

COUNTERCLAIMS

Defendants and Counter-Claimants Steven Donziger, The Law Offices of Steven R. Donziger, and Donziger & Associates, PLLC (collectively, “Donziger”) for their Counterclaims against Plaintiff and Counter-Claim Defendant Chevron Corporation (“Chevron”) allege as follows:

I. INTRODUCTION

1. By no later than 2009, Chevron recognized that it was on the verge of losing one of the largest oil-related contamination lawsuits ever to go to trial, *Maria Aguinda y Otros v. Chevron Corporation* (the “Lago Agrio Litigation”), which had been wending its way through the United States and then the Ecuadorian court systems for 16 years. Chevron’s own documents, internal environmental audits, and expert analyses confirmed the toxic legacy its predecessor, Texaco, Inc. (“Texaco”), intentionally and knowingly had left behind in the Oriente region of Ecuador. And Chevron was running out of maneuvers to dodge entirely or delay a final adjudication of the claims against it on the merits.

2. Texaco—and, later, a merged entity referring to itself as “ChevronTexaco”—repeatedly had demanded that the trial not be heard in United States federal court in New York, the plaintiffs’ preferred forum, but rather in Ecuador, a forum which Chevron successfully argued to the Southern District of New York and the Second Circuit Court of Appeals was “fair” and “totally adequate” and capable of handling a complex lawsuit against a foreign corporation such as Chevron. In so doing, Chevron did not believe that the 30,000 indigenous peoples and others impacted by Texaco’s misconduct (the “Afectados”—who grew up drinking from the streams into which the company has admitted dumping billions of gallons of toxic “production water” during its 25 years of profitable operations in the region—would re-

file their environmental claims in Ecuador, or that Chevron would fail in its efforts to derail any Ecuadorian lawsuit.

3. However, representatives of the Afectados, the “Ecuadorian Plaintiffs,” did refile their claims, in the Provincial Court of Sucumbíos (“the Lago Agrio Court”) in the town of Lago Agrio, surrounded by the hundreds of unlined, sludge-filled toxic waste pits that Texaco carved out of the jungle floor and abandoned when it left the country in 1992. And despite Chevron’s best efforts to delay the litigation through abusive procedural maneuvers and to sabotage it entirely through political pressure and other tactics, the Lago Agrio Court succeeded in managing a multi-year evidentiary process that involved dozens of judicially supervised site inspections, more than 100 expert reports, numerous fact witnesses, and the submission by the parties of over 64,000 chemical sampling results of soil and water.

4. As it became increasingly clear in light of the mounting evidence that Chevron would not be able to avoid a judgment against it on the merits, Chevron decided to embark on a new strategy to coerce a favorable outcome to the Lago Agrio Litigation. Specifically, Chevron decided to fraudulently vilify both the Ecuadorian judiciary and the lawyers, including, most vociferously, Donziger, who chose to champion the Afectados’ cause and represent the Ecuadorian Plaintiffs against one of the most powerful corporations on Earth.

5. Chevron’s new strategy was multi-faceted, but involved—and continues to involve—three main avenues of attack: (1) fabricating evidence of corruption against Chevron, then using this false and misleading “evidence” to taint the Lago Agrio Litigation and the resulting outcome; (2) misrepresenting that the voluminous and valid scientific, documentary and eyewitness evidence adduced by the Lago Agrio Court during the eight-year trial—which clearly established Chevron’s liability—was “illegitimate” so as to cast doubt

both on the outcome and on the integrity of Donziger and the rest of the Ecuadorian Plaintiffs' legal team; and (3) leveling false and misleading claims of fraud and other misconduct against Donziger and the rest of the Ecuadorian Plaintiffs' legal team in an effort to damage their reputations, disrupt their relationships with each other, with the Ecuadorian Plaintiffs, and with supporters of the litigation, instill in them fear of economic and other harm should they continue their efforts on behalf of the Ecuadorian Plaintiffs, and taint the Lago Agrio Litigation and resulting outcome.

6. The ultimate goal of Chevron's coordinated scheme of false and misleading statements and extortion was and is to eliminate the lawful fruits of Donziger's and the Ecuadorian Plaintiffs' now nearly 19-years' worth of legal efforts in the United States and Ecuador. With respect to Donziger in particular, the goal of Chevron's fraud and extortion is to coerce Donziger into abandoning or unjustly compromising his efforts to hold Chevron accountable for the environmental devastation its predecessor caused in the Ecuadorian Amazon, thereby depriving him of his rights and interests in advising the Ecuadorian Plaintiffs free from fear and intimidation, as well as his contingency fee interests in the \$19 billion judgment rendered against Chevron.

7. Chevron already has benefitted greatly from its scheme by avoiding, to date, payment of the billions of dollars in damages it owes under the judgment in the Lago Agrio Litigation. Chevron also has caused significant reputational and financial harm to Donziger through its fraud and extortion, including, but not limited to, forcing Donziger to incur substantial legal fees and costs to defend himself against Chevron's attacks and to uncover Chevron's wrongdoing.

II. PARTIES

8. Counter-Claim Plaintiff Steven Donziger is a New York attorney and legal advisor to the Ecuadorian Plaintiffs in the Lago Agrio Litigation in Ecuador. Steven Donziger also holds a contingency fee interest in the \$19 billion judgment awarded against Chevron in the Lago Agrio Litigation. Donziger is a citizen of New York.

9. Counter-Claim Plaintiff The Law Offices of Steven R. Donziger is a sole proprietorship located in New York, New York, which is owned and operated by Steven Donziger. The Law Offices of Steven R. Donziger is a citizen of New York.

10. Counter-Claim Plaintiff Donziger & Associates, PLLC is a professional limited liability corporation located in New York New York, which is owned and operated by Steven Donziger. Donziger & Associates, PLLC is a citizen of New York.

11. Counter-Claim Defendant Chevron Corporation is a multinational energy company, incorporated in the state of Delaware with its principal place of business in San Ramon, California. Chevron is therefore a citizen of Delaware and California. Chevron's predecessor-in-interest, Texaco, Inc., conducted petroleum exploration and production operations in the Oriente District of eastern Ecuador between 1964 and 1992. Chevron was and is the defendant/ judgment debtor in the Lago Agrio Litigation in Ecuador.

III. SUBJECT MATTER JURISDICTION AND VENUE

12. This Court has subject matter jurisdiction over Donziger's Counterclaims under 28 U.S.C. § 1332 because there is a complete diversity of citizenship between the parties and the amount in controversy exceeds \$75,000 exclusive of interest and costs. Donziger's counterclaims arise out of the same controversy as Chevron's federal claims, as all claims arise out of a common nucleus of operative facts. Thus, this Court also has subject matter jurisdiction over Donziger's Counterclaims under 28 U.S.C. § 1367.

13. Venue is proper in this District under 28 U.S.C. § 1391(b)(2), as a substantial number of events giving rise to Donziger's Counterclaims, including particularly a number of Chevron's tortious actions, occurred in this District, and also under 18 U.S.C. § 1965.

IV. PERSONAL JURISDICTION

14. Exercise of personal jurisdiction over Counterclaim Defendant Chevron is reasonable and proper in this District because Chevron conducts extensive business activities within the State of New York, has engaged in tortious conduct in New York which gives rise in part to Donziger's Counterclaims, and has committed tortious acts that have caused injury within New York State. For Donziger's claims for violations of state law, the exercise of jurisdiction over Chevron is proper in this District pursuant to 18 U.S.C. 1965(a) and N.Y. C.P.L.R. 301 and 302.

V. FACTUAL BASIS FOR COUNTER-CLAIMS

A. After eighteen years of procedural maneuvers, false promises, and abusive litigation, Chevron begins to run out of options for sidestepping liability for the harms caused by its predecessor's operations in Ecuador.

1. Chevron's predecessor Texaco utilizes sub-standard practices in the Ecuadorian Amazon in order to maximize its profits, causing extensive contamination.

15. From 1964 to 1992, Texaco owned an interest in an approximately 1,500 square-mile petroleum concession in Ecuador (the "Napo Concession" or the "Concession") that contained numerous oil fields, roughly 375 working well sites and production stations, and hundreds of miles of pipelines.

16. Although the Napo Concession was owned by a consortium comprised of Texaco and Ecuador's state-owned oil company, Petroecuador,³ between 1964 and June 1990 Texaco

³ The consortium originally was comprised of Texaco and Gulf Oil Corporation. By 1976,

was the sole operator of the Concession and was responsible for all drilling activities, well sites, production stations, and pipelines in the Concession. Texaco designed, engineered, built and maintained the entire system of oil extraction in the Concession, and built and operated the Trans-Ecuador pipeline that was used to carry the crude oil from the Concession to the Pacific Coast, where it could be transported by tanker and sold on the international market.

17. As designer and operator of the Concession, Texaco knowingly and deliberately implemented sub-standard operational practices that contaminated a wide swath of the Amazon rainforest in Ecuador with toxins that are harmful to human health and the environment.

18. For example, deep underground “re-injection” of production water⁴ had been a standard industry practice for production water disposal in the United States since the 1940s, nearly 30 years before Texaco began extracting oil in Ecuador. Indeed, a Texaco engineer authored the chapter of a 1962 industry text entitled Primer of Oil & Gas Production, which stated: “Extreme care must be exercised in handling and disposition of produced water not only because of possible damage to agriculture, but also because of the possibility of polluting lakes and rivers which provide water for drinking as well as for irrigating purposes.”

19. Yet in Ecuador, notwithstanding the knowledge and technological capacity to inject production water back underground to avoid contamination, Texaco elected to discharge billions of gallons of production water directly into the surface waters of the Amazon basin—roughly four million gallons *per day* at the height of Texaco’s operations.

Petroecuador had acquired Gulf Oil’s interest in the consortium.

⁴ Production water is water that occurs underground with the oil and typically contains: (a) metals, chlorides, and other chemicals that leach out of the underground rock formations where the oil occurs; (b) chemicals that are injected down into wells to enhance well production; and (c) petroleum compounds such as benzene that leach out of the oil into the production water.

20. The oil industry also has generally known since the early 1930s that *unlined* oil waste pits tend to leak and are a source of pollution. Nevertheless, to lower production costs to an absolute minimum and in violation of industry standards, Texaco carved roughly 900 open-air, oil-production waste pits in and around its well sites, directly into the floor of the jungle and then filled the waste pits with toxic “drilling muds”⁵ and oil waste, and used them for long-term or permanent, rather than temporary, storage of that toxic waste. Texaco did not install linings to prevent the toxic contents of these pits from leaching into the surrounding soils and groundwater and overflowing into nearby streams and rivers that indigenous groups in the area relied on for their drinking water and sustenance. Indeed, Texaco designed and built many of its pits with piping systems used to drain the toxic waste into nearby streams and rivers.

21. Texaco deliberately rejected best practices widely used in the United States in favor of these dangerous—but cheaper—methods. In a 1976 letter, a Texaco manager located in Quito, Ecuador informed the Chairman of the company’s Board of Directors that the Ecuadorian government’s Hydrocarbon Chairman had requested that Texaco drain and cover its pits in light of a recent “contamination problem” caused by breaks in Texaco’s pits due to “excessive rains and, in some cases, as a result of improper drainage of the pits.” Texaco did not adopt this proposal, noting that it “[would] be significantly more expensive.”

