

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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CHEVRON CORPORATION,	:	
	:	
Plaintiff,	:	
	:	
-against-	:	Case No. 11 Civ. 0691 (LAK)
	:	
STEVEN R. DONZIGER, et al.,	:	
	:	
Defendants.	:	
	:	
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**CHEVRON CORPORATION’S STATEMENT OF MATERIAL FACTS IN
SUPPORT OF MOTION FOR SUMMARY JUDGMENT ON ITS EIGHTH CLAIM FOR
RELIEF (VIOLATION OF NEW YORK JUDICIARY LAW § 487)**

Pursuant to Local Civil Rule 56.1, Plaintiff Chevron Corporation (“Chevron”) hereby
submits this statement of material facts as to which there is no genuine issue of fact to be tried.

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A. The LAPs' Counsel Manipulated Their Nominated Experts, Instructing Them to Find Contamination, but the Court-Appointed Settling Experts Rejected the LAPs' Experts' Opinions, Finding That Concentrations of Contaminants Were Lower Than Allowable Limits and That Health Risk Was "Low"

1. During the initial judicial-inspection phase of the trial, Donziger advised one of the LAPs' technical consultants that "the lawyers will control the scope [of the process], not the science people." Mastro Decl. 2820 (KAMP-NATIVE001786-001793) at KAMP-NATIVE001789.

2. Donziger "instructed" the LAPs' nominated experts to find contamination. Dkt. 31-21 (Calmbacher Dep. Tr.) at 52:13-18.

3. The LAPs' technical coordinator, Edison Camino Castro, warned Donziger that "[w]ith so much psychological pressure, an Expert may react by making an accusation to the Court about the abuses, the coercion, the distortion of scientific methods, intellectual harassment, lack of security, systematic degradation of morals and ethics, intervention under threat into technical matters by people that are not educated in engineering, etc." Mastro Decl. 2821 (DONZ-HDD-0066187).

4. On February 1, 2006, the "Report of the 'Settling Experts' on the Judicial Inspection of the Sacha 53 Well" found that "the concentration levels of the elements analyzed are lower than the allowable limits" and thus "the risk to human health is low." Mastro Decl. 2822 at 26 (Report of the "Settling Experts" on the Judicial Inspection of the Sacha 53 Well explaining: "[T]he concentration levels of the elements analyzed are lower than the allowable limits[.]; Dkt. 31-12 at 76 ("[T]he risk to human health is low, with a probability of impact equally low, unless there are drastic changes in the site's current conditions[.]"); *id.* ("In the case

of Mr. Baños's well, no concentrations of hydrocarbons were detected."); *see also* Dkt. 46-5 (DONZ00041662) at 50.

B. The LAPs' Counsel Pressured the Ecuadorian Court to End the Judicial Inspection Process and Install a Single "Global" Expert

5. In January and July of 2006, the Lago Agrio Plaintiffs ("LAPs") filed motions seeking to "waive" and "relinquish" their right to conduct the majority of the remaining judicial inspections. Dkt. 31-29 at 92,443 (2006.01.26 filing by Fajardo moving to withdraw from requested judicial inspections at specified sites); Dkt. 31-30 at 116,433 (2006.07.21 filing in which Fajardo moved to relinquish judicial inspections stating: "the plaintiffs are of the opinion that it is unnecessary to conduct further judicial inspections at this stage of the lawsuit, with respect to those inspections requested by the plaintiffs, at Sacha Centro and Shushufindi fields. . . . In the brief [dated January 27, 2006] to which I am referring, I expressed the plaintiffs' willingness to waive their right to conduct judicial inspections at the Sacha and Shushufindi fields.").

6. The LAPs' lawyers met repeatedly with Judge Germán Yáñez Ricardo Ruiz, without Chevron representatives present, including to discuss their requests to cancel the majority of the remaining judicial inspections. Dkt. 28-9 (DONZ00036235) at 29 (Donziger's personal journal recount at least two March 2006 meetings between the LAPs' lawyers and Judge Germán Yáñez Ricardo Ruiz without Chevron representatives present, stating "Lunch meeting with judge. This was second meeting with judge - had lunch with him the previous Friday in the Cangrejo Rojo. I love it - this lobbying. I am good at it."); *id.* (DONZ00036233) at 17 ("lunch after with judge, he hits on Atossa and two Scandanavian [sic] woman [sic]."); Dkt. 32-4 (DONZ00023182) at 1 (2006.7.26 Donziger emails Kohn: "Pablo met with the Judge today. The judge, who is on his heels from the charges of trading jobs for sex in

the court, said he is going to accept our request to withdraw the rest of the inspections The judge also I believe wants to forestall the filing of a complaint against him by us, which we have prepared but not yet filed.”); Dkt. 28-9 (DONZ00027256) at 56 (2006.07.25 Donziger journal entry stating that if the judicial inspections are not cancelled “then we are in all-out war with the judge to get him removed”).

7. During meetings at which no representative of Chevron was present, the LAPs’ counsel informed Judge Yáñez of a complaint they had drafted against him but not yet filed. Dkt. 28-8 (DONZ00027256) at 29 (Donziger: “We wrote up a complaint against Yáñez, but never filed it, while letting him know we might file it if he does not adhere to the law and what we need.”); Dkt. 32-4 (DONZ00023182) at 1 (2006.7.26 Donziger emails Kohn: “Pablo met with the Judge today. The judge, who is on his heels from the charges of trading jobs for sex in the court, said he is going to accept our request to withdraw the rest of the inspections The judge also I believe wants to forestall the filing of a complaint against him by us, which we have prepared but not yet filed.”).

8. On September 7, 2006, Judge Yáñez ordered that the LAPs could abandon 64 inspections. Dkt. 402-2 (Ex. 2220) (2006.09.07 Order).

9. In December 2006, the LAPs filed a motion requesting that the Ecuadorian court appoint a single expert to “conduct the entire examination.” Dkt. 31-31 at 123,454 (2006.12.04 LAP motion to “appoint an expert to act as an expert witness to conduct the entire examination, which was properly requested and ordered”).

