

# JONES DAY

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December 20, 2011

## VIA HAND DELIVERY

Dr. Galo Alfredo Chiriboga Zambrano  
Prosecutor General of Ecuador  
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Dr. Over H. Jaramillo Jaramillo  
Prosecutor of Sucumbíos No. 4  
Edificio de la Fiscalía de Sucumbíos  
Calle Manabí entre 10 de agosto y Venezuela  
Ciudad de Nueva Loja

Re: Evidence of Judgment Fraud in Lago Agrio Lawsuit

Dear Drs. Chiriboga and Jaramillo:

As counsel for Chevron Corporation, I have written to the Prosecutor General's Office for more than a year with evidence of unlawful conduct by the plaintiffs' representatives in connection with the ongoing civil case in Lago Agrio against Chevron Corporation. The previously submitted evidence proves that plaintiffs' representatives covertly worked with the presiding judge, Nicolas Zambrano Lozado, to draft the *judgment itself*. I write again to provide further evidence implicating plaintiffs' representatives—including Steven Donziger, Pablo Fajardo, Juan Pablo Sáenz, Julio Prieto, and Luis Yanza—along with Judge Zambrano Lozado, and to inquire why, despite the seriousness of this evidence, it has yet to receive any investigation in Ecuador.<sup>1</sup>

### ***Fraud in the Judgment***

As I have previously relayed, there is substantial and unrefuted evidence that the February 14, 2011 judgment against Chevron is fraudulent. Newly discovered evidence further confirms the undisputed fact that the author(s) of the judgment copied plaintiffs' internal, unfiled work product, including correspondence, memoranda, charts, and environmental databases. This pattern of the judgment's repeated use of unfiled material prepared by plaintiffs' representatives,

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<sup>1</sup> Most of this evidence was attached to my September 22, 2011 letter, and all evidence has been or will presently be filed with the Lago Agrio court.



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including slavish repetition of the mistakes in that material, suggests that there was no independent or critical analysis of the materials provided by the plaintiffs' team to the Court.

Chevron has most recently found that, in June 2009, Mr. Fajardo emailed Messrs. Donziger, Sáenz, and Prieto saying, "*Colleagues, take a look at this decision. I think it works very well for us.*"<sup>2</sup> He then copied into the body of the email a short memo from a not-yet identified third party and a "*transcription*" of a published Ecuadorian court opinion.<sup>3</sup> That transcription contains numerous mistakes not found in any published version of the court opinion itself.<sup>4</sup> The judgment repeats all of these mistakes, exactly, as well as a citation error Mr. Fajardo made.<sup>5</sup> In the continued absence of any explanation by the plaintiffs' representatives, this and other evidence discussed below compel the conclusion that Mr. Fajardo and his co-conspirators committed judicial fraud in participating in the drafting of the judgment in their favor, and that Judge Zambrano committed *prevaricato* by colluding with them to issue the fraudulent judgment.

The February 14, 2011 judgment also refers to several test samples by names that are *not* found in the record, but rather in private spreadsheets created by the plaintiffs, which contain information from the plaintiffs' own database. Because of this irregularity, my client retained Michael Younger, a preeminent electronic forensic investigator, to analyze these materials. Mr. Younger concluded that many of the sampling results named in the judgment came not from the judicial-inspection reports filed with the court, but from plaintiffs' own private database, which was never submitted in the court record.<sup>6</sup>

In his June 10, 2011 report, Mr. Younger reaffirms this conclusion. He concludes that several key figures in the judgment, such as the number of supposed earthen pits in the concession and the percentage of samples allegedly showing high levels of contamination, were likely computed using the unfiled Selva Viva database.<sup>7</sup> That is to say, the judgment is not based on the case record, but instead on the opposing party's unfiled and demonstrably inaccurate database.

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<sup>2</sup> Email from Pablo Fajardo to Steven Donziger et al., dated June 18, 2009 at 2:27 p.m., attached as Annex A (DONZ00051504).

<sup>3</sup> Email from Pablo Fajardo to Steven Donziger et al., dated June 18, 2009 at 2:27 p.m., attached as Annex A (DONZ00051504).

<sup>4</sup> Compare Highlighted Email from Pablo Fajardo to Steven Donziger et al., dated June 18, 2009 at 2:27 p.m., attached as Annex B, with Highlighted Copy of *Andrade v. CONELEC*, attached as Annex C.

