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CHEVRON CORPORATION

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CV 09 5371

CHEVRON CORPORATION,

Plaintiff,

v.

CRISTÓBAL BONIFAZ and THE LAW
OFFICES OF CRISTÓBAL BONIFAZ,

Defendants.

Case No. _____

COMPLAINT FOR MALICIOUS
PROSECUTION

JURY TRIAL DEMANDED

ORIGINAL
FILED

09 NOV 19 PM 2:39

EDWARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

E-filing

EMC

1 Plaintiff Chevron Corporation (hereinafter Chevron or Plaintiff), for its Complaint against
2 the Defendants listed below alleges as follows:

3 **INTRODUCTION**

4 1. In 2006, Defendant Cristóbal Bonifaz, an attorney, filed an action in this Court
5 purportedly on behalf of certain individual Ecuadorians against Chevron and two affiliates,
6 captioned *Gonzales v. Texaco Inc.*, No. C-06-02820 WHA (N.D. Cal.) (*Gonzales*). Before filing
7 suit, Bonifaz had never met the individuals on whose behalf he purported to sue. He did not
8 obtain authorization to sue for his purported clients in the United States. And he never had any
9 probable cause to sue Chevron or its subsidiaries on behalf of those individuals. Nonetheless, he
10 filed multiple pleadings in this Court falsely representing that *Gonzales* plaintiffs had cancer and
11 that it was caused by Chevron's subsidiaries. He even dramatically alleged, falsely, that one
12 plaintiff's child was suffering from leukemia and "slowly deteriorat[ing] from the cancer." But
13 when that plaintiff was deposed under oath, Chevron and the Court learned that her child had
14 never been diagnosed with cancer. In short, Bonifaz filed claims that were false. After two years
15 of litigation, Chevron exposed those claims as fraudulent, resulting in their dismissal with
16 prejudice, a finding by the Court that claims were "manufactured," and the imposition of
17 terminating and Rule 11 sanctions.

18 2. The Court also dismissed as untimely other claims that Bonifaz had contended
19 were timely without probable cause. And, as Chevron discovered and revealed the true facts that
20 showed various claims brought in *Gonzales* were groundless, Bonifaz dismissed the claims of
21 remaining plaintiffs that also had been brought without probable cause.

22 3. Bonifaz's conduct was neither accidental nor an innocent mistake. Bonifaz hired
23 and paid someone in Ecuador to find "plaintiffs" as part of a pre-existing plan to sue Chevron. As
24 the Court wrote: "It is clear to the Court that this case was manufactured by plaintiffs' counsel for
25 reasons *other* than to seek a recovery on these plaintiffs' behalf. This litigation is likely a smaller
26 piece of some larger scheme against defendants." The Court also found that Defendants "filed
27 these actions in California, for reasons that have more to do with internecine quarrels among
28 Texaco's antagonists than the interests of their plaintiffs."

1 San Francisco Division is proper as a substantial part of the events giving rise to this action
2 occurred in the county served by that Division.

3 FACTUAL ALLEGATIONS

4 **I. BACKGROUND**

5 15. From 1964 to 1992, Texaco Petroleum Company (TexPet) was a minority
6 shareholder in an oil exploration and production consortium (the Consortium) with the
7 Corporación Estatal Petrolera Ecuatoriana, now known as Petroecuador (Petroecuador), in the
8 Oriente region of Ecuador (the Concession Area) pursuant to concession agreements with, and
9 subject to the regulatory authority of, the government of Ecuador. In 1990, Petroecuador became
10 the Consortium's operator, and in 1992 it took over 100% ownership of the Consortium and all
11 Consortium facilities and operations. Since 1992, TexPet has had no ownership interest or
12 involvement in oil exploration or production activities in Ecuador.

13 16. In October 2001, Texaco Inc. (Texaco) merged with a subsidiary of Chevron. As
14 a result, Texaco and TexPet became and remain subsidiary corporations of Chevron.

15 17. In 2003, Bonifaz and others participated in filing a lawsuit against Chevron on
16 behalf of 48 Ecuadorians in Lago Agrio, Ecuador (Lago Agrio Litigation). Bonifaz and others
17 created and participated in an organization called *Frente de Defensa de la Amazonia* (a/k/a the
18 Amazon Defense Front or the Amazon Defense Coalition) (hereinafter the Front) to receive and
19 control proceeds from the lawsuit.

20 18. In early 2006, on information and belief, the Front and the Lago Agrio plaintiffs
21 terminated Bonifaz as their lawyer. This termination cut off or threatened to cut off Bonifaz's
22 financial interest in the outcome of the Lago Agrio Litigation, which is ongoing.