10. The LAPs’ lawyers continued to meet repeatedly with Judge Yáñez, without Chevron representatives present, including to persuade him to commence the global expert examination and to appoint the global examination expert. Dkt. 28-8

(DONZ00027256) at 36 (2006.11.20 Donziger journal entry noting: “Meeting with Judge: on Sat night at Lupe’s house.”); Dkt. 402-13 (Ex. 2312) (DONZ00041865) (2006.11.07 email in which Fajardo reports a meeting with the Judge noting an effort to convince the Judge to adopt the Global Assessment, the Judge’s resistance because the request lacked a legal basis, and Fajardo’s request for feedback from the team to help strengthen their position); Dkt. 28-8 (DONZ00027256) at 38 (2006.11.16 Donziger journal entry noting: “Meeting with Judge in hotel: On Tuesday night in Hotel Auca.”); Dkt. 402-13 (Ex. 2313) (DONZ00042039) (2006.11.28 email in which Sáenz reports that the Judge did not feel the global assessment was justified and that he would not take such an assessment into account when rendering judgment “since I think it entirely lacks legal logic”); Dkt. 402-13 (Ex. 2314) (DONZ00042194) (2006.12.21 email in which Fajardo writes that he “met with the Judge today, and I can say that he will definitely not issue the order [authorizing global inspections] before the recess; he will issue it immediately afterward”); Dkt. 28-8 (DONZ00027256) at 26 (2007.01.19 Donziger journal entry recording: “Met with judge last night in house. Humble house, furniture. Made tea. I really like the guy. Remember last August I wanted to ride the wave and get him off case? This was an example of Pablo’s total intelligence. We saved him, and now we are reaping the benefits.”); Dkt. 28-7 (DONZ00027256) at 10 (2007.03.01 Donziger journal entry stating, “On Friday night, Pablo and Luis met with the judge near the airport in his barrio in a restaurant.”); *id.* (2007.03.01 Donziger journal entry stating: “Pablo returned to Lago and met with the judge. . . . The bottom line is that the judge asked us for help to protect him, like we did last August.”); *id.* (DONZ00027256) at 1 (“Two very disturbing meetings with Judge in Lago on May 21. First with Trudie and Luis Yanza full of his charm and bullshit, starts blaming Texaco for filing too many papers. And then that night, I saw another side of Pablo. He called to ask if I would call the judge so we could go see

him at his house. . . . I called the judge and he asked that we bring over some whiskey or some wine. We didn't. When we got there, he was clearly drunk and had a young woman.”).

11. After ratifying his earlier decision to cancel the judicial inspections on January 22, 2007, Judge Yáñez on January 29, 2007, ordered that the global expert examination would proceed. Dkt. 52-8 (2007.01.22 Order); Dkt. 402-15 (Ex. 2333) (2007.01.29 Order).

12. Of the 122 site inspections originally ordered, only 45 were conducted by the parties' nominated judicial inspection experts. Dkt. 33-13 (Cabrera Report) at 16.

13. Settling experts completed and filed only one report, the “Report of the ‘Settling Experts’ on the Judicial Inspection of the Sacha 53 Well.” Dkt. 31-12 (Report of the “Settling Experts” on the Judicial Inspection of the Sacha 53 Well).

C. The LAPs' Counsel Pressured the Court Into Installing Cabrera as the Global Expert

14. The LAPs' attorneys met with potential experts to be appointed by the Ecuadorian court for the Peritaje Global (“global expert examination”) to find one that would “totally play ball with [the LAPs] and let [the LAPs] take the lead while projecting the image that he is working for the court,” asking one whether he was comfortable “slamming” Chevron with a multi-billion dollar judgment. Dkt. 28-8 (DONZ00027256) at 30 (“I asked if he could be comfortable slamming them with a 10b judgment. . . . I see using E-tech to give him cover, but he has to totally play ball with us and let us take the lead while projecting the image that he is working for the court.”); *id.* at 18 (Donziger writing in his diary that he interviewed Cabrera and that he “may be the perfect foil for Chevron”).

15. Representatives of the LAPs, including Fajardo, met with Judge Yáñez without Chevron representatives present, to arrange to have Richard Cabrera appointed as

the court’s expert for the global expert examination. Dkt. 28-7 (DONZ00027256) at 6-7; Dkt. 400-2 (Ex. 2011) (DONZ-HDD-0100386) at 1 (“Pablo’s a clever character and in [sic] pretty in with the judge, right, so I’m sure some solution will come up”); Dkt. 6-2 (Crude footage) at CRS-158-02-CLIP-06; Dkt. 6-9 (certified transcripts of Crude footage) at 94-95 (Fajardo “had two meetings with the President of the court” and had “more or less an idea of who” the global expert “could be”); Dkt. 28-7 (DONZ00027256) at 15-16 (Donziger writes, “I asked Pablo if he was 100% sure the judge would appoint Richard and not Echeverria, and he said yes. But given that this is the most important decision of the case thus far, there is simply no margin for error.”); Dkt. 356-9 (DONZ-HDD-0113389) at 152 (Donziger describes appointment of Cabrera as a “HUGE VICTORY” and states “that visit to the judge last week was a huge help”); Dkt. 400-2 (Ex. 2012) (DONZ00042758) at 1; Dkt. 400-1 (Ex. 2010) (Donziger Dep. Tr.) at 965:11-968:5, 3822:12-3824:3; Dkt. 28-8 (DONZ00027256) at 29 (Donziger: “We wrote up a complaint against Yanez, but never filed it, while letting him know we might file it if he does not adhere to the law and what we need. The worst part is that after the decision - which was covered in the Ec press and the Oil Daily - he told Luis that we needed to back him now as he fights for survival on the court. So instead of a strong judge who sees the viability of our case, we now might have a weak judge who wants to rule correctly for all the wrong, personal reasons. Need to get going on the inspections (looking for perito) and peritaje global.”)

16. On March 19, 2007, Judge Yáñez ordered that: “Mr. Richard Cabrera is appointed as the expert for the expert evaluation requested by plaintiffs” Dkt. 32-5 (2007.03.19 court order) at 2.

17. After Cabrera was appointed, Donziger stated: “[A]ll this bullshit about the law and facts . . . but in the end of the day it is about brute force [The judge] never

would have done [Cabrera's appointment] had we not really pushed him." Dkt. 6-2 (Ex. 1) at CRS-361-11-CLIP-01; Dkt. 8-5 (Ex. 2 (certified transcript)) at 431, 434.

18. In a March 26, 2007, email to the LAPs' lawyers, Pablo Fajardo stated: "Today the cook met with the waiter to coordinate the menu," which was code for the judge (the cook) meeting with Cabrera (the waiter), and described the need to pressure the judge to keep him from appointing another expert in addition to Cabrera. Dkt. 400-2 (Ex. 2012) (DONZ00042758) (referring to the judge as the "cook", Cabrera as the "waiter" and Chevron as "the other restaurant"); Dkt. 400-1 (Ex. 2010) (Donziger Dep. Tr.) at 3822:12-3824:8 (Donziger testifying that Fajardo's code words "the cook," "the waiter," and "the other restaurant" referred to the judge, Cabrera, and Chevron respectively).

19. In May 2007, Fajardo met with Judge Yáñez, who he referred to as "the boss," and the judge confirmed that "[t]here is no turning back. He will ratify Richard [Cabrera] and everything that's been ordered." Dkt. 32-7 (DONZ00108564) at 1; Dkt. 400-1 (Ex. 2010) (Donziger Dep. Tr.) at 3830:19-3836:14.