<sup>5</sup> Compare Highlighted Email from Pablo Fajardo to Steven Donziger et al., dated June 18, 2009 at 2:27 p.m., attached as Annex B, and Highlighted Copy of *Andrade v. CONELEC*, attached as Annex C, with Highlighted Excerpt from Page 186 of the Judgment, attached as Annex D, showing overlap with the Fajardo Email and variation from the published *CONELEC* case.

<sup>6</sup> Declaration of Michael L. Younger, Feb. 23, 2011, attached as Annex 19 to the Appellate Alegato.

<sup>7</sup> Expert Report of Michael L. Younger, June 10, 2011, at 14–17, attached as Annex 4 to Chevron's motion filed July 26, 2011 at 5:48 p.m. With respect to the pit count used in the judgment, Younger concludes that the source of the data could be either the Selva Viva database or the fraudulent Cabrera Report. *Id.* at 16–17.



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The judgment replicates errors contained in the plaintiffs' database. For example, the judgment claimed "*alarming*" levels of mercury present at certain sites. But the data in the official record shows those samples as having no mercury above detectable limits. The error came from the plaintiffs' internal database, which had separated the "*less than*" symbol from the sampling results (e.g., "< 7"), so that what was a negative result looked as if it were positive. As Mr. Younger concluded, "*the data points cited in the Sentencia were copied, cut-and-pasted, or otherwise taken directly from [the plaintiffs' internal files].*"<sup>8</sup> Additionally, the judgment replicates errors in the database attributing data to the wrong experts and confuses measurement units (for example, incorrectly listing John Connor as an expert for Lago Agrio Central<sup>9</sup>). Based on these and other errors, Mr. Younger concluded that the unfiled "*Selva Viva Data Compilation was likely the source of numerous data points cited in the Lago Agrio Court Decision.*"<sup>10</sup>

Chevron also discovered further evidence of fraud by comparing the language of the judgment with a draft memorandum authored by plaintiffs' attorney Juan Pablo Sáenz and other members of plaintiffs' legal team around November 2007 regarding Chevron's alleged merger with Texaco. Upon comparing these two documents, linguists Professor Teresa Turell and Professor Robert Leonard found whole blocks of text in the judgment that match exactly or very closely the language in the draft memorandum.<sup>11</sup>

In no fewer than fifteen instances, significant portions of the Sáenz memorandum, including entire sentences, appear verbatim or nearly verbatim in the judgment.<sup>12</sup> For example, text from the Sáenz memorandum is pasted directly into page 24 of the judgment; the text appearing in both the judgment and the Sáenz memorandum is bolded for your convenience.<sup>13</sup>

| <b>Judgment at 24</b>  | <b>Sáenz Memorandum at 3-4</b>  |
|--|---|
| <b>Al igual que Shields, ha quedado claro en el expediente que Bischoff participaba activamente en las complejas cadenas y</b> | <b>Al igual que Shields, Bischoff participaba activamente en las complejas cadenas y procesos de toma de decisiones que</b> |

<sup>8</sup> Expert Report of Michael L. Younger Declaration, June 10, 2011, §IV at 17, attached as Annex 4 to Chevron's motion filed July 26, 2011 at 5:48 p.m.

<sup>9</sup> Declaration of Michael L. Younger, Feb. 23, 2011, at 9, attached as Annex 19 to the Appellate Alegato.

<sup>10</sup> *Id.* at 9.

<sup>11</sup> Teresa Turell, Expert Witness Report on Disputed Authorship of the Text: Sentencia: Juicio No. 2003-0002, Juez Ponente: Ab. Nicolas Zambrano Lozada, June 28, 2011, attached as Annex 2 to Chevron's motion filed July 26, 2011 at 5:48 p.m.; Report of Robert A. Leonard, June 27, 2011, attached as Annex 3 to Chevron's motion filed July 26, 2011 at 5:48 p.m.; Memorandum attached to the email from Juan Pablo Sáenz to Pablo Fajardo and others, dated Nov. 15, 2007 at 11:24 a.m., attached as Annex 23 to the Appellate Alegato (DONZ-HDD-0142503-25). Our review of the Lago Agrio record indicates that this memorandum was never filed with the court.

<sup>12</sup> Declaration of Seth A. Leone, dated May 2, 2011, attached as Annex 22 to the Appellate Alegato.

<sup>13</sup> Compare Judgment issued by the Deputy President of the Provincial Court of Sucumbíos dated Feb. 14, 2011 at 8:37 a.m., *Maria Aguinda et al. v. Chevron Corp.*, No. 002-003 at 24, with Memorandum attached to the email from Juan Pablo Sáenz to Pablo Fajardo and others, dated Nov. 15, 2007 at 11:24 a.m., attached as Annex 23 to the Appellate Alegato (DONZ-HDD-0142503-25 at 3-4).