23 19. In retaliation against the Front and the Lago Agrio plaintiffs and motivated by
24 continuing ill will and malice against Chevron, Bonifaz plotted to bring a lawsuit against Chevron
25 in the United States.

26 **II. THE GONZALES ACTION**

27 20. In furtherance of that plan, Bonifaz paid Ecuadorian attorney Gerardo Peña
28 Matheus (Peña) to find "three or four people" in the Concession Area with "some form of

1 cancer,” and to provide him with a letter from “any medic who has examined these people that
2 says in his opinion there is at least a 51% probability that the cancer was caused by the fact that
3 these people have been exposed to the petroleum contamination” He wrote to Peña that “with
4 this last action in court that I am planning we will give Chevron ‘la copa de gracia.’”

5 21. In response to Bonifaz’s request, Peña or individuals working on his behalf
6 identified a few Oriente residents as potential plaintiffs for Bonifaz’s planned lawsuit. On
7 information and belief, they did not obtain any letter from any doctor, any medical records, or any
8 other evidence that the individuals had cancer or that their “cancer” was caused by the
9 Consortium’s operations; the only documents relating to these potential plaintiffs that Peña
10 provided to Bonifaz were “intake forms” filled out by a paralegal or other individual working on
11 Peña’s behalf that provided no basis for filing a lawsuit.

12 22. On or about April 25, 2006, despite never having met with his putative clients
13 nor having obtained their authorization to sue in the United States, Bonifaz and his law firm,
14 along with Terry Collingsworth and Paul Hoffman, filed the *Gonzales* action in this Court on
15 behalf of a purported class consisting of “residents of the Amazonian rainforest region of
16 Ecuador, known as the Oriente” who allegedly “contracted cancer, or who now suffer from an
17 increased risk of contracting cancer and other diseases,” allegedly due to the Consortium’s
18 operations. Although TexPet was the minority shareholder in the Consortium, Defendants did not
19 sue Ecuador or Petroecuador.

20 23. The original *Gonzales* complaint alleged causes of action for unjust enrichment
21 and violations of California’s Unfair Competition Law, California Business and Professions Code
22 §§ 17200, *et seq.*, and sought disgorgement of TexPet’s profits, which were alleged to be in the
23 billions of dollars and comparable to the damages sought in the competing Lago Agrio Litigation.

24 24. The original complaint was dismissed with leave to amend because the facts
25 alleged were insufficient to state a valid claim.

26 25. Defendants, together with Collingsworth and Hoffman, filed an amended
27 complaint on or about October 12, 2006, dropping the class action allegations and alleging
28

1 personal injury claims for nine plaintiffs based on causes of action for negligence, intentional or
2 reckless infliction of emotional distress, and battery.

3 26. The claims of all nine *Gonzales* plaintiffs were made by Defendants without
4 probable cause.

5 27. The original and amended complaint claimed that Gloria Vera Chamba's
6 (Chamba) minor son had leukemia caused by Chevron's subsidiaries. At deposition, Chamba
7 admitted that her son never had leukemia. Chevron also established during discovery that
8 Chamba's son never lived in the Concession Area and thus Defendants never had any basis to
9 allege that TexPet caused her son any injury. Indeed, the evidence revealed that Chamba had
10 filed claims in Ecuador against Petroecuador, alleging that the state-owned oil company was
11 responsible for causing her son's alleged illnesses and contradicting the claims asserted against
12 Chevron on her behalf and on behalf of her son. Chamba's claims were dismissed by the Court
13 and, as the Court found in its Rule 11 order, were "bogus claims that should never have been on
14 the books" and "baseless and made without reasonable and competent inquiry."

15 28. The original and amended complaint alleged that Luisa Jame Gonzales
16 (Gonzales) had breast cancer caused by Chevron's subsidiaries. At deposition, Gonzales
17 admitted that she did not have breast cancer. She testified that she had previously told Bonifaz or
18 his co-counsel that she did not have breast cancer. Her claims were also eventually dismissed by
19 the Court in *Gonzales* and were likewise "bogus claims that should never have been on the
20 books" and "baseless and made without reasonable and competent inquiry."

21 29. The original and amended complaint alleged that Nixon Rodriguez Crespo
22 (Rodriguez), the husband of Gonzales, had a fear of cancer and suffered injuries as a result of his
23 wife's alleged "breast cancer." At deposition, Rodriguez admitted that the claims asserted in his
24 name were false. Those claims were also dismissed by the Court in *Gonzales* and were also
25 "bogus claims that should never have been on the books" and "baseless and made without
26 reasonable and competent inquiry."

