UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CHEVRON CORPORATION

Petitioner,

v.

STEVEN DONZIGER, et al.

Defendants.

Civil Action No: 1:11-cv-00691-LAK

DECLARATION OF JUAN PABLO SÁENZ M.

I, JUAN PABLO SÁENZ M., pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am an attorney residing in Quito, Ecuador, and I serve as counsel for the plaintiffs (the "Ecuadorian Plaintiffs") in the lawsuit filed against Chevron Corporation ("Chevron") in Lago Agrio, Ecuador (the "Lago Agrio Litigation").

2. I am licensed to practice law in the Republic of Ecuador and have been so licensed since 2008—the Lago Agrio Litigation is the first case I became involved in since graduating from law school at the Universidad San Francisco de Quito. I am over the age of 21 and under no disability. I am fluent in both English and Spanish. I make this Declaration based on personal knowledge.

3. I submit this Declaration in the hope that—with the benefit of more information concerning the history of the Lago Agrio Litigation—Your Honor will see that Chevron is plainly undeserving of the equitable relief it seeks. It is the ultimate irony that Chevron pins its hopes of dodging a lawful judgment—a judgment that is the product of eight long years of

litigation and hundreds of thousands of pages of evidence submitted in Ecuador[1]—based on accusations of unethical conduct on the part of the *Ecuadorian Plaintiffs*' attorneys. For the past seventeen years since this case was first filed in New York, Chevron and its vast network of lawyers around the globe have engaged in a campaign of fraud, intimidation, and abuse of the legal process unlike the world has ever seen before. I believe it will become clear to Your Honor as you review the below that Chevron has not earned the right to come back to your Court—the very court Chevron fought bitterly to get away from between 1993 to 2001—and ask that my clients be blocked from even attempting to initiate a proceeding to enforce a lawful judgment. I am admittedly unfamiliar with the nuances of United States law, but I suspect that under *any* system of justice, a party which has conducted itself in the manner that Chevron has is precluded from obtaining equitable relief from a court.

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[1] Attached hereto as Exhibit 39 is a certified copy of an English translation of the Lago Agrio Court's February 14, 2011 opinion. As this Court is well aware, Chevron's principal complaints concerning the underlying litigation have related to the Ecuadorian Plaintiffs' alleged involvement in the preparation of the Cabrera Report and the alleged conduct of attorney Steven Donziger, as captured in certain of the outtakes from the film *Crude*, obtained by Chevron in a 28 U.S.C. § 1782 proceeding filed in this Court. At pages 49 through 55 of the opinion, Judge Zambrano dealt with these complaints, as well as several others lodged by Chevron and by the Ecuadorian Plaintiffs, which ultimately do not affect the merits of the case. With respect to the alleged fraud concerning the Cabrera Report, Judge Zambrano concluded, without ultimately rendering an opinion as to the propriety of alleged conduct of counsel, that it would be prudent to exclude the Cabrera Report from consideration. (*See* Small Decl. Exhibit B, at 50-51.) Judge Zambrano took a similar approach to the alleged conduct of Mr. Donziger, noting that while he is troubled by Mr. Donziger's disrespectful statements concerning the court, the Ecuadorian Plaintiffs should not and will not be punished for the flippant remarks of one of their attorneys. (*See id.* at 51-52.) In short, regardless of whether the complaint emanated from Chevron or the Ecuadorian Plaintiffs, Judge Zambrano swept aside the ancillary mud-slinging and adjudicated the claims and defenses *on the merits*. And indeed, when all of the overblown rhetoric and unfortunate behavior (on both sides) is removed from the equation—as it should be—the merits of my clients' claims are *strong* and undeniable. Attached hereto as Exhibits 72 and 73 are true and correct copies of certified English translations of two documents comprising the Ecuadorian Plaintiffs' "*alegato final*," a final encapsulation of the Ecuadorian Plaintiffs' arguments and evidence filed in the Lago Agrio Court prior to judgment. Exhibit 73, the Ecuadorian Plaintiffs' submission on liability, lays out in exacting detail the overwhelming evidence against Chevron.

CHEVRON MANIPULATED THE ECUDAORIAN GOVERNMENT AND THE UNITED STATES COURT SYSTEM IN ORDER TO RE-VENUE THE CASE IN ECUADOR BECAUSE CHEVRON BELIEVED THAT THE ECUADORIAN JUDICIARY WOULD PROVE TOO WEAK TO MAINTAIN THE CASE IN THE FACE OF CHEVRON'S INFLUENCE IN THE COUNTRY

4. With the benefit of hindsight, it is now obvious that Chevron's stated reason for demanding a trial in Ecuador—namely, that the evidence is located there—was strictly pretextual. Rather, it is crystal clear that Chevron wanted this case to be heard in Ecuador because it believed that the Ecuadorian judiciary was too weak to handle these claims. After decades of exploiting the country and wielding its influence like a club as it extracted riches from the Napo Concession,[2] Chevron believed it could use that same power to buy or bully its way to a swift dismissal of this case, or, at the very least, to delay the day of reckoning indefinitely.

5. The centerpiece of Chevron's eight-year struggle to wrest the *Aguinda* litigation from the U.S. courts was the company's profuse commendation of the Ecuadorian judicial system. In an effort to make the U.S. court comfortable with sending the case to Ecuador, Chevron submitted numerous affidavits, some from its own Ecuadorian counsel, touting the virtues of the Ecuadorian court system:

[2] Indeed, Chevron's predecessor, Texaco, engaged in rampant misconduct in Ecuador and had apparently emerged unscathed. Attached hereto as Exhibit 4 is a true and correct copy of a confidential internal memorandum circulated by Texaco executive Robert M. Bischoff on behalf of Robert C. Shields, Chairman of the Board of Directors of TexPet, to TexPet's Acting Manager in Ecuador, dated July 17, 1972, entitled "Reporting of Environmental Incidents: New Instructions," informing company employees in Ecuador as to the new policy for reporting environmental incidents. The internal memorandum instructs the company's employees in Ecuador, in pertinent part: "**[o]nly major events . . . are to be reported. . . . A major event is further defined as one which attracts the attention of the press and/or regulatory authorities or in your judgment merits reporting**," and further, that "**[n]o reports are to be kept on a routine basis and all previous reports are to be removed from Field and Division Offices and destroyed.**" Thus, not only did Texaco instruct its employees to *conceal* spills and other environmental incidents in all but the most disastrous of cases, it also instructed them not to maintain routine records and to *destroy* all records of previous incidents.

- "I have been an attorney for Texaco Petroleum Company ("Texpet") for 26 years and currently am Texpet's legal representative in Ecuador…Texpet's appearances before the Ecuadorian courts as a defendant in actions commenced by citizens of Ecuador demonstrates the faith of the Ecuadorian people in their judicial system, and Texpet's awareness of its obligations to address such claims….The lawsuits and proceedings show that the Ecuadorian courts provide an adequate forum for claims such as those asserted by the plaintiffs in Maria Aguinda et al. v. Texaco Inc., 93 CIV 7527 (BDPXLMS)."[3]

- "The existence of these lawsuits demonstrates that Ecuadorian citizens and local officials have faith in this judicial system of Ecuador to provide redress for alleged wrongs concerning oil-related activities in Ecuador. Accordingly, it is their opinion, and my opinion, that the Ecuadorian courts provide an adequate forum for claims such as those asserted by plaintiffs in the Maria Aguinda action."[4]

- "I have reviewed the January 31, 2000 Memorandum Order of the United States District Court Judge Jed S. Rakoff. He should not be concerned about the ability of the Ecuadorian courts to dispense independent, impartial justice if the plaintiffs in the Aguinda and Jota cases pursue their claims in Ecuador…The recent events described above have had [sic] not adversely affected Ecuador's judicial system…I have reviewed the 1998 Report on Ecuador of the United States Department of State. Despite isolated problems that may have occurred in individual criminal proceedings, Ecuador's judicial system is neither corrupt nor unfair. Such isolated problems are not characteristic of Ecuador's judicial system, as a whole…Ecuador has a democratic government with an independent judiciary."[5]

- "I previously submitted an affidavit dated December 7, 1995, in which I stated my opinion, based upon my knowledge and expertise, that Ecuador's courts provide a totally adequate forum in which the plaintiffs in Maria Aguinda, et al. v. Texaco Inc., ("Aguinda"), could fairly pursue their claims. I submit this affidavit to reaffirm my earlier statement. The courts in Ecuador still represent totally adequate forum in which the Aguinda plaintiffs may assert the claims they have attempted to bring in the courts of the United States…I also believe that the courts in Ecuador provide totally adequate forum in

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[3] *See* Exhibit 5 attached hereto, which is a true and correct copy of Affidavit of Dr. Rodrigo Perez Pallares, dated December 1, 1995.

[4] *See* Exhibit 6 attached hereto, which is a true and correct copy of Affidavit of Dr. Adolfo Callejas, dated December 1, 1995.

[5] *See* Exhibit 7 attached hereto, which is a true and correct copy of Affidavit of Enrique Ponce y Carbo, dated February 4, 2000.

which the plaintiffs in the Jota case may bring the claims that they have attempted to assert in United States' [sic] courts…I have reviewed the Memorandum Order of the United States District Court Judge Jed S. Rakoff, dated January 31, 2000. I appreciate Judge Rakoff's concern over the recent political events that resulted in the constitutional change of president in Ecuador…The attempted coup lasted no more than several hours…Ecuador's military has reaffirmed its support for constitutional rule in Ecuador. Ecuador's military is not in control of the government, and in particular, is not in control of Ecuador's courts….The courts have remained open and are operating normally….The judicial system in Ecuador has resolved fairly and without corruption those cases that have been concluded, and I expect the judicial system similarly to resolve fairly and without corruption the still pending cases…I publicly criticized aspects of Ecuador's judicial system in a speech six years ago in an effort to challenge other lawyers and legal students to seek to improve and perfect Ecuador's system of justice, and there have been many improvements since that date."[6]

- "I do not believe Judge Rakoff should be concerned about the ability of the courts in Ecuador to dispense independent, impartial justice if the plaintiffs in the Aguinda and Jota actions pursue their claims in Ecuador….While I recognize that Ecuador's system of justice is not perfect, Ecuador's judicial system as a whole is neither corrupt nor unfair."[7]

- "Judge Rakoff should not be concerned about the ability of the courts in Ecuador to dispense independent, impartial justice if the plaintiffs in the Aguinda and Jota cases pursue their claims in Ecuador….While Ecuador's judicial [sic] is not perfect, it is neither corrupt nor unfair."[8]

- "Judge Rakoff should not be concerned about the ability of the courts in Ecuador to dispense independent, impartial justice if the plaintiffs in the Aguinda and Jota cases pursue their claims in Ecuador…I also have reviewed the 1998 Report on Ecuador of the United States Department of State. While Ecuador's judicial system is not perfect, it is neither corrupt nor unfair. The

[6] *See* Exhibit 8 attached hereto, which is a true and correct copy of Affidavit of Dr. Alejandro Ponce Martinez, dated February 9, 2000.