22. A few years later, in a 1980 letter responding to the Ecuadorian government’s request that Texaco conduct a study concerning possible elimination of the unlined pits,

⁵ Drilling muds are liquid solutions that are circulated through wells during drilling to lubricate and cool the drill head, to carry the drill cuttings to the surface, and to maintain pressure in the well. This process generates waste that includes excess drilling mud, drill cuttings, and other chemicals used during the drilling process to increase well performance. The specific chemicals in drilling mud waste include barium, heavy metals (including chromium, chromium 6, lead, and zinc), chloride, petroleum compounds, and acid.

memorandum to Texaco Petroleum's acting manager in Ecuador entitled "Reporting of Environmental Incidents: New Instructions" (the "Shields Memorandum").

27. The Shields Memorandum instructed the company's employees in Ecuador only to record spills and other environmental incidents if the media or the government became independently aware of the incident: "Only major events . . . are to be reported . . . A major event is further defined as one which attracts the attention of press and/or regulatory authorities or in your judgment merits reporting."

28. The Shields Memorandum also instructed Texaco personnel to *destroy* spill records: "No reports are to be kept on a routine basis and all previous reports are to be removed from Field and Division offices and destroyed."

2. Anticipating a politically motivated dismissal from a cooperative government, Texaco, and later Chevron, fights for nine years to move the Ecuadorian Plaintiffs' lawsuit to Ecuador.

29. In 1993, the Ecuadorian Plaintiffs filed a federal class-action lawsuit against Texaco in the United States District Court for the Southern District of New York, then-site of Texaco's global headquarters.⁶ The plaintiffs in the *Aguinda* lawsuit "sought money damages under theories of negligence, public and private nuisance, strict liability, medical monitoring, trespass, civil conspiracy, and violations of the Alien Tort Claims Act," as well as "extensive equitable relief to redress contamination of the water supplies and environment."⁷

30. After the *Aguinda* litigation was filed, Texaco began exploring ways in which the Ecuadorian government could help it avoid responsibility. Texaco began "working with certain

⁶ The action is commonly referred to as the "*Aguinda*" litigation, in reference to one of the named plaintiffs, Maria Aguinda of the Kichwa indigenous group.

⁷ *Aguinda v. Texaco, Inc.*, 303 F.3d 470, 473 (2d Cir. 2002).

opinion leaders in Ecuador to explain the implications of the law suit for investments in Ecuador.” The company’s “image management” consultant, Holwill & Company, advised it to “identify [its Ecuadorian] allies and prompt them to speak out in a reasonable manner.” Texaco met behind the scenes with top-level politicians who, like Ecuador’s then-Vice President, “seemed as interested in touting Texaco’s interest publicly as [they were] in Texaco actually making new investments.” At a meeting between Texaco officials and Ecuador’s Minister of Energy, the Minister explained that he had to *appear* critical of Texaco as the public raised questions about why the company should be allowed to do continued business in Ecuador in light of its “outstanding issues,” but “[h]e winked and added that this was ‘just politics’.”

31. In May 1995, Texaco entered into a contract with the government of Ecuador whereby Texaco would perform environmental remediation work in the Concession in exchange for a release from liability from the government. The release stated that 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 . . .”

32. Earlier drafts of the release language were much broader. For example, Texaco’s draft Memorandum of Understanding, which preceded the final agreement, initially proposed not only the release of claims by the Ecuadorian government 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 . . .”

33. Ecuadorian environmental groups and other interested third-parties objected to the broad release language in Chevron’s early drafts. And, ultimately, the proposed broader release

language was not included in either the final Memorandum of Understanding or in the final agreement itself.

34. Nonetheless, Texaco attempted to use the release to undermine the *Aguinda* litigation. On December 22, 1994, Texaco asserted in the *Aguinda* case that “in light of the settlement entered into between Texaco and Ecuador, ‘th[e] Court should dismiss the *Aguinda* Complaint in its entirety.”⁸

35. But the Southern District of New York court did not dismiss the *Aguinda* litigation based on the settlement and release. In fact, another court in this District observed years later: “[I]t is highly unlikely that a settlement entered into while *Aguinda* was pending would have neglected to mention the third-party claims being contemporaneously made in *Aguinda* if it had been intended to release those claims or to create an obligation to indemnify against them.”⁹

36. Having failed in its gambit to use the release it had obtained from the government of Ecuador to dispose of the *Aguinda* case, Chevron fought for roughly nine years to have the case dismissed on *forum non conveniens* grounds, so as to avoid any United States court ruling on its misconduct in Ecuador.

37. Although Texaco’s headquarters were in New York, Texaco argued that Ecuador was the appropriate forum to hear the Afectados’ claims. Texaco heaped effusive praise on Ecuador’s civil justice system. Texaco submitted sworn affidavits from numerous experts and its own lawyers touting the fairness and capabilities of the Ecuadorian courts and their capacity adequately to handle complex litigation against foreign corporations. For example, Texaco

⁸ Memo. Decision & Order dated June 19, 1995, *Aguinda v. Texaco Inc.*, 93 Civ. 7527 (BDP) (LMS) (S.D.N.Y.), at 4.

⁹ *Republic of Ecuador v. ChevronTexaco Corp.*, 376 F. Supp.2d 334, 374 (S.D.N.Y. 2005).

affiant José María Pérez-Arteta pledged that Ecuador has a “corruption-free history of litigation against multi-nationals and other oil companies in Ecuador. Ecuador’s courts have adjudicated, and continue to adjudicate, many cases involving oil companies in an impartial and fair manner.”

38. Texaco also made a series of promises that, if its motion were granted, the company would (1) submit to the jurisdiction of the Ecuadorian courts, (2) waive any statute of limitations defenses, and (3) satisfy any Ecuadorian final judgment, subject only to a reservation that it could invoke the limited defenses identified in New York’s Foreign Money Judgment Recognition Act. The Southern District of New York again granted Texaco its *forum non conveniens* dismissal on that conditional basis.

39. While its *forum non conveniens* dismissal was being considered on appeal by the Second Circuit, Texaco merged with Chevron, and the resulting entity began referring to itself as “ChevronTexaco.” ChevronTexaco replaced Texaco before the Second Circuit Court of Appeals and then “reaffirmed the concessions” that its predecessor made in the district court to secure the *forum non conveniens* dismissal.¹⁰

40. Indeed, ChevronTexaco attempted to use the merger to its advantage, arguing to the Second Circuit: “In their brief, plaintiffs argue that these lawsuits should proceed in New York because it is ‘the home of Texaco Inc.’ That is no longer true. . . . Texaco merged with Chevron Inc. on October 9, 2001, five months after the District Court’s decision. The resulting corporation, ChevronTexaco, Inc., is headquartered in San Francisco. ChevronTexaco is in the process of closing down what remains of Texaco’s former offices in White Plains, New York.”

¹⁰ *Republic of Ecuador v. Chevron Corp.*, 638 F.3d 384, 390 n. 3 (2d Cir. 2011)

41. The Second Circuit affirmed the dismissal on the condition that ChevronTexaco adhere to its promises and concessions.¹¹

42. In May 2003, representatives of the Afectados re-filed their claims in the Sucumbíos Trial Court (the “Lago Agrio Court”) in Lago Agrio, Ecuador (the “Lago Agrio Litigation”). It quickly became apparent that Chevron had no intention of honoring its promises, litigating in good faith, or respecting the Ecuadorian judicial system.

43. Although Texaco, and later, “ChevronTexaco,” repeatedly promised the Southern District of New York and the Second Circuit that it would not object to jurisdiction in Ecuador, ChevronTexaco’s Answer to the Ecuadorian Plaintiffs’ Complaint stated: “It is further claimed that in the aforementioned capacity CHEVRONTEXACO CORPORATION has agreed to subject itself to the jurisdiction of Ecuadorian courts. However, the corporation I represent, CHEVRONTEXACO CORPORATION, is not the successor of Texaco Inc., and it has never acted in the Republic of Ecuador, nor has it signed contracts with the Ecuadorian Government, nor with sectional or administrative entities, nor has it subjected itself in any manner whatsoever to the jurisdiction of the Judiciary of the Republic of Ecuador. As a result, I state that you, Mr. President of the Superior Court of Justice of Lago Agrio, lack jurisdiction and competency over CHEVRONTEXACO CORPORATION.” Chevron also reneged on its promise not to raise a statute of limitations defense.

44. Chevron’s manager of global issues and policy, Silvia Garrigo, was confronted about Chevron’s reneging in a segment on the news program *60 Minutes* in 2009. When asked how Chevron could justify challenging jurisdiction in Ecuador when it had promised that it

¹¹ *Aguinda v. Texaco, Inc.*, 303 F.3d 470 (2d Cir. 2002).

would acquiesce to Ecuador's jurisdiction, Garrigo responded: "We didn't want to get sued, period."

45. Picking up where it left off with *Aguinda*, Chevron also secretly worked behind the scenes to use its political and economic influence in Ecuador to engineer a dismissal of the Lago Agrio Litigation. For example, Chevron representatives repeatedly sought assurances from Ecuador's Attorney General that the case would be handled in a manner favorable to Chevron. Chevron also met with numerous other senior Ecuadorian government officials during the course of the Lago Agrio Litigation, including in 2005 then-President of Ecuador Alfredo Palacio, and made similar demands.

46. When these efforts did not yield the expected result, a swift, politically-motivated dismissal of the Lago Agrio Litigation, Chevron began to take a different tack with the government of Ecuador, threatening it with serious economic harm if it did not assist Chevron in avoiding liability. Chevron's efforts to threaten and intimidate the government of Ecuador into interfering with the Lago Agrio Litigation continue to the present, and include a multi-million dollar lobbying campaign to strip Ecuador of crucial trade privileges with the United States—a campaign that one U.S. Congresswoman from Chevron's home state has described as "little more than extortion Apparently, if it can't get the outcome it wants from the Ecuadorian court system, Chevron will use the US government to deny trade benefits until Ecuador cries uncle."

47. Additionally, Chevron harnessed its contacts and influence with the Ecuadorian military to assist Chevron in its efforts to disrupt and delay the Lago Agrio Litigation. For example, on October 19, 2005, the Lago Agrio Court was scheduled to preside over a judicial site inspection of the Guanta separation station near the town of Lago Agrio. Due to the large

volume of oil processed and waste historically discharged at the station, and its location on ancestral lands of an indigenous group (the Cofán), this was to be one of the most important and well-publicized site inspections in the trial.

48. On the day before the Guanta inspection was scheduled to occur, Chevron agents delivered to the Lago Agrio Court a military report warning of a security threat at the Guanta site. Immediately after the delivery of this report, Chevron's lawyers submitted an *ex parte* request to the court demanding cancellation of the inspection. The Lago Agrio Court thereafter granted Chevron's request and ordered the inspection canceled.

49. Over the following weeks, counsel for the Ecuadorian Plaintiffs investigated the events surrounding the abrupt cancellation of the Guanta inspection. Lieutenant Colonel Francisco Narváez, commander of the military base from which the report emanated, disclosed that Chevron's lead counsel was a friend and that many Chevron representatives lived at the military base during active periods of the Lago Agrio Litigation.

50. The Ecuadorian Ministry of Defense released, in late November 2005, a contract between Chevron and the Ecuadorian military. The contract showed that Chevron's lawyers and other agents lived in a fully-equipped villa on the base, which Chevron had constructed at its own expense—a villa that, according to the contract, ultimately would be “donated” to the base for the “enjoyment” of the military officers.