27 30. The original and amended complaint alleged that Vilma Jacqueline Moreno
28 Chuquiom (Chuquiom) had breast cancer caused by Chevron's subsidiaries and that her husband

1 Tobias Alberto (Alberto) had a fear of cancer and suffered injuries as a result of his wife's alleged
2 breast cancer. On information and belief, Chuquiom never had breast cancer and Bonifaz never
3 had any probable cause to make those allegations. On information and belief, Bonifaz did not
4 even have an "intake form" for Chuquiom or Alberto. The claims asserted in the names of
5 Moreno and Alberto were dismissed by the Court in *Gonzales* for failing to answer Chevron's
6 discovery concerning their purported illnesses.

7 31. The original and amended complaint alleged that Luz Armas Cadena (Armas)
8 had lymphoma and thyroid cancer caused by Chevron's subsidiaries and that her husband Jose
9 Bonilla (Bonilla) had a fear of cancer and suffered injuries as a result of his wife's alleged
10 conditions. Those claims were barred from the outset by res judicata or the statute of limitations.
11 Armas and Bonilla had sued TexPet in Ecuador in 1997 claiming, in part, damages for Armas'
12 alleged health problems. On information and belief, Bonifaz never had any probable cause to
13 allege any claims on behalf of Armas and Bonilla against Chevron. On information and belief, he
14 did not even have an "intake form" for Bonilla. Bonilla's claims were voluntarily dismissed
15 following cross-examination at deposition concerning the lawsuit he had previously filed against
16 TexPet in 1997. Armas' claims were dismissed by the Court as barred by the applicable statute of
17 limitations. On information and belief, Bonifaz had no probable cause to believe that the claims
18 of Armas and Bonilla were valid.

19 32. The original and amended complaint alleged that Maria Cano Zambrano (Cano)
20 had uterine cancer caused by Chevron's subsidiaries and that her husband Arturo Alava (Alava)
21 had a fear of cancer and suffered injuries as a result of his wife's alleged condition. Cano did not
22 have uterine cancer; she had a cervical condition that Cano's own Ecuadorian treating physician,
23 from the national cancer institute, testified was likely caused by the human papillomavirus (HPV)
24 and for which petroleum is "not considered in the risk factors." In addition, Cano's claims were
25 barred from the outset by the statute of limitations. On information and belief, Bonifaz never had
26 any probable cause to allege any claims on behalf of Cano and Alava against Chevron. On
27 information and belief, he did not even have an "intake form" for Alava. Alava's claims were
28 voluntarily dismissed after cross-examination at deposition concerning how his wife contracted

1 HPV. Cano's claims were dismissed by the Court as barred by the applicable statute of
2 limitations. On information and belief, Bonifaz had no probable cause to believe that the claims
3 of Armas and Bonilla were valid.

4 33. During the course of the *Gonzales* litigation, Bonifaz engaged in conduct
5 designed and intended to prevent Chevron and the district court from discovering that the
6 Chamba, Gonzales and Rodriguez claims were fabricated.

7 34. Among other things, between December 2006 and February 2007, Bonifaz
8 concealed the existence of the "intake forms" that revealed the lack of merit in his clients' claims.
9 In February 2007, Bonifaz participated in propounding interrogatory responses that, for Chamba,
10 "perpetuated the pretense of the viability of the claims in the case rather than coming clean and
11 dismissing the claim" and, for Gonzales, "perpetuated the claim of cancer, although counsel
12 surely knew or should have known by this point that Plaintiff Gonzales had no cancer at all." In
13 May 2007, Bonifaz participated in propounding supplemental interrogatory responses from
14 Gonzales claiming cancer even though, as the Court found, "[c]ounsel knew by this point that
15 there was no cancer and the supplemental answer was a smokescreen to avoid dismissal of a
16 meritless claim."

17 35. On October 16, 2007, the district court in *Gonzales* imposed monetary sanctions
18 on Bonifaz (as well as Collingsworth and Hoffman) on a *sua sponte* motion under Rule 11 of the
19 Federal Rules of Civil Procedure. The Court found that Bonifaz "knew or should have known (i)
20 that the claims made by plaintiffs Chamba, Gonzales, and Rodriguez were baseless, (ii) that their
21 pre-suit inquiry was neither reasonable nor competent, (iii) that counsel failed to follow up on
22 pre-suit warning flags that spelled trouble, and (iv) that none of the three plaintiffs gave consent
23 to file suit in the United States, much less informed consent."