20. Cabrera was sworn in as the Ecuadorian court's global examination expert on June 13, 2007. Dkt. 32-9 (Cabrera certificate of swearing in) at 130,169.

21. The LAPs' team discussed opening a "new secret [bank] account" on the same day Cabrera was sworn in as the Ecuadorian court's global examination expert— June 13, 2007. Dkt. 400-3 (Ex. 2021) (DONZ-HDD-0113361-62) at 1-2 (Donziger and Yanza discuss opening a "new secret account"); Dkt. 32-9 (Cabrera certificate of swearing in) at 130,169; Dkt. 356-9 (DONZ-HDD-0125080) at 210 (Email from Yanza to Donziger, copying Fajardo, requesting Donziger to "explain this situation to JK so he can transfer 30 to our Secret

Account and 20 to SV, but he could send the 50 to the secret account, and then we could pass the 20 to SV to save time and paperwork”).

D. The Court Ordered Cabrera, and He Swore, to Maintain “Complete Impartiality And Independence Vis-À-Vis The Parties”

22. At his June 13, 2007 swearing in, Cabrera swore to carry out his duties “faithfully and in accordance with science, technology and the law and with complete impartiality and independence vis-à-vis the parties.” Dkt. 32-9 (Cabrera certificate of swearing in) at 130,169.

23. The Ecuadorian court ordered Cabrera to be “impartial” and “independent” and that his work be “transparent” and “independent from the two parties.” Dkt. 32-9 at 130,169 (In Cabrera certificate of swearing in Cabrera swears to perform his duties “faithfully and in accordance with science, technology and the law and with complete impartiality and independence vis-à-vis the parties”); Dkt. 32-6 (132,846) at 2 (2007.10.03 court order regarding Cabrera’s duties as expert stating: “The Expert [Cabrera] is hereby reminded that he is an auxiliary to the Court for purposes of providing to the process and to the Court scientific elements for determining the truth.”); *id.* at 6 (ordering Cabrera to “perform his work in an impartial manner and independently with respect to the parties”); *id.* (“In reference to the persons acting as assistants to [Cabrera] in the sampling and other work being performed by the expert, these must be independent from the two parties.”); *id.* at 10 (ordering Cabrera to maintain “complete impartiality and transparency with respect to the parties and their attorneys”).

24. The Ecuadorian court ordered that Cabrera be solely responsible for “the entire report, the methodology used, for the work done by his assistants.” Dkt. 32-6 (132,850) at 10 (2007.10.03 court order regarding Cabrera’s duties as expert stating: “The expert is responsible for the entire report, the methodology used, for the work done by his assis-

tants, etc.”); *id.* at 17 (“The expert has agreed to be responsible for all information and conclusions contained in the expert report.”); *id.* (Ecuadorian court stating that “the expert Richard Cabrera . . . was appointed as the sole expert”).

25. The Ecuadorian court ordered Cabrera to present together “with the report” all sources used and “to cite all of his scientific sources, and analytical and legal documents that he use[d] to perform his work.” Dkt. 402-14 (Ex. 2322) (133,755) at 1 (2007.11.30 Ecuadorian court order regarding materials used in preparing the Cabrera Report: “[A]ll the documents that serve as support or a source of information for the work performed by [Cabrera] must be presented together with the report. . . . [I]n his report the Expert is required to cite all of the scientific sources, and analytical and legal documents that he uses to perform his work.”).

26. The LAPs repeatedly asserted that Cabrera was a “neutral” and “independent” court-appointed expert or “Special Master.” Dkt. 402-12 (Ex. 2308) at 134,001, 134,004 (2008.01.11 LAP filing stating in Ecuador court filing that “Cabrera was not proposed by the plaintiffs” and “was not appointed at the suggestion of the plaintiffs,” but was nominated by the court); Dkt. 47-57 (2010.07.09 LAP filing in Stratus 1782) at 27 (“Cabrera is not even an expert for one party, but a Court-appointed neutral.”); Dkt. 47-30 (Donziger’s Lantos Commission Testimony) at 7 (“The best and most recent independent estimate available of the human health impact of this contamination is provided by the expert appointed by the court, Richard Cabrera.”); Dkt. 30-5 (2010.06.14 LAP complaint to stay arbitration) ¶ 29 (“The best and most recent independent estimate available of the human health impact of this contamination is provided by the neutral Special Master appointed by the court to provide advice on damages.”); Dkt. 400-2 (Ex. 2017) (2009.05.10 LAP filing) at 129,697 (The LAPs requested a single expert desig-

nated by the court “primarily due to the issue of impartiality Impartiality because, having not been named by either of the parties, he will be even more objective in his analysis and conclusions”); *see also* Dkt. 400-2 (Ex. 2019) at 140,184-85 (2008.04.18 LAP filing stating: “I remind you, Mr. President, that expert Cabrera was given the task because of his professional and personal suitability, and as such, his work should be free of external pressures from the parties, especially when these pressures can compromise the systematic integrity of his work in an attempt to turn this professional designated by the court into a mere executor of their plans and strategies.”).

27. The LAPs denied any improper relationship with Cabrera. Dkt. 36-5 at 3 (2008.04.04 LAP filing in Ecuador calling the notion that Cabrera “works for us” “simply ridiculous”); Dkt. 36-6 at 140,266 (2008.04.25 LAP filing in Ecuador) at 2 (labeling the allegation that the LAPs have a “close relationship with the Independent Expert Richard Cabrera” “[a]nother infamy”); Dkt. 359-9 at 3362:7-3363:20 (Donziger testifying that the LAPs’ counsel “[s]ought to prevent Stratus’ role relative to the Cabrera report from coming out”); Dkt. 401-5 (Ex. 2165) (Press Release, *Chevron Accused of Lying to Shareholders Over \$16 Billion Damages Claim in Ecuador Rainforest Case by Amazon Defense Coalition*, Apr. 3, 2008) (“Chevron’s claim that Professor Cabrera is cooperating with the plaintiffs is completely false. . . . Chevron is frightened by Cabrera precisely because he is an independent and credible expert.”).