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|   |  |
|---|--|
| <p><b>procesos de toma de decisiones que involucraban a Texaco Inc. y Texpet. En su declaración juramentada Bischoff</b></p> <p><b>explica cómo los contratos del cuartel general de Texpet, ubicados en Florida, que se excedieran de USD 500.000,00 debían ser aprobados por un abogado de apellido Wissel, jefe de los abogados de Texaco Inc. En este caso, vemos como la relación entre Texpet y Texaco Inc. no estaba limitada a que ésta sea propietaria de las acciones de aquella, sino que ambas trabajaban íntimamente vinculadas, tomando Texaco Inc. todas las decisiones mientras que Texpet se limita a ejecutarlas.</b></p> | <p><b>involucraban a Texaco Inc. y Texpet. En su declaración juramentada Bischoff explica cómo los contratos del cuartel general de Texpet, ubicados en Florida, que se excedieran de USD 500.000,00 debían ser aprobados por un abogado de apellido Wissel, jefe de los abogados de Texaco Inc. En este caso, vemos como la relación entre Texpet y Texaco Inc. no estaba limitada a que ésta sea propietaria de las acciones de aquella. Ambas trabajaban íntimamente vinculadas, tomando Texaco Inc. todas las decisiones y Texpet limitándose a ejecutarlas.</b></p> |
|---|--|

Similarly, text from page 10 of the Sáenz memorandum appears in pages 24 and 25 of the judgment.<sup>14</sup>

| <u><b>Judgment at 24-25</b></u>  | <u><b>Sáenz Memorandum at 10</b></u>   |
|--|--|
| <p><b>En este sentido este sentido es completamente normal que el Directorio de una empresa subsidiaria esté conformado por algunos oficiales de su matriz, y que también es normal que la matriz reciba informes periódicos sobre su estado, y tomen ciertas decisiones que por su importancia están por sobre la administración regular. Sin embargo, en el caso de Texaco Inc. y su subsidiaria Texaco Petroleum Company (Texpet), el rol de los Directores trascienden los roles que pueden considerarse normales, pues éstos recibían información y tomaban decisiones acerca de la gran mayoría de hechos y actos de Texpet sobre asuntos cotidianos de la operación de la concesión Petrolera Napo, respondiendo a una cadena de mando bien establecida, como ha quedado demostrado en el expediente.</b></p> | <p><b>Es completamente normal que el directorio de una empresa subsidiaria de otra esté conformado por algunos oficiales de ésta. También es normal que los directores de la subsidiaria reciban informes periódicos sobre su estado, y tomen ciertas decisiones que por su importancia están por sobre la administración regular. Sin embargo, en el caso de Texaco Inc. y su subsidiaria Texaco Petroleum Company, el rol de los directores trasciende los roles normales, pues estos recibían información y tomaban decisiones acerca de la gran mayoría de hechos y actos de Texpet sobre su operación de la concesión petrolera Napo.</b></p> |

<sup>14</sup> Compare Judgment issued by the Deputy President of the Provincial Court of Sucumbíos dated Feb. 14, 2011 at 8:37 a.m., *María Aguinda et al. v. Chevron Corp.*, No. 002-003 at 24-25 with Memorandum attached to the email from Juan Pablo Sáenz to Pablo Fajardo and others, dated Nov. 15, 2007 at 11:24 a.m., attached as Annex 23 to the Appellate Alegato (DONZ-HDD-0142513).



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Unique citations and citation errors copied from the Sáenz memorandum also appear to have been pasted into the judgment. For instance, blocks of text with identical references to “PET” bates numbers and unique references to “doc s/n” and “doc s/r” appear in both the Sáenz memorandum and the judgment.<sup>15</sup>