[7] *See* Exhibit 9 attached hereto, which is a true and correct copy of Affidavit of Dr. Sebastian Perez-Arteta, dated February 4, 2000.

[8] *See* Exhibit 10 attached hereto, which is a true and correct copy of Affidavit of Dr. Rodrigo Perez Pallares, dated February 4, 2000.

specific instances cited in that report are not characteristic of Ecuador's judicial system, as a whole."[9]

- "Multinational and oil companies are generally treated by the Ecuadorian Court in equal conditions to national companies or individuals…Most of Ecuador's courts have handled cases involving multinationals and oil companies in an impartial and fair manner, resulting in judgments either in their favor or against these companies."[10]

- "I have read the most recent documents from the plaintiffs in Aguinda and Jota and do not agree with the characterization which they have put forth about the level of politicization and corruption in the Ecuadorian judicial system. The tribunals and courts of Justice of Ecuador have processed and continue to process lawsuits against multi-national foreign companies, including petroleum companies. The courts of Ecuador do not offer preferential treatment to these companies nor do said companies have the power to influence the courts…. In my experience, the courts of Ecuador, in the complex and delicate task of administering justice, treat all persons who present themselves before them with equality and in a just manner."[11]

6. As evidenced by the foregoing, Chevron's affiants bent over backwards to try and explain away numerous troubling signs of political and judicial turmoil in Ecuador at the time—even going so far as to assure this Court that it should not be concerned about a recent attempted military coup because it was very short in duration. This Court, and the Court of Appeals for the Second Circuit, ultimately relied on the representations of Chevron's many affiants and dismissed the case on the condition that Chevron would respect the jurisdiction of the Ecuadorian courts and satisfy any judgment issued from them, subject to the right to mount a limited challenge in the context of an enforcement proceeding. In an August 2002 press release

[9] *See* Exhibit 11 attached hereto, which is a true and correct copy of Affidavit of Dr. Adolfo Callejas Ribadeneira, dated February 4, 2000.

[10] *See* Exhibit 12 attached hereto, which is a true and correct copy of Supplemental Affidavit of Doctor Alejandro Ponce Martinez, dated April 4, 2000.

[11] *See* Exhibit 13 attached hereto, which is a true and correct copy of Sworn Statement of Dr. Ricardo Vaca Andrade, dated March 30, 2000.

commenting on the dismissal, Chevron reiterated that Ecuador, and not the United States, was the appropriate venue for the trial:

> ChevronTexaco is pleased with the ruling of the U.S. Court of Appeals affirming the lower court's dismissal of these claims and ruling that the **cases brought by these plaintiffs do not belong in the U.S. judicial system**. This ruling vindicates ChevronTexaco's long-standing position and the arguments we have made to the court: **The appropriate forum for this litigation is Ecuador** because the plaintiffs are in Ecuador, the operations were in Ecuador, the state oil company –with which the Texaco subsidiary was a minority partner, and which continues to operate the oil fields today—is in Ecuador. **The evidence is in Ecuador; and the remedies sought by plaintiffs can only be obtained in Ecuador**.[12]

7. How does Chevron rectify these statements with the position it takes today—namely, that the Ecuadorian court system is systemically corrupt and unfit to render an enforceable judgment? In order to explain away its earlier plea to try the case in Ecuador, and to justify its prolific disparagement of the Ecuadorian courts, Chevron has constructed a convenient narrative: while the Ecuadorian judiciary was a perfectly fair forum throughout the 1990s and the early 2000s (i.e., the time during which Chevron was fighting to move the case here), corruption became rampant thereafter, particularly with the election of the Correa government.

8. Chevron's narrative, however, is utterly fictional. While, as a citizen of Ecuador, I believe that the American perception of my country has long been somewhat unfair, the fact is, the warning signs of corruption issued by the U.S. Department of State and other authoritative entities have not materially changed from the late 1990s and early 2000s to the present. Attached hereto as Exhibit 14 is a true and correct copy of a website printout of the 2001

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[12] ChevronTexaco Press Release, *ChevronTexaco Issues Statement on U.S. Circuit Court Decision Affirming Dismissal of Ecuador Litigation* (Aug. 19, 2002), *available at* http://www.texaco.com/sitelets/ecuador/en/releases/2002-08-19.aspx (emphasis added).

Transparency International[13] Corruption Perceptions Index. In 2001, as Chevron was lauding Ecuador in its bid to re-venue the case there, Transparency International rated Ecuador with a **2.3** out of a possible 10, and ranked it 79 out of 92 countries analyzed (**the 14th percentile**). Also attached hereto as Exhibit 15 is a true and correct copy of a Website printout of Transparency International's 2010 Corruption Perceptions Index. In the 2010 Corruption Index, recently released as Chevron feverishly argues that Ecuador is too rife with corruption to provide a fair forum for the case, Ecuador is assigned a raw score of **2.5** and is ranked 127 out of 178 countries analyzed (**the 28th percentile**). In other words, according to Transparency International, corruption is now *less* of an issue in Ecuador than it was back in 2001, when Chevron seemed to like the country.

9. Further, Chevron often points to the U.S. State Department's dossier on Ecuador as evidence that judicial corruption in Ecuador requires this Court and other tribunals to view the Lago Agrio Litigation with a jaundiced eye. But in light of the following, Chevron's justification for its current disparagement of the Ecuadorian system appears pretextual:

- Attached hereto as Exhibit 16 is a true and correct copy of a Website printout of the Fiscal Year 2001 Ecuador Country Commercial Guide published by the U.S. and Foreign Commercial Service and U.S. Department of State. In 2001, the State department opined: "Ecuador has laws and regulations to combat official corruption, but they are rarely enforced. Illicit payments for official favors and theft of public funds take place frequently in Ecuador. . . . Dispute settlement procedures are made more difficult by a lack of transparency in the

[13] Transparency International is an NGO dedicated to monitoring international corruption, founded in 1993 by a former director of the World Bank. The organization annually publishes a Corruption Perceptions Index, which rates corruption levels in dozens of countries using a variety of metrics.

court system and the openness of many judges to bribery. Local authorities often expect gratuities for issuing necessary permits."

- Attached hereto as Exhibit 17 is a true and correct copy of a Website printout of the U.S. Department of State 2010 Investment Climate Statement on Ecuador. **In 2010, the State Department's opinion is ostensibly identical to what it was in 2001:** "Ecuador has laws and regulations to combat official corruption, but they appear to be inadequately enforced. Illicit payments for official favors and theft of public funds take place frequently. Dispute settlement procedures are complicated by the lack of transparency and inefficiency in the judicial system. In addition, there are frequent allegations by the private sector that local authorities may demand "gratuities" to issue necessary permits."

10. As part of its fictional narrative, Chevron has complained to the many foreign tribunals in which it is pursuing collateral attacks on this Court that the company cannot possibly receive a fair trial in Ecuador because President Correa has made public his opinion that Chevron should be made to pay for its decimation of the Amazon basin. Chevron is not incorrect that the President has condemned the company for its failure to own up to its toxic legacy. Rather, the problem lies in Chevron's logical leap that the election of an executive branch apparently less inclined to bend to the demands of big oil renders the Ecuadorian court system an unfit forum in which to try the case. The current United States President Barack Obama made the following public statements in the wake of British Petroleum's 2010 Deepwater Horizon oil spill in the Gulf of Mexico: "They've got moral and legal obligations here in the Gulf for the damage that has been done . . . . What I don't want to hear is, when they're spending that kind of money on

their shareholders and spending that kind of money on TV advertising, that they're nickel-and-diming fishermen or small businesses here in the Gulf who are having a hard time."[14] (June 4, 2010); "[t]here is going to be damage done to the Gulf Coast and there is going to be economic damages that we've got to make sure BP is responsible for and compensates people for."[15] (June 7, 2010); and "[w]e will make BP pay for the damage their company has caused."[16] (June 16, 2010). Yet notwithstanding these charged comments, nobody—not even Chevron—would seriously argue that Mr. Obama's condemnation of a company which, in his opinion, recklessly inflicted harm on the people he is duty-bound to defend signals that the United States is too politicized to guarantee due process of law to an oil company.[17]

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[14] D. Jackson, *Obama: BP has 'moral and legal obligations' to Gulf Coa*st, USA Today, *available at* http://content.usatoday.com/communities/theoval/post/2010/06/obama-oil-spill-louisiana-thad-allen/1?csp=34 (last visited Feb. 6, 2011).

[15] *Obama's Comments Monday on the BP Oil Spill*, June 7, 2010, *available at* http://www.mcclatchydc.com/2010/06/07/95475/obamas-comments-monday-on-the.html# (last visited Feb. 6, 2011).

[16] *Full text of President Obama's BP Oil Spill speech*, June 16, 2010, *available at* http://www.reuters.com/article/2010/06/16/us-oil-spill-obama-text-idUSTRE65F02C20100616?pageNumber=1 (last visited Feb. 6, 2011).

[17] It should be noted that President Obama has indeed weighed in on *this* litigation. Attached hereto as Exhibit 18 is a true and correct copy of a Letter from Sens. Barack Obama & Patrick Leahy to U.S. Trade Rep. Rob Portman, Feb. 2, 2006. Then-Senator Obama noted Chevron's attempts to end-run the Ecuadorian judicial process and expressed his "belie[f that] the 30,000 indigenous residents of Ecuador deserve their day in court." He urged the United States Trade Representative that Chevron should not be permitted "to interfere with a case involving Chevron that is under consideration by the Ecuadorian judiciary, particularly one involving environmental, health and human rights issues that have regional importance." Even after he announced his candidacy for President, then-Senator Barack Obama announced that he "'stands by his position' that the case is a 'matter for the Ecuadoran judicial system.'" *See* Exhibit 19 attached hereto, which is a true and correct copy of Website printout of an article by Michael Isikoff, entitled *A $16 Billion Problem: Chevron hires lobbyists to squeeze Ecuador in toxic-dumping case. What Obama win could mean*, NEWSWEEK, Aug. 4, 2008, available at http://www.newsweek.com/2008/07/25/a-16-billion-problem.print.html.