28. Cabrera filed at least 11 letters with the Ecuadorian court claiming his independence, impartiality, fairness, and honesty. Dkt. 35-9 (2007.07.23 Cabrera letter) at 131,972 (Fajardo, writing as Cabrera, stating, “I should clarify that I do not have any relation or agreements with the plaintiff, and it seems to me to be an insult against me that I should be linked with the attorneys of the plaintiffs.”); Dkt. 400-3 (Ex. 2030) (2007.08.23 Cabrera letter) at

132,263 (Fajardo, writing as Cabrera, reporting that, “In order to demonstrate the transparency, impartiality and objectivity with which I am performing the field work . . . I chose to draft a sample registry sheet”); Dkt. 401-7 (Ex. 2178) (2007.10.11 Cabrera Letter) at 133,178-80 (claiming that it is “untrue” that “the plaintiff is in ‘close contact’ with me” and asserting that he “performed [his] work with absolute impartiality, honesty, transparency and professionalism”); Dkt. 400-3 (Ex. 2031) (2007.10.16 Cabrera letter) at 133254 (Fajardo, writing as Cabrera, stating that Cabrera’s “duty as expert is to comply with the law”); Dkt. 400-3 (Ex. 2032) (2007.10.31 Cabrera letter) at 133,465 (Fajardo, writing as Cabrera, stating, “I can only confirm my commitment to continue my work with absolute impartiality, honesty and transparency.”); Dkt. 400-3 (Ex. 2033) (2007.11.08 Cabrera letter) at 133,582 (Fajardo, writing as Cabrera, asking the court to order public and private institutions to provide him with essential information so he can “conduct a thorough, impartial and objective investigation in strict observance of the law”); Dkt. 400-3 (Ex. 2034) (2007.12.10 Cabrera letter) at 133907 (Fajardo, writing as Cabrera, stating, “I hope and I am certain that my report, which is completely impartial, will help bring to light the truth of the matters in dispute.”); Dkt. 35-10 (2008.10.07 Cabrera letter) at 151,316 (Fajardo, writing as Cabrera, stating, “I am an honest man with nothing to hide, and my conduct as an expert in this case has been as professional, impartial and objective as possible, as can be seen from my expert report. The fact that neither of the two parties is fully satisfied with my report is clear evidence of my impartiality.”); Dkt. 36-4 (2009.03.04 Cabrera letter) at 154,580 (Fajardo, writing as Cabrera, responds to questions by Chevron regarding Cabrera’s independence: “Once more I make it a matter of record that I have done my work, with my technical team, in adherence to my principles of integrity and, without a desire to negatively affect or benefit either party”); Dkt. 400-3 (Ex. 2035) (2010.03.22 Cabrera letter) at 168,513 (Fajardo, writing as Cabrera, stat-

ing, “Chevron accuses me of a conflict of interest Your Honor, this is a serious and false accusation.”); Dkt. 400-3 (Ex. 2029) (2007.07.12 Cabrera letter) at 131,338 (Fajardo, writing as Cabrera, referring to “the complete and absolute impartiality with which I must act in carrying out my expert evaluation”).

29. As Dr. McMenamin concluded, LAPs’ counsel Pablo Fajardo authored at least 15 letters to the Ecuadorian court in Cabrera’s name, including at least 10 of the 11 Cabrera letters attesting to Cabrera’s “independence” and lack of “relationship” with the LAPs. Dkt. 400-16 (Ex. 2105) ¶¶ 3, 9(c)(iii), Ex. F (2011.06.30 Expert Report of Gerald McMenamin concluding that “(1) the fifteen Cabrera filings identified as a subset of all the Cabrera filings reviewed have a single author, and (2) the author of this subset is Pablo Fajardo Mendoza”); *see also* Dkt. 35-9 (2007.07.23 Cabrera letter) at 131,972 (Fajardo, writing as Cabrera, stating, “I should clarify that I do not have any relation or agreements with the plaintiff, and it seems to me to be an insult against me that I should be linked with the attorneys of the plaintiffs.”); Dkt. 400-3 (Ex. 2030) (2007.08.23 Cabrera letter) at 132,263 (Fajardo, writing as Cabrera, reporting that, “In order to demonstrate the transparency and impartiality and objectivity with which I am developing the field work . . . I chose to draft a sample registry sheet”); Dkt. 400-3 (Ex. 2031) (2007.10.16 Cabrera letter) at 133,254 (Fajardo, writing as Cabrera, stating that Cabrera’s “duty as expert is to comply with the law”); Dkt. 400-3 (Ex. 2032) (2007.10.31 Cabrera letter) at 133,465 (Fajardo, writing as Cabrera, stating, “I can only confirm my commitment to continue my work with absolute impartiality, honesty and transparency.”); Dkt. 400-3 (Ex. 2033) (2007.11.08 Cabrera letter) at 133,582 (Fajardo, writing as Cabrera, asking the court to order public and private institutions to provide him with essential information so he can “conduct a thorough, impartial and objective investigation in strict observance of the law”); Dkt. 400-3 (Ex.

2034) (2007.12.10 Cabrera letter) at 133,907 (Fajardo, writing as Cabrera, stating, “I hope and I am certain that my report, which is completely impartial, will help bring to light the truth of the matters in dispute.”); Dkt. 400-4 (Ex. 2041) (2008.01.07 Cabrera letter) (Fajardo, writing as Cabrera, stating that Cabrera’s report is almost complete and requesting that the parties supply Cabrera with documents); Dkt. 35-10 (2008.10.07 Cabrera letter – 151,316) at 7 (Fajardo, writing as Cabrera, stating, “I am an honest man with nothing to hide, and my conduct as an expert in this case has been as professional, impartial and objective as possible, as can be seen from my expert report. The fact that neither of the two parties is fully satisfied with my report is clear evidence of my impartiality.”); Dkt. 400-4 (Ex. 2042) (2008.11.07 Cabrera letter) at 152,783 (Fajardo, writing as Cabrera, stating that Cabrera could not produce to Chevron any drafts of his report because “[t]he digital files that contain these drafts were deleted after the final report was submitted, and the paper was recycled. . . . I was not aware of any obligation to store all the drafts I used in performing my work.”); Dkt. 36-4 (2009.03.04 Cabrera letter) at 154,580 (Fajardo, writing as Cabrera, responds to questions by Chevron regarding Cabrera’s independence: “Once more I make it a matter of record that I have done my work, with my technical team, in adherence to my principles of integrity and, without a desire to negatively affect or benefit either party”); Dkt. 400-3 (Ex. 2035) (2010.03.22 Cabrera letter) at 168,513 (Fajardo, writing as Cabrera, stating, “Chevron accuses me of a conflict of interest Your Honor, this is a serious and false accusation.”); Dkt. 400-3 (Ex. 2036) (2007.12.17 email from Fajardo to Donziger attaching draft of the Cabrera letter in which Cabrera claimed to be threatened by Chevron (“Cabrera threat letter”)); Dkt. 400-3 (Ex. 2037) (draft of Cabrera threat letter sent by Fajardo to Donziger with the metadata showing the author as “Pablo” and that the document was last modified six days before the threat letter was filed in Cabrera’s name); Dkt. 402-13 (Ex. 2318) at

133,469 (2007.11.05 filed version of the Cabrera threat letter in which Fajardo, writing as Cabrera, claims “my life, as well as the lives of my family and collaborators, are in serious danger” because of Chevron); Dkt. 32-11 at 133,759 (2007.11.29 Ecuadorian court order ordering police protection for Cabrera as a result of Fajardo’s ghostwritten letter); *see also* Dkt. 402-13 (Ex. 2319) (2007.07.12 Cabrera letter) at 131,336 (Fajardo, writing as Cabrera, requesting that the court halt government remediation at inspection sites); Dkt. 400-3 (Ex. 2029) (2007.07.12 Cabrera letter) at 131,338 (Fajardo, writing as Cabrera, referring to “the complete and absolute impartiality with which I must act in carrying out my expert evaluation”); Dkt. 402-14 (Ex. 2321) (2007.07.23 Cabrera letter) at 131,971 (Fajardo, writing as Cabrera, giving notice of future site inspections).

