UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

CHEVRON CORPORATION, Plaintiff, v. MARIA AGUINDA SALAZAR, et al., Defendants.	Case No. 11-CV-0691 (LAK) (S.D.N.Y.) **DECLARATION OF CHARLES M. TEBBUTT IN SUPPORT OF ELAW'S FEE PETITION IN RE: CHEVRON SUBPOENAS**

I, Charles M. Tebbutt, hereby declare:

1. I am over the age of 18 and am competent to make this declaration.

2. I am counsel for Environmental Law Alliance Worldwide ("ELAW") in this matter.

3. On May 20, 2011, ELAW received a Subpoena *Duces Tecum* (the "Document Subpoena") from Chevron Corp. ("Chevron"). A true and correct copy of that document is attached at Ex. 1, pp. 1-26.

4. ELAW initially sought an extension in time of respond to the Subpoena. Chevron agreed, and in an e-mail offered to extend ELAW's time to respond to June 17, 2011. A true and correct copy of that e-mail is attached at Ex. 1 at p. 27.

5. On June 17, ELAW responded to the Document Subpoena by serving Chevron with its Objections and Responses. A true and correct copy of that document is attached at Ex. 1, pp. 28-46.

6. ELAW's primary substantive objection to the Subpoena was that it would cause undue burden and expense, in violation of Fed. R. Civ. Proc. 45. The Subpoena itself was so overly broad that production would encompass literally thousands of responsive documents. *Id*. at pp. 28-31. ELAW also objected to the Subpoena as improperly issued, as it sought the production of documents in New York City, a clear violation of Fed. R. Civ. Proc. 45(a)(2) (requiring document subpoenas to issue from the court "where the production or inspection is to be made"). *Id*. It was also issued under the subpoena-power of the District Court of Oregon by an attorney who was not authorized to practice law in this District, a violation of Fed. R. Civ. Proc. 45(a)(3). *Id*. These violations made the Document Subpoena jurisdictionally void in Oregon.

7. Chevron responded to ELAW's objections by letter dated June 22, in which Chevron disagreed with ELAW's objections but failed to offer an explanation as to the

procedural irregularities. A true and correct copy of Chevron's response is attached at Ex. 1, pp 47-50.

8. Despite these defects, ELAW reached sought to resolve the matter cooperatively. In a letter dated June 29, ELAW expressed its willingness to "meet and confer [with Chevron] to see if the parties can come to an agreement without court involvement." A true and correct copy of that letter is attached at Ex. 1, pp. 51-52.

9. Chevron availed itself of this opportunity, contacting ELAW to schedule a phone conference for July 6, 2011. A true and correct copy of Chevron's response is attached at Ex. 1, pp. 53-54.

10. During the July 6 phone conference, attended by Chevron counsel Alexander Southwell and Kristin Hendricks, and Dan Snyder and me for ELAW, the parties discussed a tentative Stipulation (the "Stipulation") whereby ELAW offered to produce non-privileged documents and a privilege log to Chevron, with Chevron agreeing to pay ELAW's reasonable attorney fees and costs associated with the production. The Stipulation would give Chevron a certain amount of time to challenge the inclusion of documents on ELAW's privilege log, and any dispute regarding items on the privilege log would be resolved by the Court. The specific agreement to pay ELAW's attorney fees and costs would be memorialized separately from the stipulation. Chevron agreed to draft both documents.

11. Chevron did not provide a draft Stipulation until July 22, 2011. A true and correct copy of the e-mail containing the draft is attached at Ex. 1, pp. 57-61 (e-mail chain; pertinent portion appears on p. 60). The parties exchanged numerous e-mails between July 22 and July 26 in an effort to finalize the terms and conditions contained in the Stipulation. *Id*. at 57-60.

12. On July 28, Greg Shill, counsel for Chevron, contacted my associate, Daniel C. Snyder, and represented to Mr. Snyder that he had spoken with me about execution of the Stipulation. *See* Snyder Declaration at 2. At that time, I was on vacation in New York and Mr. Snyder told me that Mr. Shill represented to him that I had agreed to the terms of the Stipulation, that all language had been finalized, and that ELAW could begin producing documents. In fact, I had not spoken to Mr. Shill, let alone any counsel for Chevron, since two days prior. ELAW's counsel relayed this information in an e-mail to Chevron's counsel that same day, and clarified ELAW's position that no stipulation would be executed until a side agreement concerning attorney fees and costs was also drafted, reviewed, and finalized, as per the agreement. A true and correct copy of that e-mail is attached at Ex. 1, pp. 62-63.

