UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

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| CHEVRON CORPORATION,<br><br>Plaintiff,<br><br>v.<br><br>STEVEN DONZIGER, THE LAW OFFICES OF STEVEN R. DONZIGER; et al.,<br><br>Defendants. | Case No. 11-CV-0691 (LAK) |

**DONZIGER DEFENDANTS' MOTION FOR STAY AND PROCEDURAL SAFEGUARDS**

On behalf of myself, Donziger & Associates, PLLC and the Law Offices of Steven R. Donziger, I, Steven Donziger, *pro se*, respectfully request that the Court stay this litigation for three months. Additionally, I request that the Court institute certain procedural modifications to afford me adequate opportunity to marshal the resources and to take other steps necessary to mount a proper and legally-entitled defense in this case. The breakneck pace of Chevron's continued legal onslaught since withdrawal of my former counsel is severely prejudicing my ability to defend myself. There are further a number of fundamental issues that need to be addressed to afford me any possibility of a fair trial.

Without this short stay, these fundamental issues will not be addressed nor will I be prepared for trial, my interests will be severely prejudiced, I fear a manifest injustice will result. I remind the court that Chevron is seeking treble damages against me on the $19 billion underlying judgment from the courts of Ecuador. The potential liability against me in this case, if it were to be realized, would be devastating to me and my family. Even without a finding of liability, the legal fees in defending against this lawsuit - for which I am liable personally -- threaten to bankrupt me.

I submit that the situation I face – a *pro se* defendant preparing for trial in little over five months against a plaintiff with apparently unlimited resources who is represented by 114 lawyers at Gibson Dunn, another almost 1900 lawyers at other law firms, and at least 98 investigators at Kroll, in a case in which millions of pages of documents have been produced in discovery – is all part of Chevron's strategy to win by might what it cannot win on merit.

I know that the gravamen of Chevron's claims against me, that the Ecuadorian litigation was a fraud, is fundamentally wrong. Indeed, Chevron's own scientific evidence submitted to the Ecuadorian court amply proved the claims of the plaintiffs, as do Chevron's pre-inspection

sampling and videos hidden from the plaintiffs and the court. Indeed, a memorial submitted by the Republic of Ecuador in its related BIT arbitration with Chevron, which was recently made public and which was based in part on evidence that I have yet not been able to gain myself, makes clear that I have very real and meritorious defenses to these claims based on facts including but not limited to those showing:

- The ample evidentiary basis for a finding of liability against Chevron by the Ecuadorian court absent the Cabrera Report;
- How Chevron's own science and internal environmental assessments essentially proved the case made against it;
- How Chevron used deceptive scientific protocols during the trial in Ecuador to minimize evidence of contamination; and
- How Chevron engaged in procedural misconduct and planned disruptions of the evidence-gathering process in order to delay the trial in Ecuador and cause "systematic harassment" to the court.

Declaration of Steven R. Donziger ("Donziger Dec."), Ex. A ("ROE Counter-Memorial") at pp 14-77. These facts and others show that the judgment in Ecuador is valid and legitimate. And while this Court (absent an enforcement action initiated by the Ecuadorian plaintiffs) cannot accede to Chevron's requests that it opine on the judgment's validity, I cannot defend myself against the crushing liability that Chevron – one of the largest and richest corporations in the world – seeks to impose on me unless I am given the opportunity to develop the evidence necessary to mount defenses based on what actually happened in Ecuador and respond to Chevron's allegations to the contrary. As it is, however, I can barely even keep up with the

procedural demands being made of me by Chevron and the Special Masters, let alone do what is necessary to present my case.

In an Order dated May 24, 2013, the Court indicated a willingness to consider a further request for an extension of the schedule in this case. *See* Dkt. 1185 at 2. I hereby make a request for a modest three month stay for the reasons discussed below and, more basically, to prevent the remainder of this litigation, including the upcoming trial, from devolving into a mockery of justice and due process.