E. The LAPs’ Counsel Colluded With and Bribed Cabrera, and Ghostwrote His Court Filings and Reports

30. On March 3, 2007, Donziger, Fajardo, Yanza, Maest, and other of the LAPs’ representatives met with Cabrera, without Chevron representatives present, to plan the global expert examination. Dkt. 6-2 (Ex. 1) at CRS-191-00-CLIP-03 (2007.03.03 Crude outtake video clip of meeting among P. Fajardo, A. Maest, and others); Dkt. 7-5 (Ex. 2 (certified transcript)) at 244 (Fajardo: “Chevron . . . doesn’t know what the hell is going to happen in the global expert examination. . . . I hope none of you tell them, please. [laughter] [I]t’s Chevron’s problem.”); Dkt. 6-2 (Ex. 1) at CRS-187-01-02 (video of March 3, 2007 meeting in Ecuador attended by the LAPs’ attorneys, the LAPs’ technical experts, and Cabrera in which Fajardo stated, “[T]he work isn’t going to be the expert’s. All of us bear the burden. . . . [Cabrera will] sign the report and review it. But all of us, all together, have to contribute to that report.” At which Maest added: “But not Chevron” [laughter]); Dkt. 7-5 (Ex. 2 (certified transcript)) at 245; Dkt. 8-9 at 1120:23-1121:5 (Donziger testifying that “the primary purpose of the [March 3,

2007] meeting” with Cabrera was to “lay out the entire case and legal theory for Mr. Cabrera and the other participants in the meeting”); *see also* Dkt. 6-2 (Ex. 1) at 188-00-CLIP-02, 188-01-CLIP-01, 189-00-CLIP-02, 189-00-CLIP-03, 189-00-CLIP-05, 191-00-CLIP-02, 191-00-CLIP-03, 192-00-CLIP-01, 193-00-CLIP-01 (video of the March 3, 2007 meeting with Cabrera and video of subsequent discussions regarding the March 3rd meeting); Dkt. 7-2-7-5 (Ex. 2 (certified transcript)) at 169-235, 241-53; Dkt. 400-1 (Ex. 2010) (Donziger Dep. Tr.) at 2147:7-11 (Donziger admitting that during the March 3, 2007 meeting with Cabrera, he assumed Cabrera would be appointed as the court’s global expert).

31. When one of the LAPs’ consulting experts commented that the LAPs’ March 3, 2007, team meeting with Cabrera was “bizarre,” Donziger replied, “Don’t talk about it,” and “that’s the way it works,” and Donziger told the *Crude* camera crew filming the discussion, “that is off the record.” Dkt. 6-2 (Ex. 1) at CRS196-01-CLIP-01; Dkt. 8-5 (Ex. 2 (certified transcript)) at 451-55.

32. The LAPs’ counsel secretly contracted with Cabrera. Dkt. 400-3 (Ex. 2027) (2007.07.01 email from Fajardo explaining that Cabrera called “about a little mistake in the contract” and suggesting that the LAPs’ representatives “help [Cabrera] get an office,” arrange for Julio Prieto’s girlfriend to be his assistant, that it is the LAPs’ “duty to help him get insurance”); Dkt. 400-3 (Ex. 2028) (email discussing life insurance quotes for Cabrera); *supra* ¶ 126.

33. The LAPs’ counsel purchased insurance for Cabrera and discussed getting him an office and arranging for one of their girlfriends to be his assistant. Dkt. 400-1 (Ex. 2010) (Donziger Dep. Tr.) at 3800:9-3805:7, 4842:22-4843:18 (Donziger testifying that the LAPs’ counsel had entered into a contract with Cabrera); Dkt. 400-3 (Ex. 2027) (2007.07.01 email from Fajardo explaining that Cabrera called “about a little mistake in the contract” and

suggesting that the LAPs' representatives "help [Cabrera] get an office," arrange for Julio Prieto's girlfriend to be his assistant, that it is the LAPs' "duty to help him get insurance"); Dkt. 400-3 (Ex. 2028) (email discussing life insurance quotes for Cabrera); Dkt. 400-1 (Ex. 2010) (Donziger Dep. Tr.) at 3802:5-3808:16 (Donziger testifies that the LAPs purchased life insurance for Cabrera).

34. On or before April 17, 2007, after he had been appointed the global assessment expert, but before he had been sworn in, the LAPs' representatives paid money to Cabrera. Dkt. 356-9 at 206 (2007.04.17 email from Yanza to Donziger: "We have met with Richard [Cabrera] and everything is under control. We gave him some money in advance."); *see also* Dkt. 400-1 (Ex. 2010) (Donziger Dep. Tr.) at 3781:3-3784:25.

35. The LAPs' representatives paid Cabrera outside the disclosed court process from what was referred to in their internal emails as "our secret account." Dkt. 400-1 (Ex. 2010) (Donziger Dep. Tr.) at 4869:6-16 (Donziger describing court procedures for paying Cabrera); Dkt. 400-3 (Ex. 2021) at 2 (Luis Yanza: "To open the account we need at least 2 thousand dollars. Due to the urgency, I suggest that amount (or more, 5 or 10 thousand) be sent to my personal account and I will transfer it to the new secret account."); Dkt. 400-3 (Ex. 2022) at 1; Dkt. 400-1 (Ex. 2010) (Donziger Dep. Tr.) at 4847:2-24 (Donziger testifying that Yanza referred to the account from which Cabrera was paid as a "secret account"); *id.* at 4853:6-4859:7; Dkt. 400-3 (Ex. 2023) at 3; *see also* Dkt. 400-3 (Ex. 2024) (email attaching list of total distributions made from Chevron Litigation Fund) at 1; Dkt. 400-3 (Ex. 2025) (list of total distributions from Chevron Litigation Fund reveals payments of \$50,000 to Frente de Defensa de la Amazonia on Aug. 15, 2007 and Sept. 14, 2007) at 1-2; Dkt. 400-1 (Ex. 2010) (Donziger Dep. Tr.) at 4848:11-4849:11 ("Q. Let's actually turn to page 3, where you say at the bottom 'Joe, please