11. Accepting the falsity of Chevron's mantra that "everything changed" in Ecuador in terms of corruption beginning in the mid-2000s, the question becomes, *why, then, did Chevron fight so hard to venue the case there*? The answer is that Chevron believed it could manipulate any perceived tendency toward corruption to its *benefit*, and that it could bully or bribe its way to a swift dismissal of the case. The evidence of this intention is undeniable. Attached hereto as Exhibit 20 is a true and correct copy of an internal Texaco facsimile from Mike Kestiw to York LaCorgne, Ricardo Veiga, and Mike Trovino, dated December 6, 1993, stating on the cover sheet, with respect to the attached draft Diplomatic Note, "I worked with Amb[assador] Teran (Ecuador) on this last Friday. He will deliver to State Dep[artment] today." What this document reveals is that **Texaco officials apparently ghostwrote a letter from the Ecuadorian ambassador to the United States to the Department of State, prevailing upon the Department of State to intervene and cause the dismissal of the *Aguinda* plaintiffs' claims.**

12. Even more incredible than the fact of Texaco's behind-the-scenes political machinations to move this case to Ecuador are the particular representations that Texaco apparently put into this ghostwritten letter—representations that are shocking in light of Chevron's current position:

> **Acceptance of jurisdiction in this case by the US courts would do violence to the international procedural system. Under that system, US courts would not be permitted to consider evidence or perform procedural acts in the territory of another country, where they lack the authority and knowledge needed to consider and judge matters concerning foreign laws and their application . . . . Moreover, the Embassy requests that this petition address a second point. The plaintiffs have suggested to the US courts that they cannot expect a fair hearing in Ecuadorian courts. Such a claim is false and**

> **defamatory. Acceptance of this argument by a US court would be highly offensive**. (emphasis added).[18]

13. Chevron's representatives met privately with Ecuadorian officials in attempt to use their influence to make the Lago Agrio Litigation go away. Attached hereto as Exhibit 22 is a true and correct copy of an excerpt from the deposition testimony of Chevron lawyer Ricardo Reis Veiga, dated November 8, 2006, which reads as follows:

> Q: Then when the lawsuit was filed in Lago Agrio, **did there come a time where you and/or Dr. Perez went to see representatives of the Attorney General's Office to get some comfort as to how the case would be treated in the Ecuadorian courts?**
>
> A: **Yes.**
>
> Q: How many meetings did you have? I assume these were face-to-face meetings.
>
> A: We had face-to-face meetings (Tr. 219:12-21) (emphasis added).
>
> * * *
>
> Q: 2003, okay. From that point, **can you remember the first time you personally approached the Attorney General or any of his representatives about how the case would be handled?**
>
> **A: I think the first approach was perhaps at the end of 2003 or beginning of 2004 with the Attorney General himself.**
>
> Q: Mr. Borja?
>
> A: Mr. Borja.
>
> Q: And was that in his office, or was it somewhere else?
>
> A: Was in his office.
>
> Q: Who was with you? Was Dr. Perez with you?
>
> A: Dr. Rodrigo Perez was with me.
>
> Q: And was anyone with Attorney General Borja?
>
> A: I think in this first meeting he was by himself. Eventually, someone will get into his office, but he was by himself." (Tr. 220:10-221:8) (emphasis added).

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[18] Also attached hereto as Exhibit 21 is a true and correct copy of an unofficial translation of the *finalized* letter to the Department of State from the Ecuadorian Embassy, dated December 3, 1993.

14. A series of memoranda prepared by what was apparently Texaco's "image management" firm, Holwill & Company, further memorialize the influence that Texaco was exerting over the government of Ecuador while it was seeking to move the litigation there:

> I am not prepared to give you a definitive answer on the situation in Ecuador. However, based on a few phone calls, I believe that a solution can be salvaged. First, however, it is critically important to establish Texaco's priorities…The top priority I believe, must be to protect Texaco, Inc., from the law suit in US courts. **To the extent that your litigators believe that an amicus brief by the GOE will be helpful to their efforts, we should first focus on getting that back on track. This can be done by working with certain opinion leaders in Ecuador to explain the implications of the law suit for investments in Ecuador…From what I read on the Internet, it appears that politicians in Ecuador do not understand the consequences of failing to defend the image of the court system in Ecuador. As for immediate actions, you need to identify you [sic] allies and prompt them to speak out in a reasonable manner.**[19]

> York LeCorgne, Rodrigo Perez, Ricardo Reis Veiga – all of Texaco – and Richard Holwill met with Vice President Dahik in his office beginning at 10:15 AM on this date. The meeting, which lasted approximately 30 minutes, was extremely productive and cordial…Dahik stressed again his desire to resolve the matter and to encourage additional investment in Ecuador by Texaco. LeCorgne stressed that resolution of the fiscal issues would permit the company to participate in the Seventh Round of Oil Leases tentatively scheduled for November. Dahik agreed that this was a reasonable deadline for completion of the fiscal issue. **(Comment: Dahik seemed as interested in touting Texaco's interest publicly as he was in Texaco actually making new investments.)**[20]

> [Minister of Energy Francisco] Acosta came to the meeting after a press conference in which Texaco has been discussed. **He told us that the reporters asked how Texaco could enter the gasoline marketing business here with so many outstanding issues unresolved. Acosta said that he told the press that he thought that a resolution of the tax issue could happen soon and that he would push the company to fulfill its obligations in all other areas. He winked and added that he had been tough on the company but that this was 'just politics'**…Acosta was fully cooperative and told us that he hoped to move quickly to settle all outstanding issues and responded positively to a suggestion by Perez that this be done in meeting scheduled at the same time each week. **Acosta**

[19] *See* Exhibit 23 attached hereto, which is a true and correct copy of a Memorandum of Holwill & Company, for Ricardo Viega [sic] dated January 18, 1994.

[20] *See* Exhibit 24 attached hereto, which is a true and correct copy of a Memorandum of Holwill & Company, dated August 17, 1993 (emphasis added).

> **indicated that the *subsecretario* would chair those meetings but admitted that the man to whom the offer had been made, Carlos Suarez, had not yet accepted the post. Suarez is a former employee of Texaco; Perez quickly added that he thought it was a good idea**…The conversation did not get into details of the outstanding issues but Veiga did point out that the negotiations must include disposition of Texaco's claims against the Government of Ecuador and Petroecuador as well. Acosta accepted this point without protest…LeCorgne stressed the need to work quickly as Texaco wanted to obtain a settlement quickly in order to participate in the Seventh Round of Lease Offerings.[21]

15. The bottom line is this: The fitness of the Ecuadorian judiciary to fairly adjudicate this case has not changed—at least not for the worse—since the days when Chevron was *pleading* to go to Ecuador. The only thing that *has* changed is Chevron's ability to game the Ecuadorian system.[22] Respectfully, Your Honor, Chevron's regret that Ecuador ultimately proved less vulnerable to manipulation than Chevron previously believed when the company made a calculated decision to drag this case there is no reason to deny the Ecuadorian Plaintiffs their right to enforce a judgment that they have thus far waited seventeen years for.[23]

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[21] *See* Exhibit 25 attached hereto, which is a true and correct copy of a Memorandum of Holwill & Company, dated August 17, 1993 (emphasis added).

[22] As this Court is aware, Texaco's collusion with crooked Ecuadorian politicians in the early 1990s allowed the company to fraudulently procure a release from liability based upon a woefully inadequate "remediation" of a select few well sites. As this Court is aware, this collusion ultimately led to the indictment of two Chevron attorneys, Rodrigo Perez Pallares and Ricardo Reis Veiga, among others. A true and accurate copy of an English translation of the charging document is attached hereto as Exhibit 71. I understand Your Honor tends to view the indictment with skepticism—as a means simply to exert settlement pressure on Chevron. But whether the pending charges have that effect or not, respectfully, Your Honor, you should understand this: the former Ecuadorian regime *sold its people out*, and it did so under the guidance of Messrs. Perez and Veiga. The fact that it took some time to bring about a condemnation of these acts, and that there was initially little interest in doing so from the powers that be, should be surprising to no one—inertia is a powerful thing when it comes to exposing government malfeasance.

[23] The import of Chevron's delay cannot be overstated. Chevron's primary strategy in defense of this case has been to point the finger of blame at Petroecuador. For a variety of reasons—not the least of which is the doctrine of joint and several liability—this defense is of no moment in the action between the Ecuadorian Plaintiffs and Chevron. And while joint and

CHEVRON ENGAGED IN UNETHICAL AND UNLAWFUL EFFORTS TO OBSTRUCT THE COLLECTION OF DAMNING EVIDENCE THROUGHOUT THE COURSE OF THE LAGO AGRIO TRIAL

16. A number of the affidavits submitted by Chevron to this Court in the mid-1990s with the goal of soothing Judge Rakoff's concerns about recent developments in Ecuador specifically assure the Court that the Ecuadorian military will not play a role in the trial. For example:

> "Based on my own experience, as indicated, and my knowledge of Ecuadorian courts, I can affirm to Judge Rakoff that the plaintiffs, in both the "Aguinda" and in the "Jota" cases, can obtain from Ecuadorian civil courts impartial and independent justice, **without corruption or interference from the military** or any other public or private entity."[24]

17. Notwithstanding such representations, not long after the commencement of the trial in Ecuador, Chevron began using its ties to the military to thwart the collection of scientific evidence via the site inspection process implemented by the Lago Agrio Court.