| <u>Judgment at 21</u>  | <u>Sáenz Memorandum at 6</u>   |
|--|--|
| <p>Del mismo modo, <b>cartas de funcionarios menores dirigidas a Shields</b>, en el <b>cuerpo 65</b>, fojas <b>6855, 6856, 6860, 6861, 6875, 6882, 6885</b>, donde se hace referencias a <b>cartas dirigidas a Shields</b> que se originaron en Quito, en manos de funcionarios menores que solicitaban su autorización, como William Saville, que era un ejecutivo de Texpet que operaba en Quito, y envió muchas y cotidianas comunicaciones a Shields (en Nueva York) solicitando autorizaciones. Por ejemplo, le envía a Shields los costos estimados de la perforación de los pozos Sacha 36 al 41 (doc s/n), y solicita su aprobación para iniciar la licitación de transporte de combustibles en el Oriente (PET 031387 en foja 6856). J.E.F. Caston, otro ejecutivo de la petrolera ubicado en Quito solicita la autorización de Shields para licitar varios servicios (PET 020758 en foja 6860) y para aprobar los costos estimados de instalar bombas sumergibles en cinco pozos en, el campo Lago Agrio. Finalmente tenemos a Max Crawford, otro funcionario radicado en Quito, quien también solicitaba periódicamente la aprobación de Shields para diversos objetivos (PET 035974 en foja 6882, y doc s/r en foja 6885).</p> | <p><b>Cartas de funcionarios menores dirigidas a Shields</b> [n.13].- En este apartado se <b>hace referencias a cartas dirigidas a Shields</b> que se originaron en Quito, en manos de funcionarios menores que solicitaban su autorización. William Saville era un ejecutivo de Texpet que operaba en Quito. El envió muchas y cotidianas comunicaciones a Shields (en Nueva York) solicitando autorizaciones. Por ejemplo, le envía a Shields los costos estimados de la perforación de los pozos Sacha 36 al 41 (doc s/n), y solicita su aprobación para iniciar la licitación de transporte de combustibles en el oriente (PET031387). J.E.F. Caston, otro ejecutivo de la petrolera ubicado en Quito, solicita la autorización de Shields para licitar varios servicios (PET020758) y para aprobar los costos estimados de instalar bombas sumergibles en cinco pozos en el campo Lago Agrio. Finalmente tenemos a Max Crawford, otro funcionario radicado en Quito, quien también solicitaba periódicamente la aprobación de Shields para diversos objetivos. Aquí se reproducen dos solicitudes para aprobar el inicio de dos licitaciones (PET035974 y doc s/r).</p> <p>[n. 13: Pedidos de oficiales inferiores dirigidos a Shileds [PSV-018/I] <b>Cuerpo 65, fojas 6855, 6856, 6860, 6861, 6875, 6882, 6885.</b>]</p> |

Moreover, both the judgment and the Sáenz memorandum contain nearly identical text with the same incorrect citation to foja 2166. Both documents cite to foja 2166 for minutes from a

<sup>15</sup> Compare Judgment issued by the Deputy President of the Provincial Court of Sucumbíos dated Feb. 14, 2011 at 8:37 a.m., *María Aguinda et al. v. Chevron Corp.*, No. 002-003 at 21, with Memorandum attached to the email from Juan Pablo Sáenz to Pablo Fajardo and others, dated Nov. 15, 2007 at 11:24 a.m., attached as Annex 23 to the Appellate Alegato (DONZ-HDD-0142509).



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January 22, 1965 meeting regarding a \$30,312.00 appropriation from Texaco to Texaco Petróleos del Ecuador.<sup>16</sup> But foja 2166 does not contain the January 22 minutes, but instead a document dated December 4, 1964.<sup>17</sup> Foja 2166 vuelta contains the first page of the January 22, 1965 minutes, and no mention is made of the \$30,312.00 until foja 2167 vuelta.<sup>18</sup>

| <b><u>Judgment at 22</u></b>  | <b><u>Sáenz Memorandum at 9</u></b>   |
|---|---|
| Entre las pruebas que nos llevan a este convencimiento citamos adicionalmente el <b>acta de reunión de directorio de Texaco Inc. No. 380, de fecha 22 de enero de 1965 (Cuerpo 22, foja 2166), que estableció asignaciones a favor de la Cia. Texaco Petróleos del Ecuador por un monto de USD 30.312,00.</b> | a) <b>El acta de Reunión de Directorio No. 380 [n. 19], de fecha 22 de enero de 1965, estableció asignaciones a favor de la Cía. Texaco Petróleos del Ecuador por un monto de USD 30.312,00.</b><br><br>[n. 19: Doc. ADT 1. <b>Cuerpo 22, foja 2166</b> ] |

As Professors Turell and Leonard explain, the similarities are too great to be coincidence, and either plaintiffs wrote at least part of the judgment, or the author(s) of the judgment had access to documents prepared by the plaintiffs' representatives and lawyers that were never submitted during the trial.<sup>19</sup> Matches of over six words are very unusual absent plagiarism,<sup>20</sup> and there are matches of up to 95 words between the judgment and the Sáenz memorandum.<sup>21</sup>