**A. I need time to seek substitute counsel.**

I need a stay to have the time necessary to obtain substitute counsel. Donziger Dec., ¶ 8. My need to be represented in this case given the severity of the allegations against me, the almost unprecedented legal resources arrayed against me, and the enormous scale of this case cannot be overstated. Nonetheless, my effort to secure counsel is taking place in an environment in which Chevron and its counsel have engaged in a concerted effort to leave me unrepresented and leave Mssrs. Camacho and Payaguaje severely under-represented as this case moves rapidly to trial. Chevron's CEO and Chairman, John Watson, in February made this strategy explicit, telling investors that the case "will end when the plaintiffs' lawyers give up." Donziger Dec., Ex. B. Central to Chevron's strategy in this regard has been the use lawsuits as weapons to isolate me in the public eye and intimidate those in the legal and funding communities who might otherwise be inclined to provide support. Other than myself, Chevron already has sued or threatened to sue numerous attorneys who have represented the Ecuadorian plaintiffs, including most recently the Patton Boggs law firm. Chevron also has sued or threatened to sue major sources of funding, including those upon whom I relied to provide funds to pay my counsel, including my former counsel at the Keker & Van Nest firm.

Another component of this strategy has been to defame me and spread false information in the press that appear designed to scare off potential counsel. For example, Mr. Watson has referred to me and other lawyers that represent the Ecuadorian plaintiffs as "criminals," Donziger Dec., Ex. C, when in truth I am not. I'm merely someone that sought to help victims of massive pollution hold an oil company responsible for that pollution. As a further example, Mr. Randy Mastro, who leads Chevron's legal team for Gibson Dunn, in the face of unambiguous statements by Keker & Van Nest and Smyser Kaplan & Veselka to the contrary, in a prepared statement to the press, claimed the reason for their withdraw was that: "[n]o reputable person, organization, or government would want to be associated with this scheme." *Id.*, Ex. D. Other Chevron officials have made similar comments, suggesting this strategy has been approved at the highest levels of the corporation. *See id.*, Ex. E. (quoting a Chevron corporate spokesman as saying, "Anyone jumping into bed with the plaintiffs needs to understand ... that they will be funding a fraudulent lawsuit.")

Chevron's strategy to sue, threaten to sue, and defame law firms who enter this case on behalf of me or the Ecuadorian defendants has severely prejudiced my efforts to identify and procure adequate substitute counsel. Chevron has also substantially raised the cost of retaining substitute counsel through its scorched earth litigation strategy, creating the substantial risk that any such counsel would face an unnecessary barrage of discovery and other demands in an extraordinarily compressed time frame as mandated by the court, while running the risk that Chevron will target them with retaliatory legal actions, subpoenas, and surveillance as it has done repeatedly to others in the past. *See, e.g.,* Declaration of Denis Collins, ¶¶ 2-8 (describing surveillance activities concerning my person that he witnessed); Donziger Dec., ¶ 7 ("I know of

no reason why any person, other than Chevron, would surveil me; and Chevron has no legitimate reason to do so.")

Setting aside the merits of Chevrons claims against me and the Ecuadorian plaintiffs (and the lack thereof), I respectfully submit that this effort is profoundly unethical and corrosive to our system of justice. Again, cases should be won on merit not attrition; and no one should seek to defeat an adversary in litigation by eliminating his, her, its or their ability to retain legal representation in the fight. This is an adversarial system of *justice*, in which facts and evidence thereof are supposed to determine outcomes, not whether one side has been able pick off persons defending the interests of the other. A stay is absolutely necessary if I am to have a realistic chance to obtain the funds for, and to retain, substitute counsel. And retention of substitute counsel is absolutely necessary if I am to have any chance of a fair trial.

**B. I need time to get up to speed on the factual and legal issue in the case while fielding Chevron's barrage of ancillary requests**

I further need a stay to get fully up to speed in this complex case with a voluminous record and mountains of discovery, which includes many millions of pages of documents, countless hours of video and audio recordings, and a privilege log from Chevron that alone is 15,000 pages long and lists approximately 2,000 people, including 114 lawyers from my adversary counsel in this very case, and 98 persons from the investigative and private security firm Kroll. Donziger Dec., ¶¶ 9.

Notwithstanding Chevron's allegation that I have played some sort of omniscient "mastermind" role, Amended Complaint, ¶311, the reality is that there are numerous allegations concerning the factual bases of Chevron's claims as well as many ancillary legal and factual issues (such as 502(d)) stipulations which were being negotiated by my former counsel) about which I have little or no familiarity. Donziger Decl. ¶10. Chevron glibly suggests that I should

have taken time before my former counsel's withdrawal to familiarize myself with the record. *See* Dkt. 1185 (reproducing Chevron's arguments against a two-week delay in the deposition schedule). Chevron's suggestion is untenable. In addition to the mountains of documentary, video and audio materials to go through, as a result of Chevron's apparently unlimited litigation budget, there are now nearing 1200 docket entries in this matter. *Id*. ¶ 11. This volume far outstrips the ability of me – or anyone – to simply absorb it in a matter of weeks, or even months. *Id*. New counsel would require several months to digest a record of this magnitude. There is no conceivable way that I, as *pro se* litigant, who has never litigated a civil case in federal court, has not litigated in a United States court at all since the late nineties, has never tried a case before a jury, and has never even taken a deposition, would need something less to do the same. *Id.*, ¶ 12.