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several liability is the norm in *any* case where damage may have been caused by multiple parties, the justification for the doctrine's application is a fortiori here, where Chevron has delayed the resolution of this case by any and all means—whether or not they are legal and ethical. The indigenous communities of the Ecuadorian Amazon basin originally filed suit against Texaco in 1992, only two short years after Chevron ceased its role as operator in the Napo Concession. At that time, while Petroecuador may well have had some role in causing some amount of contamination, Chevron could not even have tried, with a straight face, to lay blame at Petroecuador's doorstep alone. Chevron delayed this case because it believed (erroneously) that, as time progressed, it could more convincingly lay blame at the feet of Petroecuador. It would be a gross injustice if Chevron were permitted to benefit from its delay tactics, a fact that was implicitly recognized by Judge Zambrano when he noted that "the obligation to make reparation imposed on [a tortfeasor] does not extinguish because of new damages attributable to third parties." (Exhibit 71, at 123.) If this case had been tried in the United States, Chevron would not have been permitted to duck liability to the *Ecuadorian Plaintiffs* by arguing that Petroecuador is even more guilty—they would have been told to fight it out with *Petroecuador*. That is precisely what has occurred in Ecuador. Chevron has received and will continue to have every opportunity to squabble with Petroecuador over percentage of fault—the Ecuadorian Plaintiffs should not have to suffer while two potential tortfeasors blame one another.

[24] *See* Exhibit 26 attached hereto, which is a true and correct copy of Sworn Affidavit of Dr. Jaime Espinosa Ramírez, dated February 28, 2000 (emphasis added).

18. The fraud perpetrated by Chevron to stop the inspection of the Guanta separation station serves as a particularly sordid and shameful example of Chevron's corruption of the Lago Agrio trial. On October 19, 2005, then-presiding Judge Efrain Novillo was scheduled to inspect the Guanta station near the town of Lago Agrio, the historic headquarters of Chevron's field operations in Ecuador. Due to the large volume of oil processed and waste discharged at the station and its location on ancestral lands of an indigenous group (the Cofán), this was to be one of the most critical inspections in the trial. Many of the Cofán made arrangements to attend the judicial inspection, as was their right. International journalists also traveled great distances to attend this inspection.

19. Confronted with the possibility of massive contamination being exposed first-hand to the international media, Chevron devised a scheme to stop the Guanta site inspection. Chevron operatives concocted an anonymous threat, feeding it to a susceptible military intelligence officer at the nearby military base GFE-24 Rayo, causing the officer to produce an unauthorized and utterly fictional "report" memorializing the concocted threats.

20. On October 18, the day before the Guanta inspection, Chevron's operatives delivered the document to the Court at 5:46 p.m., fourteen minutes before the Court's required closing time of 6 p.m. *Ten minutes later*, Chevron's lawyers followed up with a signed request that the Court cancel the inspection. The Court issued an order canceling the inspection at 5:59. Plaintiffs and their attorneys were never contacted by opposing counsel. Chevron's unlawful power-play was complete when, the next day, in place of news of the inspection, full-page advertisements attacking Plaintiffs appeared in the five leading Ecuadorian newspapers with national circulation, including the two highest-circulation dailies, *El Comercio* and *El Universo*.

21. The following day, Plaintiffs confronted Lt. Col. Francisco Narváez, commander of the military base from which the false report emanated. Lt. Col. Narváez denied that the report could have come from his base because he was the only one with the authority to issue such a report, and had not done so. Indeed, Narváez added that he would *never* issue a report on the basis of such unnamed and unsubstantiated allegations. However, Lt. Col. Narváez also admitted that he was close personal friends with Chevron's lead counsel and that many Chevron representatives lived at the military base during active periods of the trial.

22. In the days following the cancelation of the Guanta inspection, additional facts came to light and Lt. Col. Narváez was forced to admit that the unsubstantiated report had come from his base and was signed by his subordinate, Major Arturo Velasco—but Narváez insisted that it had been written and delivered to the court without his knowledge and without proper authorization. Plaintiffs continued to demand further government investigation of the matter. In response, Chevron initiated an aggressive public relations campaign *denying* any involvement, and indeed, accusing Plaintiffs of *defamation* for daring to suggest Chevron's involvement.

23. Notwithstanding Chevron's attempts to silence inquiry into the matter, the controversy continued to grow. In response to Plaintiffs' requests and public pressure, the Ministry of Defense finally released, in late November 2005, a contract between Chevron and the military base. The contract confirmed that Chevron's lawyers and agents—both Ecuadorian and American—not only resided on the base, but also that they lived in a fully-equipped "villa" on the base that Chevron had constructed at its own expense. Moreover, by the terms of the contract, the villa ultimately would be "donated" to the base for the "enjoyment" of the military

officers as soon as the litigation came to a close.[25] As public attention to the matter increased in early December 2005, the contract was hastily suspended by the Minister of Defense himself.

24. Eventually, the Lago Agrio Court forwarded a request to the Ministry of Defense calling for an independent investigation into the Guanta incident. On February 3, 2006, the Subsecretary of National Defense, Fabián Varela Moncayo, responded by providing the Court with an official report, prepared by Colonel Miguel Fuertes Ruiz. The report included a sworn affidavit from Major Velasco, the official who signed the false report. Attached hereto as Exhibit 28 is a true and correct copy of a certified English translation of a February 3, 2006, Ecuadorian Ministry of National Defense report, attaching confidential affidavits submitted by Major I. Arturo Velasco C., Sub-Commander of Special Forces, and Col. of E.M.C. Miguel Fuertes Ruiz, Commander of 19-BS, summarizing an incident that occurred with respect to judicial inspections in the El Guanta sector.

25. In the affidavit, Major Velasco described in detail the events leading to the production of the "intelligence" report he signed. The testimony is damning of Chevron, to say the least. Major Velasco testified that at 1 p.m. on the day before the scheduled Guanta inspection, he was approached by an unnamed Chevron official and an employee of Chevron's local security company, a man named Manuel Bravo—a former Senior Captain in the Ecuadorian military. Acting expressly and directly on Chevron's behalf, the men claimed to have received information about security threats surrounding the inspection. The sufficiency of the information appears never to have been discussed. Major Velasco simply replied that security for the inspection was a matter for the National Police, and that he could not assist with

[25] *See* Exhibit 27, which is a true and accurate copy of an unofficial translation of a March 26, 2004 contract between Texaco Petroleum Company and the Fourth Army Division "Amazonas" for the building of corporate lodging on military base RAYO-IV.

security. But the Chevron officials were not interested in additional security; rather, "what they wanted was to suspend the judicial inspection," and to accomplish this they needed Major Velasco to communicate their "information" to the judge in his official capacity as a locally-informed military intelligence officer.

26. Major Velasco promptly communicated the unsubstantiated threat to the presiding judge in person. The Court agreed to cancel the inspection in principle, but not without receiving an official institutional document memorializing the supposed threat. Major Velasco initially refused, again stating that the National Police were the proper authorities to produce such a document. In the hours that followed, however, Chevron's security agent Bravo pressured Major Velasco with increasing "insistence." Bravo claimed that the National Police were investigating the issue, but that they were acting too slowly, and that if a document did not get to the Court before 6 p.m., there were "going to be problems." Major Velasco eventually agreed to provide Bravo with a document until such time as the National Police could finish their investigation. Major Velasco claims he told Bravo that the document was not blessed by the proper military authority and that Bravo "could not officially deliver the document for any reason." However, it appears that Bravo, acting as always as Chevron's paid agent, did immediately deliver the document to the Court, which promptly suspended the inspection.

27. On that record, this much is clear: Chevron pressured and corrupted a military official into writing and presenting a fraudulent intelligence report to the Court in an effort to stop the inspection of a separation station that would have exposed Chevron's toxic contamination to the world. To compound its malfeasance, Chevron lied about its involvement with the cancellation. Moreover, in the weeks following the cancellation of the Guanta inspection, which produced intensive media coverage in Ecuador unfavorable to Chevron,

several of Plaintiffs' representatives began to suffer from a pattern of human rights abuses. These abuses included death threats, robberies, and home invasions. Indeed, the abuses were so grave that both the Inter-American Commission on Human Rights[26] and the United Nations Special Representative on Human Rights Defenders[27] promptly intervened to request that the Ecuadorian government immediately implement "precautionary measures" to safeguard the victims.

28. Chevron's obstruction of the evidence-collection process most certainly did not begin or end with the Guanta incident. As noted above, in making its case for a transfer from the U.S. courts to Ecuador on *forum non conveniens* grounds, Chevron argued that the necessary site inspections could occur only if the case was transferred to the Ecuadorian courts. Yet, as soon as the case was filed in this Court in 2003, Chevron immediately began to obstruct and delay the judicial inspection process. In a November 2003 filing, Chevron raised a litany of pretextual challenges to planned judicial inspections, asking the court to postpone *all* inspections until these "issues" could be sorted out.[28] Chevron did everything it could to block the inspections from ever happening.

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[26] *See* Exhibit 29, which is a true and accurate copy of a Dec. 22, 2005 letter from the Inter-American Commission on Human Rights regarding Precautionary Measures for the protection of Alejandro Ponce Villacis and others. This letter has not yet been translated from its original Spanish into English—a translated version of this document will be provided to the Court *post haste*.

[27] *See* Exhibit 30, which is a true and accurate copy of a Nov. 17, 2005 letter from the United Nations Commission on Human Rights regarding Precautionary Measures. This letter has not yet been translated from its original Spanish into English—a translated version of this document will be provided to the Court *post haste*.

[28] *See* Exhibit 31 attached hereto, which is a true and correct copy of Chevron's Nov. 5, 2003, 11H30M, filing with the Superior Court of Justice, Nueva Loja, Ecuador.

29. But ironically, in 2006, when the Plaintiffs sought to bring the inspection process to a close because ample scientific evidence had been collected and further inspection would be a waste of time and resources, Chevron objected vehemently. Chevron petitioned the court on at least three occasions in a period of one month to order that the inspections move forward infinitely into the future.[29] Chevron raised the specious argument that if each and every possible sample was not taken at every possible site in the Concession area, to find the company liable for contamination would be a denial of its due process—an absurdly impracticable notion. In sum, Chevron's tactic shifted from blocking inspections entirely, to asserting that they must go on ostensibly forever. The common theme, of course, is that Chevron at all times gave its best effort to assure that the trial could never reach a conclusion.