24 36. Final judgment was entered against all of the *Gonzales* plaintiffs and in favor of
25 Chevron, Texaco, and TexPet on November 15, 2007. The *Gonzales* plaintiffs did not appeal the
26 judgment against them. Bonifaz paid the sanctions fine as ordered by the Court and did not
27 appeal the sanctions against him.

28

1 37. The pretrial investigation conducted by Bonifaz into the merits of his “clients”
2 claims was patently unreasonable and virtually nonexistent.

3 38. Bonifaz’s filing and prosecution of the *Gonzales* lawsuit without conducting a
4 reasonable investigation evidences malice.

5 **III. ADDITIONAL MALICE: THE LARGER SCHEME AGAINST CHEVRON**

6 39. Further, as the Court stated: “It is clear to the Court that this case was
7 manufactured by plaintiffs’ counsel for reasons *other* than to seek a recovery on these plaintiffs’
8 behalf. This litigation is likely a smaller piece of some larger scheme against defendants.” The
9 Court also found that Defendants “filed these actions in California, for reasons that have more to
10 do with internecine quarrels among Texaco’s antagonists than the interests of their plaintiffs.”

11 40. The larger scheme against Chevron and its affiliates involves a long-standing
12 attempt by Bonifaz and others to extort money from Chevron for improper purposes and their
13 own benefit by blaming Chevron for causing cancer in individuals who do not have cancer and
14 for being responsible for environmental problems that are the responsibility of Ecuador and the
15 state-owned oil company, Petroecuador.

16 41. TexPet, Ecuador, and Petroecuador entered into a Settlement Agreement in 1995
17 which provided in part that TexPet would perform specified remediation in exchange for a full
18 release of claims. In 1998, Ecuador and Petroecuador executed an *Acta Final* (hereinafter 1998
19 Final Release), which certified TexPet’s performance of its remedial obligations and “release[d],
20 absolve[d] and discharge[d]” TexPet and any affiliates from “any liability and claims” resulting
21 from the Consortium’s operations. TexPet also provided funding for potable water, sewage, and
22 other projects pursuant to separate settlement agreements with local governments near the
23 Concession Area. Agreements with the four primary municipalities (Lago Agrio, La Joya de los
24 Sachas, Francisco de Orellana, and Shushufindi) were confirmed and approved by courts in each
25 municipality. TexPet entered into similar agreements with the Province of Sucumbíos, and with a
26 coalition of smaller municipalities in Napo province, each of which broadly released TexPet, its
27 parent company, affiliates, and principals from liability or claims resulting from the Consortium’s
28 operations.

1 42. Against this background, upon information and belief, Bonifaz and others
2 engaged in the following acts for the purpose of circumventing the 1998 Final Release and
3 extorting money from Chevron for their own illicit purposes:

4 (a) After Ecuador and Petroecuador released all claims against TexPet, Bonifaz and
5 others working in concert with him lobbied the Ecuadorian government to enact legislation
6 (which they helped draft) aimed illegally and unconstitutionally at circumventing the 1998 Final
7 Release and purportedly and illegally allowing Bonifaz and others to sue TexPet and its affiliates
8 in Ecuador.

9 (b) Bonifaz entered into a collusive agreement with Ecuadorian officials whereby he,
10 and those working with him, agreed not to sue Ecuador or Petroecuador for any environmental
11 impacts for which they are responsible, in exchange for the Ecuadorian government's assistance
12 and participation in lawsuits that Bonifaz and his cohorts would bring against Chevron, Texaco,
13 and TexPet. Bonifaz presented Ecuador's Attorney General with notarized documents agreeing
14 not to pursue any legal action against Ecuador. As Bonifaz publicly stated: "[I]f the U.S. court
15 finds both Petroecuador and Texaco liable, we will not accept the percentage of the claim
16 assigned to [Petroecuador]."

17 (c) As noted above, in 2003, Bonifaz and others funded and participated in filing a
18 lawsuit against Chevron on behalf of 48 individual Ecuadorian plaintiffs in the Superior Court of
19 Nueva Loja, Ecuador. Bonifaz and those working in concert with him sought to evade the
20 provisions of the 1998 Final Release by claiming that the judgment they sought against Chevron
21 for, among other things, funding further environmental remediation, should not be paid to the
22 government of Ecuador, but should instead be paid to the Front, a non-governmental organization
23 created and controlled by them. Bonifaz had substantial involvement with the organization and
24 activities of the Front in Ecuador and in the United States and was designated as its legal
25 representative in connection with the Lago Agrio Litigation and other related matters.