transfer 50,000 to the following account in Ecuador. If you have any questions please call.’ Do you see that? A. Yes. Q. And then you provide the information for the account that Mr. Yanza calls the secret account. Do you see that? A. Yes.”); Dkt. 400-3 (Ex. 2026); Dkt. 400-1 (Ex. 2010) (Donziger Dep. Tr.) at 3805:8-12 (“Q. Am I correct, Mr. Donziger, that the plaintiffs’ team had a nickname for Mr. Cabrera? He was called Wao, correct? A. Yes.”), *id.* at 4327:15-20; Dkt. 356-9 (DONZ-HDD-0125080) at 210 (“[H]e sends us money to our secret account, to give to Wuao, [to] not stop the work.”) (brackets in original); Dkt. 400-3 (Ex. 2021) (DONZ-HDD-0113361); Dkt. 400-3 (Ex. 2022) (DONZ-HDD-0124585); Dkt. 402-2 (Ex. 2222) (DONZ00066208) (“The economic subject is chaotic. . . . the wao is also very uncomfortable (and this is dangerous)” so it was “urgent for money to arrive next week.”); Dkt. 400-1 (Ex. 2010) (Donziger Dep. Tr.) at 4414:16-4415:3 (Donziger is aware of no purpose of the secret account besides payments to Cabrera).

36. Separate from any payments through the “secret account,” the LAPs’ counsel paid at least \$263,000 to Cabrera through the Ecuadorian court. Dkt. 402-3 (Ex. 2239) (2007.06.28 LAP filing attaching check from Selva Viva to Cabrera in the amount of \$59,349.00); Dkt. 402-3 (Ex. 2240) (2007.10.10 LAP filing attaching check from Selva Viva to Cabrera in the amount of \$47,000.00); Dkt. 402-4 (Ex. 2241) (2007.11.28 LAP filing attaching check in the amount of \$30,000 for Expert Cabrera, paid by Selva Viva); Dkt. 402-4 (Ex. 2242) (2008.01.30 LAP filing attaching payment to Cabrera for \$25,000, paid by Selva Viva); Dkt. 402-4 (Ex. 2243) (2008.03.24 LAP filing submitting check for \$9,000 paid for by Selva Viva); Dkt. 402-4 (Ex. 2244) (2008.05.12 LAP filing submitting \$33,000 payment to Cabrera, paid by Selva Viva); Dkt. 402-4 (Ex. 2245) (2008.09.03 LAP payment to Cabrera for \$12,000, paid by Selva Viva); Dkt. 402-4 (Ex. 2246) (2008.12.09 LAP payment to Cabrera for \$13,550, paid by

Selva Viva); Dkt. 402-4 (Ex. 2247) (2009.07.06 LAP payment of \$10,000.00 to Cabrera); Dkt. 402-3 (Ex. 2235) (2009.10.19 LAP payment of \$25,000.00 to Cabrera); *see, e.g.*, Dkt. 402-20 (Ex. 2358) (2008.12.15 Cabrera filing requesting payment of \$42,915 purportedly for “preparing clarifications to my report, the hiring of experts in various areas of science . . . in addition to some logistical details, such as the letting of offices, service of assistants, and more”); Dkt. 402-2 (Ex. 2219) (Cabrera filing accepting receipt of \$47,000 payment from the LAPs); Dkt. 400-1 (Ex. 2010) (Donziger Dep. Tr.) at 4865:20-4869:23 (discussing funds requested by and paid to Cabrera through Court-approved process); Dkt. 402-3 (Ex. 2234) at 2 (2007.10.15 Cabrera filing requesting \$97,000 “to cover the costs required for supplementing the expert examination”).

37. The LAPs paid Cabrera through the Ecuadorian court for the preparation of the Cabrera Report and its Annexes, even though those were prepared by LAPs’ representatives, and not Cabrera. Dkt. 400-16 (Ex. 2105) (2011.06.30 McMenamin Report finding that the Cabrera Report and the supplemental report were written by the LAPs’ counsel and their consultants); Dkt. 400-1 (Ex. 2010) (Donziger Dep. Tr.) at 2165:2-6, 2184:3-2186:4 (“Q. Did the plaintiffs’ team draft the Cabrera work plan? A. I believe the plaintiffs’ team drafted a work plan that was given to him for his adoption.”); Dkt. 8-9 (Donziger Dep. Tr.) at 2203:4-17 (the LAPs’ counsel and consultants wrote Cabrera’s work plan); Dkt. 400-4 (Ex. 2044) (2007.06.25 filed Cabrera work plan (written by the LAPs representatives) including budget of \$59,349 for “the amount necessary to start the activities or field work immediately”); Dkt. 400-2 (Ex. 2016) at 130,660 (2007.06.29 letter from Fajardo to the court stating “I proceeded to pay by check 100% of the amount set by the Expert to start the expert examination, as timely requested”); Dkt. 402-15 (Ex. 2329) at 131,993 (2007.07.27 filing by Cabrera requests the Lago Agrio Court to order that “the party that requested the Expert exam deposit the sum of \$47,118” to pay “tech-

nical personnel, laboratories, and other services”); Dkt. 402-3 (Ex. 2240) (2007.10.10 LAP filing) at 133,132-33 (LAPs submit a check through Selva Viva to the Lago Agrio Court for \$47,000 as payment to Cabrera stating “[t]he sum or the amount of money indicated in the check being delivered to him corresponds to 100% of the estimate requested to continue the work of the expert examination.”); Dkt. 402-3 (Ex. 2234) at 133,210 (2007.10.15 Cabrera filing stating: “in view of continuing to progress with the expert examination under my supervision, and to comply with the payments of all technical personnel, laboratories and my expenses for the same examination” that the LAPs pay \$97,000 which “shall be used to cover the costs required for supplementing the expert examination.”); Dkt. 402-15 (Ex. 2330) at 133,764 (2007.12.04 Cabrera filing acknowledging payment of \$30,000 as “an advance of the Ninety-Seven Thousand Dollars I requested as part of the estimate.”); Dkt. 402-15 (Ex. 2331) at 134,163 (2008.02.08 Cabrera filing acknowledging \$25,000 as “an advance of Ninety-Seven Thousand Dollars requested by the Expert as part of the budget request.”); Dkt. 402-15 (Ex. 2332) at 140,267 (2008.04.28 Cabrera filing stating “the plaintiffs have only paid the amount of 64,000 dollars of the total of NINETY-SEVEN THOUSAND DOLLARS.”).