51. On February 3, 2006, Ecuador's Subsecretary of National Defense provided the Lago Agrio Court with an official report regarding the Guanta inspection cancellation, which included a sworn affidavit from Major Arturo Velasco, who signed the false Guanta threat report.

52. In his affidavit, Velasco stated that 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 former senior captain in the Ecuadorian military. The two men claimed to have received information about supposed security threats related to the inspection. The Chevron agents, however, were not interested in additional security; rather, they wanted “to suspend the judicial audience,” and to accomplish this they needed Velasco to communicate their “information” to the Lago Agrio Court in his official capacity. Although Velasco resisted the idea of preparing such a report, Chevron’s security agent pressured Velasco with growing “insistence.” Chevron’s security agent warned that if a military document did not get to the Court before 6 p.m., there were “going to be problems.” Velasco eventually cooperated.

53. When the truth finally emerged, the Guanta inspection cancellation confirmed one of the Ecuadorian Plaintiffs’ concerns about moving the *Aguinda* litigation from New York to Ecuador: that Chevron might attempt to use its military ties to its advantage. Predictably, Chevron had produced an affidavit from counsel to assure the Southern District of New York that the plaintiffs’ concerns were unfounded:

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.* (Emphasis added).

54. But Ecuador’s independent judiciary ultimately withstood all the political and military pressure and interference Chevron sought to impose on it. While Chevron’s attempts to sabotage the trial succeeded in dragging the proceedings out for years, Chevron was unable to halt them altogether—and the Lago Agrio Court ultimately compiled a massive evidentiary record documenting Texaco’s, and Chevron’s, wrongdoing.

B. Chevron embarks upon a systematic campaign of false and misleading statements regarding the Lago Agrio Litigation, Donziger, and other supporters of the Ecuadorian Plaintiffs.

55. By 2009, it was becoming apparent to Chevron that the Lago Agrio proceedings

were nearing an end, and that Chevron could not hope to prevail on the merits given all of the evidence in the record regarding Texaco's misconduct and the resulting environmental harm. Chevron, therefore, needed a new strategy.

56. The new strategy that Chevron, acting through its senior officers and managers, including its Chairman and CEO, John Watson, and its General Counsel, R. Hewitt Pate, together with its new American counsel and other agents and representatives, settled upon was to weave a false and misleading narrative of fraud, collusion and corruption in connection with the Lago Agrio Litigation, and then propagate this fraudulent narrative through a massive public relations, lobbying, and collateral litigation campaign, in hopes of persuading the recipients of its false and misleading representations that the Lago Agrio Litigation was simply a part of "a disturbing phenomenon" of "U.S.-based plaintiffs' lawyers colluding with corrupt foreign courts to fabricate whopping civil judgments against American companies, and then using the bogus judgments to try to coerce a big settlement."

57. In adopting this new strategy, Chevron decided to make Donziger—who Chevron recognized as being a key advisor to the Ecuadorian Plaintiffs and a key organizer of Ecuadorian Plaintiffs' legal efforts—the principal protagonist in its fraudulent narrative in hopes of persuading the world that Donziger "orchestrate[ed] corruption, with the goal of obtaining a fraudulent multi-billion dollar judgment against Chevron" and that he was "at the center of a decades-long \$27.3 billion fraud[.]". In short, Chevron decided to follow the advice of "Dick the Butcher" in *Henry The Sixth*, part 2: "The first thing we do, let's kill all the lawyers."

58. As *Bloomberg Businessweek Magazine* has reported: “Faced with [Donziger’s] virtuoso maneuvering in Ecuador, the oil company changed strategy in the fall of 2009. It turned to Gibson, Dunn & Crutcher, a Los Angeles-based law firm that had recently rescued Dole Food (DOLE) from billions of dollars of pesticide liability in Nicaragua. Gibson Dunn advertises its ability to turn the tables on plaintiffs who secure foreign judgments against American companies. Unleashed by Chevron, a team from the firm led by Randy M. Mastro . . . trained its fierce attention on Donziger . . . On its website, the 1,000-attorney firm is marketing what might be called the Donziger Defense as a template other U.S. companies can purchase to combat social-reform suits filed overseas.”

59. Chevron’s new strategy had multiple illegitimate goals, including corruptly:

- a. damaging Donziger’s credibility and reputation;
- b. disrupting Donziger’s professional relationship with the Ecuadorian Plaintiffs and other members of their legal team and other supporters of the Lago Agrio Litigation;
- c. swaying public opinion and the opinion of supporters and potential supporters of the Ecuadorian Plaintiffs against Donziger and the Ecuadorian Plaintiffs;
- d. gaining the support of U.S. government officials in connection with Chevron’s efforts to force the Ecuadorian government to violate the constitutional independence of its judiciary by interfering with and stopping the Lago Agrio Litigation;
- e. gaining favorable rulings from U.S. and Ecuadorian courts against Donziger and other representatives and supporters of the Ecuadorian Plaintiffs with whom Donziger has worked;
- f. tainting the Lago Agrio judgment in the eyes of enforcement courts worldwide;
- g. persuading U.S. and Ecuadorian officials to investigate Donziger; and

h. coercing Donziger, as well as other lawyers, into abandoning the Lago Agio Litigation out of fear for their reputations, careers and livelihoods.

60. Chevron's campaign of false and misleading statements regarding the Lago Agio Litigation and Donziger has been and continues to be multi-faceted, involving dozens of fraudulent statements to a wide-ranging audience, including U.S. and Ecuadorian courts, U.S. and Ecuadorian government officials, international tribunals, supporters and potential supporters of the Ecuadorian Plaintiffs, the media, and the general public.

61. The full scope of Chevron's fraud will be revealed through discovery. However, specific examples already known to Donziger include the following:

C. Specific examples of Chevron's false and misleading representations regarding the Lago Agio Litigation, Donziger, and others representing the Ecuadorian Plaintiffs.

1. Chevron's false and misleading representations regarding the purported bias and corruption of Judge Nuñez.

62. On August 31, 2009, Chevron publicly released a series of four clandestine video recordings on YouTube in an orchestrated attempt to undermine and taint the Lago Agio Litigation.

63. Chevron represented that the video recordings "reveal a \$3 million bribery scheme implicating" Judge Juan Nuñez who, at the time, was presiding over the Lago Agio Litigation. Chevron also represented that the video recordings captured Judge Nuñez concluding 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."

64. An Ecuadorian citizen, Diego Borja, and an American, Wayne D. Hansen, created the video recordings between May and June 2009, using a hidden pen camera and a hidden watch camera.

65. In its press campaign coinciding with the public unveiling of the videos, Chevron claimed that the videos were made “without Chevron’s knowledge” and that the company “did not initiate or participate” in the scheme.

66. Chevron characterized Borja and Hansen as Good Samaritans, and represented that the two men were “prospective environmental remediation contractors” “pursuing business opportunities in Ecuador.” Chevron claimed that, in the course of pursuing these business opportunities, Borja and Hansen inadvertently stumbled upon “serious judicial misconduct,” and videotaped that alleged misconduct out of their concern for the integrity of the judicial system. Charles James, Chevron’s General Counsel at the time, told the *New York Times*: “I’d like to think he [Borja] brought [the videos] to us out of respect for our company and concern for what seemed to be transpiring here”

67. Although Chevron acknowledged that Borja had performed work as a “logistics contractor” for Chevron, Chevron maintained that Borja no longer had any ties to Chevron at the time of the recordings. The company disclaimed any association with Hansen, whom it described as an “American businessman.” Chevron also claimed that the company did not pay the two men for their efforts.

68. Chevron made the same series of representations to the Lago Agrio Court and to various Ecuadorian government agencies, including the Ecuadorian Solicitor General and the Ecuadorian Prosecutor General, with the intent that they rely upon them to Donziger’s and the Ecuadorian Plaintiffs’ detriment.

69. In conjunction with its release of the Borja and Hansen video recordings, Chevron announced that it would “seek the disqualification of the judge in the case and annulment of his prior rulings” and stated that the recordings “raise additional serious questions about corruption,

executive branch interference and prejudgment of the case that demand a full investigation. No judge who has participated in meetings of the type shown on these tapes could possibly deliver a legitimate decision.”

70. Chevron’s General Counsel James told the *New York Times*: “We think this information absolutely disqualifies the judge and nullifies anything that he has ever done in this case.”

71. Chevron’s claims immediately received great attention. By way of example, the day that Chevron launched its publicity campaign regarding the video recordings, the *New York Times* reported: “The oil giant Chevron said Monday that it had obtained video recordings of meetings in Ecuador this year that appear to reveal a bribery scheme connected to a \$27 billion lawsuit the company faces over environmental damage at oil fields it operated in remote areas of the Amazon forest in Ecuador.”

72. As a result of the videos, and Chevron’s corresponding representations regarding the origin and significance of the videos, Judge Nuñez felt compelled to recuse himself from the Lago Agrio Litigation to avoid any appearance of impropriety, even though there was no evidence that he engaged in wrongdoing.

73. Chevron continues to rely on the Borja and Hansen video recordings in press releases, public statements, and in filings with U.S. and Ecuadorian courts to support its claims of bias and corruption within the Ecuadorian judiciary and that the Lago Agrio proceedings were corrupt and illegitimate.

74. In its Amended Complaint in this action, Chevron states: “Judge Nuñez was ultimately forced to excuse himself from the case, not because of his apparent bias, but because of a bribery solicitation scandal where he was caught on video expressing his prejudgment

against Chevron. . . . Although Chevron filed a petition to annul all of Judge Nuñez's biased and politically influenced rulings in the Lago Agrio Litigation, that petition was denied by Judge Nuñez's replacement. Thus, Judge Nuñez's improper and bad faith judicial decisions continued to taint the Lago Agrio Litigation and undermine Chevron's rights, just as the RICO Defendants [including Donziger] hoped they would."

75. Chevron's representations regarding Borja and Hansen, their interactions with Judge Nuñez, and the nature of their connections to Chevron, were materially false and/or misleading.

- a. **Chevron Misrepresentation #1: The videos "reveal a \$3 million bribery scheme implicating" Judge Nuñez, who also "confirms that he will rule against Chevron and that appeals by [Chevron] will be denied."**

76. Chevron claimed that the videotapes depicted two separate acts of "judicial impropriety": (a) an alleged premature disclosure of the verdict, and (b) an alleged "bribery scheme." Both allegations, however, are belied by the videos themselves.

77. Media outlets such as the *New York Times*, the *Los Angeles Times*, and the *Financial Times* reviewed the videos and concluded that they do not support Chevron's grave allegations of "judicial impropriety."

78. The *Los Angeles Times* observed: "On the tapes, the men—a former Chevron contractor and an American businessman—press Nunez to say how he will rule, without success. Then, as Nunez prepares to leave, one of the men again maintains that Chevron is guilty, and Nunez replies, 'Yes, sir.' To Chevron, that clinches the argument [that the judge already has reached a decision prior to the close of evidence]. But on the video, it's unclear to whom the judge is speaking and whether he is responding to the question or just trying to end the meeting."