13. Chevron completed the side agreement concerning fees on August 1. A true and correct copy of the side agreement is attached at Ex. 1, p. 64. ELAW agreed to limit its

total fees to $19,000, even though I anticipated that ELAW's fees for the production itself would exceed $20,000. I agreed to limit our fee request in an effort to resolve the dispute. The estimate of fees did not include time spent researching the propriety of non-party subpoenas and the procedural flaws with the subpoena mentioned in ¶6.

14. The Stipulation was also executed on August 1. A true and correct copy of the Stipulation is attached at Ex. 1, pp. 65-68.

15. ELAW complied with the terms of the Stipulation by uploading 2,083 pages of non-privileged documents to Chevron's ftp site on August 2 and its privilege log on August 3. ELAW also e-mailed its privilege log to Chevron's counsel. Per the terms of the Stipulation, Chevron was required to provide any challenge to ELAW's privilege log by August 5. *See* Ex. 1 at 67, ¶¶ 6-7.

16. On August 3, ELAW also provided Chevron with a copy of its Supplemental Objections and Responses to Chevron's *Subpoena Duces Tecum*. A true and correct copy of that document is attached at Ex. 1, pp. 69-87.

17. On August 10, I sent an e-mail to Chevron's counsel containing ELAW's invoice for the production costs incurred as a result of the Document Subpoena, which totaled $20,715. ELAW had previously agreed to limit the fees to $19,000. A true and correct copy of that e-mail may be found at Ex. 1, pp. 88-89.

18. Chevron responded to that e-mail by raising, for the first time, concerns it had with ELAW's privilege log. A true and correct copy of that e-mail is attached at Ex. 1, pp. 90-91 (email chain). I informed Chevron that such questions were untimely under the Stipulation, deadlines which Chevron had itself chosen. *See id.* at 92. Nonetheless, I offered to discuss with Chevron its concerns in an effort to amicably resolve any dispute.

19. Counsel for the parties, Southwell and Jason Stavers for Chevron and Snyder and me for ELAW, had three conversations, two on August 11, and one on August 12 (Southwell was not present on the second or third calls), during which Chevron posed numerous questions to ELAW concerning the privilege log. ELAW's counsel answered, to the best of their abilities, all of these questions. At no time did ELAW waive the terms of the Stipulation. I made clear that we were providing responses to Chevron's questions out of professional courtesy, and that such questions were untimely under the Stipulation.

20. On August 12, I wrote an e-mail to Chevron, at Chevron's request to put our response in writing, in which I responded to one of the questions Chevron had posed previously over the phone. A true and correct copy of that e-mail is attached at Ex. 1, p. 92.

During the August 11 and 12 calls, Chevron said they would get back to us if they had any further concerns.

21. The next communication from Chevron occurred on September 7, when my client, Bern Johnson, Executive Director of ELAW, was served a Deposition Subpoena. A true and correct copy of that Subpoena is attached at Ex. 1, pp. 93-97. At the time, ELAW had not yet received the payment it was due under the Stipulation.

22. On September 8, counsel for Chevron wrote to ELAW and sought to again raise questions concerning the privilege log and ELAW's document production. A true and correct copy of that e-mail is attached at Ex. 1, pp. 98-99. While such questions were untimely under the Stipulation, I nonetheless offered to consider Chevron's questions as ELAW had done in early August. A phone conference was scheduled for later that day. *Id*.

23. Counsel for Chevron, Southwell, Hendricks and Shill, were late initiating that call with ELAW's counsel (Tebbutt and Snyder), even though they had requested the conference to begin with. During that phone call, Chevron requested ELAW to provide an amended privilege log. In response, ELAW's counsel reiterated the continuing position that ELAW had fully complied with all obligations under the Document Subpoena pursuant to the Stipulation, and that any discussion concerning the privilege log was untimely. Still, in an effort to avoid conflict and despite Chevron's disregard for its own chosen deadlines, ELAW agreed to consider reasonable requests posed by Chevron as it had done previously in early August. When ELAW's counsel asked Chevron to clarify the scope of the deposition, however, Chevron failed to return the same courtesy and simply responded with vague areas of potential inquiry. ELAW's counsel also requested Chevron to explain why it was deposing Mr. Johnson in the first place, and made clear that such a deposition was annoying, oppressive, and unduly burdensome on Mr. Johnson and ELAW. ELAW's counsel further inquired as to the status of payment for the work incurred as a result of the Document Subpoena. ELAW's counsel indicated that it would not make Mr. Johnson available for deposition until it received the required payment under the Stipulation. Chevron indicated it would have an answer to this question before the parties' next phone call.

