling arbitration after a motion to dismiss for failure to state a claim was denied). That opinion was motivated by the then-prevailing presumption of arbitration and against waiver. *See Garcia*, 141 F.4th at 676–81. The case is not consistent with current Fifth Circuit law that, in general, a party cannot move for arbitration after losing a motion to dismiss. *See Forby*, 909 F.3d at 783. The court does not consider *Trade SDB* an application of the current prevailing law that supports the defendants’ argument.

2022 WL 2783852 (W.D. Tex. June 17, 2022); *Rivera v. Ross Dress for Less, Inc.*, No. 4:22-CV-74, 2023 WL 6282836, at *6 (S.D. Tex. Sept. 26, 2023) (no motion to dismiss for failure to state a claim); *Dheera Ltd. Co. v. Johnson Controls Inc.*, No. 3:23-CV-1301-X, 2024 WL 42316, at *3 (N.D. Tex. Jan. 3, 2024) (the defendant moved to dismiss for failure to state a claim; the plaintiff promptly amended its complaint, which mooted the motion to dismiss; and then the defendant moved to compel arbitration, not to dismiss for failure to state a claim).

The defendants' motion to dismiss the First Amended Complaint weighs in favor of finding waiver because the motion was a "full-throated attempt to win . . . on the merits in federal court." *Forby*, 909 F.3d at 784. The defendants sought dismissal of all claims, with prejudice. *See id.* (explaining that a dismissal with prejudice is a resolution on the merits because it terminates the plaintiff's case and claims). Their motion and proposed order asked the court to dismiss the First Amended Complaint "with prejudice." (Docket Entry No. 37 at 1; Docket Entry No. 37-1 at 1). In addition, the plaintiffs' motion was not "targeted," *Maldonado*, 2021 WL 966064, at *6, but rather sought dismissal of each count of the First Amended Complaint with prejudice, (*see* Docket Entry No. 37 at 1–2).

Their motion did not solely or primarily rely on "non-merits argument[s]" or arguments for which dismissal with prejudice "would have likely been an abuse of discretion." *Pumphrey*, 2024 WL 4100495, at *3–4. The defendants moved to dismiss the "TUFTA, sworn account, and quantum meruit claims" based on "the statute of limitations," (Docket Entry No. 37 at 2); moved to dismiss the contract claims based on a lack of actual or apparent authority, (Docket Entry No. 38 at 9, 12); and moved to dismiss under the statute of frauds, (*id.* at 9). These are affirmative defenses, *see* FED. R. CIV. P. 8(c)(1) (limitations and statute of frauds); *Isaac Indus., Inc. v. Petroquimica De Venezuela, S.A.*, 127 F.4th 289, 301 (11th Cir. 2025) (citing 5 WRIGHT & MILLER

§ 1271) (authority), that invoke “the judicial process to a greater degree,” *Mirant*, 613 F.3d at 589. The scope of the defendants’ motion to dismiss, the finality of their requested relief, and the specific arguments they made weigh heavily in favor of finding waiver.

Second, the defendants relied on the Master Services Agreement, which contains the relevant arbitration provision, to seek dismissal on the merits. That reliance is inconsistent with their current motion, which relies on the Master Services Agreement to compel arbitration. Courts readily find waiver when a litigant “attempts ‘to switch judicial horses in midstream’ due to ‘poor judgment . . . or poor foresight.’” *Garcia*, 141 F.4th at 680 (alterations in original) (quoting *Walker v. J.C. Bradford & Co.*, 938 F.2d 575, 577 (5th Cir. 1991)). For example, in *Garcia*, the court found waiver in part because the motion to compel arbitration came “three months after” the movants declared “their intent *not* to arbitrate.” *Id.* Similarly, the defendants’ motion to compel arbitration was filed five months after they cited the Master Services Agreement to seek “a decision on the merits.” *Forby*, 909 F.3d at 784. The defendants cannot “have it both ways,” *Grigson v. Creative Artists Agency L.L.C.*, 210 F.3d 524, 528 (5th Cir. 2000), relying on the Master Services Agreement first to support their affirmative defenses and arguments for dismissal and then to move to compel arbitration. The decision to rely first on the Master Services Agreement to pursue dismissal weighs in favor of finding a waiver of arbitration.

Third, the defendants moved to compel arbitration after the court lifted the discovery stay in part and allowed the case to proceed to the summary judgment stage. When the defendants filed their first motion to dismiss, they sought a discovery stay, arguing principally that they “have substantial arguments for dismissal of all claims” and that “[n]o amount of discovery would overcome the[] legal barriers to Plaintiff’s claims and no amendment can circumvent dismissal.” (Docket Entry No. 27 at 1–2). Servicios then filed its First Amended Complaint, (Docket Entry

No. 31), and the defendants again moved to dismiss, (Docket Entry Nos. 37, 38). Because of the difficult choice-of-law and foreign-law issues presented, the court held two oral arguments. (Docket Entry Nos. 56, 66). Discovery did not begin during the pendency of either motion to dismiss. (*See* Docket Entry Nos. 30, 52).

At the second oral argument on the motion to dismiss, the court recognized that many of the issues raised “significant factual disputes” that could not be resolved on a motion to dismiss but which could be appropriate for resolution on summary judgment. (Docket Entry No. 64 at 19:16–20). The court asked the parties whether “the best way to proceed” was to “trim off” “small questions” “in the motion to dismiss process” and send the “big questions . . . to summary judgment.” (*Id.* at 19:20–23). The defendants responded that discovery was “wholly unnecessary” and that the court did not “even have to go anywhere near” the more fact-intensive agency issues because “no contract was formed.” (*Id.* at 24:22–24, 26:2–5). The court ruled that there were “certain questions that [it] [could] resolve on [the] motion to dismiss, not many,” and that “discovery is indeed going to be very helpful” as the parties “move[d] to summary judgment.” (*Id.* at 29:9–12, 29:16–24). When the defendants responded that complaint allegations on contract formation were deficient because “there’s inconsistent contradictory theories” in the complaint, the court noted that Servicios was “pleading in the alternative” and that “contract formation” was more suitable for resolution on summary judgment rather than a motion to dismiss. (*Id.* at 30:20–31:9). The court allowed “limited discovery into issues of actual or apparent authority and corporate structure necessary to resolve whether the defendants are party to the alleged contract,” (Docket Entry No. 66), and ordered the parties to set a date to present expert testimony on the relevant Venezuelan law.

This exchange and subsequent order gave the defendants some “sense of the court’s view of the case.” *Forby*, 909 F.3d at 784. Chevron sought a pre-discovery dismissal of all Servicios’s claims. (Docket Entry Nos. 27, 37, 37-1). The court effectively denied that request after the second oral argument, starting discovery based on its assessment that it could not resolve many of the important questions in the case on the pleadings alone. (See Docket Entry No. 64 at 19–30). To be sure, the court did not rule on any specific claim or explicitly deny the motion to dismiss. *Contra Forby*, 909 F.3d at 784. Nor did the court state that it “favored” one party’s legal “interpretation” or theory. *Contra Petroleum Pipe*, 575 F.3d at 482. For this reason, the court does not consider the pre-motion-to-arbitrate orders dispositive, as the Fifth Circuit normally would have had they been clear merits rulings. See *Garcia*, 141 F.4th at 680. But it is difficult to see how any of the parties at the second oral argument could walk away thinking the court was “receptive to” the defendants’ “arguments,” *Petroleum Pipe*, 575 F.3d at 482, that the case should be dismissed on the pleadings, with no discovery, (see Docket Entry No. 64 at 24:22–24, 29:9–12, 29:16–24). The sequence and timing weighs in favor of finding that the defendants’ motion to compel arbitration is an attempt to secure “a second bite at the [pre-discovery-dismissal] apple.” *Petroleum Pipe*, 575 F.3d at 482.