Furthermore, since my former counsel withdrew, I have been inundated with requests from Chevron to meet and confer on ancillary discovery issues, several of which involve lengthy documents and stipulations that implicate the universe of millions of pages of production in this case, while at the same time I am preparing to attend and take depositions and digest Chevron's kitchen-sink 30(b)(6) notice to Donziger & Associates, PLLC. *Id.* ¶ 13. I have requested that Chevron take reasonable steps to streamline its multitudinous requests; for example, I requested that Gibson Dunn designate one point of contact with me. Chevron has refused. *See* Donziger Declaration ¶¶ 14-15, Exs. .

I submit this is part of a litigation strategy designed by Chevron to overwhelm me and my Ecuadorian clients to such an extent that the valid Ecuador judgment (currently the subject of recognition actions in other countries where the same complaints Chevron raises here are also being raised) cannot be enforced solely due to a lack of resources. I also note that this strategy is nothing new; Chevron for years employed the same strategy ("to win by might rather than by

merit") in Ecuador to an attempt to overwhelm the opposition, at one time filing 39 motions with the court in a 50-minute window as part of a campaign of "systematic harassment" and "deception" to obstruct the proceedings. *Id.*, Ex. A, ¶¶138, 149, 156.

Without the short three-month stay I have requested, there is no way I can do much more than ride (or get swallowed up by) the tide created by Chevron's relentless and intentionally overwhelming litigation strategy. This is not due process.

**C. I need time to develop and present my core defenses in this case.**

I further require additional time to develop and present my core defenses in this case. These defenses include that: (1) this lawsuit and related Chevron legal actions and threatened legal actions are part of Chevron's admitted long-term strategy to retaliate against me and "demonize" me because of my leadership role in holding Chevron accountable for its environmental crimes, human rights abuses, and fraudulent cover-up in Ecuador, as well as to distract public attention from its crimes and the legitimate liability it faces, which it has gone to great lengths to hide; and (2) that Chevron's claims in this matter are based on distortions of evidence, including without limitation out-of-context use of the *Crude* outtakes, as documented in part in my counterclaims (*see* Dkt. 567-1, pp. 137-143), and the wholesale fabrication of evidence using illicit means that include without limitation cash payoffs to witnesses and extortion, including payments to former Ecuador judge Alberto Guerra in exchange for favorable testimony, the transparent coercion of affidavits from scientists at Stratus Consulting, and the attempted video entrapment scheme against Judge Juan Nunez.

To this end, I must be allowed to develop and present evidence that goes to facts including those related to: (1) the legitimacy of the Lago Agrio Judgment and the trial process that produced it, such that the fact-finder can understand that even disregarding the Cabrera

report (which I maintain was not a product of fraud as Chevron alleges) there was ample basis for a finding of liability against Chevron; (2) the nature and extent of Chevron's admitted campaign to "demonize" me, including the means used to execute that campaign, including the use of undercover physical and electronic surveillance; (3) the involvement of high-level Chevron officials in approving, funding, and designing said campaign; and (4) how said campaign is part of Chevron's efforts to sell a false and misleading narrative to the media, deceive its shareholders about risk, deceive government officials about the facts of the case, and to seek wholly improper extrajudicial solutions that are designed unlawfully quash the Lago Agrio case and deprive the Ecuadorian plaintiffs of their fundamental rights as protected by law.

A three-month stay will allow me a bare minimum of time to conduct the necessary analysis, formulate an evidentiary plan; develop evidence, and to develop and present my defense. I have no interest in unduly delaying these proceedings, and in fact I seek resolution of Chevron's claims by a jury as soon as practicable without compromising my due process rights. I will work with Chevron, the Court, and the Special Masters to streamline the process as much as possible, consistent with my basic due process right to defend myself, and subject to my ongoing objections to this process that are in the record.