Professors Turell and Leonard have also confirmed that plaintiffs' summary of record chart, which was not filed, was used in the drafting of the judgment. Certain text from it appears verbatim in the judgment, and citation errors, idiosyncrasies, misquotes, and misspellings from it have been imported into the judgment as well.<sup>22</sup>

<sup>16</sup> Compare Judgment issued by the Deputy President of the Provincial Court of Sucumbios on Feb. 14, 2011 at 08:37 a.m., *Maria Aguinda et al. v. Chevron Corp.*, No. 002-003, at 22, with Memorandum attached to the email from Juan Pablo Sáenz to Pablo Fajardo and others, dated Nov. 15, 2007 at 11:24 a.m., attached as Annex 23 to the Appellate Alegato (DONZ-HDD-0142512 and footnote 19).

<sup>17</sup> Minutes of the Meeting of Directors of Texaco Inc., Number 379, held on Dec. 4, 1964, *Record* at 2,164-2,166 (at 2166).

<sup>18</sup> See Minutes of the Meeting of Directors of Texaco Inc., held Jan. 22, 1965, *Record* at 2,166v-2,167v.

<sup>19</sup> Teresa Turell, Expert Witness Report on Disputed Authorship of the Text: Sentencia: Juicio No. 2003-0002, Juez Ponente: Ab. Nicolas Zambrano Lozada, June 28, 2011, attached as Annex 2 to Chevron's motion filed July 26, 2011 at 5:48 p.m.; Report of Robert A. Leonard, June 27, 2011, attached as Annex 3 to Chevron's motion filed July 26, 2011 at 5:48 p.m.

<sup>20</sup> Report of Robert A. Leonard, June 27, 2011 at 3-7, attached as Annex 3 to Chevron's motion filed July 26, 2011 at 5:48 p.m.

<sup>21</sup> *Id.* at 12-14.

<sup>22</sup> Teresa Turell, Expert Witness Report on Disputed Authorship of the Text: Sentencia: Juicio No. 2003-0002, Juez Ponente: Ab. Nicolas Zambrano Lozada, June 28, 2011, attached as Annex 2 to Chevron's motion filed July 26, 2011 at 5:48 p.m.; Report of Robert A. Leonard, June 27, 2011, attached as Annex 3 to Chevron's motion filed July 26, 2011 at 5:48 p.m. Professor Leonard has also provided a supplemental report, which includes documents further illustrating the fraud that pervades the judgment itself. Supplement to Report of Robert A.



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This evidence is corroborated by additional linguistic analysis. Professor Gerald McMenemy, the chair of the Department of Linguistics at California State University, Fresno, analyzed the language of the judgment and compared it with other decisions written by Judge Zambrano. Professor McMenemy focused on “five patterned and re-occurring markers of writing style,” including use of punctuation in sentence-end quotations and divisions of text into headings and subheadings.<sup>23</sup> Ultimately, he concluded that “there is substantial linguistic evidence” demonstrating not only “that the QUESTIONED-Sentencia was written by multiple authors” but also “that Judge Zambrano is not the author of significant amounts of the QUESTIONED-Sentencia.”<sup>24</sup>

Likewise, Professor Turell has compared the judgment against Chevron with prior judgments authored by Judge Zambrano and has confirmed Professor McMenemy’s conclusions. She found “[t]he written style of JUDGMENT, the text whose authorship is disputed, is quite different from the written style identified in four of the texts headed by Judge Zambrano as Juez Ponente [Reporting Judge], so that these two text sets cannot have been written by the same author.”<sup>25</sup> Instead, the judgment closely resembles material that the plaintiffs’ lawyers have authored. In particular, “[t]he written style of some sections of [the judgment] exhibit linguistic syntactic markers and parameters similar to those found in the style of two sets of texts (academic and legal) written by [plaintiffs’ lawyer Alejandro] Ponce.”<sup>26</sup>

Other evidence also points to plaintiffs having a role in producing the judgment. For example, in August 2008, Mr. Donziger wrote to Mr. Fajardo, explaining the need to “do[] everything to prepare the court to issue a quick judgment and in such a way that it can be enforced in the U.S. before appeals in Ecuador . . . . Working out the plan for court and the judges, to speed things up.” Mr. Fajardo responded the same day: “Next week I’m going to begin the work with the new judges.”<sup>27</sup> In fact, Mr. Donziger’s “Strategic Plan for 2009/Ecuador” included: “speed to finish, deal with release, number, reasoned opinion, relationship to alegato,

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(continued...)