Considering these three factors together—that the defendants moved for a full dismissal on the merits, that the defendants relied on the contract containing the arbitration provision to do so, and that the defendants moved to arbitrate after the court lifted the discovery stay and ruled that only a few issues could be resolved on the motion to dismiss as opposed to a motion for summary judgment or trial—the court is persuaded that the defendants waived their right to arbitrate this case by substantially invoking the judicial process.

IV. The Motion to Dismiss

A. The Breach of Contract Claim

Chevron Corp. and Chevron USA move to dismiss Servicios's contract claims. Servicios's primary contract claim is that the Chevron defendants, through Castelli, its procurement manager, promised to pay Servicios's 2016-2020 invoices if Servicios agreed to enter into new drilling contracts with Petropiar. (Docket Entry No. 38 ¶¶ 56–73, 83–84). Servicios alleges additional contract claims that depend on finding an agency or an alter-ego relationship between the defendants and Petropiar. (*See id.* ¶¶ 164–79). Servicios relies on these vicarious liability claims to argue that the defendants fulfilled the alleged condition precedent to their promise to pay by performing an audit and invoice reconciliation. (*See* Docket Entry No. 61 at 2).

The defendants argue that Servicios's contract claims fail for three reasons. First, the defendants argue that no contract formed: there was no meeting of the minds because the alleged agreement to pay Petropiar's debt is too vague and indefinite. (Docket Entry No. 38 at 7–9).⁴ Second, the defendants argue that if a contract was formed, the statute of frauds bars its enforcement. (*Id.* at 9; Docket Entry No. 60 at 5–11). Third, the defendants argue that if an enforceable contract was formed, they cannot be held liable for breach because none of the people or entities alleged to have made the contract had the authority to bind the defendants. (Docket Entry No. 38 at 9–14).

The defendants' arguments fail at this stage of the case.

⁴ The defendants argue in reply that Servicios did not allege a contract offer or acceptance. (Docket Entry No. 51 at 2). But Servicios alleges that Castelli promised that if Servicios "remained 'in' Chevron Corp's stable of service providers," then Chevron would pay Servicios's invoices for past work, including the invoiced amounts "owed by the joint ventures like Petropiar." (Docket Entry No. 31 ¶ 61). Servicios also alleges that it "entered into a new arrangement to perform drilling and well services for Chevron Corp. and its various Venezuelan joint ventures" and that, "[i]n exchange, Chevron Corp. guaranteed the amount owed by Petropiar." (*Id.*). These are clear allegations of an offer and an acceptance.

1. Contract Formation: Meeting of the Minds

The parties agree that Venezuela law governs the contract formation issues and that the substance of Texas law and Venezuela law on contract formation is not meaningfully different. (Docket Entry No. 62-1). The defendants argue that no contract to pay Servicios's past invoices was formed because Servicios does not "allege the terms under which Chevron Corp. unequivocally agreed to pay Petropiar's debt, including which invoices would be paid" and "the exact amount to be paid." (Docket Entry No. 38 at 11–12).⁵ This argument fails at this stage, for two reasons.

First, Castelli's alleged promise is sufficiently definite. "When an agreement provides a standard to be applied in determining price, the contract is sufficiently definite to be enforceable." *Penwell v. Barrett*, 724 S.W.2d 902, 905 (Tex. App.—San Antonio 1987, no writ). Servicios alleges that it consistently invoiced Petropiar for work done from 2016 to 2020 and that those invoices remain unpaid. (Docket Entry No. 31 ¶¶ 83–84). Servicios alleges that each invoice was based on field reports that were audited and approved by Petropiar and Chevron employees. (*Id.* ¶¶ 38–41, 64, 85–86). Servicios alleges that Castelli knew of Servicios's unpaid invoices, (*see id.* ¶¶ 59, 61, 86), "guaranteed the amount owed by Petropiar," and promised that the "invoices would be satisfied by Chevron Corp." if Servicios agreed "to perform additional services" for the defendants and their "various Venezuelan joint ventures," (*id.* ¶ 61). These allegations support a reasonable inference that Castelli promised to pay Servicios's invoices and did not dispute the specific amounts. *See CWTM Corp. v. AM Gen. LLC*, No. CIV.A. H-04-2857, 2005 WL 1923605,

⁵ The defendants argue that the complaint does not allege when payment was due. (Docket Entry No. 38 at 11–12). But "time for performance is not ordinarily a material term of a contract." *Mirage Ints., Inc. v. Anchor Ins. Holdings, Inc.*, No. A-16-CV-594-LY-ML, 2017 WL 2999418, at *4 (W.D. Tex. Mar. 28, 2017), *report and recommendation adopted*, No. 1:16-CV-594-DAE, 2017 WL 2999688 (W.D. Tex. May 2, 2017).

at *5 (S.D. Tex. Aug. 10, 2005) (citing *Grigson*, 210 F.3d at 534) (explaining that a course of dealing may support the existence of a promise). The basis of the promise—payment for the outstanding invoices that Servicios had previously sent to Petropiar and Chevron—is sufficient at this stage to support an inference that there was a meeting of the minds on the amounts to be paid. *See, e.g., Fischer v. CTMI, L.L.C.*, 479 S.W.3d 231, 241 (Tex. 2016) (“[T]he agreement provided a clear formula or standard by which to determine the payments: the completion percentages of projects pending at the end of 2010.”); *cf. Bendalin v. Delgado*, 406 S.W.2d 897, 899 (Tex. 1966) (explaining that a contract does not form if the parties fail to “reach some understanding as to price” or “provide an adequate way in which it can be fixed”).

Second, even if Castelli’s alleged promise was initially too indefinite to support contract formation, Servicios alleges that the defendants later agreed on a definite amount through the reconciliation process. Servicios alleges that the defendants’ account reconciliation process was a step toward fulfilling what the Chevron “procurement manager had promised: . . . to satisfy Petropiar’s unpaid invoices.” (Docket Entry No. 31 ¶ 65). Servicios alleges that it “re-submitted each pending invoice and its support” to employees of Petropiar and Chevron and attended in-person meetings “to discuss debt settlement and the results thereof.” (*Id.* ¶ 74). Servicios alleges that Castelli “remained involved in the reconciliation negotiations, despite his role in procurement and not finance,” because he “was the Chevron Corp. procurement manager who had stated that Chevron Corp. would true-up [Servicios] for these past due debts once [Servicios] agreed to the new master services agreement.” (*Id.* ¶ 73). Servicios alleges that the reconciliation process concluded with the email from Susana Riera that confirmed the account reconciliation and the validity of the \$24 million that Castelli promised the defendants would pay. (*Id.* ¶¶ 77–79). According to Servicios, “Chevron Corp indicated that it would pay the \$24 million in a single

lumpsum or series of large lumpsums shortly after the reconciliation process concluded.” (*Id.* ¶ 79).

Although a contract obligation may initially appear indefinite, subsequent performance or a course of dealing may show that the parties understood the contract terms they agreed to. *See Fischer*, 479 S.W.3d at 240; *Domingo v. Mitchell*, 257 S.W.3d 34, 40 (Tex. App.—Amarillo 2008, pet. denied) (the parties’ conduct and course of dealing may permit an inference of a mutual agreement); *cf. L.O.D.C. Grp., Ltd. v. Lopez*, No. 02-24-00243-CV, 2025 WL 1141873, at *4 (Tex. App.—Fort Worth Apr. 17, 2025, pet. denied) (holding that the absence of a reference to “the company policies” in the offer letter that formed the basis of the parties’ agreement did “not make the offer letter’s terms too indefinite” because the employee understood that those policies applied). The complaint sufficiently alleges that Castelli’s initial promise was sufficiently definite to establish a contract or that the parties’ subsequent performance and agreement “removed [the alleged] uncertainty.” *Fischer*, 479 S.W.3d at 240.