79. The *Financial Times* was equally skeptical about the claims Chevron was making concerning the contents of the videos, noting: “The judge refuses several times on the tape to reveal the verdict, before saying, ‘Yes, sir,’ when asked if he will find Chevron guilty. However, the video raises the question as to whether Judge Nunez understood what he was being asked.”

80. Indeed, during the course of the two meetings in which he participated, Judge Nuñez rebuffed Hansen’s and Borja’s attempts to coax the verdict from him on several occasions. Judge Nuñez became increasingly frustrated with the persistent badgering from Hansen about the verdict:

HANSEN: I want, uh, uh, tell them, ah, is it sure that Chevron’s going to lose [original in English]. . . . They’ve [Chevron] been the guilty party for more than many years, right?

JUDGE NUÑEZ: You’ll see that, Sir. *What you want to find out is whether it’s going to be guilty or not, I’m telling you that I can’t tell you that, I’m a judge, and I have to tell you in the ruling, not right now.*

* * *

So in the ruling, sir, I’ll say it. I haven’t, I haven’t come here to tell you that there will be a ruling, no, no, no, there’s a, there will be a ruling, Sir.

81. Equally specious is Chevron’s claim that the videos demonstrate Judge Nuñez’s involvement in a bribery scheme. As the *New York Times* observed after examining the videos:

The recordings, made by a former Ecuadorean contractor for Chevron by using hidden recording devices, do not make clear whether Judge Núñez was involved in a bribery scheme — or even whether he was aware of an attempt to bribe him.

82. In fact, Borja himself has since admitted that there was not, in reality, a bribe involving Judge Nuñez. Apparently disturbed by Borja’s activities undertaken on behalf of Chevron, Borja’s childhood friend, a man named Santiago Escobar, recorded approximately six hours of conversations with Borja via Skype, an internet telephone service, between August and

October of 2009 (hereinafter referred to as the “Escobar Tapes”). In the Escobar Tapes, Borja admits to his friend: “Because really, there was no bribe. . . . I mean, there’s was never . . . there was never a bribe.”

b. Chevron Misrepresentation #2: Wayne Hansen, the supposed Good Samaritan who filmed the alleged bribery scheme, is an “American businessman.”

83. Wayne Hansen, the supposed “American businessman” who heroically ferreted out judicial corruption, is actually a convicted felon. He served nineteen months in a United States federal prison for his role in the importation of 275,000 pounds of illegal narcotics into this country. Hansen also was once the proprietor of a motel that the media described as the “Costco of drugs, hookers, and guns.” Hansen’s former acquaintances, friends and spouses have described him as a career “con man” and a “hustler.”

84. Documents obtained by the Ecuadorian Plaintiffs in 28 U.S.C. § 1782 discovery actions pending in the Northern District of California indicate that Hansen fled from the U.S. to Peru in or around November 2010 after a 28 U.S.C. § 1782 subpoena was directed to him.

85. The Ecuadorian Plaintiffs have unearthed through a 28 U.S.C. § 1782 discovery action against Borja a December 3, 2010 email from Wayne Hansen to the Mason Investigative Group (“Mason Group”)—the firm deployed by lawyers for Chevron and Borja, acting in concert, to manage the “loose cannon” Hansen—in which Hansen invites members of the Mason Group to visit him in his new home, the beach town of Mancora, Peru.

86. In that same December 3, 2010 email, Hansen laundry-lists for the Mason Group the various expenses he has incurred and perks he would like to receive while in Peru—including a pool, personal chef, and maid-service.

c. **Chevron Misrepresentation #3: At the time the recordings were made, Diego Borja was simply an “ex-contractor” who had performed some “logistics contracting” work for Chevron in the past.**

87. Chevron represented to the Lago Agrio Court that Borja was not working for Chevron in any way at the time of the video recordings in May and June 2009. Chevron claimed in a July 13, 2010 filing with the Lago Agrio Court that Borja was an “ex-contractor” who had performed some discrete work for the company in the past: “In effect, Diego Borja was a Chevron independent contractor with a specific role; his functions had nothing to do with the sampling process; and also, his work had already concluded at the time of the incident . . .” Chevron made the same representations in its press releases and other public statements.

88. Chevron lied to the Lago Agrio Court and to the public about its connection to Borja, apparently to distance itself from the unraveling scheme. As Borja explained on the Escobar Tapes, Chevron did its best to hide the extent of its relationship with Borja and believed that the Ecuadorian Plaintiffs and their counsel would never learn the truth because they are “idiots.”

89. Contrary to Chevron’s repeated representations, documents unearthed through the Section 1782 discovery action against Borja reveal that Borja was in fact an active contractor for Chevron at the time he made the recordings. As of August 2009—three months after the recordings were completed—Borja was still overseeing the wind-up of Chevron’s sampling laboratory operations. On August 27, 2009, Borja sent Chevron an invoice for work performed that month by his company, Interintelg.

90. Discovery also has revealed that Borja worked for Chevron since at least 2003. And Borja has admitted that he shared an office building in Quito with Chevron’s in-house and outside counsel, as well as Severn Trent Laboratories, the supposedly independent company that

performed Chevron's sampling work in connection with the Lago Agrio Litigation, and which employed Borja's wife, Sara Portilla.

- d. Chevron Misrepresentation #4: Borja and Hansen were “prospective environmental remediation contractors” who inadvertently stumbled upon judicial misconduct and then decided to make the video recordings out of their sense of civic duty—without Chevron’s knowledge or involvement.**

91. Borja and Hansen held themselves out as “prospective environmental remediation contractors” in order to gain access to Judge Nuñez. And Chevron repeatedly described them in the same way in its press releases and other public statements.

92. The truth of the matter is that neither Borja nor Hansen had ever worked in the field of environmental remediation. Hansen represented in the videotaped meetings that he had previously been involved in remediation work for Honeywell, but Honeywell officials later confirmed that this was a lie.

93. Borja and Hansen also did not, as Chevron maintains, “stumble” upon trouble; they set out with the intent to create it. This is apparent even from the tapes themselves, which show that Borja and Hansen were relentless in their efforts to elicit a preview of the verdict from Judge Nuñez, who clearly did not want to give them one.

94. And while Chevron has publicly denied any knowledge of or involvement in Borja’s and Hansen’s scheme, Chevron had extensive meetings and communications with Borja while the scheme was still ongoing. Indeed, Chevron operatives flew Borja to San Francisco for a high-level meeting with senior Chevron executives and counsel *before* Borja and Hansen made their fourth and final videotape.

95. Moreover, two days after Borja finished making his fourth and final video recording (the recording which he returned to Ecuador to make after his San Francisco meeting with Chevron, and which has featured prominently in Chevron’s claims about the supposed

“bribery solicitation scandal”), Chevron agents extracted him and his wife from Ecuador and set them up in new life in Chevron’s hometown of San Ramon, California.

96. Additionally, according to the sworn testimony of Borja’s friend Escobar, Borja admitted to Escobar that he and Hansen were “carrying out an operation for Chevron” by meeting with and recording Judge Nuñez and others, that they had “received orders” from Chevron and had “sprung a trap” by surreptitiously “film[ing] quite a lot of people,” including Judge Nuñez, for the purpose of “destroy[ing]” the trial, and that Chevron “of course . . . knew” about the secret filming of Borja’s and Hansen’s meetings.

e. *Chevron Misrepresentation #5: Chevron did not pay Borja or Hansen for making the video recordings.*

97. Chevron represented as follows in response to an inquiry from the Ecuadorian Solicitor General about whether Chevron was compensating Borja or Hansen for executing the entrapment scheme: “Chevron has not provided Mr. Borja with any compensation or promised Mr. Borja any compensation in the future in exchange for his providing the recordings or related information.”

98. Chevron did admit that it was making supposedly limited payments to Borja, although it characterized those payments as “humanitarian,” and not payment for Borja’s clandestine video recordings. Chevron stated that these “humanitarian” payments were designed to assist Borja and his wife with their “immediate living needs” because Chevron abruptly whisked them away to the United States, and thus, Chevron was providing him with “a temporary stipend and temporarily is providing him and his immediate family with transportation and housing,” in addition to “reasonable attorney’s fees.”

99. Chevron made the same representations in its public statements regarding the purported Judge Nuñez bribery scandal.

100. Chevron's representations are, at a minimum, intentionally and materially misleading. In fact, Chevron's "humanitarian" payments were cover for a lavish program of rewards and luxury compensation paid to Borja—which Borja has described as a "brass ring"—to ensure his cooperation in various 28 U.S.C. § 1782 discovery and other proceedings.

101. On the Escobar tapes, Borja described how Chevron carefully crafted its lucrative arrangement with him so that it would not appear that the company was "buying" evidence.

102. Borja and Chevron both have produced a cache of documents evidencing the benefits that Chevron has conferred on him. These documents reveal the falsity of Chevron's representations that its sponsorship of Borja is limited or "temporary," or "humanitarian," in nature.

103. Despite the fact that Borja did no work for Chevron, he received from the company a monthly "stipend," which continued at least through the September 2011, in an amount ranging from \$5,000 to \$10,000.

104. Chevron also paid Borja's monthly rent payments, which are referred to as "Witness Rent Payments."

105. Chevron paid for Borja's furniture, automobiles in an amount of \$700 per month, first-class airfare, his cell phone, and even his washer/dryer set.

106. Chevron also paid Borja's income taxes, as well as those of his wife, Sara Portilla.

107. Chevron also has arranged for Borja to be represented by a prominent criminal defense law firm at Chevron's expense, and paid for immigration lawyers and tax lawyers on Borja's behalf.

108. Chevron remained obligated to find work for Borja's wife as late as August of 2010; and the Borjas were rather demanding. For example, when Chevron forwarded a job

opening to the Borjas, the Borjas counter-offered because they felt that other jobs might be a “better fit” for Portilla.

109. Borja’s wife, Sara Portilla, who formerly worked as a technician and manager at Severn Trent Labs, the supposedly independent laboratory used by Chevron for sampling in the Lago Agrio Litigation, is now employed directly by Chevron.

110. The records produced by Borja over year ago indicate that the total value of Chevron’s payments to or on his behalf amounted to well in excess of \$2 million.

111. Additionally, there is evidence that Chevron’s lavish payments to Borja did not commence only after he turned over his video tapes to Chevron. In his sworn deposition, Borja’s friend Escobar testified that Borja admitted that he had “received a down payment for the videos” and “would receive a lot of dough” from Chevron when the filming was complete, “that they were going to give him even more dough than what they had already given him.” According to Escobar, Borja described the video-taping operation for Chevron as “the deal of his life[.]”

112. The Escobar Tapes reveal why Chevron has felt compelled to pay so much to ensure Borja’s continued loyalty and cooperation. According to his statements on the Escobar Tapes, Borja possesses extensive first-person knowledge and other evidence about Chevron’s illegal and improper acts during the Lago Agrio Litigation, and if Chevron does not take good care of him, Borja will reveal that misconduct publicly:

BORJA: [I]f something bad happened to me, let’s say, 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 . . . [W]hat you are seeing right now on the videos would be . . . that would be about 30% of everything I know, you get it? That’s why they pay no more attention to the gringo [Wayne Hansen] there’s no reason to, he doesn’t know anything, but I know a lot more than the videos, you get it? . . . I have the mails, I have a lot of things . . . Do you think I was going to jump into the water without that? I

brought everything I have everything in my iPhone, dude.

ESCOBAR: But, and those papers, where are they? You have to have everything buried, dude.