Leonard, dated Aug. 1, 2011, at 1, attached as Annex 2 to Chevron’s Supplemental Appellate Alegato, filed Sept. 19, 2011 at 1:15 p.m.

<sup>23</sup> Declaration of Gerald R. McMenemy, dated July 31, 2011, at 2, attached as Annexes 1 & 3 to Chevron’s Supplemental Appellate Alegato, filed on Sept. 19, 2011 at 1:15 p.m.

<sup>24</sup> *Id.*

<sup>25</sup> Teresa Turell, Expert Witness Report on Disputed Authorship of the Text: Sentencia: Juicio No. 2003-0002, Juez Ponente: Ab. Nicolas Zambrano Lozada, June 28, 2011, § VII at 44, attached as Annex 2 to Chevron’s motion filed July 26, 2011 at 5:48 p.m.

<sup>26</sup> *Id.* Although plaintiffs have filed rebuttal expert reports in U.S. proceedings, none of them offers the opinion that: (1) Judge Zambrano did in fact write the judgment or the clarification order or (2) the judgment does not rely on unfilled plaintiffs’ work product.

<sup>27</sup> Emails between Steven Donziger and Pablo Fajardo, dated Aug. 9, 2008 at 5:17 p.m., attached as Annex 3 to the Appellate Alegato (DONZ00047253).



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*final order for U.S. enforcement, ask for bond and interest to run.*<sup>28</sup> Apparently following this “Plan,” in June 2009 Mr. Fajardo told Mr. Donziger that he was assigning an intern “a research assignment for our legal memorandum and the judgment, but without him knowing what he is doing . . . .”<sup>29</sup> Less than two weeks later, Mr. Fajardo emailed plaintiffs’ team attaching a case and noting that “[t]he arguments by the magistrates are very interesting, I think they serve us well for our arguments and . . . .”<sup>30</sup>—with the ellipsis likely a concealing reference to “the judgment” mentioned in his earlier email. The veiled references to the judgment in plaintiffs’ internal documents continued through 2009. On one occasion, Mr. Fajardo circulated material that he believed would “help us with the alegato work and . . .” (ellipsis in original).<sup>31</sup> At another time, Mr. Fajardo stated that plaintiffs needed someone to continue “organizing the office’s legal information for the alegato and the other project.”<sup>32</sup> By late 2009, Mr. Donziger was promising that “the judgment will be issued no later than May-June” of 2010, and Mr. Fajardo responded to assure him that “the plan for the judgment will be fulfilled. I’m not 100 percent sure, but I’m 99.9 percent sure.”<sup>33</sup>

The plaintiffs’ U.S. representatives also discussed preparations for the judgment. In August 2009, Joseph Kohn stated: “In order to be effective at all in developing a judgment that will be enforceable in the US and elsewhere we need to be involved in the preparation of the final submission and proposed judgment, the major task we have all agreed upon repeatedly our firm would work on. . . . It is not helping the case to continually postpone and delay the start of a process where we can develop the necessary judgment and arguments.”<sup>34</sup> Presumably

<sup>28</sup> Email from Steven Donziger to himself, dated January 5, 2009 at 2:06 p.m., attached as Annex 3 to Chevron’s Supplemental Appellate Alegato, filed Sept. 19, 2011 at 1:15 p.m. (DONZ00049360).

<sup>29</sup> Email from Pablo Fajardo to Steven Donziger, dated June 5, 2009 at 8:30 a.m., attached as Annex 1 to Chevron’s Motion filed July 26, 2011 at 5:48 p.m. (DONZ0051338) (emphasis added).

<sup>30</sup> Email from Pablo Fajardo to Julio Prieto et al., dated June 18, 2009 at 9:43 p.m., attached as Annex 1 to Chevron’s Motion filed July 26, 2011 at 5:48 p.m. (DONZ00051506). Mr. Donziger and the plaintiffs’ legal team planned to hold a “key” meeting the day after this email was circulated where, according to Mr. Fajardo, they were to discuss “all of the outcome of the case and what to do, how much money to put in, how to distribute the items and everything.” Email from Steven Donziger to Pablo Fajardo, dated June 16, 2009 at 3:31 p.m., attached as Annex 3 to Chevron’s Supplemental Appellate Alegato, filed Sept. 19, 2011 at 1:15 p.m. (DONZ00066328).