Servicios alleges facts sufficient to establish contract formation.

2. Contract Enforcement: Statute of Frauds

The defendants argue that Texas law governs contract enforcement, (Docket Entry No. 60 at 5–10), and that the statute of frauds bars enforcement of the contract that Servicios alleges, (Docket Entry No. 38 at 9). Assuming that Texas law governs the alleged contract’s enforceability, the statute of frauds does not apply.

“A promise or agreement within the statute of frauds is not enforceable unless the promise or agreement, or a memorandum of it, is in writing and signed by the person to be charged or by someone lawfully authorized to sign for him.” *Peak Tech. Servs., Inc. v. Land & Sea Eng’g, LLC*, No. CIV.A. H-10-1568, 2011 WL 2118762, at *6 (S.D. Tex. May 27, 2011) (citing TEX. BUS. &

COM. CODE § 26 .01(a)). The statute of frauds applies to “a promise by one person to answer for the debt, default, or miscarriage of another person.” TEX. BUS. & COM. CODE § 26.01(a). “[T]he basic reason for requiring that a promise to answer for the default of another be in writing is that the promisor has received no direct benefit from the transaction.” *Cooper Petroleum Co. v. LaGloria Oil & Gas Co.*, 436 S.W.2d 889, 895 (Tex. 1969). “But a promise within this suretyship provision of the statute of frauds may be enforceable without a writing under the ‘main purpose doctrine.’” *Peak Tech.*, 2011 WL 2118762, at *6 (quoting *Chubb Lloyds Ins. Co. of Tex. v. Andrew’s Restoration, Inc.*, 323 S.W.3d 564, 572 (Tex. App.—Dallas Aug. 20, 2010, no pet.)).

The defendants argue that the statute of frauds applies because the alleged contract is a suretyship. (See Docket Entry No. 38 at 9 (citing *Alattar v. Ganim*, 355 S.W.3d 1, 6 (Tex. App.—Houston [14th Dist.] 2010)); Docket Entry No. 60 at 6–7 (arguing that “[t]he performance at issue is the enforceability of the oral guaranty because Plaintiff seeks to enforce Chevron Corp.’s alleged obligation to pay Petropiar’s debt’’)). The defendants must show that (1) the alleged contract is a suretyship and (2) the main-purpose doctrine does not apply. The defendants do not make either showing.

First, the alleged contract is not a suretyship. It does not require the defendants “to answer for the debt, default, or miscarriage of another.” TEX. BUS. & COM. CODE § 26.01(a). The crux of a suretyship is that a breach by the debtor imposes liability on the guarantor. See *Jamshed v. McLane Exp. Inc.*, 449 S.W.3d 871, 880 (Tex. App.—El Paso 2014, no pet.) (explaining that under a guaranty of payment, “the guarantor is jointly and severally liable on the debt and may be sued under the same terms as the principal obligor’’); see also *Kennedy v. Hall*, 680 F. App’x 269, 271 (5th Cir. 2017) (per curiam) (“[W]ith a guaranty of payment, the guarantor is immediately liable upon the debtor’s default.”). But here, the defendants are not contractually liable because Petropiar

defaulted or failed to pay its contract debts. Rather, the defendants are liable to Servicios because they made a separate promise to pay Servicios if it entered into new drilling contracts with their Venezuelan joint ventures. Under the alleged contract, the defendants did not guarantee Petropiar's performance on the 2016-2020 contracts but instead used Petropiar's alleged debt as the "standard to be applied in determining price." *Penwell*, 724 S.W.2d at 905. A contract's function, not its framing in pleadings, determines whether the statute of frauds applies. *See Alattar*, 355 S.W.3d at 6 ("The question of whether the statute of frauds applies is a matter of law, not a matter of pleading," (citing *Haase v. Glazner*, 62 S.W.3d 795, 799 (Tex. 2001))). And the alleged contract does not function as a suretyship.

Second, even if the contract was a suretyship, the main-purpose doctrine applies. "The . . . doctrine requires that: (1) the promisor intended to create primary responsibility in itself to pay the debt; (2) there was consideration for the promise; and (3) the consideration given for the promise was primarily for the promisor's own use and benefit—that is, the benefit it received was the promisor's main purpose for making the promise." *Cruz v. Andrews Restoration, Inc.*, 364 S.W.3d 817, 828 (Tex. 2012); *see Gulf Liquid Fertilizer Co. v. Titus*, 354 S.W.2d 378, 383 (Tex. 1962). The alleged contract satisfies each requirement. Servicios alleges that the defendants "guaranteed the amount owed by Petropiar" and promised that Servicios's "invoices would be satisfied by Chevron Corp." if Servicios agreed "to perform additional services" for the defendants and their "various Venezuelan joint ventures." (Docket Entry No. 31 ¶ 61). Servicios further alleges that the defendants entered into the agreement to advance their business agenda. Petropiar is the defendants' subsidiary, and the defendants benefit from its activities, either through the receipt of Venezuelan oil for sale in the U.S. market or through the appreciating value of the defendants' interest in Petropiar. (*See id.* ¶¶ 17–61, 97–103). For example, Servicios alleges that

Petropiar sells its oil products to the defendants at a below-market rate, which they can use for substantial profit. (*See id.* ¶¶ 17–29, 95–97).

The defendants respond that Servicios cannot show the final element of the main-purpose doctrine because the complaint allegations do not show “a direct and primary benefit to Chevron Corp.” (Docket Entry No. 51 at 4–5). The defendants argue that “[a]ny benefit to Chevron Corp. as the ultimate parent is too indirect to satisfy the main purpose doctrine.” (*Id.* at 5). The Texas Supreme Court recently rejected this argument. In *Cruz*, the court clarified that “the question is not who [is] the primary *beneficiary*, but whether [the guarantor’s] primary *purpose* in promising to pay was to benefit itself.” *Cruz*, 364 S.W.3d at 828. In some cases, the guarantor’s benefit may be “too remote and indirect” to infer that the debtor’s primary purpose was to provide that benefit. *See Cooper Petroleum*, 436 S.W.2d at 896. This is not such a case. Servicios alleges that the Chevron defendants adopted the corporate strategy to resume oil operations in Venezuela in 2022 and that obtaining the service providers for its subsidiaries to operate, which Venezuela law required, was necessary to achieve that goal. (Docket Entry No. 31 ¶ 57). Because the defendants purchase oil products from Petropiar, allegedly at a discount, to fuel their own business, (*see id.* ¶¶ 17–29, 95–97), Servicios’s work for Petropiar satisfies even the defendants’ narrower reading of the main-purpose doctrine, *see Peak Tech.*, 2011 WL 2118762, at *6–8 (concluding that a jury could find that the statute of frauds did not apply to the alleged contract because the defendant “directly benefitted from [the plaintiff] continuing to provide contractor services” to a third party).

Servicios’s complaint adequately alleges a contract that is not within the scope of the statute of frauds. The alleged contract is not a suretyship, and, if it were, it is the type of suretyship that is not subject to the statute of frauds because its main purpose is to economically benefit the defendants. *Leppke v. Cokinos, Bosien & Young*, No. 14–99–00697–CV, 2001 WL 40345, at *6

(Tex. App.—Houston [1st Dist.] Jan. 18, 2001, no pet.) (noting that an oral promise by a corporation’s stockholders and directors may not be within the statute of frauds when “their main purpose was to subserve their own purpose and promote their financial gain”); RESTATEMENT (SECOND) OF CONTRACTS § 116 (A.L.I. 1981) (“A contract that all or part of a duty of a third person to the promisee shall be satisfied is not within the Statute of Frauds as a promise to answer for the duty of another if the consideration for the promise is in fact or apparently desired by the promisor mainly for his own economic advantage, rather than in order to benefit the third person.”).