30. Moreover, throughout the course of the trial, Chevron also engaged in pressure tactics vis à vis expert witnesses. For instance, on December 10, 2009, the Court appointed José René López Chávez as a scientific expert in the case.[30] On December 15, Mr. López filed a proposed work plan with the court.[31] Mr. López made clear that he would not be able to commence work until he received payment. The Court accepted López's work plan into the

[29] *See* Exhibit 32 attached hereto, which is a true and correct copy of Chevron's Nov. 5, 2003, 11H30M, filing with the Superior Court of Justice, Nueva Loja, Ecuador; Exhibit 33, which is a true and correct copy of Chevron's Aug. 16, 2006, 17H40M, filing with the Superior Court of Justice, Nueva Loja, Ecuador; Exhibit 34, which is a true and correct copy of Chevron's Aug. 25, 2006 filing with the Superior Court of Justice, Nueva Loja, Ecuador.

[30] *See* Exhibit 35 attached hereto, which is a true and accurate copy of the Dec. 10, 2009 Provincial Court of Justice of Sucumbíos, Ecuador's Appointment of Expert José René López Chávez.

[31] *See* Exhibit 36 attached hereto, which is a true and accurate copy of Expert José René López Chávez's Activities and Chronology of Work filed with the Provincial Court of Justice, Sucumbíos, Ecuador.

record on January 5, 2010, and allowed the parties three days to comment on the plans.[32] On January 8, Chevron demanded that the Court return López's work plan and chronology to him and compel him to submit a new work plan, citing pretextual nitpicks regarding the timing set forth in the plan.[33] But on February 18, the Court rightly accepted López's *original* work plan into the record.[34] Less than a week later, Chevron demanded that the Court revoke its February 18 Order and require López to submit a new work plan to the court.[35]

31. On February 2, in an effort to avoid further controversy on this issue, the Court elected to return López's work plan and ordered him to file a new plan with the Court.[36] The Court again gave the parties three days to review the amended plan after its submission. Nonetheless, even after López completed a new work plan, Chevron refused to pay until a new "rational and consistent" plan is submitted.[37] Notably, Chevron completely failed to articulate what was *irrational* or *inconsistent* about the plan. On March 23, the Court ordered Chevron to accept López's work plan for the final time.[38] *More than three months after the expert was*

[32] *See* Exhibit 37 attached hereto, which is a true and accurate copy of the relevant pages of the Provincial Court of Justice of Sucumbíos, Ecuador's Jan. 5, 2010 Order.

[33] *See* Exhibit 38 attached hereto, which is a true and accurate copy of Chevron's Jan. 8, 2010, 11H47M filing with the Provincial Court of Justice of Sucumbíos, Ecuador.

[34] *See* Exhibit 40 attached hereto, which is a true and accurate copy of Chevron's Feb. 22, 2010, 15H35M filing with the Provincial Court of Justice of Sucumbíos, Ecuador.

[35] *See id.*

[36] *See* Exhibit 41 attached hereto, which is a true and accurate copy of the relevant pages of the Provincial Court of Justice of Sucumbíos, Ecuador's Feb. 2, 2010 Order.

[37] *See* Exhibit 42 attached hereto, which is a true and accurate copy of Chevron's Jan. 25, 2010, 16H55M filing with the Provincial Court of Justice of Sucumbíos, Ecuador.

[38] *See* Exhibit 43 attached hereto, which is a true and accurate copy of the Provincial Court of Justice of Sucumbíos, Ecuador's March 23, 2010 Order.

appointed, Chevron agreed to pay $33,254, only *half* of the cost of the expert's work.[39] In addition to delaying the expert work for an initial three months, Chevron continued to add insult to injury by refusing to pay the expert for necessary costs such as laboratory expenses.[40] Chevron employed similar delay and intimidation tactics vis à vis other Court-appointed experts, such as Dr. Marcel Muñoz Herrería, to whom Chevron delayed final payment of necessary costs for over six months for the dual purpose of delaying the trial and extracting a favorable report.[41]

CHEVRON ENGAGED TWO OPERATIVES—ONE A CONVICTED DRUG TRAFFICKER—TO VIDEOTAPE THE LAGO AGRIO JUDGE AND ENTRAP HIM INTO REVEALING HIS THOUGHTS ON THE CASE PREMATURELY. ONE OF THESE OPERATIVES HAS SINCE ADMITTED THAT CHEVRON HAS ENGAGED IN UNLAWFUL CONDUCT THAT, IF BROUGHT TO LIGHT, WOULD NOT ONLY RESULT IN A VERDICT AGAINST CHEVRON, BUT WOULD IN FACT CAUSE THE *DOWNFALL OF THE COMPANY*

32. Having failed to grind the judicial process to a halt by crippling the evidence-gathering process, Chevron deployed two mercenaries—one a convicted felon—to try and entrap a former presiding judge into prematurely disclosing his opinion of the case while secretly being videotaped. Chevron represented to the Lago Agrio Court that the two individuals were

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[39] *See*, Exhibit 44 attached hereto, which is a true and accurate copy of Chevron's March 30, 2010, 15H22M filing with the Provincial Court of Justice of Sucumbíos, Ecuador.

[40] *See* Exhibit 45 attached hereto, which is a true and accurate copy of Expert José René López Chávez's March 24, 2010, 09H39M filing with the Provincial Court of Justice of Sucumbíos, Ecuador; Exhibit 46, which is a true and accurate copy of Expert José René López Chávez's April 7, 2010, 08H58M filing with the Provincial Court of Justice of Sucumbíos, Ecuador; and Exhibit 47, which is a true and accurate copy of Expert José René López Chávez's April 14, 2010, 09H39M filing with the Provincial Court of Justice of Sucumbíos, Ecuador.

[41] *See* Exhibit 48 attached hereto, which is a true and accurate copy of Expert Marcelo Muñoz's June 3, 2010, 15H50M filing with the Provincial Court of Justice of Sucumbíos, Ecuador; Exhibit 49 attached hereto, which is a true and accurate copy of Expert Marcelo Muñoz's Oct. 29, 2010, 16H18M filing with the Provincial Court of Justice of Sucumbíos, Ecuador; and Exhibit 50 attached hereto, which is a true and accurate copy of the Provincial Court of Justice of Sucumbíos, Ecuador's Oct. 11, 2010 Order.

"environmental contractors" and executed their plot merely as concerned citizens (i.e., that they were neither directed by Chevron nor compensated to execute their plan). Chevron also represented that that the videotapes reveal a "bribery scheme." Upon further investigation, all of these representations proved to be false.

33. On August 31, 2009, Chevron issued the following press release, claiming to have discovered a purported "bribery scheme," implicating Judge Núñez and a number of government officials:

> Chevron Corp. . . . today provided authorities in Ecuador and the U.S. with video recordings that reveal a $3 million dollar bribery scheme implicating the judge presiding over the environmental lawsuit currently pending against the company and individuals who identify themselves as representatives of the Ecuadorian government and its ruling party.
>
> In the videos, the judge confirms that he will rule against Chevron and that appeals by the energy company will be denied — even though the trial is ongoing and evidence is still being received . . .
>
> The recorded meetings also show an individual who claims to be a representative of Ecuador's ruling political party . . . seeking $3 million in bribes in return for handing out environmental remediation contracts . . . after the verdict is handed down.[42]

According to Chevron's initial filing in the Lago Agrio Court, the videos were made by two "prospective environmental remediation contractors," Diego Borja and Wayne Hansen. These two men recorded four meetings in Ecuador in May and June 2009.

34. Following the Chevron court-filing, press release and posting of the tapes and transcripts on its website, the Republic's Prosecutor General commenced an investigation of all the individuals named in Chevron's allegations, and the Ecuadorian National Judiciary Council also opened an investigation regarding Judge Núñez. While Judge Núñez denied any

[42] Chevron Press Release, *Videos Reveal Serious Judicial Misconduct and Political Influence in Ecuador Lawsuit* (Aug. 31, 2009) at 1, *available at* http://www.chevron.com/news/press/release/?id=2009-08-31.

wrongdoing, he recused himself from the proceedings to eliminate any appearance of impropriety.

35. After these videotaped meetings, a childhood friend of Borja named Santiago Escobar recorded conversations that took place between them via "Skype" over a period of several weeks in August through October 2009. *See* Exhibit 1 attached hereto, which is a Compact Disc containing excerpts from an audio recording of conversations between Diego Borja and Santiago Escobar, dated Oct. 1, 2009; Exhibit 2, which are uncertified translated transcriptions of excerpts from recorded conversations between Diego Borja and Santiago Escobar, dated Oct. 1, 2009; and Exhibit 3, which is a true and correct copy of relevant pages of the Republic of Ecuador's Memorandum of Law, filed in *In re The Republic of Ecuador v. Borja*, No. CV 10-80225 MISC EMC, Dkt. 2 (N.D. Cal. Sept. 10, 2010).

36. In the first recorded conversation, Borja told Escobar "**Crime does pay**." Borja bragged that the videotapes of the purported bribery scheme had "tipped" the balance in Chevron's favor and that he had accomplished in "three days? two days?" what Chevron had been unable to do in a year by getting Judge Núñez dismissed, even though Borja acknowledged in another conversation that "**there was no bribe….there was never a bribe**."

37. Although Chevron denied any involvement in the videotaping, it was later revealed that Chevron had close connections to Borja and that Chevron lawyers had in fact met with Borja in San Francisco, California, after recording some of the tapes *but before the recording of others*. Indeed, the connections between Chevron and Borja are numerous and extend well before the attempted sting operation, as follows:

- Borja has worked for Chevron for several years, perhaps since 2004 or even 2000.
- Borja said that, from the outset of his relationship with Chevron, he has taken directions from Chevron personnel in the United States and in Chevron's

Miami's Latin American Operations office, out of which he was hired. He said he has worked as a direct contractor of Chevron (USA). Chevron paid him through his company, Interintelg, S.A.

- Borja formed four companies for Chevron in order to make the work he did appear to be independent of Chevron. Borja has implied that Chevron controls these companies.
- Borja's wife, Sara Portilla, worked for Chevron (as a contractor) for four years and worked in the same Quito office building as Borja and Chevron's legal team — a building owned by Borja's uncle, who himself has worked for Chevron for over 30 years.