BORJA: Of course, they are. And I also have copies in Ecuador, in . . . I have one copy here . . . *I have correspondence that talks about things you can't even imagine, dude.* I mean, things that . . .

ESCOBAR: For example.

BORJA: Things that for them can . . . it's, *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]* . . . *I mean, what I have is conclusive evidence, photos of how they managed things internally.* . . . (Emphasis added.)

113. Among other incriminating information in his possession, Borja explained to Escobar that he has evidence revealing how he and his wife set up a confusing web of corporations designed to create the false appearance that Severn Trent Labs was independent, when in fact it was controlled by Chevron.

114. Notably, soon after Chevron removed Borja from Ecuador and set him up in his new all-expense-paid life in California, Chevron's lawyers took from Borja the iPhone upon which Borja told Escobar he had stored incriminating information about the company.

2. Chevron's false and misleading statements regarding the absence of evidence of environmental harm resulting from Texaco's operations.

115. As part of its overall effort to taint the Lago Agrio Litigation, and to discredit Donziger, Chevron has represented to courts around the United States, and represented publicly in its press releases and other public statements, that there is no legitimate evidence to support the Ecuadorian Plaintiffs' environmental claims and that the Ecuadorian Plaintiffs' lawyers' claims to the contrary are false.

116. For example, in a February 14, 2011 press release, available at www.chevron.com, Chevron states that the Lago Agrio Court's judgment against Chevron is "contrary to the legitimate scientific evidence."

117. In a January 2012 press release, available at www.chevron.com, Chevron states: "[A]ll of the legitimate evidence presented to the Ecuadorian court demonstrates that former Texaco Petroleum Company operations present no risk to residents' health and have not resulted in any significant impact to groundwater, drinking water, biodiversity, or indigenous culture."

118. Similarly, on its corporate website in a section entitled "Ecuador Lawsuit—Background," Chevron claims that "[a]ll legitimate scientific evidence submitted during the litigation in Ecuador proves that TexPet's remediation was effective and that the sites it remediated pose no unreasonable risks for human health or the environment."

119. On its public relations website, "The Amazon Post", www.theamazonpost.com, Chevron states: "The overwhelming scientific evidence demonstrates that the plaintiffs' claims of petroleum-contaminated drinking water are false—a fact well known by plaintiffs' lawyers. When all legitimate evidence disproved their claims, they didn't make the ethical choice and admit their mistake, they went the other direction and turned to fraud."

120. On the same Amazon Post website, Chevron states: "The overwhelming scientific evidence in the Ecuador court record demonstrates that the claims of contaminated drinking water and elevated cancer rates are false, and that the plaintiffs' U.S. and Ecuadorian lawyers know they are false."

121. Chevron has made similar representations to this Court and to numerous other United States courts.

122. These statements are false and misleading because they omit material information about the scientific evidence of environmental pollution and degradation and about Chevron's own improper environmental sampling and analysis methods and tactics.

123. The reality is that there is overwhelming evidence in the Lago Agrio Litigation record proving that extensive contamination exists, that Texaco was responsible for its discharge and is legally responsible for its clean-up, and that it has caused tremendous environmental harm and human suffering.

124. The Lago Agrio Litigation record fills more than 200,000 pages, and contains over 100 expert reports addressing nearly 64,000 soil and water sample results, testimony from dozens of eye witnesses, and countless hours of legal argument on every element of liability and every Chevron defense.

125. At the core of the Lago Agrio Litigation was a series of approximately 45 "judicial site inspections," such as the Guanta inspection disrupted by Chevron. Judicial site inspections are a civil law evidentiary practice whereby, under the supervision of the judge (who actually joins the parties in the field and presides over the event), experts nominated by both parties would collect soil and water samples at former Texaco well sites and operating stations; attorneys for both sides would make public arguments; and, on occasion, testimonial evidence would be taken into the record. The findings of both Chevron's and the Ecuadorian Plaintiffs' designated judicial site inspection experts were memorialized in more than a hundred expert reports.

126. Testing of the thousands of samples taken during the judicial site inspection process exhibited at least fifteen potentially toxic chemicals, compounds, and metals at levels exceeding acceptable limits, including barium, benzene, cadmium, copper, chromium,

ethylbenzene, polycyclic aromatic hydrocarbons (“PAH”s), mercury, naphthalene, nickel, lead, toluene, total petroleum hydrocarbons (“TPH”), vanadium, and zinc. Each of these chemicals is associated with an adverse impact on human health and some are known human carcinogens, according to the United States Agency for Toxic Substances and Disease Registry.

127. Levels of contamination above both U.S. and Ecuadorian standards for one or more of the toxic substances identified in Paragraph 126 were found at *every inspected site*, with some exceeding the legal limit many times over. For example, TPH in excess of the Ecuadorian standard of 1,000 ppm was found at 97% of the 93 total sites investigated during the trial, including those visited by the parties during the judicial site inspections as well as those sampled by several court-appointed experts throughout the trial. TPH concentrations at the majority of the sites were shown to be greater than 10,000 ppm, and some sites exhibited TPH in excess of 100,000 ppm.

128. But the judicial site inspections were far from the only evidence adduced during the Lago Agrio Litigation supporting a finding of liability against Chevron. In addition to the judicial site inspection reports submitted by party-affiliated experts, the Lago Agrio Court also was presented with reports from court-appointed experts designated to study particular aspects of the contamination. By way of example, one such court-appointed expert, José Ignacio Pilamunga, performed an inspection at the site of the well known as “Aguarico 2,” which was drilled by Texaco in 1970, closed in 1990, and thus, operated exclusively by Texaco. Pilamunga concluded that Texaco’s so-called “remediation” of the three pits located at Aguarico 2 was inadequate, and that the site should receive further remediation applying proper standards and techniques.

129. The Lago Agrio Court also received fact-witness testimony throughout the trial, including testimony from former oil workers. By way of example, in 2003, eyewitness Alejandro Soto gave testimony regarding Texaco's handling of drilling muds and other waste accumulated during the drilling process:

[T]he mud that came out from drilling was put next to the pits and the platform; it would not even fit in the pit, it was left there in the water; a large part was distributed along the platform and the other part went to the rivers or estuaries [W]hen the petroleum came out, part of it was scattered at the beginning of the platform, and another part went to the pits with sand; once in the pit it was set on fire, burning the surrounding woods; the petroleum on the platform went straight to rivers and estuaries.

130. By the end of the trial Chevron's *own* evidence largely proved the case against it.

131. For example, the reckless nature of Texaco's operations was documented in the reports of two environmental auditors commissioned in whole (Fugro-McClelland West, Inc.) or in part (HBT Agra, Ltd.) by Texaco itself, in connection with winding down the company's operations in Ecuador.

132. The "Environmental Audit Report" prepared by HBT Agra concluded that "no groundwater monitoring program was in place prior to 1990 at any of the stations," that "[wastewater is] discharge[d] into nearby streams" and that "no testing is conducted on wastewater prior to disposal."

133. HBT Agra further noted that "oil emulsion and produced water is discharged into a local creek or river or in some instances directly into the jungle" and "produced water has historically not been tested prior to disposal." HBT Agra observed that "prior to 1990 pits were not maintained" and that "protection of the surface water quality was reportedly not considered during exploration drilling."

134. To mitigate the observations made by HBT Agra, Texaco independently retained Fugro McClelland to perform a parallel audit. The Fugro McClelland audit turned out to be almost equally condemning.

135. In the Fugro McClelland report, Texaco's *own, hand-picked* environmental auditors concluded: "All produced water from the production facilities eventually discharged to creeks and streams except for one facility which used a percolation pit. None of the discharges were registered with the Ecuadorian Institute of Sanitary Works (IEOS) as required by the Regulations for the Prevention and Control of Environmental Pollution related to Water Resources (1989)."

136. Fugro-McClelland further observed that "[i]n general, spills of hydrocarbons and chemicals were not cleaned up. Instead, they were covered with sand," and "[t]he produced water from TEXPET's operations have historically been discharged into surface waters."

137. Notwithstanding Chevron's claim that it could not be held responsible for any contamination that occurred *after* it ceased to be the Operator of the Concession in 1990, Fugro-McClelland concluded: "spills which were judged as degraded or heavily degraded were attributed to TEXPET's operations from 1964 to 1990. *In addition, spills fresh or degraded which were the result of improper equipment design were considered the responsibility of TEXPET.*" (Emphasis added.)

138. With respect to contamination found during the judicial site inspections, Chevron's own experts recorded significant instances of toxic pollution in excess of the Ecuadorian standard. By way of example, the well known as "Sacha 94" was the fourth site examined during the judicial inspections. Petroecuador, Ecuador's State-owned oil company, never operated there; the site was not operated by anyone after Texaco left Ecuador. Yet

Chevron's own technical expert reported soil TPH of 5,600 and 8,700 at Pits 1 and 2 of Sacha 94, respectively – several times higher than the Ecuadorian limit. Worse yet, both pits were certified by Texaco to be “completely remediated” following Texaco’s purported remediation in the mid-1990s.

139. Indeed, Chevron’s experts reported substantial TPH exceedances *throughout* the trial, albeit to a lesser extent than the experts nominated by the Ecuadorian Plaintiffs. Chevron’s TPH data showed roughly 91% of well sites with TPH greater than 100 ppm (the U.S. standard); roughly 79% with TPH greater than 1,000 ppm (the Ecuadorian standard); and roughly 47% with TPH greater than 5,000 ppm, that is 50 times the maximum allowed under numerous state law standards in the U.S. and five times the Ecuadorian standard.

140. In representing that “[a]ll legitimate scientific evidence submitted during the litigation in Ecuador proves that TexPet’s remediation was effective and that the sites it remediated pose no unreasonable risks for human health or the environment,” Chevron also omits material facts regarding its own experts’ doubts about the veracity of its claims.

141. For example, in a July 2006 email from Chevron expert Doug MacKay to fellow Chevron expert Robert Hinchee, MacKay writes: “*I doubt seriously that there never were any significant environmental or public health impacts*, so I don’t want to imply that. I do think that the evidence shows the in-scope remediated pits, etc., met criteria, and further that the likelihood is great that natural attenuation would handle any residual impacts, even from portions of the pits that might not be as well remediated as they were supposed to have been. Beyond that, I am less confident I know what to say that could truly be defended.” (Emphasis added)

142. In addition, Chevron fails to disclose that its technical experts used a variety of improper sampling techniques during the Lago Agrio Litigation to minimize findings of contamination.

143. Specifically, as documented by scientists Dr. Ann Maest, Mark Quarles, P.G., and William Powers, (1) Chevron's selection of sampling locations was designed to avoid finding contamination; (2) Chevron selected sampling locations outside of expected contaminant pathways in the environment around Texaco's abandoned waste pits; and (3) Chevron inappropriately used composite soil samples in an effort to minimize contaminant concentrations; and (4) Chevron misapplied and invented contaminant standards.

144. Chevron also instructed its field technicians to send "dirty" samples they had collected only to a laboratory called "Newfields," and not to Severn Trent Labs, which was the company's only laboratory of record in the Lago Agrio Litigation: Chevron's "Summary of Sampling and Testing Program for Judicial Inspection Sites states: "Clean soil samples are analyzed for PAHs at STL w/a split sent to Newfields to hold. Samples showing field evidence of contamination are sent to Newfields for PAH analysis and fingerprinting (no STL PAH analysis)."