Texas’s statute of frauds does not bar enforcement of the contract Servicios alleges.

3. Authority to Contract

The parties agree that Venezuela law governs whether the defendants are liable under the alleged contract but disagree in part on the substance of Venezuelan law. (Docket Entry No. 62-1). The defendants argue that they cannot be held liable because neither Castelli nor Petropiar, including its employees, could bind them to the contract under the applicable law. (Docket Entry No. 38 at 11–14). Under the principles of Venezuelan law presented to the court at this stage of the proceedings, dismissal is not warranted.

i. Castelli

Servicios’s primary contract claim is that a defendant, through Castelli, Chevron’s procurement manager, promised to pay Servicios’s 2016-2020 invoices if Servicios agreed to new drilling contracts with Petropiar. (Docket Entry No. 38 ¶¶ 56–73, 83–84). The defendants argue that Castelli could not bind them to this contract because (1) Castelli is not an employee of Chevron Corp. or Chevron USA, (Docket Entry No. 51 at 5–6, 5 n.7), and (2) even if Castelli was the defendants’ employee, he did not have actual authority to bind them to the alleged contract, (*id.* at 7–8). Neither argument warrants dismissal at this stage.

First, the court must draw factual inferences in Servicios's favor, which leads to the conclusion that Castelli is an employee of a defendant. Servicios alleges that Castelli is a Chevron Corp. procurement manager, (Docket Entry No. 31 ¶ 58); that Castelli used a Chevron email address, (Docket Entry No. 39-9 at 10); and that, based on conversations with Castelli, Servicios learned that the defendants planned to use "procurement staff" from Chevron Global Technology Services Company "to hire service providers and source rigs" among its many "Venezuelan joint ventures (Empresas Mixtas) including Petropiar, Petroboscan, Petroindependiente, and Petroindependencia," (Docket Entry No. 31 ¶ 58).

The defendants respond that Castelli was seconded to Petropiar and was not a Chevron employee. (Docket Entry No. 51 at 7 n.7). But there are no complaint allegations, (*see generally* Docket Entry No. 31), facts incorporated by reference into the complaint, (*see* Docket Entry No. 39), or concessions, (*contra* Docket Entry No. 51 at 7 n.7), that support the defendants' argument. Instead, the complaint allegations that Castelli acted as a Chevron Corp. procurement manager advancing its corporate strategy, (Docket Entry No. 31 ¶¶ 57–61; *see also* Docket Entry No. 42-1 ¶ 35.k), supports the reasonable inference that he worked for a defendant.

Second, the complaint allegations plausibly allege Castelli's implied authority to bind a defendant to the Servicios contract at issue. Under Venezuelan law, "[t]he principal-agent relationship must be established through an actual agency agreement; Venezuela has no analogue to the common law concept of apparent authority." *Skanga Energy & Marine Ltd. v. Arevenca, S.A.*, No. 11CV4296 DLC, 2014 WL 3928704, at *9 (S.D.N.Y. Aug. 12, 2014). The Civil Code of Venezuela sets out how agents may bind principles, including how employees may bind their corporate employers:

Article 1684. A mandate is a contract by which a person is bound gratuitously, or by means of a salary, to carry out one or more businesses on behalf of another, which the has commissioned it.

Article 1685. A mandate may be express or tacit. Acceptance may be tacit and result from execution of the mandate by the agent.

Article 1688. In order to compromise, sell, mortgage, or perform any other act that exceeds the ordinary administration, the mandate must be express.

Article 1691. When the agent acts in his own name, the principal shall have no legal action against those with whom the agent has entered into a contract, or vice versa. In this case, the agent has a direct obligation to the party that entered into the contract with the agent, as if the transaction were his own.

See id.; (Docket Entry No. 60-2 at 17). The parties’ experts focus on these provisions of the Civil Code to argue that the defendants are not liable under the alleged contract. (*See* Docket Entry No. 60-1 ¶¶ 22–29; Docket Entry No. 61-1 ¶¶ 17–21). The defendants argue that there was no express mandate allowing Castelli or other employees to promise to pay Petropiar’s debts on the defendants’ behalf and that this contract could not be implied because, under Article 1688, it would be outside the ordinary course of the defendants’ business. (Docket Entry No. 60-1 ¶¶ 22–29). Servicios argues that a mandate agreement could be implied because a natural presumption of authority is reasonable under the circumstances alleged. (Docket Entry No. 61-1 ¶¶ 17–19).

At this stage of the case, and under the principles of Venezuelan law established with “reasonable certainty,” *In re Avantel, S.A.*, 343 F.3d at 321, Servicios has plausibly alleged Castelli’s authority to bind a defendant. Servicios alleged that Castelli is a “Chevron procurement manager.” (Docket Entry No. 31 ¶ 61). Procurement managers’ ordinary responsibilities include retaining vendors, suppliers, and contractors. *See, e.g., Ecigrusa LLC v. Silver State Trading LLC*, No. 3:21-CV-1846-B, 2022 WL 1321573, at *6 (N.D. Tex. May 3, 2022) (a “procurement manager” “presumably procures goods”). In addition, Servicios alleged that Castelli’s promise was part of the defendants’ corporate strategy to restart its Venezuelan drilling operations in 2022.

Servicios alleges that once OFAC issued Chevron a license to drill in Venezuela, Chevron needed service companies that could comply with U.S. regulations to service its subsidiaries and joint ventures. (Docket Entry No. 31 ¶ 57). “Time was of the essence” because Chevron’s Venezuelan operations had been at a standstill since the U.S. sanctions. (*Id.*). Servicios satisfied Chevron’s criteria but was hesitant to engage with Petropiar and other Chevron joint ventures because of the \$24 million in outstanding invoices from prior work. (*Id.* ¶¶ 57–61). Castelli’s promise that Chevron Corp. would pay those invoices if Servicios agreed to new contracts with other joint ventures was necessary to the corporate strategy. (*See id.*). It is reasonable to infer from these allegations that Castelli had implied authority to make the promises necessary to procure Servicios’s services, including repaying the outstanding invoices, to quickly restart Chevron Corp.’s subsidiaries’ Venezuelan drilling operations.

The facts alleged in the complaint, and the relevant standard of review, do not support the defendants’ argument that an express mandate was necessary under Venezuelan law, at least as the parties’ experts have so far presented it. Instead, the complaint sufficiently alleges that Castelli had implied authority to promise that a defendant would pay the \$24 million Servicios invoiced in 2016-2020.

ii. Petropiar and Its Employees

Servicios alleges that the defendants are liable to pay the \$24 million because Petropiar or its employees participated in the reconciliation of the 2016-2020 invoices. (Docket Entry No. 31 ¶¶ 164–79). Servicios argues that Petropiar’s and its employees’ actions bind the defendants to the promise to pay because (1) Petropiar’s employees were the defendants’ agents acting on their instruction, (*see id.* ¶¶ 63–88, 104–13; Docket Entry No. 42-1 ¶¶ 43–53, 224–25); (2) the defendants and Petropiar are part of the same corporate group, such that Petropiar’s contractual

obligations are the defendants' obligations, (*see* Docket Entry No. 31 ¶¶ 164–79; Docket Entry No. 42-1 ¶¶ 35–146); and (3) the defendants abused Petropiar's corporate form by extracting its oil products at below-market prices and undercapitalizing it, (Docket Entry No. 31 ¶¶ 95–113, 164–70). The defendants argue that Venezuelan law does not permit any of these theories of liability. (Docket Entry No. 38 at 11–16; Docket Entry No. 51 at 6–9; *see generally* Docket Entry No. 40). Under the applicable Venezuelan legal principles that the parties have established with “reasonable certainty,” *In re Avantel, S.A.*, 343 F.3d at 321, dismissal is appropriate only for Servicios's third abuse-of-rights theory.

a. Seconded Employees

Servicios argues that “Chevron employees (secondees) [] controlled Petropiar acting as Chevron Corp's agents.” (Docket Entry No. 41 at 15). Servicios argues that, under Venezuelan law, seconded employers may or may not be able to bind their original employer while they are acting within the scope of their secondment. (Docket Entry No. 42-1 ¶¶ 46–53). Chevron responds that “a seconder's employees [] temporarily become part of the host corporation [] and, once integrated to the Host's organizational structure, are placed under the direction and supervision of the Host.” (Docket Entry No. 40 ¶ 81). Chevron, relying on the text of the secondment agreements, argues that the secondees to Petropiar are “subject to all the regulations, policies, and procedures applicable to Petropiar's employees.” (*Id.* § 82a). The parties do not appear to argue that seconded employees can never, as matter of law, bind their original company as well as their host company. Servicios instead argues that the authority question turns on the facts of each case, (Docket Entry No. 42-1 ¶ 47), and Chevron argues that the parties' specific contractual arrangement precluded the secondees from binding it, (*see* Docket Entry No. 40 ¶ 80–83).