24. The parties' counsel spoke again the next day, on September 9. Again, Chevron, represented by Hendricks and Shill, was late to initiate the call. ELAW's counsel, Tebbutt and Snyder, first informed Chevron that this phone call would serve as ELAW's obligation to meet and confer with respect to Rules 26, 37 and 45 of the Federal Rules of Civil Procedure. When asked about status of payment to ELAW under the Stipulation, Chevron offered no explanation. With regard to ELAW's privilege log, Chevron expressed concerns about the identities of individuals not listed on the log. To protect the privacy of ELAW's network of public interest attorneys across the world,

ELAW had listed some names on the privilege log with the alias "ELAW Amigo," a term commonly associated with individuals who have a formal working relationship with ELAW. Chevron requested that ELAW compare a "list of individuals" Chevron was interested in to ELAW's privileged documents to determine whether any person identified as "ELAW Amigo" was also on Chevron's list. Again, while ELAW was under no obligation to do so, ELAW's counsel informed Chevron that they would consider Chevron's request once they had an opportunity to examine the "list of names." ELAW's counsel stressed that they were doing this merely as a good faith effort, and that they were not waiving any portion of the Stipulation by cooperating with Chevron. Furthermore, ELAW requested that Chevron compensate it for the time it would spend making this comparison, as doing so was above and beyond the requirements of the Stipulation. ELAW's counsel also stated that they believed that Chevron should compensate ELAW for its attorneys' fees and costs incurred as a result of the Deposition Subpoena. Chevron agreed to provide ELAW with its "list of names" by COB Pacific time that day if it wanted ELAW to consider its request. If Chevron provided the "list of names," then ELAW agreed to respond by COB September 12 whether it would provide the supplemental information, after it had time to review Chevron's list. Chevron's counsel did not agree to pay ELAW's fees and costs associated with the Deposition Subpoena, but said they would take the request to their client.

25. On that same phone call, I again asked Chevron for clarification of the scope of Mr. Johnson's deposition. Chevron responded with the same vague topics, namely ELAW's alleged work with the Lago Agrio plaintiffs, the amicus brief, and Pablo Fajardo's fellowship, as it had done previously. In response, I informed Chevron of two issues. First, Chevron had not noticed Mr. Johnson as a Fed. R. Civ. Proc. 30(b)(6) deponent. This was highly unusual, given that Chevron's vague areas of inquiry suggested that they sought Mr. Johnson's testimony as executive director of ELAW, not in his personal capacity. Second, ELAW would object to any line of questioning that served as an end-run around the Stipulation. That is, counsel for ELAW would instruct Mr. Johnson not to answer questions regarding the content of the privilege log. I also suggested during this phone call that the parties prepare a joint letter to Magistrate Judge Coffin, alerting him of the possibility that problems during the deposition might arise which would require the Court's intervention.

26. ELAW also made it clear that it would move for a protective order or, in the alternative, move to quash the deposition subpoena unless Chevron paid ELAW's fees and costs.

27. At 4:53 p.m., seven minutes before COB on Friday, September 9, Chevron provided ELAW with its "list of names" via e-mail. A true and correct copy of that e-mail and Chevron's list is attached at Ex. 1, pp. 100-109. Chevron's "list" was 9 pages long and contained over 300 individuals. *Id*. Nonetheless, out of an abundance of

reasonableness, I instructed my associate, Daniel C. Snyder, to conduct a comparison of Chevron's names with ELAW's privileged documents and to identify those pages wherein certain listed individuals were listed in a "to", "from", or "CC" column.

28. Thirty-three names on Chevron's "list" appeared in one of the "to", "from", or "CC" categories on ELAW's privilege documents. These individuals were listed as an "ELAW Amigo" on the privilege log. A true and correct copy of ELAW's comparison is attached at Ex. 1, pp. 110-121. The vast majority of the names were individuals who signed ELAW's amicus brief. *Id*. at 110-111.