38. Chevron has rewarded Borja handsomely for his efforts. While Chevron admits to assisting Borja and his family with relocation expenses and other interim support out of alleged concern for his safety, according to Borja, Chevron pays him a monthly stipend in an amount that allows him to live at the same level in the U.S. as in Ecuador, where he claims to have been making $10,000 per month. Borja has stated that Chevron provides him with all of his expenses, a sports utility vehicle, security guards, and a fully-furnished home with a swimming pool in a gated community that borders a golf course, which it rents for $6,000 per month. Chevron later also acknowledged that it was paying for Borja's criminal defense counsel and had offered to pay for Hansen's counsel and his "reasonable security needs." Borja has made clear that he anticipates a payoff from Chevron for his role in this lawsuit.

39. In an effort to maintain leverage over the company, Borja apparently is withholding information that is damaging to Chevron. Specifically, Borja has stated that if Chevron tricked him and "if something bad happened to me…and they don't give my wife what they have to…what it supposedly should be….There's a document for that, where I…immediately go to the other side…**I have correspondence that talks about things you can't even imagine, dude…. I can't talk about them here, dude, because I'm afraid, but they're things that can make the Amazons win this just like that (snapping his fingers)**." Borja also claims to have a notarized document that contains a version of past events that would help the

Plaintiffs: "I mean what I have is conclusive evidence, photos of how they managed things internally." In addition, Borja has admitted that he destroyed the first videotape he made and that he knows a lot more than what is involved in the videos.

40. Worse yet, according to Borja, certain laboratories used by Chevron during the evidentiary phase of the trial, including Severn-Trent labs, were not independent: "**Chevron always stayed, supposedly, independent, and sent the analysis to have them analyzed….But I know that's not true….I have proof that [the labs] were more than connected, they belonged to them [Chevron]**." Borja also stated that, beginning in 2001, he was the person who signed the contract to rent the house where the purported "independent" laboratory tested contamination samples. Borja signed documents, along with his wife, for Severn Trust Labs. Indeed, Borja claims that Chevron **"cooked"** the evidence and, if the U.S. judge who sent the case to Ecuador in the first place ever knew what Borja knows, he would **"close [Chevron] down."**

41. As damning as Borja's present revelations are, it is evident that there is still *much* we do not know about Chevron's illegal activities and efforts to corrupt this trial. Borja knows information about crimes committed by Chevron with respect to this litigation that he believes, if revealed, would cause the downfall of the entire company—and at the very least, would result in a sure judgment in favor of the Plaintiffs. Notwithstanding the incredible amount of evidence that Chevron has obtained by way of applications to this Court and fifteen others throughout the United States, Chevron actually had the audacity to oppose Plaintiffs' application to take discovery from Mr. Borja. Apparently, Chevron only agrees with Your Honor's sound, adopted principle that "sunlight is the best disinfectant" when that light is being shined on someone other than itself. However, just days ago, on February 17, 2010, Chevron's opposition to take

discovery from Mr. Borja was denied by a district court in California, and the *full* extent of Mr. Borja's knowledge concerning Chevron's apparently pervasive misconduct will soon become known.[43]

FROM THE OUTSET OF THE LAGO AGRIO LITIGATION IN 2003, CHEVRON HAS OSTENSIBLY DECLARED WAR ON THE ECUADORIAN JUDICIARY, ENGAGING IN CONDUCT THAT THE COMPANY WOULD NEVER DREAM OF ATTEMPTING BEFORE YOUR HONOR OR ANY OTHER AMERICAN COURT

42. The story of the Lago Agrio Litigation has been Chevron's outright war on an Ecuadorian judiciary that has failed to bow to the oil giant in the manner Chevron anticipated when it demanded that the litigation take place not in the United States, but in Ecuador. From the moment Chevron realized that it could not make this litigation disappear in Ecuador, every move made by the company before the Lago Agrio Court has been part of an elaborate performance recorded for a specific viewing audience—a judgment enforcement court. In order

[43] Chevron has tried to recruit additional "operatives" throughout the course of the trial. Attached hereto as Exhibit 51 is a true and correct copy of an August 2010 article by Mary Cuddehe titled "A Spy in the Jungle," published in The Atlantic Magazine. The article reveals that Chevron's efforts to undermine the evidence in this litigation perhaps hit a new low when, in February 2009, Chevron's investigative firm, Kroll Associates, Inc., attempted to bribe a young American journalist into acting as a spy for Chevron. Chevron's initial proposed mission for Ms. Cuddehe would be to collect information from plaintiffs and their legal team—under the guise of legitimate journalism—that Chevron might be able to use to undermine a 2007 health study conducted by Dr. Carlos Beristain. Ms. Cuddehe believes that Chevron was interested in her because of her youth and lack of experience—in her own words, she was "**exactly what they were looking for: a pawn**." (emphasis added). Chevron, through Kroll, tempted the journalist with an all expense paid luxury weekend in Bogota, Colombia and offered to pay her $20,000 for only 6 weeks worth of work. But ultimately, the journalist's sense of personal ethics caused her to turn down the assignment. Apparently unsatisfied with the ability of its propaganda machine to influence the media indirectly, Chevron tried to put a journalist directly on the payroll in the hope that she could influence the case on Chevron's behalf while maintaining the ruse of journalistic integrity. Ms. Cuddehe's story is yet another sad chapter in Chevron's desperate effort to sidestep liability with tactics ranging from ethically questionable to clearly unlawful.

to conjure the appearance of a denial of due process for its audience, Chevron has engaged in a systematic pattern of abuse of Ecuadorian process by filing multiple copies of the exact same motion, slightly different motions speaking to the exact same issue, and flooding the court with rapid-fire multiple, nonsensical fillings that arrive within minutes of each other

43. Chevron has filed what can only be characterized as an *onslaught* of motions in the Lago Agrio Court. By way of example, on August 5, 2010 alone, Chevron filed *twenty* motions with the Court. Of the twenty filings, eighteen requested relief regarding the *same* July 30, 2010 Court order. All of these motions, which could have and should have been filed as a single brief, were filed within thirty minutes of the court's 6 p.m. closing time—a ploy to make it nearly impossible for the Court to accept Chevron's many motions into the record in a timely manner.

44. The company also has used its team of lawyers to repeatedly file *identical* motions. For example, on October 14, 2010, Chevron filed two *identical* motions in response to the Court's October 11, 2010 order, within twenty minutes of each other. Additionally, on the same day, Chevron attorneys filed four different motions, within a thirty minute period, requesting the revocation of paragraph nine of the same order.[44] Moreover, two Chevron attorneys filed additional motions regarding the same paragraph, within the same thirty minute period, requesting no relief at all but merely chastising the Court for its prior Order.[45] Thus,

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[44] *See* Exhibit 52 attached hereto, which is a true and accurate copy of Chevron's Oct. 14, 2010, 17H17M filing with the Provincial Court of Justice of Sucumbíos, Ecuador.

[45] *See* Exhibit 53 attached hereto, which is a true and accurate copy of Chevron's Oct. 14, 2010, 17H18M filing with the Provincial Court of Justice of Sucumbíos, Ecuador; along with Chevron's Oct. 14, 2010, 17H39M filing; Chevron's Oct. 14, 2010, 17H43M filing; and Chevron's Oct. 14, 2010, 17H44M filing.

Chevron filed six totally duplicative motions in thirty minutes. There is no reason for this other than to clutter the record and paralyze the Court.

45. Chevron's motions often demand either an instant ruling prior to judgment or intermediate appellate relief, neither of which is available in this case under Ecuadorian law—as Chevron knows full well. And Chevron's many motions are usually filed well outside the time period permissible under Ecuadorian law, a fact of which Chevron's savvy and experienced attorneys are keenly aware.

46. The purpose behind this course of conduct is transparent and obvious: some day, Chevron will be able to tell a judgment enforcement court—a court that will likely have little to no familiarity with Ecuadorian procedure—that it has been denied due process of law because the Lago Agrio Court denied so many of Chevron's hundreds of frivolous, abusive, and largely untimely motions. Chevron's "kill the Court with motions" strategy, as this Court is aware, ultimately led to the September 2010 recusal of Judge Ordoñez, who was either unable, or perhaps, understandably unwilling, to take all of Chevron's hundreds of bogus motions into the record. Inundating a judge with frivolous motions and then moving to recuse that judge under a provision that requires him to accept filings into the record within a short, specified time period deal is a tactic suggestive of a party acutely aware that it cannot win a case on the merits.

47. The Lago Agrio Court had no choice but to sanction Chevron for its misconduct, albeit after *dozens* of warnings. In August 2009 and October 2010, the court imposed a fine on Chevron attorneys for filing requests that were designed merely to cause obstruction and interference. But, to be sure, Chevron is gleeful that it was able to push the court past its point of tolerance. Chevron's plan is brilliant in its simplicity: dare the court to dole out punishment, and then identify that punishment as evidence that Chevron is the victim of an antagonistic and

biased tribunal. The fact that the court warned Chevron on so many occasions, yet only doled out sanctions a small handful of times, is a testament to the vast patience and fairness of the Lago Agrio Court.

48. Notwithstanding the fact that Chevron touted the virtues of the Ecuadorian judicial system from 1993 to 2001, from day one of the Lago Agrio trial, Chevron's filings were characterized by a palpable disdain for the court, notable for aggressive, even hostile, language that it would never dream of directing toward a court in the United States.

49. In its assault on the Lago Agrio Court, Chevron has, in fact, upped the ante in recent months. While the company has long threatened that the Lago Agrio Court must comply with Chevron's demands or be deemed in violation of the company's right to due process of law, Chevron has now gone so far as to threaten Judge Zambrano with *criminal liability* if the company's demands are not met. Attached hereto as Exhibit 54 is a true and correct copy of a certified translation of a December 20, 2010, Chevron filing with the Provincial Court of Justice of Sucumbios, seeking a declaration that the case is null and void on the basis of a report by handwriting expert, Gus Lesnevich. In that filing, Chevron threatened Judge Zambrano with criminal liability if he did not do as Chevron asked. Also attached hereto as Exhibit 55 is a true and correct copy of a certified translation of a December 22, 2010, Chevron filing with the Provincial Court of Justice of Sucumbios, concerning filings on damages submitted to the court. In that filing, Chevron expanded on its earlier threat, explicitly promising Judge Zambrano *imprisonment* if he did not comply. Once again, this appalling rhetoric is merely designed to allow Chevron to justify its eventual disregard for any judgment rendered by this Court. It is unfathomable that Chevron's lawyers would lob such threats at an American judge no matter

how vehement their disagreement with him—indeed, my understanding is that they would likely be leaving the courthouse in handcuffs if they tried.