145. Additionally, according to Escobar's sworn testimony, Borja admitted that Chevron operatives regularly replaced soil samples from the official inspection sites with samples from areas 20-30 km away where no oil production had occurred, in order to "deceive the investigation" and "provide results that would be different from real ones."

3. Chevron's false and misleading statements regarding the findings and conclusions of the Ecuadorian Plaintiffs' environmental experts and attorneys.

146. To support its larger message that the entire Lago Agrio case was a "fraud" invented by Donziger to "extort" money from Chevron, Chevron has made numerous false and

misleading statements to the effect that the Ecuadorian Plaintiffs and their legal and technical experts “know” or “admit” that insufficient scientific evidence against Chevron was produced in the Lago Agrio Litigation.

147. For example, Chevron has at various times stated that one of the Ecuadorian Plaintiffs’ experts, Dr. Ann Maest, had “testified under oath” that she did not know if the plaintiffs had evidence that drinking water wells in Ecuador had been contaminated by Chevron’s operations.

148. Indeed, a June 12, 2012 posting on Chevron’s public relations website, www.theamazonpost.com, states: “Ann Maest, one of the plaintiffs’ scientific experts, testified under oath that she was not aware of any scientific data ‘indicating that drinking water wells have been impacted in any way by TexPet’s operations.’”

149. Chevron’s statements are false and misleading. In making these statements, Chevron is intentionally distorting a statement by Maest at her deposition that she did not know if the plaintiffs had actually tested the wells themselves. But during the deposition, she explained that the Ecuadorian Plaintiffs’ team sampled and tested groundwater in numerous locations, and found contamination “under pretty much every pit that they looked at,” including pits allegedly remediated by Texaco, as well as “quite high concentrations of TPH [contamination]” down-gradient of the pits. She also testified that the Ecuadorian Plaintiffs’ team had taken samples from groundwater aquifers, which are a drinking water sources.

150. In another example, Chevron repeatedly has represented that another expert for the Ecuadorian Plaintiffs, Doug Beltman, “admitted” he “did not find any clear instances where Texpet did not meet the conditions required in the cleanup.”

151. This representation also is an intentionally misleading distortion of Beltman's comments. In the email Chevron references, Beltman is talking not about any of the scientific testing that was conducted as part of the Lago Agrio Trial, but rather about his examination of whether Texaco's remediation contractor, Woodward-Clyde, presented any data in their 2000 draft final report that showed non-compliance with the terms of the cleanup requirements. In the very next sentence following the one that Chevron relies upon to make its false representation, Beltman clarifies that the "sampling during the Judicial Inspections and by Cabrera showed that the 'cleaned' pits *are in fact still contaminated.*"

152. Another example is Chevron's false and misleading statement that a lawyer for the Ecuadorian Plaintiffs, Pablo Fajardo, "admitted" in a June 2009 email that Petroecuador's remediation in the Napo Concession was "worrisome" and "very unfavorable to us" and that the Ecuadorian Plaintiffs' team was concerned the cleanup would "undermine [their] legal position." Chevron has made this statement in multiple fora, including in on its corporate website, www.chevron.com.

153. In the document Chevron cites, however, Fajardo explains clearly that his concern is the fact that Petroecuador's remediation efforts are obviously unsound, "more or less what Texaco did" in simply covering over toxic pits with dirt and thereby making them even more dangerous because residents can no longer see and try to avoid the toxins. Fajardo then suggests that what properly should happen is a "remediation with stricter standards and in a broader area of action," not a repeat of the same substandard and ineffective remediation previously performed by Texaco. (The Ecuadorian Plaintiffs submitted for the record in the Lago Agrio case multiple instances where individuals were fooled by Texaco's apparent "clean-up" and moved their houses onto contaminated land, and in some instances even drilled water wells in to

contaminated pits, without realizing that all of the contamination was still there and only covered over with dirt.)

4. Chevron's false and misleading statements regarding Donziger's and other representatives of the Ecuadorian Plaintiffs' *ex parte* contacts with court-appointed experts and the Lago Agrio Court

154. As a centerpiece of its campaign to characterize the Lago Agrio Litigation as a fraud and Donziger and the other Ecuadorian Plaintiffs' lawyers as criminals, Chevron has made multiple false and materially misleading statements and representations to the effect that the Ecuadorian Plaintiffs' legal team's meetings with the "court-appointed" damages expert Richard Cabrera were improper, that the submission of materials for his review and possible adoption was "ghostwriting," that payments made to him were "bribes," and similar false, misleading, and inflammatory charges.

155. For example, on May 24, 2010, R. Hewitt Pate, Chevron's Vice President and General Counsel, stated in a Chevron press release: "The misconduct of the plaintiffs' lawyers and Cabrera constitutes a fraud against Chevron, against the Ecuadorian court system, and against the Government of Ecuador."

156. Similarly, in January 3, 2012 press release, available at www.chevron.com, Chevron stated that the plaintiffs' representatives' "misconduct includes fabricating expert reports, manufacturing evidence, [and] bribing and colluding with court officials"

157. In a February 2012 video interview with the *Wall Street Journal*, Randy Mastro, American lead counsel for Chevron, stated: "These plaintiff's lawyers in Ecuador . . . they ghostwrote [Cabrera's] report, they bribed him and literally word for word they submitted what they wrote for him; it's a travesty."

158. On March 8, 2012, Chevron General Counsel Pate stated: “Evidence also shows that the plaintiffs’ representatives paid bribes to at least one court official through a secret bank account.”

159. And in a June 12, 2012 posting to Chevron’s public relations website, www.theamazonpost.com, Chevron states: “[I]t is precisely because the sampling evidence was disproving their claims that the plaintiffs’ lawyers turned to fraud, . . . ghostwriting the Ecuadorian court expert’s supposedly “neutral” and “independent” report . . .”

160. Moreover, Chevron has used its false and misleading representations regarding Cabrera as a core argument in multiple legal proceedings against Donziger and other representatives and supporters of the Ecuadorian Plaintiffs, in order to obtain access to the Ecuadorian Plaintiffs’ legal team’s privileged documents and other materials, to frustrate enforcement of the judgment issued against Chevron in the Lago Agrio Litigation, and to cause reputational and economic harm to Donziger and others and to instill in them fear of additional economic harm should they not yield to Chevron’s demands with respect to the Lago Agrio Litigation.

161. In furtherance of these aims, Chevron repeatedly has led U.S. courts, including this Court, and others erroneously to believe that it was improper for a party to meet *ex parte* with a “court-appointed” expert and assist in the drafting of his technical work. For example, in the Eastern District of Pennsylvania and the District of New Mexico, Chevron alleged: “Cabrera’s claims of independence were false. Outtakes from *Crude* [a 2009 documentary film about the Lago Agrio Litigation] obtained by Chevron in another Section 1782 proceeding show Plaintiffs’ representatives and consultants meeting with *Cabrera* to plan his expert report on March 3, 2007 . . .” Similarly, in the Southern District of New York, in connection with 28

U.S.C. § 1782 action against Donziger, Chevron alleged: “Donziger and U.S.-based consultants he hired had improper *ex parte* contacts with both Cabrera and multiple members of his team.”

162. Chevron also has made similar statements to the Ecuadorian courts as part of its efforts to prevent, and later, to overturn the judgment against Chevron in the Lago Agrio Litigation. And Chevron has made its misrepresentations regarding Cabrera a central component of its RICO and fraud claims against Donziger in this action.

163. Chevron’s misrepresentations are not limited just to Ecuadorian Plaintiffs’ legal team’s interactions with Cabrera. Chevron also has accused the Ecuadorian Plaintiffs’ lawyers, including Donziger, of colluding directly with the Ecuadorian judiciary.

164. For example, R. Hewitt Pate stated in a press release available on Chevron’s corporate website: “Throughout the course of this litigation, judges corruptly operating in concert with the plaintiffs’ lawyers have created, rather than corrected, injustice.”

165. In making these statements and representations, Chevron materially misrepresents the true facts, and fails to disclose numerous other facts, making its representations and statements materially false and misleading.

166. For example, Chevron fails to disclose that all court-appointed experts in the Lago Agrio Litigation were paid by whichever party requested the appointment of an expert for that issue, and that Chevron itself paid those “global”—*i.e.*, subject-matter—experts who were appointed at its request, such as Gerardo Barros, Marcelo Muñoz, and Jose Bermeo.

167. Chevron also fails to disclose in either its public statements or its representations to United States and Ecuadorian courts that its own technical team had *ex parte* meetings with, and collaborated with, other court-appointed global experts, and that such meetings were consistent with court rules and practice.

168. A glimpse of Chevron's behind-the-scenes collaboration with these court-appointed global experts was provided when Chevron refused to pay Dr. Muñoz, which occasioned a letter of complaint from Muñoz to the Lago Agrio Court in which, in passing, he mentions meeting privately with Chevron's technical consultant, Alfredo Guerrero, in Coca for a "technical planning meeting" at which the engineer "approved" a work plan.

169. Additionally, Chevron has led U.S. courts and others to believe that it had been ignorant of Cabrera's interaction with the Ecuadorian Plaintiffs' counsel while Cabrera was preparing his report, and was only tipped off to those interactions after the fact, in order to better portray itself, falsely, as the unwitting victim of improper conduct. But public statements made by Chevron officials as early as March 2008—before the Cabrera issued his report—suggest that Cabrera's relationship with the Ecuadorian Plaintiffs' litigation team was well known. For example, on March 24, 2008, Sylvia Garrigo, Chevron's Manager of Global Issues and Policy, stated in an interview: "[T]he expert analysis also is corrupt *This expert [Cabrera], unfortunately, is working in partnership with the NGO leading the plaintiff's case.* The expert's work plan, instead of following the judge's orders, basically aimed to do fieldwork to find contamination caused by Texaco. . . . We've presented a series of motions to the judge declaring the work is not only biased but out of the scope of the court order. . . . As you've seen in all the recent press releases and statements the NGO and plaintiffs have made, they make it very clear this report is going to be a public indictment of Texaco and a damage assessment." (Emphasis added).

170. Chevron also fails to disclose the fact that—as multiple Ecuadorian law professors have since confirmed—during the relevant time there was no Ecuadorian legal provision that prohibited parties from having *ex parte* contacts with court-appointed experts.

Specifically, Dr. Juan Pablo Albán Alencastro and Dr. Farith Ricardo Simon confirmed that, in Ecuador, it was common practice for parties to make contact with a court-appointed expert—whether through in-person meetings, teleconferences, or written communications—and advocate their positions; the expert had free reign to decide whether, in his professional judgment, he believed that party's position to be the correct one. Further, these scholars confirmed that during the relevant time there existed no provision of Ecuadorian law which limited the extent to which an expert may use one party's work product if the expert finds the work to be appropriate for the report; the expert was permitted cite such documents as grounds for his opinion or could simply adopt that work product as his own.

171. Chevron also fails to disclose in connection with its statements and representations regarding the Ecuadorian Plaintiffs' legal teams' interactions with Cabrera that Chevron's lawyers met *ex parte*, not just with court-appointed experts, but with the Lago Agrio Court itself concerning the litigation.