29. By letter dated September 12, 2011, I informed Chevron that we had completed its requested task and would provide the comparison list pending Chevron's agreement to pay the fees associated with the task. A true and correct copy of that letter is attached at Ex. 1, pp. 122-123. The letter also stated that ELAW would move to quash the Deposition Subpoena unless Chevron paid the $19,000, outstanding for more than 30 days, pursuant to the Stipulation by September 13. *Id*. I also reiterated ELAW's desire to submit a joint letter to Magistrate Judge Coffin apprising him of the upcoming deposition and potential for problems, given that Chevron still would not agree to limit deposition topics. *Id.* Finally, I again expressed a desire to limit Mr. Johnson's deposition to areas of relevant inquiry. *Id*. at 123.

30. On September 13, ELAW finally received the payment it was due under the Stipulation. I informed Chevron of this fact by e-mail, and also requested a prompt response to my letter of September 12. A true and correct copy of that e-mail is attached at Ex. 1, p. 124.

31. That same day, but after COB, I received a letter in response from Chevron. A true and correct copy of that letter is attached at Ex. 1, pp. 125-127. In its response, Chevron indicated that it would not pay for the extra time incurred by ELAW in comparing the "list of names" against the privilege log. *Id*. at 126-127. Chevron did agree that informing Magistrate Judge Coffin was a good idea, but did not indicate whether it would file a joint letter with ELAW. *Id.* The tone of Chevron's letter was not consistent with prior expressions of intent to resolve issues, going so far as to accuse me of threatening to "obstruct Thursday's deposition by instructing your client not to answer non-objectionable questions." *Id*. at 127.

32. Given that the deposition of Mr. Johnson was only two days away, I responded to Chevron's letter late in the evening on September 13. A true and correct copy of my response is attached at Ex. 1, pp. 128-130. In that letter, I first described that ELAW's obligations under the Stipulation ended over a month prior, and that any questions answered were done in good faith in excess of ELAW's obligations. *Id*. at 128. I also explained that Chevron's subpoenas had placed an undue burden on ELAW, raising

questions about the process Chevron had used to obtain non-party, non-witness discovery. *Id*. Next, I laid out ELAW's rationale for why it should be compensated for time incurred comparing Chevron's list to ELAW's privilege log and for time spent on the Deposition Subpoena. *Id.* at 129. I also offered to discuss an amicable resolution as set forth in my prior September 12 letter, and in my prior discussions with Chevron. *Id*. at 130. I reiterated, however, that ELAW would not provide the "comparison" list unless Chevron agreed to compensate ELAW for the time it spent completing that task. *Id*. at 129. Finally, I explained that ELAW had no intentions of obstructing the deposition; to the contrary, ELAW had only informed Chevron that it would not allow the deposition to be used as a means of probing the privilege log in violation of the Stipulation. *Id*. at 130. I responded via email and made clear that ELAW was expecting Chevron to pay for all time incurred as a result of the Deposition Subpoena. *Id*. at 131. I later made a specific offer to settle fees through the completion of the deposition, which Chevron's counsel said they would take to their client, but was later rejected entirely.

33. On September 14, counsel for Chevron indicated in an e-mail that Chevron had reversed its previous position and would be willing to pay ELAW's fees associated with the comparison. A true and correct copy of that e-mail is attached at Ex. 1, pp. 131-32. Chevron also agreed to further discussion of limiting the scope of the deposition and paying ELAW's costs for the deposition. *Id*.

34. Later that day, I provided Chevron with a draft of a joint letter to be provided to Judge Coffin in advance of the deposition. A true and correct copy of that draft letter is attached at Ex. 1, pp. 133-35.

35. The parties continued to confer on September 14, eventually agreeing that (1) Chevron would pay ELAW's fees for the comparison search, (2) ELAW would submit a fee petition to this Court concerning all fees incurred by ELAW that were unresolved, including fees incurred on the fee petition itself, and (3) ELAW would provide Chevron with the comparison document. A true and correct copy of the e-mail chain which memorialized these agreements is attached at Ex. 1, pp. 136-141. ELAW provided the comparison document later that day, *id*. at 139, and then spent a significant amount of time responding to Chevron's additional questions concerning the comparison document itself. *See id*. at 136-138 (e-mail chain in which Daniel Snyder answered numerous questions from Chevron concerning the comparison list late into the night of September 14).