50. As Chevron's multi-jurisdictional vilification of the Ecuadorian judicial system continues to unfold, it has become increasingly obvious that Chevron's judgment escape route was not concocted on an *ad hoc* basis. Rather, from the very outset of this litigation in New York in 1992, Chevron knew that even if it could not succeed with Plan A—to bully or bribe its way to a dismissal in the Ecuadorian courts—it could always run back to the United States and execute Plan B, claiming that it had been victimized in Ecuador. In its execution of Plan B, Chevron seems to be relying on its own novel, convoluted definition of "due process." This is a case that has proceeded for eight years in Ecuador, a case in which hundreds of samples have been taken and tested by both parties, in which hundreds of expert reports have been submitted, and in which Chevron has successfully triggered the removal of multiple judges with whom it was dissatisfied. Under any traditional, workable interpretation of the term "due process," Chevron has undoubtedly received its due. Rather, "denial of due process" appears to be the mantra Chevron has adopted whenever the Lago Agrio Court did not give Chevron the relief it demanded, however frivolous that demand may be.

CHEVRON KNOWS FULL WELL THAT, IN ECUADOR, IT IS LAWFUL AND INDEED COMMON FOR PARTIES TO MEET *EX PARTE* WITH NEUTRAL, COURT-APPOINTED EXPERTS AND TO PREVAIL UPON THE EXPERT TO ADOPT THEIR VIEWS. INDEED, CHEVRON HAS DONE THE SAME WITH OTHER EXPERTS.

51. This Court has received reams of evidence from Chevron concerning the report of expert Richard Cabrera. Herein, I aim only to offer a bit of legal and factual context for that evidence and Chevron's allegations concerning the Cabrera Report.

52. In 2003, during the 6-day "proof period" in the Lago Agrio trial, Chevron was presented with the opportunity to request the appointment of a global damages assessment expert

to determine the extent of the damages caused by Texaco's oil extraction operations. While Plaintiffs requested that the Lago Agrio Court appoint an expert to fill this role, Chevron declined to request such an expert when given the chance—perhaps so as to remain consistent with its position that there are no damages.

53. In 2007, when the global damages expert was to be appointed, Chevron realized its error. Initially, Chevron sought to block the issuance of any damages valuation at all. When those efforts failed, however, Chevron changed its litigation strategy and sought to participate in the appointment of a global damages expert. Although Chevron was arguably precluded from such participation at that late juncture, the Court permitted Chevron's involvement. The parties were unable to agree on an expert and, as a result, the Court was forced to appoint a single expert pursuant to Ecuador's civil code. That expert was Richard Cabrera.

54. As an initial matter, there is an element of reality that needs to be addressed here. From the moment that Mr. Cabrera's name was mentioned as a potential candidate to fill the role of global damages assessment expert in this case, Chevron made it the company's mission to discredit and destroy him. As early as July 2007, the company took out full-page advertisements in several prominent periodicals dedicated to defaming and publicly humiliating Mr. Cabrera, and making him regret his involvement in this case.[46] Rather than confine its vitriolic attacks against Mr. Cabrera to this Court proceeding, Chevron felt the need to smear him in public, charging him with a "complete lack of integrity." From the beginning, Chevron lobbed every attack it could possibly think of against Mr. Cabrera. Over the past four years, Chevron has filed

[46] *See* Exhibit 56 attached hereto, which is a true and accurate copy of a July 3, 2007 advertisement in "El Universo," an Ecuadorian Newspaper; Exhibit 57, which is a true and accurate copy of a July 3, 2007 advertisement in "El Comercio," an Ecuadorian Newspaper; and Exhibit 58, which is a true and accurate copy of a July 3, 2007 advertisement in "La Hora El País," an Ecuadorian Newspaper.

well over thirty motions against Mr. Cabrera, targeting his qualifications, credibility, various alleged conflicts of interest, work plan, schedule of site visits, sampling methodology, the validity of his registration, and the timing of his acceptance of his appointment. In other words, from day one, Chevron has thrown the proverbial "kitchen sink" at Mr. Cabrera.

55. Did Chevron really expect that by ignoring Mr. Cabrera's request for information, harassing and menacing Mr. Cabrera and his team in the field, and by publicly humiliating Mr. Cabrera and viciously attacking him at every turn, it would favorably affect the outcome of the global damages assessment? Did Chevron anticipate that, by isolating itself from the process, the global damages assessment could possibly turn out *any* way other than the way it did? The reality is this: Chevron never wanted a damages assessment to occur in this case, and it would have attacked any expert designated to fill that role just as fiercely as it attacked Mr. Cabrera. In light of Chevron's choice to obstruct rather than facilitate the damages assessment, this assessment was destined to be unfavorable to Chevron. In hindsight, Chevron's decision to play the role of antagonist rather than work closely with the expert as the Ecuadorian Plaintiffs did seems inexplicable and foolish—unless Chevron's plan all along was to provoke a seemingly one-sided assessment so that it could claim bias, as it is now doing. Indeed, it seems Chevron recognized that if it cooperated with the processes established by the Lago Agrio Court, it could not later claim to have been denied due process. But by placing itself in the role of outsider and antagonist, Chevron preserved its ability to resist enforcement of any judgment by claiming unfair treatment.

56. All that said, it is important to note that there is no legal provision in the judicial system which prohibits parties to a legal suit from making contact with Court-appointed experts

prior to the issuance of the expert report—including prior to the expert's formal appointment.[47] *See* Exhibit 59 attached hereto, which is a true and accurate copy of the translated Declaration of Dr. Juan Pablo Albán Alencastro, dated Feb. 16, 2011.[48] In fact, Art. 335 of the Judiciary Organic Code, which outlines the prohibitions placed on litigating attorneys, makes no mention of prohibitions on expert contacts.[49] It is indeed *common practice* for both sides to make contact with the expert and advocate their positions.[50] These contacts can occur in any manner, whether through in-person meetings, teleconferences, or written communications—as long as during the course of those communications, no illegal acts occur.[51] In the context of these meetings with the expert, Ecuadorian law does not prohibit the parties from advocating their positions to the expert and urging his agreement with and adoption of those positions—the expert has free reign to decide whether, in his professional judgment, he believes that party's position to be the correct one.[52]

57. Critically, Chevron's own conduct in this litigation confirms that a party may meet in private with a Court-appointed neutral expert, without the adversary's knowledge, and

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[47] *See* Exhibit 59.

[48] *See also* Exhibit 60 attached hereto, which is a true and accurate copy of the translated Declaration of Dr. Farith Ricardo Simon Affidavit, dated February 16, 2011, at ¶ 7(noting that "[i]n Ecuador there are no regulations that prohibit or prevent the parties from meeting with an expert appointed in a civil trial, to plan the work that will be carried out," that "[i]n Ecuador there are no regulations that prohibit one party in a civil suit from meeting with a person before this person is appointed expert in the lawsuit that is taking place," and that, under Ecuador's civil procedure rules "there are no provisions that prevent or prohibit the expert from coordinating the execution of their work with any of the parties").

[49] *See* Exhibit 59.

[50] *See* Exhibit 59.

[51] *See* Exhibit 59.

[52].*See* Exhibit 59.

indeed, that a party may formulate the work plan for the expert's report. In March of 2009, upon Chevron's request for the appointment of an expert to inspect and prepare reports related to a predetermined group of former Texaco sites, the Court appointed Dr. Marcel Muñoz Herrería as Judicial Inspection Expert. Like Mr. Cabrera, Dr. Muñoz was a court-appointed neutral expert designated to fill a particular role in the case. Under Ecuadorian law, Chevron was obligated to pay Dr. Muñoz for his work because it was Chevron that requested his function to be carried out, just as Plaintiffs were obligated to fund Mr. Cabrera in light of the fact that Plaintiffs alone requested the performance of a global damages assessment.

58. Attached hereto as Exhibit 61 is a true and correct copy of a certified English translation of an October 29, 2010 letter from expert Dr. Marcelo Muñoz Herrería to the Provincial Court of Justice of Sucumbios. Dr. Muñoz has represented to the Lago Agrio Court that, on March 9, 2010, he met with Chevron's technical consultant, Engineer Alfredo Guerrero,[53] at the Hotel Coca for a "technical planning meeting." This meeting took place *before* Muñoz was formally appointed as Judicial Inspector by the court. In various letters to the court, Dr. Muñoz indicates that a work plan, road map and proposed findings for the expert report were discussed with Chevron's technical consultant. Indeed, Dr. Muñoz attached a work plan "*solicited and approved* by Engineer Guerrero" to the court referencing the March 9 meeting.

59. Chevron's *ex parte* interactions with Dr. Muñoz—interactions which would have remained secret had Chevron not failed to pay the expert, prompting him to complain to the Court—were perfectly acceptable and commonplace under Ecuadorian law. Simply put, a party

[53] Attached hereto as Exhibit 70 is a true and correct copy of a Website printout of Linkedin profile page for Alfredo Guerrero, indicating that he has been employed by Chevron-Texaco since 1980 in various positions: Private Consultant, Operations Representative and Engineer, and Production Foreman and Engineer.

may meet in secret with a Court-appointed neutral expert as many times as the party so desires; that party may tell that expert what it wants in the report; and that party may dictate the work plan for that report.

60. Moreover, party involvement in the preparation of the report is especially necessary and appropriate where, as here, the project is massive and highly complex.[54] There exists no provision of Ecuadorian law which limits the extent to which an expert may use the work product of a party if, after having researched and evaluated the information provided to him, the expert believes the information to be relevant and appropriate for the report.[55] The expert may cite such documents as grounds for his opinion or, as the case may be. The expert may choose to cite this work as grounds for his opinion, or, as the case may be, the expert may simply adopt that work product as his own.[56]

61. Further, the fact that an expert adopts one party's views to the exclusion of the other's does not mean that the expert was impermissibly impartial, such that the expert was *unfit* to discharge his duties. As observed by Dr. Juan Pablo Albán Alencastro, Professor of Law at *Universidad San Francisco de Quito*: "Obviously, the expert is in no position to rule on the case, but it is evident that the conclusions reached by the expert in his or her research will one way or the other confirm the position of one of the parties in litigation, which does not per se reflect the expert's being partial of having fallen to undue influence."[57] It is fair to assume that if a Court-appointed expert ever endorsed Chevron's outlandish position that it should be assigned no

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[54] *See* Exhibit 59.