<sup>31</sup> Email from Pablo Fajardo to Juan Pablo Sáenz et al., dated July 26, 2009 at 12:45 p.m., attached as Annex 3 to Chevron’s Supplemental Appellate Alegato, filed Sept. 19, 2011 at 1:15 p.m. (DONZ00051937). Mr. Donziger claimed not to “remember” whether he told Mr. Fajardo to stop referring to the plaintiffs’ drafting of the judgment by email. Official Transcript of Steven Donziger Deposition, July 19, 2011, at 4773:21-4774:6, attached as Annex 6 to Chevron’s Supplemental Appellate Alegato, filed Sept. 19, 2011 at 1:15 p.m.

<sup>32</sup> Email from Pablo Fajardo to Steven Donziger and Luis Yanza, dated Oct. 25, 2009 at 7:11 a.m., attached as Annex 3 to Chevron’s Supplemental Appellate Alegato, filed Sept. 19, 2011 at 1:15 p.m. (DONZ00052960).

<sup>33</sup> Email from Pablo Fajardo to Steven Donziger et al., dated Dec. 29, 2009 at 7:28 p.m., attached as Annex 3 to Chevron’s Supplemental Appellate Alegato, filed Sept. 19, 2011 at 1:15 p.m. (DONZ00053642). Obviously, it was unlawful for the plaintiffs to participate in any way in the drafting of the judgment. Even Mr. Donziger admitted that such collaboration is not the “the normal practice” in Ecuador. Official Transcript of Steven Donziger Deposition, July 19, 2011, at 4758:10-15, attached as Annex 6 to Chevron’s Supplemental Appellate Alegato, filed Sept. 19, 2011 at 1:15 p.m.

<sup>34</sup> Email from Joseph Kohn to Steven Donziger et. al, dated Aug. 7, 2009 at 10:08 a.m., attached as Annex 6 to the Appellate Alegato (WOODS-HDD-0148433).



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prompted by this email, Mr. Donziger and his associates met with attorneys from Mr. Kohn's firm, Kohn, Swift & Graf, in September 2009. Minutes from that meeting refer to the "*Creation of Final Order*," and include subheadings for "*Trust or 2 phases*"—apparently a reference to alternative ways to structure the award of damages—and "*Kohn, Swift to determine precedence [sic] for this in other countries*."<sup>35</sup> A Kohn, Swift & Graf attorney incorporated those minutes into an "*Ecuador Task List*," which stated that "*KSG will continue to discuss and think about how to structure the judgment*."<sup>36</sup>

Other material from plaintiffs' foreign representatives likewise indicates that plaintiffs had a role in crafting the judgment. An August 2010 email from one of plaintiffs' U.S. attorneys at the firm of Patton Boggs suggests that plaintiffs planned to use the work of Gerardo Barros to replace the fraudulent work of Mr. Cabrera: "*The costs of remediating and cleaning the 912 pits where Texpet dumped their waste – \$2-3 billion – some factual evidence cited [sic] in the Barros Report supports these numbers*."<sup>37</sup> Likewise, a "*Checklist from July 20 Meeting*" prepared by plaintiffs' financiers, the Burford Group, includes the following notation: "*Review of Chevron evidence, and computations based on that, with Barros perhaps broken out as a separate analysis with the \$3 to \$5 billion . . .*"<sup>38</sup> Given the evidence of plaintiffs' pattern of fraudulent collaboration with the court and the other evidence of their role in the judgment, it is significant that the judgment purports to rely on Barros' reports for its baseless assessment of over *US\$5 billion* for soil remediation.<sup>39</sup>

Inquiries by my client have not found plaintiffs' private database, the summary of the record, or the Sáenz memorandum in the record. To date, the plaintiffs' representatives have failed to offer any explanation for how their unfiled work product came to be included in the judgment, and they have failed to identify any other source in the record. Mr. Fajardo has in fact admitted that these documents were not submitted to the court: "*only we have them and then Chevron*."<sup>40</sup> Mr. Donziger has likewise stated that "*since the overlap between the judgment and the [Sáenz] memo was disclosed in the Younger declaration, plaintiffs' counsel have not identified any instance in the record where the text from the Fusion memo appears*."<sup>41</sup> He also

<sup>35</sup> Email from Laura Garr to Steven Donziger and Andrew Woods, dated Sept. 10, 2009 at 6:14 p.m., attached as Annex 5 to Chevron's Supplemental Appellate Alegato, filed Sept. 19, 2011 at 1:15 p.m. (WOODS-HDD-0161016-21).