Servicios's authority allegations survive dismissal at this stage because the scope of Venezuelan law is not reasonably certain. *See In re Avantel, S.A.*, 343 F.3d at 321. Although there are no factual allegations that the defendants generally gave the seconded employees authority to bind them to contractual relationships, if Castelli gave the seconded employees the authority to carry out his promise, as Servicios alleges, (Docket Entry No. 31 ¶¶ 73–88), then the fact of their secondment seems irrelevant, so long as Venezuelan law does not preclude such delegations of authority. In any event, as discussed above, the actions of the seconded employees at Petropiar may ultimately be immaterial to Servicios's contract claim.

b. Corporate Group Liability

Venezuelan law, under the *Saet* precedent, recognizes a theory of group liability when corporations are part of a single economic or corporate group. (Docket Entry No. 41-2 ¶¶ 111–25). In *Transporte Saet, S.A.*, a former employee sued a subsidiary corporation, Transporte Saet La Guaira, C.A., to recover for underpaid services. Tribunal Supremo de Justicia [T.S.J.] [Supreme Court of Justice], Sala Constitucional, 14/5/2004, “Transporte Saet, S.A.,” Exp. 03-0796 (Venez.). “The trial court found for the plaintiff and ordered the defendant and its parent corporation, Transporte Saet, S.A., to pay the monies owed to the plaintiff.” José Mauricio Bello, *An Overview of the Doctrine of the Piercing of the Corporate Veil as Applied by Latin American Countries: A U.S. Legal Creation Exported to Civil Law Jurisdictions*, 14 ILSA J. INT’L & COMP. L. 615, 641 (2008) [hereinafter Bello, *Corporate Veil*]. The Constitutional Chamber of the Supreme Tribunal of Venezuela affirmed, ruling that the trial court appropriately pierced the corporate veil. The Constitutional Chamber explained that “it is too common that business firms incorporate into two or more separate entities with the very purpose of diluting liability.” *Id.* When corporations are part of the same economic entity, even if formally distinct corporate ones,

“liability of any of the members of the group may not be divisible between the different corporations of the group.” *Id.*

To be part of a single economic or corporate group, the corporation and its ultimate parent must (1) have “unity of management” and (2) be one in economic terms—that is, function as one economic unit. (Docket Entry No. 40 ¶ 21). “The *Saet* decision enumerates its own ‘laundry list’ of applicable features of corporate groups,” including “control, either direct or indirect, and even through straw persons, preeminence of ownership over the stock, similar corporate names,” “lack of autonomy by the part of the controlled corporation,” and the “permanent nature” of the group. Bello, *Corporate Veil*, at 642. When these features align to create a corporate group, the corporate group is “liable for the debts owed by any of the corporations within the group,” even if there is no “evidence of any wrongdoing or specific fraud.” *Id.*

Servicios argues that Chevron Corp. and Petropiar meet the criteria for an “economic group” because Chevron Corp. “controlled the management and effectively treated the corporate group as a unit for the purpose of oil extraction and U.S. refining operations.” (Docket Entry No. 41 at 14). Chevron responds that Petropiar is a Venezuelan state corporation owned 70 percent by Corporación Venezolana del Petróleo and is formally subject to state control, so it is part of the Petróleos’s corporate group, not Chevron’s. (Docket Entry No. 40 ¶¶ 24–26, 29–38).

The relevant factors under the *Saet* precedent cut both ways. The functional factors weigh heavily in Servicios’s favor. Servicios alleges that “Petropiar itself does not control its exports of crude oil”; that those “decisions are made by Chevron Corp., who subsequently transfers or sells the crude extracted by Petropiar to itself, its affiliates, or third parties who subsequently deliver the crude oil to Gulf Coast refineries such as the Pascagoula Refinery”; and that “Chevron Corp. does not transfer to Petropiar sufficient revenue, or reasonably equivalent revenue, from the crude

oil that Petropiar produces.” (Docket Entry No. 31 ¶ 109). Servicios alleges that Petropiar owes service providers approximately \$840 to \$880 million, suggesting that the company was not recouping the costs of its oil exports. (*Id.* ¶ 95). Servicios further alleges that Petropiar has “very few, if any, direct employees” and that “all of the key management positions of Petropiar are held by Chevron employees, many of whom have been seconded from Houston or Argentina facilities.” (*Id.* ¶ 107). Servicios names many such employees throughout its complaint, (*id.* ¶¶ 63–88), and alleges that “Petropiar’s lead production technical manager,” “procurement department,” “health, safety, and environmental quality departments,” and “drilling and production-optimization engineers,” among others, “managed” Petropiar’s “day-to-day operations.” (*Id.* ¶ 107). Servicios also alleges that Chevron “installed one of its executives, Martin Philipsen, as the General Manager of Petropiar.” (*Id.*). The complaint allegations are sufficient to plead that Petropiar is functionally a Chevron entity.

The key countervailing factor is the formal control exercised by the Venezuelan state-owned entities. Chevron Orinoco, which is not a named defendant, owns 30 percent of Petropiar, and another state-owned Venezuelan company owns the remaining 70 percent. (Docket Entry No. 39-6 at 3). According to Chevron’s expert, José Antonio Muci Borjas, this subjects Petropiar to “strict State controls” under “the Public Administration Law, the Central Planning Law and the Hydrocarbons Law.” (Docket Entry No. 40 ¶ 30). Borjas asserts that “as a matter of Venezuelan Law,” Chevron “cannot exercise the all-encompassing control over Petropiar” and that “[c]ontrol of daily operations and field activities—by itself—does not constitute sufficient grounds to disregard the legal entity of a corporation.” (*Id.* ¶¶ 45(a), 46).

In support, Borjas cites an article addressing when it is appropriate to pierce the corporate veil under Venezuelan law. (*See Id.* ¶ 46 (citing Docket Entry No. 40-4 at 10)). That article

provides a relevant test to determine whether a financial institution has a unity of decision or management under Venezuelan law:

Unity of decision or management exists in the following cases: when a bank, savings and loan institution or financial institution has with respect to other companies: i) direct or indirect participation, equal to or greater than fifty percent (50%) of its capital or equity; ii) control equal to or greater than one third of the votes of its management or administrative bodies (Shareholders' Meetings and Boards of Directors); and, iii) Control, of any kind, over the decisions of its management or administrative bodies (numerals 1, 2 and 3 of the second paragraph of Article 161 LGBIF).