[55] *See* Exhibit 59.

[56] *See* Exhibit 59.

[57] *See* Exhibit 59.

liability in this case, Chevron would not concede that this expert must be deemed impartial and unfit because he appears to have taken Chevron's side entirely. Rather, Chevron would argue that the expert's adoption of its position is proper because Chevron is *right*.

62. Finally, under Ecuadorian law, even if an expert's conclusions are shown to be the result of *unlawful* party influence, this does not necessarily mean that the information in the report must be cast aside in its entirety. Where the information in the report is independently verifiable elsewhere in the record before the court, or is readily available in the public domain, there is no reason for the court to throw out that information in deliberating judgment.[58] The fact is, the vast majority of the Cabrera report is merely a *compilation* of the vast record of scientific evidence in this case—a tool the court could use to effectively cull relevant data from the record.

63. The foregoing, of course, is basically academic, in light of the fact that the Lago Agrio Court chose to reject the Cabrera Report in light of the international controversy surrounding it, and to cull the necessary information from other parts of the record. Nonetheless, this Court should at least be aware of the factual and legal context in which Chevron's allegations arise.

64. The Court should also be aware of the context surrounding another of Chevron's primary talking points concerning the alleged unfairness of the Lago Agrio Litigation. Chevron has complained to Your Honor and to other tribunals that the case should not exist because the Ecuadorian Plaintiffs' claims were allegedly released by the Ecuadorian government by way of a Release executed in connection with some remedial work performed by Chevron in the early 1990s. However, as an initial matter, the Release is unambiguous on its face—any release of liability would bind only the government and Petroecuador, not the citizens of Ecuador

[58] *See* Exhibit 59.

aggrieved by Chevron's pollution. Attached hereto as Exhibit 62 is a true and correct copy of the "Final Compliance Document of the Contract for Implementing of [sic] Environmental Remedial Work and Release from Obligations, Liability and Claims," entered into among the Government of Ecuador, represented by the Ministry of Energy and Mines, Petroecuador, and Texaco Petroleum Company, dated September 30, 1998, in which the "Government and Petroecuador proceed to release, absolve and discharge Texpet…**from any liability and claims by the Government of the Republic of Ecuador, Petroecuador and its Affiliates** . . . ."

65. Even if the Release itself were open to differing reasonable interpretations concerning its scope, the various iterations of the Memorandum of Understanding which preceded the Release demonstrated unequivocally that Chevron's broad interpretation of the Release is incorrect. Attached hereto as Exhibit 63 is a true and correct copy of a certified English translation of Texaco's "Draft Memorandum of Understanding Among the Ecuadorian State, Petroecuador, and Texaco Petroleum Company," in which Texaco proposed not only the release of claims by the Ecuadorian State and Petroecuador, but also a broad release from "those claims that are directed to obtain rehabilitation and repair of all the ecological damage caused or to compensate for the effects of socio economic nature caused to the populations located in the Ecuadorian Amazonic Region . . . ." The breadth of this release—particularly its seeming application to non-parties—was the subject of debate.[59] Ultimately, Texaco did not get its way and the broader release was stricken from the final Memorandum of Understanding. Attached

[59] *See* Exhibit 64 attached hereto, which is a true and correct copy of Certified English translation of an October 20, 1994 letter from the National Executive Director of the Ecuadorian Foundation for the Preservation of Nature, attaching comments to the draft Agreement [Memorandum of Understanding] presented by Petroecuador-Texaco to the Environmental Commission of the National Congress, suggesting that "TEXPET's release of obligations concerning the environmental impact may release this company of its responsibilities exclusively towards the Government, but not towards private individuals, so that a clarification is required in this respect...."

hereto as Exhibit 65 is a true and correct copy of a certified English translation of the December 14, 1994, Republic of Ecuador, Ministry of Energy and Mines Final Memorandum of Understanding between [sic] the Government of Ecuador, Petroecuador and Texaco Petroleum Company, which states that the release will "establish the mechanisms by which Texpet is to be released from any claims that the Ministry and PETROECUADOR may have against Texpet concerning the environmental impact caused as a consequence of the operations of the former PETROECUADOR-TEXACO Consortium."

THE *ONLY* REASON THAT THE ECUADORIAN PLAINTIFFS HAVE BEEN COMPELLED TO CONSIDER A MULTI-FACETED, INTERNATIONAL ENFORCEMENT STRATEGY IS THAT CHEVRON HAS LONG VOWED TO DISRECPECT ANY JUDGMENT ENTERED AGAINST IT AND TO FIGHT THE PLAINTIFFS "UNTIL HELL FREEZES OVER," BLEEDING THE ECUADORIAN PLAINTIFFS DRY UNTIL THEY CAN NO LONGER PURSUE THEIR CLAIMS.

66. I understand that much of Chevron's argument with respect to its Motion for a preliminary Injunction is focused on a memorandum prepared by the Ecuadorian Plaintiffs' U.S. counsel, which demonstrates that the Ecuadorian Plaintiffs' legal team has contemplated enforcement of a judgment in more than one country, as well as the possible attachment of assets.

67. Notwithstanding the fact that there is nothing nefarious about enforcing a lawful judgment by lawful means, it is important to understand the context of this strategic consideration. The Ecuadorian Plaintiffs are judgment creditors, and this is just a small selection of public comments made by the judgment debtor they are faced with:

- "We're not paying and we're going to fight this for years if not decades into the future."[60]

[60] *See* Exhibit 66 attached hereto, which is a true and correct copy of Website printout of a Wall Street Journal online article entitled "Chevron Looks for Home-Field Advantage In Ecuador Fight," dated July 20, 2009, available at http://blogs.wsj.com/law/2009/07/20/chevron-looks-for-home-field-advantage-in-ecuador-fight/.

- "[We] will fight until hell freezes over and then fight it out on the ice."[61]
- "We can't let little countries screw around with big companies like this– companies that have made big investments around the world."[62]
- "The Ecuadorian court's judgment is illegitimate and unenforceable. It is the product of fraud and is contrary to the legitimate scientific evidence. Chevron will appeal this decision in Ecuador and intends to see that justice prevails. . . . Chevron intends to see that the perpetrators of this fraud are held accountable for their misconduct."[63]
- "This [judgment] is the product of fraud . . . . It had always been the plan to inflate the damages claim and coordinate with corrupt judges for a smaller judgment."[64]

68. Indeed, Chevron's tough-talk narrative about what transpired in Ecuador has changed so many times it is difficult to keep track: (1) Chevron first came to the U.S. courts in December of 2009 claiming that the Ecuadorian Plaintiffs were attempting to perpetrate a fraud on the Lago Agrio Court; (2) Chevron then began to argue that the Lago Agrio Court was an accomplice to the alleged Cabrera fraud, as evidenced by the fact that the Court was allegedly accepting the report over Chevron's objections; (3) After the judgment was issued and the Cabrera Report was rejected by the Court at Chevron's urging, Chevron began to claim, as noted above, that "[i]t had always been the plan to inflate the damages claim and coordinate with

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[61] *See* Exhibit 67 attached hereto, which is a true and correct copy of Website printout of an article by John Otis entitled *Chevron vs. Ecuadorean Activists*, The Global Post, May 3, 2009, *available at:* http://www.globalpost.com/dispatch/the-americas/090429/chevron-ecuador?page=0,2#.

[62] *See* Exhibit 19.

[63] *See* Exhibit 68 attached hereto, which is a true and correct copy of a Website printout of a Chevron Press Release entitled "Illegitimate Judgment Against Chevron in Ecuador Lawsuit, Feb. 14, 2011, *available at* http://www.chevron.com/chevron/pressreleases /article/02142011_illegitimatejudgmentagainstchevroninecuadorlawsuit.news.

[64] *See* Exhibit 69 attached hereto, which is a true and correct copy of a Website printout of an article by Simon Romero and Clifford Krauss, "Ecuador Judge Orders Chevron to Pay $9 Billion," NY TIMES, article February 14, 2011, *available at* http://www.nytimes.com/2011/02/15/ world/americas/15ecuador.html?partner=rss&emc=rss.

corrupt judges for a smaller judgment"; and (4) Most recently, as evidenced by letters sent by Chevron's attorneys to this Court, Chevron appears to be developing a narrative wherein Judge Zambrano's opinion was apparently "ghostwritten"—presumably by someone affiliated with the Ecuadorian Plaintiffs.

69. In the face of Chevron's obvious resolve to do *anything and everything* to avoid payment of a lawful judgment, it is appropriate for the Ecuadorian Plaintiffs to pursue their rights with equal resolve—including measures that are quite lawful but that perhaps would be less necessary if the judgment debtor had not vowed ostensibly to destroy the Ecuadorian Plaintiffs and their counsel.

70. In closing, Chevron's attempts to portray itself as the "victim" in this matter are an insult to Your Honor's intelligence. Chevron's "escape plan" rests on a jaundiced worldview in which a corporation like Chevron simply cannot be held liable for its actions because, unlike the modest indigenous communities the company has harmed, Chevron is a player in the global economy. Make no mistake, Your Honor, in this hotly-contested litigation, *both* parties have at times conducted themselves in a way that is not befitting of the noble practice of law. The Ecuadorian Plaintiffs' counsel are guilty of failing to remain entirely above the fray in the face of Chevron's unflinching willingness to corrupt this litigation at every turn. In light of the history of this case, Chevron's latest move in its game of jurisdictional musical chairs is a slap in the face to both the Ecuadorian *and* United States judicial systems—which have been manipulated and played off of one another by Chevron for the better part of two decades now.

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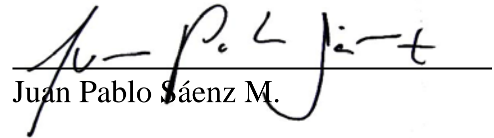
I declare under the penalty of perjury under the laws of Ecuador and the United States that the foregoing is true and correct to the best of my knowledge and ability.

Executed on February 25, 2011



Juan Pablo Sáenz M.