38. The LAPs paid Cabrera through the Ecuadorian court for preparing responses to the LAPs’ questions, even though those responses were prepared by LAPs’ representatives, and not Cabrera. Dkt. 400-16 (Ex. 2105) (2011.06.30 McMenamin Report finding that the Cabrera Report and the supplemental report were written by the LAPs’ counsel and their consultants); Dkt. 402-20 (Ex. 2358) (2008.12.15 Cabrera filing requesting payment of \$42,915 purportedly for “preparing clarifications to my report, the hiring of experts in various areas of science . . . in addition to some logistical details, such as the letting of offices, service of assistants, and more”); Dkt. 402-2 (Ex. 2218) (DONZ00051767) (“On July 3, 2009, Mr. Yanza

emailed Mr. Donziger: “*Friend, we are paying Cabrera 10 today to calm him down.*”); Dkt. 402-15 (Ex. 2335) at 157,515 (2008.07.13 Cabrera filing acknowledging \$10,000 “FOR payment to professionals who made up the technical group to answer questions from the parties.”).

39. The LAPs paid Cabrera through the Ecuadorian court for the “outstanding balances” of a “multidisciplinary team” of “professionals that have cooperated in carrying out” the work on the Cabrera Report and its Annexes, even though those were prepared by the LAPs’ representatives. Dkt. 400-16 (Ex. 2105) (2011.06.30 McMenamin Report finding that the Cabrera Report and the supplemental report were written by the LAPs’ counsel and their consultants); Dkt. 8-9 (Donziger Dep. Tr.) at 2177:8-2178:15; 2165:2-2166:23; 2406:7-11 (Donziger testified that the LAPs’ team was involved in “putting together Cabrera’s work team”); Dkt. 402-15 (Ex. 2332) (2008.04.28 Cabrera filing stating “[t]he expert report that I responsibly delivered to you . . . in an impartial, objective and real manner, I required the participation of a very experienced multidisciplinary team,” and requesting that the court order the LAPs to pay “the amount of TWENTY-FIVE THOUSAND FIVE HUNDRED FIFTY DOLLARS OF THE UNITED STATES OF AMERICA, (USD 25,550) which budget request or money will be used to pay the outstanding balances of the professionals that have worked on this case”).

40. The LAPs’ representatives controlled the manner in which Cabrera carried out his duties as the Ecuadorian court’s global examination expert, including specifically, determining his sampling and associated protocols, site selection and team composition. Dkt. 32-12 (Donziger: “My tendency is to stop Richard from working much more in the field . . . or, if he continues doing it, he should continue under the most strict control with an extremely limited number of samples. And we’ll change the focus of the data at our offices.”) (em-

phasis in original); Dkt. 6-2 (Ex. 1) at CRS-196-00-CLIP-01 (2007.03.04 Crude outtake video clip of meeting among S. Donziger, A. Maest, R. Kamp, and C. Champ discussing groundwater evidence); Dkt. 7-6 (Ex. 2 (certified transcript)) at 265-67; Dkt. 8-9 at 2203:11-13 (Donziger: the LAPs' representatives were "involved in Mr. Cabrera's site selection"); Dkt. at 8-9 at 2177:8-2178:15 (Donziger testified that the LAPs' team was involved in "putting together Cabrera's work team"); Dkt. 400-1 (Ex. 2010) (Donziger Dep. Tr.) at 2163:2-2166:22 (Donziger: the LAPs' representatives were involved in "putting together Cabrera's work team"); Dkt. 8-9 at 2203:14-17 (Donziger: the LAPs' representatives "were involved in [Cabrera's] sampling protocols."); *id.* at 2203:4-17; Dkt. 400-1 (Ex. 2010) (Donziger Dep. Tr.) at 3833:16-3834:6 (the LAPs' counsel and consultants wrote Cabrera's work plan, were involved in Cabrera's site selection, and suggested Cabrera's sampling protocols).

41. On June 22, 2007, Pablo Fajardo sent Steven Donziger an email regarding how to access a draft plan for "how to work with the global damages assessment expert" by using the email account "examen_pericial@hotmail.com," and with the instruction to only use the code names "Lagarto 2" and "Lagarto 3" for himself and Donziger. Dkt. 402-15 (Ex. 2315) (DONZ00043514); Dkt. 400-1 (Ex. 2010) (Donziger Dep. Tr.) at 3057:13-3058:16 ("Q. And as you look at this e-mail now, does it refresh your recollection that the plan he is referring to is the plan for how to work with the global damages assessment expert on his report? A. I believe so, yes.").

42. The LAPs' counsel and consultants wrote Cabrera's June 25, 2007 "Work Plan for Expert Examination," which Cabrera then submitted to the Ecuadorian court as his own work. Dkt. 400-1 (Ex. 2010) (Donziger Dep. Tr.) at 2165:2-6 ("Q. Did the plaintiffs' team draft the Cabrera work plan? A. I believe the plaintiffs' team drafted a work plan that was

given to him for his adoption.”), 2184:3-2186:4; Dkt. 8-9 at 2203:4-17 (the LAPs’ counsel and consultants wrote Cabrera’s work plan); Dkt. 6-2 (Ex. 1) at CRS-189-00-CLIP-02; Dkt. 7-4 (Ex. 2 (certified transcripts)) at 223-27 (Donziger proposed forming a “work committee” to draft Cabrera’s “work plan” with the goal of having “more or less eighty percent-ninety percent on the way to a plan” in a few days); Dkt. 400-4 (Ex. 2043) (DONZ00038727) at 1 (Fajardo emailing Donziger); *see also id.* at 3-4 (LAP-drafted chart entitled “Expert Examination Activity Plan” with members of the LAPs’ team noted as the individuals responsible for various activities); *id.* at 5-6 (LAP-drafted document entitled “Final Plan from the Global Expert Examination” containing an outline of tasks to be performed for Cabrera’s global examination); Dkt. 400-4 (Ex. 2044) (LAPs’ team drafted Cabrera’s work plan); Dkt. at 8-9 at 2177:8-2178:15; 2165:2-2166:23; 2406:7-11 (Donziger testified that the LAPs’ team was involved in “putting together Cabrera’s work team.”).

43. Stratus met with Cabrera in January 2008. Dkt. 400-1 (Ex. 2010) (Donziger Dep. Tr.) at 2247:2-20 (Donziger testifies that individuals from Stratus and the LAP legal team met with Cabrera in January 2008 where they discussed that “Stratus individuals would draft materials that would be given to Mr. Cabrera for his hoped-for adoption in his report” and that Cabrera “seemed open” to accepting a report drafted by Stratus).

44. Stratus planned who would draft portions of the documents that would become the Cabrera Report and its Annexes. Dkt. 400-16 (Ex. 2105) (2011.06.30 McMenamin Report) ¶¶ 3, 9(a); Dkt. 33-2 (2008.02.22 email from Beltman to Stratus employees) (STRATUS-NATIVE043232-33) (Stratus project manager Douglas Beltman telling his team that they will draft the Cabrera Report: “The project is at a key point right now. We have to write, over the next 2 to 3 weeks, probably the single most important technical document for the case. .