172. One eyewitness, Robinson Yumbo Salazar, has testified: "On multiple occasions, I personally saw the lawyers who represent Chevron Corporation in the Lago Agrio case, their technical personnel and their security guards, meeting alone with the judge in charge of the case, without the presence of the plaintiffs' lawyers. . . . I especially remember two cases where I saw Iván Alberto Racines, a lawyer of Chevron in the Lago Agrio case, and other lawyers of Chevron whose names I do not remember, meeting with Doctor Germán Yáñez Ruiz, who was the judge of the case at the time. These meetings were without the participation of the Plaintiffs' representatives in the Lago Agrio case."

173. Another eyewitness, Donald Rafael Moncayo Jimenez, recounted in a sworn affidavit: "On multiple occasions, I personally saw the lawyers who represent Chevron

Corporation in the Lago Agrio case meeting alone with the judges who heard the case without the presence of the plaintiffs' lawyers." Moncayo stated that he could recall at least seven such incidents.

174. Moncayo provided details concerning one meeting where he "saw attorneys Adolfo Callejas Ribadeneira and Ivan Alberto Racines (lawyers of Chevron), and Dr. Efraín Novillo (who was in charge of the case at the time) in the offices of Judge Novillo. They were talking about the expert designated by the Judge, Mr. Richard Cabrera." When he "approached the offices, the private security guards of Chevron and a Chevron technician tried to chase [him] away."

175. Moncayo also described another incident where Judge Juan Núñez, then-President of the Lago Agrio Court, "was talking to Dr. Diego Larrea and Alberto Racines about the inspection of the Auca wells and other stations, where there were oil wells, topic of the Lago Agrio case [sic]."

176. Additionally, during his deposition on September 13, 2011, Moncayo testified under oath to witnessing one of Chevron's lawyers, Dr. Enrique Caravajal, have an *ex parte* meeting with the then-Presiding Judge Ordonez after business hours on July 30, 2010. The *ex parte* meeting lasted some 20 minutes or so, and is captured in photographs that Moncayo took with his mobile phone.

177. Finally, Chevron fails to disclose its own extensive behind-the-scenes efforts during the Lago Agrio Litigation, including those described in Paragraphs 45-52, to persuade Ecuador's government, including its Attorney General, improperly to intervene in, and to put a stop to, the litigation. Chevron fails to disclose these efforts in its public statements, even though Chevron has admitted in discovery to at least 47 meetings and communications with Ecuadorian

government officials between August 2003 and February 1, 2011 concerning the Lago Agrio Litigation.

5. Chevron's false and misleading statements regarding the *Crude* outtakes involving Donziger and other representatives of the Ecuadorian Plaintiffs.

178. Chevron has made repeated false and misleading statements about what appears in the over 600 hours of *Crude* documentary film outtakes it obtained from the film's maker. In its RICO complaint, on its website, and in other fora, Chevron and its agents cite in misleading ways to excerpts of the outtakes, often omitting a sentence or phrase immediately preceding or following the excerpt which reveals the true meaning of the quoted statement. Several representative examples of such misleading citations are set forth below.

179. For example, paragraph 72 of Chevron's RICO complaint reads in part as follows:

Central to the RICO Defendants' and their co-conspirators' scheme to defraud and extort Chevron is the fact that Ecuador's judiciary has developed systemic weakness and corruption, in addition to other significant flaws and shortcomings. The conspirators are aware of this fact, and have sought to exploit it. According to Donziger, "[T]he court is now in play, up for grabs, and accessible." Donziger has boasted that, unlike in the United States, the "**game**" is "**dirty**" and there are "**almost no rules**" in Ecuador. (Emphasis added)

180. In fact, the excerpt in question shows Donziger discussing his plan to confront the judge with his belief that *Texaco* has bribed the judge. Donziger expresses his reluctance to confront the judge, noting that such a confrontation would not occur in the United States. However, he explains, such a confrontation is necessary because *Texaco* is "playing dirty":

STEVEN DONZIGER: Um, what we're doing now is we're going down uh, and ***we're going to confront the judge who we believe is paid by Texaco***. We believe he is corrupt and we're gonna confront him, ah, with – with our suspicions about his corruption and let him know what time it is. And, ah, you know, this is something you would never do in the United States. I mean, this is something you would, I mean, this is just out of bounds. Both in

terms of judicial behavior and what – what lawyers would do. But Ecuador, you know, there's **almost no rules** here. And this is how the **game** is played, it's **dirty**. And, you know, they're playing dirty, *we're honest, they're dirty*. They play dirty, we have to, occasionally use, um, pressure tactics to neutralize their corruption. And today is one of those examples. (Emphasis added)

Crude outtake, March 30, 2006.¹²

181. As another example, paragraph 73 of the RICO complaint reads in part as follows:

The RICO Defendants and their co-conspirators do not view the enterprise in which they are engaged as a lawsuit. As Donziger has explained, the litigation "**is not a legal case**," but a "**political battle that's being played out through a legal case**." Donziger and the other RICO defendants know that their "success" will have nothing to do with pursuing the Lago Agrio litigation on the merits but rather will depend on using that "litigation" as a vehicle or pretense with which to attack Chevron in the media and before U.S. governmental bodies and shareholders and force it into paying them off.... (Emphasis added)

182. The longer transcript of the outtake makes clear that Donziger is saying exactly the opposite of what Chevron insinuates. Donziger expresses his view that the Ecuadorian Plaintiffs will *win* the litigation on the merits of the evidence, while noting that a litigation victory will need to be dealt with politically. Chevron quotes only the statements about politics in the outtake, while omitting Donziger's discussion of the **litigation** in the same breath:

DONZIGER: ... Lawyers generally don't think press is that important. I personally think press is as important if not more important than the lawyering that goes on in this case.

BENJAMIN: You think that's specific to this case or--?

12 The longer outtake transcript appears as CRS 032-00-CLIP 5 on page 16 of a 455 page Exhibit 2 to the Declaration of Kristine Hendricks, filed along with thousands of other pages of material lodged when Chevron filed its RICO complaint in this action. (Hendricks Declaration, Document 6-4 filed February 6, 2011, page 16 of Exhibit 2.) Burying the fuller transcript in thousands of pages of exhibits does not cure Chevron's misleading complaint allegations. To the contrary, the exhibits demonstrate that Chevron knows the fuller context and yet chooses to present incomplete and thereby misleading snippets.

DONZIGER: [Interposing] I think it's specific to this case, its, its, it happens in some other cases but it's rare.

BENJAMIN: This is a political—

DONZIGER: [interposing] This is,

BENJAMIN: --political- -

DONZIGER: --this is **not a legal case**, this is a **political battle that's being played out through a legal case and all the evidence is in. I mean the judge can easily find that we can win this case based on what's in right now, what Texaco's admitted to**. So, what we need to do is get the politics in order in a country that doesn't favor people from the rainforest. So that's why we spend so much time on the politics. You know we, we, we we've proven the case I think many times over. So, you know, we need to get the country ready to, to deal with the idea the judge can actually impose a multibillion dollar judgment ... on an American company in this country.... (Emphasis added)

Crude outtake, April 13, 2006.¹³

183. In another example, paragraph 75 of the RICO complaint reads in part as follows:

As part of their strategy to intimidate and coerce the Lago Agrio court, the RICO Defendants and their co-conspirators plotted to raise what they called their own “**private army**,” a “**specialized group**” detailed “**to watch over the court**,” for which, “**if we need weapons, we can provide weapons**.” (Emphasis added)

184. The full outtake from which Chevron selectively chooses these words makes clear that Donziger and his colleagues were discussing ways to mobilize a political force, a “march,” and not an “armed army.” They discuss a desire for citizens to be present to “monitor” the court, in order “to protect the process from corruption.” “Army” is noted to be a “loaded word,” and Donziger clarifies that “it’s not an armed army.” Moreover, it is clear that the reference to

¹³ Clip CRS 060-00-CLIP 04 appearing at pages 33-35 of Exhibit 2 to Hendricks Declaration filed February 6, 2011, Document 6-7.

“weapons” in the conversation is a joke, playing off the “loaded” word “army.” The nonsensical nature of the “weapons” reference is reflected by the reference to weapons “from Iran”:

ATOSSA SOLTANI: This project of John S- Quigley’s—do we want—do we want to talk about this?

STEVEN DONZIGER: [unintelligible] needs are a ***big march***...

SOLTANI: In Quito—in uh...

DONZIGER: In Lago.

SOLTANI: In Lago.

DONZIGER: There are several things. Big march that we make our own army. **Private [army]**.

YANZA: [laughter] It’s—it’s—it’s called an army, but it’s like a—a group—a **specialized group**, right, specialized for, uh-- ah—for immediate action.

DONZIGER: [Laughter] [unintelligible]

YANZA: When the court is needed—when I—action is needed.

SOLTANI: Do you guys know if anybody can, uh, subpoena these videos? That is a, how do you [unintelligible]

DONZIGER: We don’t have the power of subpoena in Ecuador.

SOLTANI: What about the U.S.? These guys...

DONZIGER: An army, ***it's not an armed army***, it’s a group of people to watch over the court

* * *14

YANZA: [laughter] It’s to **watch over the court**, because for the remainder of the case...

DONZIGER: ***It's to protect justice.***

SOLTANI: But the perception is that there’s a group...

14 Elided section discussed separately in Paragraphs 185-186 below.

DONZIGER: *To prevent Texaco from breaking the law.*

SOLTANI: *There's a group of what—people who are watching the court, like...*

YANZA: Yes, but who are there permanently—it's not that everyone is there, it goes by shifts, but who are available a little [overlapped voices]

DONZIGER: The idea—we need a permanent watch [overlapped voices] with twenty people to follow Richard, the expert, to protect the court, to prevent corruption. ***Prevent corruption. We need people. It's a force, a political force that the judges can see.*** Then, we start with five hundred people at the court and after that—all that, followed by twenty, thirty people, paid by us, for their time ***to protect the process from corruption.***

SOLTANI: Monitors.

YANZA: Yes.

DONZIGER: Exactly.

YANZA: Yes, yes, yes [unintelligible]

DONZIGER: I prefer the word ‘army’, but...

KEVIN KOENIG: It's a little loaded.

YANZA: But—but—[chuckles] but—but these people...

DONZIGER: Is it loaded?

[overlapped voices]

YANZA: ... would have to receive some minimal training...

SOLTANI: Especially in this country.

YANZA: ...they would have to receive minimal training... things like that—details, so they do a good job for us. That's it. And then, if it goes well, and we need, uh, **if we need weapons, we can provide weapons.**

DONZIGER: [laughter]

YANZA: From Iran! We can bring...

DONZIGER: [laughter]

KOENIG: Carumba!

SOLTANI: I'm going to lose my citizenship here.

DONZIGER: So we really need—*we really need some—some long-term support. Get some people mobilized.*¹⁵

* * * *

185. Embedded within the discussion quoted above is another exchange, which Chevron frequently quotes in a particularly misleading way. Paragraph 75 of the RICO complaint states in part:

Realizing the ramifications of this plan [concerning the “army”], Soltani asked if the videotapes of the discussion could be subpoenaed, advising: “**I just want you to know that it’s—it’s illegal to conspire to break the law.**”

186. Chevron fails to quote the *very next sentence* which Donziger states in response.

The exchange is as follows:

DONZIGER: An army – it’s not an armed army – it’s just a group of people to watch over the court.