36. Both parties ended up submitting individual letters to Magistrate Judge Coffin in advance of the deposition. Even though we had discussed making the letters as objective as possible, Chevron's letter contained inappropriate posturing and argument.

A true and correct copy of Chevron's letter is attached at Ex. 1, pp. 142-45. ELAW's letter may be found at Ex. 1, p. 133-35.

37. On September 15, Mr. Johnson and ELAW's counsel arrived on-time for the deposition, scheduled to begin at 9:00 a.m. The deposition did not start until 9:18 a.m., however, because Chevron was not prepared to proceed on time. Chevron's first series of questions pertained to Mr. Johnson's background information and were far more detailed than necessary for a non-party, non-witness. At 10:20 a.m., Chevron requested a 20-minute break, but then took 31 minutes before going back on the record. Chevron asked for another 10-minute break at 11:48 a.m., but was not prepared to restart the deposition until 12:03 p.m. This practice continued throughout the day such that, by 3:36 p.m., Chevron had only gotten 4 hours and 20 minutes on the record. In total, Chevron took 94 minutes of break time, not including a 45-minute lunch break, which Chevron requested. At the end of the day, which ran from 9:00 a.m. to 5:15 p.m., Chevron had 5 hours and 58 minutes on the record.

38. Throughout the day's questioning, Chevron's counsel took significant pauses between many questions. The video deposition, if needed, will reflect the many pauses and substantiate the factual representations provided herein. At 1:02 p.m. Chevron requested a break for lunch. I asked Chevron's counsel how long they wanted to take for lunch. Ms. Hendricks stated 45 minutes - Chevron ordered in. ELAW returned and was ready to proceed at 1:47 p.m. Chevron did not return to the room and proceed until 1:56 p.m.

39. Chevron requested a 5 minute break, at 2:48 p.m., but was not ready to go back on the record until 2:55 p.m.

40. Another 5 minute break was requested by Chevron at 3:22 p.m., but Chevron was not ready proceed until 3:36 p.m. Just prior to the 3:22 p.m. break I asked how long Chevron intended the deposition to go. I was told that they intended to use 7 hours of on-the-record time. I then informed Ms. Hendricks, after trying unsuccessfully before the previous break, that my client had to leave by 5 p.m., so that if important questions existed, now would be the time to ask them.

41. At 4:18 p.m., Mr. Johnson requested a 2 minute break and the parties were back on the record at 4:22 p.m. Prior to and during that break, I requested that the court reporter tally all "asked and answered" objections to that point. I was later told by the court reporter "approximately" 51 such objections had been recorded to that point. Numerous more such objections were interposed after the tally.

42. We went off the record for 1 minute at 5:03 p.m. and back on at 5:04 p.m. I then informed Ms. Hendricks that, out of courtesy, my client would remain until 5:15 p.m. but that I needed two minutes of that time to ask a few questions. Ms. Hendricks

continued forward until 5:13 p.m. and I had to call time. We argued over the continuation of the deposition. She threatened to walk out. I asked my 6 questions in less than two minutes and called the deposition over, despite Chevron's objections. My client had 15 eleven year-old female soccer players to coach and be responsible for. The deposition ended at 5:16 p.m., with Chevron having used nearly six hours on the record.

43. During the deposition, counsel for Chevron exhibited a propensity to mischaracterize Mr. Johnson's prior testimony. I made numerous of "misstates prior testimony" objections throughout the day. Even though Mr. Johnson made clear that ELAW did no work for the Lago Agrio Plaintiffs, counsel for Chevron consistently posed questions which improperly distorted this testimony. *See* Transcript of Bern Johnson Deposition, attached hereto at Exhibit 2, p. 125 ("Had you heard about the Lago Agrio litigation before ELAW started working with the Lago Agrio plaintiffs?); p. 182 ("And what other work has ELAW done for the Lago Agrio plaintiffs besides the amicus brief?"); p. 191 ("What work was ELAW doing for the Lago Agrio plaintiffs in December 2008?"); p. 199 ("Was ELAW continuing to work for the Lago Agrio plaintiffs in 2010?"); p. 206 ("Was that because the misdeeds that you had heard about made you question whether you should be supporting the Lago Agrio plaintiffs' efforts?").

44. At one point, Chevron used up nearly 11 pages of deposition transcript asking Mr. Johnson whether he recognized individuals on a list of names propounded by Chevron. *Id*. at 150-161. Rather than simply asking Mr. Johnson to review the exhibit, Chevron instead opted to take significant time going through the list name-by-name, asking after each name if Mr. Johnson was familiar with it. *Id*.