(Docket Entry No. 40-4 at 10 (emphasis omitted)). The article provides an additional “significant influence or control” test that applies “[w]ithout the need for unity of decision or management . . . to include [a company] within the financial group.” (*Id.* at 11 (emphasis omitted)). This test requires that:

[T]here shall be significant influence or control in the following cases: (i) when [one] or several of the companies are capable of affecting to a significant degree the operational or financial policies of companies governed by the LGBIF; and, ii) when there is (in any sense) direct or indirect participation between said companies, in a proportion that may be between twenty percent (20%) and fifty percent (50%) of the share capital. (Art. 161 LGBIF third and fourth paragraphs).

(*Id.*). Although Petropiar may not satisfy the first “unity of decision or management” test, it appears to satisfy the second “significant influence or control” test, because Servicios alleges the defendants’ significant control over Petropiar’s operations and financial policies and because the defendants indirectly, (*see* Docket Entry No. 42-1 ¶ 146), control more than 20 percent of Petropiar.⁶

⁶ The defendants respond that Servicios has not adequately alleged that Chevron Corp. and Chevron USA are in the same corporate group as Chevron Orinoco. (Docket Entry No. 60 at 10–11). As the court noted at the second oral argument, this issue itself turns on factual disputes that could not be resolved on a motion to dismiss. (Docket Entry No. 64 at 19:18–19). Veil-piercing is a fact-laden claim. *See Robles v. Copstat Sec., Inc.*, No. 08 CIV. 9572 (SAS), 2009 WL 4403188, at *2 (S.D.N.Y. Dec. 2, 2009); *Cookware Co. (USA), LLC v. Austin*, No. 15 CIV. 5796 (DAB), 2017 WL 5198388, at *3 (S.D.N.Y. Oct. 26, 2017); *Rsch. Found. for State Univ. of New York v. Inpria Corp.*, No. 1:24-CV-120 (BKS/ML), 2025 WL 472680, at

At this stage of the proceedings, the defendants’ argument that Petropiar is, as a matter of law, part of Petróleos’s corporate group, is not established with “reasonable certainty.” *In re Avantel, S.A.*, 343 F.3d at 321.

c. Abuse of Rights

Article 1,185 of the Civil Code sets out of the abuse-of-rights doctrine. It provides:

Anyone who, intentionally or negligently, or by imprudence, has caused damage to another, is obliged to compensate the latter.

Any person who has caused damage to another must also make reparation, in the exercise of his right, the limits set by good faith or by the object for which that right has been conferred.

(Docket Entry No. 40-2 at 10). To state a claim for abuse of rights, there must be: (1) an irregular exercise of a legal prerogative by its rightful holder; (2) damages as a result of the irregular exercise of that right; and (3) a causal connection between the abuse and the harm. (Docket Entry No. 40 ¶ 58; *see* Docket Entry No. 40-32 at 5–6). Servicios does not dispute that these elements govern its abuse-of-rights claim. (Docket Entry No. 42-1 ¶¶ 77, 79).

Servicios’s complaint is fatally deficient on the causation element. Servicios’s primary argument for an abuse of rights is that the defendants caused “Petropiar’s insolvency, which caused the non-payment and Chevron Corp’s subsequent false promise and refusal to pay perpetuated the damage.” (Docket Entry No. 41 at 14). Servicios’s argument collapses two distinct liability theories. The first, and the one most relevant to the abuse-of-rights claim, is that Chevron should be liable for the 2016–2020 invoices because it caused Petropiar’s insolvency and inability to pay those invoices. But, as Servicios has made clear, and the defendants have understood, this case is not about the contracts for the “old work.” (Docket Entry No. 64 at 11:25–12:7; *see* Docket Entry

*28–29 (N.D.N.Y. Feb. 12, 2025). It makes sense to wait at least until summary judgment motions to resolve whether Chevron Corp. and Chevron USA and Chevron Orinoco are in the same corporate group.

No. 61 at 1–2). Servicios is not asserting that the defendants breached the contracts for the “old work” by undercapitalizing Petropiar and causing a failure to pay; to do so would bring the forum-selection clauses into play. Instead, Servicios asserts its liability theory based on the alleged 2023 oral promise by a Chevron procurement manager to pay the 2016-2020 invoices so that Servicios would perform additional drilling work. As to that theory, there is no causal connection between the 2023 promise and Petropiar’s undercapitalization, which allegedly started years earlier. Petropiar’s undercapitalization and its cause is irrelevant because the promise that forms the basis of Servicios’s contract claim allegedly came from the defendants themselves.

Servicios’s claim on the abuse-of-rights theory is dismissed, with prejudice, because amendment would be futile.

B. Quantum Meruit

“Quantum meruit is an equitable remedy . . . ‘based on the promise implied by law to pay for beneficial services rendered and knowingly accepted.’” *Vortt Exploration Co., Inc. v. Chevron U.S.A., Inc.*, 787 S.W.2d 942, 944 (Tex. 1990) (quoting *Colbert v. Dallas Joint Stock Land Bank*, 102 S.W.2d 1031, 1034 (Tex. 1937)). “[F]ounded on unjust enrichment,” quantum meruit “will be had when non-payment for the services rendered would ‘result in an unjust enrichment to the party benefited by the work.’” *Id.* (quoting *City of Ingleside v. Stewart*, 554 S.W.2d 939, 943 (Tex. Civ. App.—Corpus Christi 1977, writ ref’d n.r.e.))

To recover under quantum meruit, the plaintiff must prove that: “(1) valuable services were rendered; (2) to the party sought to be charged; (3) which services were accepted by the party sought to be charged; (4) under such circumstances as reasonably notified the recipient that the plaintiff, in performing such services, expected to be paid by the recipient.” *Collins v. Aikman Floorcoverings, Inc. v. Thomason*, 256 S.W.3d 402, 407–08 (Tex. App.—San Antonio 2008, pet.

denied). “Generally, a party may recover under quantum meruit only when there is no express contract covering the services or materials furnished.” *Vortt*, 787 S.W.2d at 944. “If an express contract covers the services or materials at issue, recovery under quantum meruit generally is prohibited.” *Kam v. Karedia*, No. 03-18-00526-CV, 2019 WL 6831551, at *3 (Tex. App.—Austin Dec. 13, 2019, no pet.); *see also Texas A&M Concrete, LLC v. Brae Burn Constr. Co., Ltd., L.L.P.*, No. 01-20-00438-CV, 2022 WL 2441751, at *9 (Tex. App.—Houston [1st Dist.] June 30, 2022) (“Under Texas law, a plaintiff who seeks to recover the reasonable value of services rendered or materials supplied through a quantum-meruit claim generally may do so only when there is no express contract covering those services or materials.”). “This rule not only applies when a plaintiff is seeking to recover in quantum meruit from the party with whom he expressly contracted, but also when a plaintiff is seeking to recover ‘from a third party foreign to the original [contract] but who benefitted from its performance.’” *Pepi Corp. v. Galliford*, 254 S.W.3d 457, 462 (Tex. App.—Houston [1st Dist.] 2007) (quoting *Hester v. Friedkin Cos., Inc.*, 132 S.W.3d 100, 106 (Tex. App.—Houston [14th Dist.] 2004, pet. denied)).

These principles preclude Servicios’s claim. First, the claim is based on a breach of contract that governed Servicios’s relationship with Petropiar from 2016 to 2020. *Kam*, 2019 WL 6831551, at *3. Alternatively, Servicios performed its later work for Petropiar and the defendants under agreements reached in 2023. (*See* Docket Entry No. 31 ¶ 65 (“Plaintiff agreed to perform additional services for Chevron Corp and its Venezuelan joint ventures under the new arrangement.”)). Second, if there is no contract between Servicios and the defendants, it is not clear what uncompensated services Servicios performed for Chevron Corp.’s and Chevron USA’s benefit. Servicios’s argument assumes that services it rendered under its later contracts with Chevron’s Venezuelan joint ventures were entirely for the Chevron defendants’ benefit and that

there is no corporate separateness between them and their joint venture entities. This theory fails because if the defendants and their joint ventures are not separate corporate entities, then there is a written contract between Servicios and the defendants to perform the new work. (*See* Docket Entry No. 31 ¶ 61 (“Plaintiff’s management entered into a new arrangement to perform drilling and well services for Chevron Corp and its various Venezuelan joint ventures, including Petroboscan, Petroindependiente, and Petroindependencia.”)). Servicios was a party to written contracts, Servicios “performed” its “duties under th[ose] [alleged] contract[s],” and the defendants are third parties (or parties) to them. *Pepi Corp.*, 254 S.W.3d at 463.