SOLTANI: I just want to know—**I just want you to know that it’s—it’s illegal to conspire to break the law.**

[laughter]

DONZIGER: *No law’s been conspired to be broken.*

YANZA: [laughter] It’s to **watch over the court**, because for the remainder of the case...

DONZIGER: *It’s to protect justice.*¹⁶

¹⁵ Clip CRS-350-04-CLIP-02, appearing at page 422 of the 455 page Exhibit 2 to Hendricks Declaration, Document 8-4 filed February 6, 2011.

¹⁶ Clip CRS-350-04-CLIP-02 of Exhibit 2 to Hendricks Declaration at pages 422-423, Docket 8-4, filed February 6, 2011.

187. These two excerpts discussed above, with regard to the “army” and “weapons,” and with regard to “conspiring to break the law,” are examples of misleading citations to the outtakes which Chevron and its agents have repeated in other fora in connection with their overall campaign to discredit Donziger and the Lago Agrio Litigation.

188. For example, these excerpts were also misleadingly quoted by Chevron counsel Randy Mastro in a *Wall Street Journal* TV interview on February 17, 2012:

Announcer: OK That brings me to another of these remarkable outtakes that you got through the discovery process, where the American plaintiff’s lawyer is talking to I think several people at a meeting, and one of them seems to remind him that it’s illegal to conspire to break the law.

MASTRO: A telling admission, as they were discussing creating an army to surround the courthouse to pressure the court, and arming the army with weapons, that’s what that statement was made in response to.

Announcer: Yikes.

189. Similarly, Chevron’s website posts the video of the exchange that includes Soltani’s statement “It is illegal to conspire to break the law,” cutting off the exchange right there, without showing Donziger’s response, “No law’s been conspired to be broken.” See www.chevron.com/ecuador, video #41 under “Uploaded Videos.”

190. In addition, when citing to the Crude outtakes, Chevron frequently fails to quote or cite to abundant other information in the Crude outtakes which reveal information *detrimental* to Chevron, making the outtakes Chevron does cite misleading by omission. For example, Chevron cites to certain outtakes pertaining to particular conversations or meetings, while omitting to cite to other outtake clips from the same conversation or meeting, where information detrimental to Chevron’s spin on the Lago Agrio Litigation is discussed and/or where Donziger and others being videotaped provide additional material information and context necessary to

make the excerpts cited by Chevron complete and not misleading. As one example, in paragraphs 129-133 of its Amended RICO Complaint Chevron cites to certain outtakes recording a March 3, 2007 meeting, while failing to mention other outtakes from that same meeting during which the participants discussed the abundant evidence of pollution and contamination and the scientific evidence supporting it.

6. Chevron’s false and misleading statements regarding Donziger’s involvement in “ghostwriting” the Ecuadorian judgment.

191. As soon as the Lago Agrio Court issued its carefully reasoned judgment against Chevron on February 14, 2011, Chevron began to weave the judgment itself into its narrative of fraud and misconduct, claiming that the judgment was secretly “ghostwritten” by the Ecuadorian Plaintiffs’ lawyers, including Donziger.

192. On information and belief, Chevron felt compelled to include the judgment into its false narrative because in his decision Judge Zambrano rejects Chevron’s claims of fraud and other misconduct on the part of the Ecuadorian Plaintiffs’ legal team. Chevron, therefore, had to find a way to discredit these findings, as well as the Court’s liability findings against Chevron, in order to succeed in its overall scheme of fraudulently attacking and discrediting Donziger and the Lago Agrio Litigation.

193. For example, on its website, Chevron states that the Ecuadorian Plaintiffs’ lawyers’ misconduct includes “even ghostwriting parts of the verdict itself.”

194. Similarly, Chevron’s public relations website, www.theamazonpost.com, states: “[T]he plaintiffs’ lawyers turned to fraud . . . ghostwriting the ultimate judgment itself.”

195. Chevron General Counsel Pate has publicly stated: “Chevron has already shown through the plaintiffs’ lawyers own documents and film outtakes that Judge Zambrano’s ruling against Chevron was ghostwritten by the plaintiffs’ lawyers.”

196. Chevron also submitted a letter to Ecuador's Prosecutor General, accusing Donziger and other members of the Ecuadorian Plaintiffs' legal team of fraud and corruption, including secretly drafting the judgment. According to Chevron's press release trumpeting the letter, Chevron claims to have "submitted evidence showing that plaintiffs' representatives, including Steven Donziger . . . covertly worked with Judge Zambrano to draft the judgment." In its letter to the Prosecutor General, Chevron demanded that the Ecuadorian government open an investigation of Donziger.

197. In fact, Donziger did not ghostwrite the judgment or have any knowledge that anyone else did. Chevron has no evidence to the contrary and no basis to accuse him.

198. Indeed, this Court recently concluded, after reviewing all of the evidence that Chevron could muster in support of its ghostwriting claims that: "[E]ven assuming the judge did not draft much of the Judgment, *there is no admissible evidence as to the identity of the author or authors*. The record is silent, for example, even as to such a basic matter as whether the trial judge had professional staff assisting him, which could account for multiple authors and for certain dissimilarities in style between the judgment and prior writings of the judge." (Emphasis added.)

VI. FIRST COUNTER-CLAIM FOR RELIEF – FRAUD

199. Donziger realleges and incorporates herein by reference each and every foregoing paragraph of these Counterclaims as if set forth in full.

200. Chevron and its agents have knowingly misrepresented, omitted, and/or concealed material facts in their pleadings and representations before U.S. courts and before the Lago Agrio Court and the Ecuadorian appellate courts, in their communications to federal and state government agencies and officials, in their communications to the Ecuadorian government, including its Solicitor General and its Prosecutor General, and in their communications to

Donziger, to the media, to supporters and potential supporters of the Ecuadorian Plaintiffs, and to public at large.

201. Chevron's and its agents' false and misleading representations are detailed throughout these Counterclaims and include Chevron's false and misleading statements regarding: Diego Borja and Wayne Hansen, and their plot to discredit Judge Nuñez, the evidentiary record in the Lago Agrio Litigation, including the scientific evidence supporting the judgment against Chevron, and the statements and opinions of the Ecuadorian Plaintiffs' environmental experts and counsel concerning the evidentiary record, Donziger's statements and conduct during the course of the Lago Agrio Litigation, and Donziger's knowledge of and participation in the alleged ghostwriting of the Ecuadorian judgment.

202. Chevron made these misrepresentations while knowing that they were materially false and/or that they omitted material information.

203. Chevron made these misrepresentations with the intent of (i) corruptly obtaining favorable rulings from United States and Ecuadorian courts, (ii) obstructing, thwarting and delaying the Lago Agrio Litigation in Ecuador and recognition and enforcement of the judgment rendered against Chevron in that litigation, (iii) propagating false information about Donziger, the Ecuadorian Plaintiffs, and other supporters and representatives of the Ecuadorian Plaintiffs to United States and Ecuadorian courts and other government officials and agencies, international tribunals, potential supporters and funders of Lago Agrio Litigation and the Ecuadorian Plaintiffs, the media, and the general public, (iv) pressuring United States and Ecuadorian government officials and agencies to pursue criminal investigations of Donziger and other supporters and representatives of the Ecuadorian Plaintiffs, (v) disrupting Donziger's professional relationship with the Ecuadorian Plaintiffs, other members of their legal team, and

litigation supporters, and (vi) damaging Donziger's reputation, goodwill, and business operations.

204. These material misrepresentations have been reasonably and justifiably relied upon by United States courts, the Lago Agrio Court by means of its decision to recuse Judge Nuñez and not to consider or rely upon the Cabrera report, U.S. state and federal government agencies and officials, Ecuadorian government officials, the media, potential supporters and funders of the Ecuadorian Plaintiffs, and others.

205. As a direct, proximate, and foreseeable result of Chevron's fraud and calumny, Donziger has been harmed, including significant pecuniary, reputational, and other damages. These injuries include significant damage to Donziger's reputation and goodwill, impairment of his professional relationship with the Ecuadorian Plaintiffs, and attorneys' fees and costs Donziger has incurred defending against Chevron's misrepresentations and the baseless, improperly motivated litigation that Chevron has pursued against Donziger based, in significant part, upon its material misrepresentations and/or omissions, and that he has incurred in investigating and exposing Chevron's fraud.

206. Chevron has engaged in malicious, willful, and fraudulent commission of these wrongful acts with the intent to harm Donziger, and because of the reprehensible and outrageous nature of these acts, Donziger is entitled to, and should be awarded, punitive damages against Chevron.

VII. SECOND COUNTER-CLAIM FOR RELIEF – CIVIL EXTORTION/ DURESS

207. Donziger realleges and incorporates herein by reference each and every foregoing paragraph of these Counterclaims as if set forth in full.

208. As described in the foregoing paragraphs, Chevron has engineered and executed a wide-ranging campaign of public attacks based on false and intentionally misleading statements against Donziger.

209. Chevron has utilized its false and misleading statements against Donziger to harass and intimidate him, to subject him to obloquy, to subject him to vexatious litigation, to damage his reputation and goodwill, and to harm him economically.

210. Chevron also has physically threatened, harassed, and intimidated Donziger by subjecting him and his family to near-constant monitoring and surveillance, both in the United States and in Ecuador.

211. Chevron has acted with intent to induce fear in Donziger, and Chevron has in fact induced fear in Donziger, that Chevron will continue to: (1) pursue a scheme of misrepresentations to the great harm and public denigration of Donziger, (2) subject Donziger to harassing and economically ruinous litigation premised upon its misrepresentations, (3) deplete Donziger's assets by forcing Donziger to defend against Chevron's campaign of attacks, (4) threaten and interfere with Donziger's right to pursue his lawful business, (5) attempt to disrupt Donziger's professional relationship with the Ecuadorian Plaintiffs; (6) seek to trump up baseless criminal investigations of Donziger, and (7) subject any third-parties, including other attorneys and litigation funders, that offer support to Donziger or the Ecuadorian Plaintiffs to the same treatment.

212. By this wrongful use and infliction of fear, Chevron has sought to obtain property interests of Donziger and the Ecuadorian Plaintiffs, including their interest in Chevron's full satisfaction of judgment rendered against Chevron in Ecuador, by seeking to coerce Donziger

and the Ecuadorian Plaintiffs to consent to abandon or settle the Lago Agrio Litigation on terms favorable to Chevron.

213. Chevron's attempted extortion of Donziger has caused harm to Donziger, including damage to his business, reputation and goodwill, and requiring Donziger to devote time and effort, and to incur substantial legal fees and costs, to respond to Chevron's fraudulent attacks and threats.

214. Chevron has engaged in malicious, willful, and fraudulent commission of these wrongful acts with the intent to harm Donziger, and because of the reprehensible and outrageous nature of these acts, Donziger is entitled to, and should be awarded, punitive damages against Chevron.

VIII. PRAYER FOR RELIEF

1. For general damages according to proof at trial;
2. Punitive damages in an amount to be proven at trial; and
3. For such other legal and equitable relief as the Court may deem Donziger is entitled to receive.

JURY DEMAND

Defendants Steven Donziger, the Law Offices of Steven R. Donziger and Donziger & Associates, PLLC hereby demand a jury trial of all claims and/or issues in this action triable as of right by a jury.

Dated: August 15, 2012

Respectfully submitted,

By: /s/ John W. Keker

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