45. Chevron's counsel also posed inappropriate questions pertaining to the Stipulation during the deposition. For instance, Ms. Hendricks, who conducted Chevron's deposition of Mr. Johnson, asked the deponent to explain information contained in one of ELAW's privilege documents as identified on the privilege log. *Id*. at 187-88. I instructed Mr. Johnson not to answer, and then informed Chevron that this line of questioning raised the exact concerns ELAW mentioned about the scope of the deposition in the calls leading up to the deposition. *Id.*

46. The facts set forth in this declaration as they pertain to the September 15, 2011 deposition of Bern Johnson were primarily recorded by me on Friday, September 16, while the events were still fresh in my mind and were based on notes taken during the deposition.

47. On September 19, I provided an e-mail to Chevron containing ELAW's bill for the time spent comparing Chevron's "list of names" against ELAW's privilege log. A true and

correct copy of that e-mail is attached at Ex. 1, pp. 146-48. ELAW's total time spent on this task – a task which Chevron requested ELAW to perform – was $1,400. Chevron refused to pay the total amount, which included the time that Daniel Snyder spent answering Chevron's questions late into the night on September 14. Instead, Chevron excluded that time and agreed to only pay $1,191. *Id*. at 146. The remainder it said was not appropriate for compensation. I informed them that I disagreed. Rather than dispute the small difference at that point, I told them that any further difference would be raised in the fee petition, if we did not resolve the matter of other fees.

48. On September 21, Chevron sent me an e-mail containing an Order from the Second Circuit Court of Appeals. A true and correct copy of that e-mail and the Order are attached at Ex. 1, pp. 149-151. The Order vacated the District Court of New York's preliminary injunction against enforcement of the $18 billion judgment against Chevron issued by the Ecuadorian Court in the Lago Agrio Litigation. *Id*. at 151. It also stayed Count 9 of Chevron's RICO lawsuit, the principal claim by Chevron to invalidate the Ecuadorian judgment and for which it initially sought non-party discovery from ELAW in the first place. *See id.* Despite the provision of thousands of documents and six hours of deposition time (during a more than 8 hour time frame), counsel for Chevron indicated that "Chevron reserves any and all rights concerning its efforts to seek discovery from ELAW and Bern Johnson." *Id*. at 149. Should Chevron attempt any further discovery from ELAW, ELAW will move for a protective order.

49. On September 22, I provided an e-mail to Chevron containing ELAW's bill for all time incurred since August 8 for my associate, Daniel C. Snyder, and since August 11 for my time. A true and correct copy of the e-mail is attached at Ex. 1, pp. 152-54. I sent this e-mail to offer Chevron one last opportunity to compensate ELAW for the time it spent dealing with the Deposition Subpoena and Chevron's further untimely questions before filing a fee petition. Prior to the deposition, on September 14, I had offered to Ms. Hendricks to settle the fee dispute if Chevron agreed to pay ELAW $15,679. Chevron, later that same day, rejected that offer and made no counter offer. Now having reviewed the actual billing records, at the time the total due to ELAW would have been $21,423. This amount included the hours ELAW incurred responding to Chevron's questions and requests, communicating with Chevron after document production during August and September, deposition preparation, and sitting for the deposition itself. *Id*. at 153. I also reminded Chevron that if ELAW were forced to petition the court for fees, ELAW would also seek compensation for time spent preparing the fee petition.

50. Chevron refused to pay ELAW for the post-August 10 time. *Id*. at 152. ELAW did, however, receive a check from Chevron on October 11 for $1,191. This amount represented a portion of the time ELAW spent comparing Chevron's "list of names" against the privilege log. The full amount requested was $1,400.

51. Chevron previously agreed to pay ELAW's counsel at the rate of $450/hr for Mr. Tebbutt and $190/hr for Mr. Snyder. Thus, hourly rates for the time spent are not in dispute.

52. In order to keep fees as low as possible, I instructed Mr. Snyder and my paralegal, Marisela Taylor, to perform as much of the research, preparation and drafting as possible.

Under penalty of perjury, I declare that the foregoing is true and correct to the best of my knowledge.

Submitted this 17th day of October, 2011.

s/Charles M. Tebbutt

Charles M. Tebbutt
Counsel for ELAW