The claim for quantum meruit is dismissed, with prejudice, because amendment would be futile.

C. Forum Selection

The defendants, in the alternative, have moved to dismiss the complaint because the contracts between Servicios and Petropiar include a forum-selection clause. Each contract between Servicios and Petropiar contains the following clause:

This CONTRACT shall be governed and interpreted exclusively in accordance with the laws of the Bolivarian Republic of Venezuela, for which purpose both PARTIES choose as their sole and special domicile the city of Maturin, to the exclusion of any other, to the jurisdiction of whose courts they agree to submit.

(*See, e.g.*, Docket Entry No. 39-1 § 36.2; Docket Entry No. 39-2 § 36.2). Servicios argues that this provision does not require dismissal because: (1) this provision is not a forum-selection clause; and (2) the defendants are nonparties unable to enforce it. The first argument fails, but the second succeeds in part.⁷

⁷ Servicios asserts that the forum-selection clause does not cover its claims if interpreted under Venezuelan law. (Docket Entry No. 41 at 21–22 (citing Docket Entry No. 42-1 ¶¶ 226–30)). Servicios cites to its Venezuelan law expert’s declaration in support, but the declaration merely states that the forum-selection clause should not apply because Servicios’s claim is based on a new promise that does not incorporate the

First, the provision is both a choice-of-law and a forum-selection clause. It requires that Venezuelan law control contract interpretation. “When the mandatory term ‘shall’ is coupled with language” requiring the use of one state’s laws, the “clause is mandatory, not permissive.” *Coutinho & Ferrostaal, Inc. v. STX Pan Ocean Co.*, No. CIV.A. H-12-991, 2013 WL 1415107, at *3 (S.D. Tex. Apr. 8, 2013). The provision then requires that the parties choose as “their sole and special domicile the city of Maturin, to the exclusion of any other,” for the “purpose” of their dispute being resolved under “the laws of the Bolivarian Republic of Venezuela.” The provision chooses this exclusive forum to effectuate its mandatory choice of law. *See Weber v. PACT XPP Techs., AG*, 811 F.3d 758, 768 (5th Cir. 2016) (holding that a forum-selection clause is mandatory if it “affirmatively requires that litigation arising from the contract be carried out in a given forum”).

Servicios responds that the parties only “agree[d] to submit” to the jurisdiction of the Venezuelan courts, not to litigate every dispute there. (Docket Entry No. 41 at 24–25). But that language—“to the jurisdiction of whose courts they agree to submit”—could also be interpreted to mean that the parties “agree[d] to submit” their disputes to the jurisdiction of the Maturin courts. The remainder of the clause and the contract favors this latter reading. The parties agreed to submit to the Maturin courts for the “purpose” of resolving any disputes between them under “the laws of the Bolivarian Republic of Venezuela.” Servicios’s reading of those contracts as permissive would ignore that the parties included in the contract their “sole and special domicile . . . to the exclusion of any other.” The contracts state at the outset that Petropiar is domiciled in Caracas and that Servicios is domiciled in Zulia and Maracaibo. (Docket Entry No. 39-1 at 2; Docket Entry No.

old forum-selection clause. (Docket Entry No. 42-1 ¶¶ 226–30). For the reasons explained above the line, Servicios’s expert is correct with respect to the contract claims but not Servicios’s sworn-account or fraudulent-transfer claims.

39-2 at 3). Because the parties would already have Venezuelan fora in which to resolve their disputes under Venezuelan law, the purpose of listing the parties' special domicile as "Maturin, to the exclusion of any other," (Docket Entry No. 38-1 § 36.2), is to make Maturin the exclusive forum for adjudication. Treating this provision as a mandatory forum-selection clause harmonizes the special and exclusive domicile language with the rest of the provision and contract. *See Coker v. Coker*, 650 S.W.2d 391, 393 (Tex. 1983) (explaining that courts must attempt to "harmonize and give effect to all the provisions of the contract").

The Second Circuit's ruling in *Proyecfin de Venezuela, S.A. v. Banco Industrial de Venezuela, S.A.*, 760 F.2d 390 (2nd Cir. 1985), is instructive. The parties' contract stated that the parties "selected as the special and exclusive domicile the City of Caracas, Venezuela to whose Court the parties specifically declare are subject." *Id.* at 395. The Second Circuit explained that the best reading of the "special and exclusive" term is that the clause is "mandatory." *Id.* ("[T]his language appears to be mandatory . . ."). The court added that the term "domicile" is synonymous with venue within a national court system such as Venezuela's. *See id.* at 396.⁸ Here, the parties' choice of a "sole and special" venue, "to the exclusion of any other," confirms that the provision mandates litigation in Venezuela. (Docket Entry No. 38-1 § 36.2). The forum-selection clause requires dismissal of claims subject to it. *See Caracas Exxon Rsch. & Eng'g Co. v. Indus. Risk Insurers*, 775 A.2d 601, 618 (N.J. Super. Ct. App. Div. 2001) (reasoning that a similar "special and exclusive domicile" clause provided "clear expectations that disputes would be litigated in Caracas"); *cf. Reavis v. Exxon Corp.*, 396 N.Y.S.2d 774, 777 (Sup. Ct. 1977) (holding that the

⁸ The Second Circuit read the forum-selection clause in *Proyecfin de Venezuela* as a venue provision that applied only if the plaintiff sued in Venezuela, not as a mandatory forum-selection clause, because a conflicting provision in the contract required the court to so reconcile the two. *See* 760 F.2d at 395–96. Servicios does not identify a separate contractual provision that requires to this court to apply a similarly reconciled reading of the disputed forum-selection clause rather than its most natural one.

contract’s use of “special domicile” alone did not purport “to elect Caracas as the *sole* domicile of the parties” (emphasis added)).

Second, the defendants cannot enforce the forum-selection clause against Servicios’s contract claims, but they can enforce the forum-selection clause against Servicios’s sworn-account and fraudulent-transfer claims. The forum-selection clause does not require dismissal of Servicios’s contract claims because the defendants are not party to the contract and the contract that contains the forum-selection clause is not the basis of Servicios’s claims.

Nonsignatories to a contract can enforce a forum-selection clause in that contract when a signatory must “rely on the terms of the written agreement in asserting its claims against the” nonsignatory. *Grigson*, 210 F.3d at 527 (emphasis omitted) (quoting *MS Dealer Serv. Corp. v. Franklin*, 177 F.3d 942, 947 (11th Cir. 1999)); *see also Positive Software Solutions, Inc. v. New Century Mortg. Corp.*, 259 F. Supp. 2d 531, 540 (N.D. Tex. 2003) (concluding that a nonsignatory could not invoke an arbitration clause when the plaintiff’s claims presumed the existence of the agreement but did not rely upon its terms); *Vinewood Capital, LLC v. Dar Al-Maal Al-Islami Trust*, No. 4:06–CV–361–Y, 2007 WL 2791876, at *6 (N.D. Tex. Sept. 26, 2007) (“The first basis requires a signatory’s claim to completely rely on the terms of an agreement that contains an arbitration clause.” (emphasis added)), *aff’d* 295 Fed. App’x. 726 (5th Cir. 2008); *Vinewood Cap., LLC v. Sheppard Mullin Richter & Hampton, LLP*, 735 F. Supp. 2d 503, 513 (N.D. Tex. 2010) (concluding that a nonsignatory could not invoke an arbitration clause to arbitrate a fraud claim because “[a] fraud claim, by its nature, does not depend on the terms of the contract”); *Jureczki v. Banc One Tex., N.A.*, 252 F. Supp. 2d 368, 375 (S.D. Tex. 2003) (concluding that because claims were “necessarily governed by plaintiff’s contract,” which contained an arbitration clause, nonsignatory defendants could invoke the clause). “Under governing law, the claim raised in the

litigation must rely on the language of the agreement containing the [forum-selection] clause, rather than just presume its existence,” to enforce it. *QPro Inc. v. RTD Quality Servs. USA, Inc.*, 761 F. Supp. 2d 492, 500 (S.D. Tex. 2011).