<sup>36</sup> Email from Jared Solomon to Joseph Kohn et al., dated Sept. 11, 2009 at 1:11 p.m., attached as Annex 3 to Chevron's Supplemental Appellate Alegato, filed Sept. 19, 2011 at 1:15 p.m. (DONZ00100266-67).

<sup>37</sup> Email from Adlai Small to Steven Donziger et al., dated Aug. 2, 2010 at 7:38 a.m., attached as Annex 3 to Chevron's Supplemental Appellate Alegato, filed Sept. 19, 2011 at 1:15 p.m. (DONZ00058275).

<sup>38</sup> Checklist from July 20th meeting, last saved July 22, 2010, attached as Annex 5 to Chevron's Supplemental Appellate Alegato, filed Sept. 19, 2011 at 1:15 p.m. (WOODS-HDD-0019026-27).

<sup>39</sup> Judgment issued by the Deputy President of the Provincial Court of Sucumbíos dated Feb. 14, 2011 at 8:37 a.m., *María Aguinda et al. v. Chevron Corp.*, No. 002-003 at 180-81, *Record* at 216388-431v, 216427v-28.

<sup>40</sup> *Chevron says that any agreement with the plaintiffs must include Petroecuador*, Ecuavisa.com, May 31, 2011, attached as Annex E.

<sup>41</sup> Official Transcript of Steven Donziger Deposition, July 19, 2011, at 4704:21-4705:4, attached as Annex 6 to Chevron's Supplemental Appellate Alegato, filed Sept. 19, 2011 at 1:15 p.m.



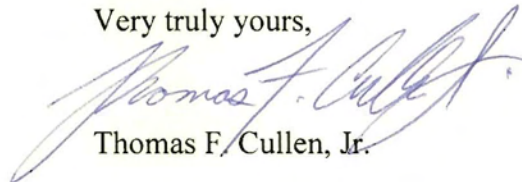
Dr. Galo Alfredo Chiriboga Zambrano  
Dr. Over H. Jaramillo Jaramillo  
December 20, 2011  
Page 10

conceded that plaintiffs "*never publicly on the record submitted a proposed judgment in Lago Agrio.*"<sup>42</sup> Judge Zambrano should have therefore either identified the location of these documents in the record or explained how they came to be included in the decision bearing his name, yet to date, he, too, has offered no explanation.

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I am enclosing copies and Spanish translations of all emails and other documents quoted or referenced in this letter that I have not previously submitted. The corrupt and fraudulent conduct by Judge Zambrano and Messrs. Donziger, Fajardo, Sáenz, Prieto, and Yanza revealed in this evidence is causing serious, ongoing harm to Chevron Corporation and to the Republic of Ecuador. I respectfully submit that the evidence is compelling and your duty is clear.

Very truly yours,



Thomas F. Cullen, Jr.

Enclosures (on paper and in electronic format for the addressee, in electronic format only for those copied)

cc: Attorney Cristian Peralta Vasquez, Clerk to No. 4 Prosecutor  
Dr. Nelson Guamán Guerrero, Provincial Prosecutor for Sucumbíos  
Dr. Diego García Carrión, Attorney General of Ecuador  
Mr. Edwin Jarrín Jarrín, National Secretary of Transparency  
Dr. Luis Naranjo Jara, Provincial Director of the Judiciary Council of Sucumbíos (Acting)  
Hon. Timothy Zúñiga-Brown, Chargé d'Affaires, a.i., United States Embassy in Ecuador  
Hon. Nathalie Cely Suárez, Ambassador, Ecuador Embassy in the United States

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<sup>42</sup> Official Transcript of Steven Donziger Deposition, July 19, 2011, at 4758:16-4759:3, attached as Annex 6 to Chevron's Supplemental Appellate Alegato, filed Sept. 19, 2011 at 1:15 p.m.



### Annex List

- ANNEX A:** Email from Pablo Fajardo to Steven Donziger et al., dated June 18, 2009 at 2:27 p.m. (DONZ00051504).
- ANNEX B:** Highlighted Email from Pablo Fajardo to Steven Donziger et al., dated June 18, 2009 at 2:27 p.m. (DONZ00051504)
- ANNEX C:** Highlighted Copy of *Andrade v. CONELEC*
- ANNEX D:** Highlighted Excerpt from Page 186 of the Judgment at 186 Showing Overlap with the Fajardo Email and Variation from the Published Conelec Case
- ANNEX E:** *Chevron says that any agreement with the plaintiffs must include Petroecuador, Ecuavisa.com, May 31, 2011.*