26 (d) Bonifaz and those working in concert with him, including principals and agents of
27 the Front, further sought to evade the provisions of the 1998 Final Release by encouraging the
28 Ecuadorian government to attempt to nullify the 1998 Final Release by claiming that it had been

1 obtained by fraud and by issuing sham criminal indictments against its signatories, including two
2 persons that signed on behalf of TexPet.

3 (e) Bonifaz and those working in concert with him to prosecute the Lago Agrio
4 Litigation formed and operated a company in Ecuador known as “Selva Viva” to transmit funds
5 to Ecuador for use in prosecuting the Lago Agrio Litigation and other activities in Ecuador and
6 the United States pursuant to their scheme against Chevron.

7 (f) Bonifaz and those working in concert with him including principals and agents of
8 the Front and Selva Viva, and principals and agents of other non-governmental organizations in
9 the United States and Ecuador, including without limitation Amazon Watch, Oilwatch, Accion
10 Ecologica, Esperanza International, and E-law, have sought to raise funds to support their
11 prosecution of the Lago Agrio Litigation and related activities in Ecuador, the United States, and
12 other countries by making false and malicious statements about Chevron, and have transmitted
13 the proceeds of their fund-raising activities to the Front, Selva Viva, and other organizations and
14 individuals to prosecute the Lago Agrio Litigation and conduct related activities pursuant to their
15 scheme against Chevron.

16 (g) In 2004, Chevron and Texaco commenced an arbitration proceeding against
17 Petroecuador, seeking indemnification for costs and expenses incurred by them in connection
18 with the Lago Agrio Litigation. After Bonifaz sought to represent Petroecuador and Ecuador in
19 order to further his interest in pursuing a litigation scheme, Petroecuador and Ecuador—
20 represented by Bonifaz—filed suit in the United States District Court for the Southern District of
21 New York seeking to enjoin the arbitration. Bonifaz was later dismissed as counsel for
22 Petroecuador and Ecuador.

23 (h) In or around February 2006, the Front terminated its relationship with Bonifaz. In
24 a resolution dated February 17, 2006, the Executive Committee of the Front announced that from
25 that day forward Bonifaz would “not be able to execute any act on behalf of the affected related,
26 directly or indirectly, with our legal case.” According to the Front, “Bonifaz was discharged from
27 any connection to the Lago Agrio case . . .”
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1 to Chevron, and engaging in despicable conduct with a willful and conscious disregard of the
2 rights of others, including the *Gonzales* plaintiffs (their purported clients) and Chevron.

3 50. As a direct and proximate result of Defendants' conduct, Chevron was forced to
4 expend a significant amount of time and money in defending the meritless claims filed in the
5 name of the *Gonzales* plaintiffs. Further, Chevron suffered significant harm to its reputation and
6 business interests. These damages have resulted in harm to Chevron in an amount in excess of
7 the jurisdictional limit of this Court. The conduct of Defendants, individually and collectively,
8 was a substantial factor and proximate cause in bringing about Chevron's harm.

9 **PRAYER**

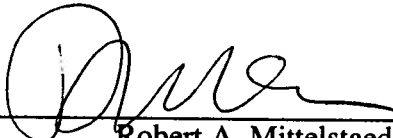
10 WHEREFORE, Chevron prays for relief as follows:

- 11 1. For special damages including attorneys' fees and other costs in defending the
12 *Gonzales* action, damage to reputation and harm to business interests, in an amount to be proven
13 at trial in excess of \$4 million;
 - 14 2. For general damages according to proof at trial;
 - 15 3. For attorneys' fees and costs of suit herein;
 - 16 4. For punitive damages in such amount as the Court may deem appropriate to
17 penalize Defendants for their intentional and malicious misconduct;
 - 18 5. For prejudgment interest; and
 - 19 6. For such other relief as the Court may deem Chevron entitled to receive.
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1 Date: November 13, 2009

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5 GIBSON, DUNN & CRUTCHER LLP
6 Scott A. Edelman
Andrea E. Neuman

7
8 By: 
9 Robert A. Mittelstaedt
Attorneys for Plaintiff Chevron Corporation

10
11 **DEMAND FOR JURY TRIAL**

12 Plaintiff Chevron Corporation hereby demands a jury trial of all issues in this action
13 triable as of right by a jury.

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15 Date: November 13, 2009

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18 By: 
19 Robert A. Mittelstaedt
Attorneys for Plaintiff Chevron Corporation

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