The current posture and schedule is not consistent with my rights in this regard, not only because I have not had sufficient time to take control of the case after withdrawal of my counsel two weeks ago, but also because certain of this Court's orders (especially issued in recent weeks as I was dealing with the possibility that my former counsel was considering filing a motion to withdraw) would appear severely hamstring my ability to develop a defense as outlined above. For example, this Court's May 9 Order striking areas of inquiry allowed in the upcoming 30(b)(6) deposition of Chevron appears to preclude me from inquiring into, among other topics,

the extensive surveillance apparatus that Chevron appears to have used in multiple countries to illicitly spy on me and my colleagues and manufacture evidence to support this and other retaliatory lawsuits. The Court also appears to have restricted my ability to inquire into the existence of massive contamination at Chevron's former oil well and production sites, the "inspecting, testing, or analysis" conducted as part of the trial, and other issues that would help me defend myself by proving the validity of the Ecuador judgment, see, e.g., Dkt. 721 (striking requests for production of documents concerning contamination).

Such evidence is probative of facts that are highly relevant to my defenses in this action. These include facts going directly to my state of mind concerning the alleged predicate acts underlying Chevron's civil RICO claim, and to the substance of many allegations that survive Chevron's limited "withdrawal" (at the suggestion of the court) of its "sham litigation" allegation, such as the claim that defendants created a "fabricated and fraudulent record . . . to extort Chevron" and other (false) claims. See Dkt. 720. These facts furthermore go fundamentally to the causation portion of Chevron's claims against me. If I am not allowed to develop a defense based on the existence of the overwhelming evidence supporting the Lago Agrio court's finding of liability against Chevron, I cannot possibly be expected to defend myself against Chevron's allegations that the alleged wrongdoing by me and/or others was the cause of its injuries for which it seeks to hold me liable in the amount of many billions of dollars.

**D. I need limited modifications to case procedures in order to accommodate my extremely limited resources.**

In addition and separately, I also request the following limited modifications to case procedures to accommodate my extremely limited resources as a *pro se* litigant:

- Given the imminent pendency of depositions that I believe could be critical to my ability to develop evidence to mount an adequate defense, I request that the court

allow me and counsel for the Ecuadorian defendants wide latitude to examine all Chevron deponents consistent with our previously submitted list of topics, and that questions about environmental contamination in Ecuador be allowed not on the grounds that the issue of "science" is directly in play in this litigation, but that the issue of "science" affects my ability to develop my core defense consistent with my due process rights, as discussed above. These issues include, but are not limited to, my contention that the Lago Agrio judgment is valid and legitimate based on overwhelming scientific evidence, even absenting the Cabrera Report; my beliefs and state of mind regarding Chevron's outtakes from the film *Crude*; and my *mens rea* regarding Chevron's claims against me and the Ecuadorians, including claims for fraud, extortion, and predicate RICO acts.

- I request that deadlines for appealing rulings of the Special Masters be extended. While I will always endeavor to appeal rulings as fast as possible, it will be virtually impossible for me to meet the 48-hour deadline for appealing a ruling by the Special Masters given the almost super-human deposition schedule now in place. This schedule will require me to prepare for depositions, conduct depositions, prepare for and sit for my own two-day deposition, while continuing efforts to secure counsel, with minimal time to spare. I am also extremely concerned of "waiver" rulings against me given the history of this case, where I was forced to turn over my entire case file after the Court found a "waiver" in 2010. I therefore request that the parties be given up to 14 days to request review of a Special Master ruling with respect to objections.

- I request that Chevron's counsel at Gibson Dunn be ordered to designate one attorney to communicate with me and counsel for the Ecuadorians one time on a daily basis all outstanding and pending issues regarding meet and confers, and that this attorney be ordered to coordinate appointments with other Gibson Dunn attorneys as needed for the efficient management of this process.
- I request that this Court order Chevron and Gibson Dunn to refrain from making public statements regarding current counsel for me or the Ecuadorians, former counsel on the case, and potential future counsel such that it interferes with the right to counsel of either me or my Ecuadorian clients in this matter.
- I request that this Court order Chevron, Gibson Dunn, and all other agents of Chevron to refrain, more generally, from doing anything to interfere with my effort to locate and retainer substitute counsel.
- I reserve my rights to request additional reasonable modifications to the management of this litigation as necessary to protect my rights. I expect to come to a better understanding of what these requests might entail during the three-month stay period requested herein.

Fundamentally, I am asking only for a fair chance to defend myself against an adversary that has indicated by its actions and words that it will do anything in its power to destroy me. I respectfully request that the Court provide me with the relief requested herein.

Respectfully submitted,

Dated: June 1, 2013

By: */s/ Steven R. Donziger*

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