The surviving contract claims do not “rely on”—let alone “completely rely on”—the terms of the agreements containing the forum-selection clause, *Vinewood Cap.*, 735 F. Supp. 2d at 513; they rely on independent promises made to pay a past debt that Servicios asserted. The contract claims “presume[] the existence of the” past agreements between Servicios and Petropiar but “do[] not depend on the terms of that agreement, such that [Servicios] is simultaneously invoking the [contract] yet refusing to comply with the [forum-selection] clause it contains.” *QPro Inc.*, 761 F. Supp. 2d at 500. Servicios does not point to a specific term under those contracts that it alleges the defendants breached. Instead, Servicios points to invoices that it issued and that the defendants allegedly later agreed to pay. (Docket Entry No. 31 ¶¶ 84–85).⁹ The latter promise is “conduct separate from the specific rights and obligations under the agreement.” *QPro Inc.*, 761 F. Supp. 2d at 500. Whether those invoices were properly issued in 2016 through 2020 is not a basis to deny liability on Servicios’s theory of the case. (*Cf. id.* ¶ 85 (alleging that “[a]t least one Chevron Corp representative was involved in the original approval and invoicing of all 131 of these unpaid bills”)). The terms of the agreements between Servicios and Petropiar are irrelevant to this dispute. The defendants cannot enforce the forum-selection clause as to all Servicios’s contract claims.

In contrast, the defendants can enforce the forum-selection clause against Servicios’s surviving sworn-account claim. That claim relies on the validity of the contract between Servicios and Petropiar. To state a claim for a sworn account, a plaintiff must allege: (1) there was a sale

⁹ To the extent the validity of Petropiar’s debt under the contracts between Servicios and Petropiar is an element of Servicios’s contract claim, the forum-selection clause requires the contract claim’s dismissal.

and delivery of the merchandise or performance of the services; (2) the amount of the account is just, meaning that the prices were charged in accordance with an agreement, or, in the absence of an agreement, are usual, customary, and reasonable prices for that merchandise or services; and (3) the amount is unpaid. *Coim USA Inc. v. Sjobrand Inc.*, 663 F. Supp. 3d 684, 689 (N.D. Tex. 2023) (quoting *Noodlenet, LP v. Proctor & Gamble Distrib. LLC*, No. 3:08-CV-1121-K, 2008 WL 11349984, at *2 (N.D. Tex. Nov. 11, 2008)). A suit on a sworn account “presupposes a contract or a series of contracts that is performed by one party as plaintiff who sues the other party, as defendant, for performance of his obligations.” *Copeland v. Hunt*, 434 S.W.2d 156, 158 (Tex. Civ. App.—Corpus Christi 1968, writ ref’d n.r.e). A key element of the claim is that if there is a contract, the prices charged were “in accordance with [the] agreement.” *Coim USA Inc.*, 663 F. Supp. 3d at 689 (quoting *Noodlenet, LP*, 2008 WL 11349984, at *2). Servicios cannot prevail on its sworn-account claim without showing that it properly charged Petropiar under their contract. The defendants can enforce the forum-selection clause against the sworn-account claim.

The defendants can also enforce the forum-selection clause against Servicios’s fraudulent-transfer claims. To state a claim for an fraudulent transfer, a plaintiff must allege that (1) it is a creditor with a claim against a debtor; (2) the debtor transferred assets after, or a short time before, the plaintiff’s claim arose; and (3) the debtor made the transfer with the intent to hinder, delay, or defraud the plaintiff. See *Nwokedi v. Unlimited Restoration Specialists, Inc.*, 428 S.W.3d 191, 204–05 (2014); TEX. BUS. & COM. CODE § 24.005(a)(1). To state a claim for a constructive fraudulent transfer under TUFTA, a plaintiff must allege “(1) a lack of reasonably equivalent value for the transfer; and (2) the transferor was ‘financially vulnerable’ or insolvent at the time of the transaction.” *In re Life Partners Holdings, Inc.*, 926 F.3d 103, 120 (5th Cir. 2019). Both claims completely rely on Servicios’s claim against Petropiar under the 2016-2020 contracts.

The key element of a fraudulent-transfer claim is that the plaintiff is a creditor with a claim against a debtor. *See Nwokedi*, 428 S.W.3d at 204. “Simply put, [Servicios] would have no right to complain of [the defendants’ oil transfers with Chevron] except for its status as [Petropiar’s] creditor pursuant to the [2016-2020 contracts].” *In re Cornerstone Healthcare Holding Grp., Inc.*, 348 S.W.3d 538, 542 (Tex. App.—Dallas 2011, no pet.). Because fraudulent-transfer claims are “premised on the [parties’] agreement,” this court, along with others in Texas, have held that nonparties may enforce an arbitration or forum-selection clause against them. *See Amegy Bank Nat. Ass’n v. Monarch Flight II, LLC*, 870 F. Supp. 2d 441, 451 (S.D. Tex. 2012) (“The fraudulent transfer claims against the nonsignatory defendants are also arbitrable under *Grigson . . .*”); *In re Cornerstone*, 348 S.W.3d at 542 (“[T]he parties’ single forum-selection clause applies to Mariner’s [fraudulent-transfer] claims.”); *Futurewei Techs. Inc. v. E. Oliver Cap. Grp., LLC*, No. 4:09CV455, 2010 WL 1856418, at *3 (E.D. Tex. Apr. 15, 2010) (same), *report and recommendation adopted*, No. 4:09CV455, 2010 WL 1849256 (E.D. Tex. May 7, 2010). The defendants can enforce the forum-selection clause against the fraudulent-transfer claim.¹⁰

Servicios’s sworn-account and fraudulent-transfer claims are dismissed, without prejudice, under the forum-selection clause.

V. Conclusion

The motion to dismiss, (Docket Entry No. 37), is granted in part and denied in part. The court reserves ruling on several issues of Venezuelan law. The claim for quantum meruit is dismissed, with prejudice. Servicios’s sworn-account and fraudulent-transfer claims are

¹⁰ For the same reasons, the forum-selection clause requires dismissal of Servicios’s contract claims based on the allegation that the defendants are liable under the 2016-2020 contracts because “Chevron Corp.,” at that time, “abused the corporate form of Petropiar and used Petropiar as its agent to act on its behalf and in its interests.” (Docket Entry No. 31 ¶ 170).

dismissed, without prejudice, under the forum-selection clause. The motion to stay the case pending arbitration, (Docket Entry No. 71), is denied. The motion to strike the defendants' reply or, in the alternative, to file a sur-reply, (Docket Entry Nos. 79, 80), is denied as moot. The motion to file a declaration, (Docket Entry No. 84), is denied as moot.

The parties may begin discovery on the surviving claims and issues. By June 5, 2026, the parties must propose a scheduling order for the court to enter.

SIGNED on May 20, 2026, at Houston, Texas.

A handwritten signature in black ink, reading "Lee H. Rosenthal". The signature is fluid and cursive, with a large, sweeping "L" and "R".

Lee H. Rosenthal
Senior United States District Judge