. . . We (the case attorneys, the case team in Quito, and Stratus) have put together a very ambitious outline for this report. The people in the Quito office are working on some parts, and we're working on others."); Dkt. 32-20 (SRATUS-NATIVE043857-58) (the LAPs' agents outlining how they would "attribute" the annexes they were drafting to Cabrera).

45. Stratus removed the names of the original authors from what would become annexes to the Cabrera Report. Dkt. 34-7 (STRATUS-NATIVE063676) (Beltman emailing Donziger regarding the fact that Powers' name needed to be taken off his report before it was filed as an annex to the Cabrera Report); Dkt. 402-2 (Ex. 2217) ¶ 1 (2007.11.14 Fajardo email to Cristobal Villao: "For legal reasons, in the first part, the paragraph which states who hired you to carry out the study is to be omitted"); Dkt. 33-7 (STRATUS-NATIVE069116) at 2 (Beltman: "Here is the Uhl report, cleaned and sanitized.").

46. The LAPs' counsel hired Uhl, Baron & Rana ("UBR") to draft a report regarding potable water systems in the former concession area. Dkt. 402-15 (Ex. 2328) (VU0000037) (Letter from UBR providing "a summary outline of a scope of work and cost estimate for the development of a preliminary analysis of potential costs for the provisions of potable water to the residents of two provinces in the Amazon Region of Ecuador"); Dkt. 402-2 (Ex. 2228) (VU0000039) ("This letter will serve as our agreement to retain Uhl, Baron, Rana & Associates, Inc."); Dkt. 402-9 (Ex. 2267) (Uhl Dep. Tr.) at 68:12-69:16 (Vincent Uhl testifying that UBR was retained by Kohn, Swift & Graf "to do the water project in Ecuador").

47. Cristobal Villao worked for UBR on the potable water project for the LAPs' counsel. Dkt. 402-2 (Ex. 2228) (VU00000039); Dkt. 402-2 (Ex. 2229) (VU00000063) at 1; Dkt. 402-2 (Ex. 2230) (VU00000122) at 1; Dkt. 402-3 (Ex. 2231) (VU00000136) at 1; Dkt. 402-3 (Ex. 2232) (VU00000150) at 1-3.

48. UBR performed all of its work on the potable water project for the LAPs' counsel and was paid by the LAPs' counsel. Dkt. 402-2 (Ex. 2228) (VU00000039); Dkt. 402-9 (Ex. 2267) (Uhl Dep. Tr.) at 27:11-17.

49. After receiving a draft of the UBR potable water report, the LAPs' counsel, Pablo Fajardo, instructed Cristobal Villao to remove from the report the statement that "Uhl, Baron, Rana & Associates, Inc. (UBR) was retained by Kohn, Swift, & Graf, P.C. in July 2007" and the dates on which the work was performed. Dkt. 402-2 (Ex. 2217) ¶ 1 (2007.11.14 Fajardo email to Cristobal Villao stating: "For legal reasons, in the first part, the paragraph which states who hired you to carry out the study is to be omitted"); *id.* ¶ 5 ("Also for legal reasons, it's necessary to make all working dates to appear as recorded before July 31 or after August 16. This means that between August 1 and August 16, no date in which field work has been carried out should appear.").

50. In Section 5.0 of UBR's report, UBR recommended "a minimum of \$20,000,000 to \$30,000,000 will be required just to evaluate the extent of impact to the groundwater resources in these two provinces" because "no detailed groundwater investigations [had] been conducted." Dkt. 402-13 (Ex. 2320) (UBR Report).

51. The LAPs' representatives removed Section 5.0 of the UBR report and the altered UBR report was submitted to the Ecuadorian court as Annex R to the Cabrera Report. *Compare* Dkt. 402-3 (Ex. 2231) (VU00000136) (draft from UBR recommending groundwater study) *with* Dkt. 402-9 (Ex. 2269) (Cabrera Report, Annex R) (containing no recommendation for groundwater study); Dkt. 400-1 (Ex. 2010) (Donziger Dep. Tr.) at 2325:3-2326:2 (Donziger testifying that Mr. Villao of UBR prepared a potable water systems report that was attached to the Cabrera Report as an annex); Dkt. 33-7 (STRATUS-NATIVE069117) at 2 (Belt-

man sending the Uhl potable water report to Donziger on March 6, 2008 stating, “Here is the Uhl report, cleaned and sanitized.”).

52. Cristobal Villao never met or communicated with Cabrera. Dkt. 402-9 (Ex. 2267) (2011.04.19 Uhl Depo Morning Session) at 64:6-9 (“Q. To your knowledge has Mr. Villao ever communicated with Mr. Cabrera on the work that you and he did in Ecuador? A. To my knowledge he has not.”).

53. Cristobal Villao was identified in the Cabrera Report executive summary as “part of my technical team, which consists of impartial professionals with impeccable credentials, as can be observed in Exhibit V to this report.” Dkt. 33-12 (Cabrera Report) at 2; Dkt. 402-15 (Ex. 2334) (Annex V).

54. The Cabrera Report consists of a summary report titled “Summary Report of Expert Examination” and supporting Annexes A through V. Dkt. 33-13 (Cabrera Report).

55. The LAPs’ counsel and others working at their direction wrote the April 1, 2008 “Summary Report of Expert Examination” and Annexes A through V. Dkt. 400-4 (Ex. 2046) (DONZ00083815) at 1-2 (Internal memo: “The Cabrera Report is a series of 17 annexes; in all, 11 of them were prepared by Stratus and adopted by Cabrera.”); Dkt. 356-10 (DONZ-HDD-0004621) at 83 (Donziger: if Chevron obtained discovery from Stratus, “they will find that Stratus wrote the bulk of the report adopted by Cabrera and submitted to the court.”); Dkt. 400-1 (Ex. 2010) (Donziger Dep. Tr.) at 3400:7-9 (Donziger: “Stratus had drafted a substantial number of annexes that were adopted by [Cabrera] verbatim that were included in his report.”); Dkt. 47-55 (DONZ00031368) at 1-3 (the LAPs’ counsel: “we do better by explaining that we authored the report,” “we authored portions of the report,” “[we do not benefit by] deny-

ing what is already apparent (that we authored portions of the report”); Dkt. 400-1 (Ex. 2010) (Donziger Dep. Tr.) at 2377:21-2378:9 (Donziger: Stratus drafted “an actual report with annexes in Cabrera’s name”); Dkt. 8-9 at 2253:5-11 (Donziger agreed that “the general idea” was “that Stratus would draft the report in a form that it could be submitted directly to the Ecuadorian court by Mr. Cabrera”); Dkt. 32-16 (STRATUS-NATIVE043270-043278) (Stratus contracted with Kohn, Swift & Graf to write Cabrera Report); Dkt. 32-17 (STRATUS-NATIVE066482-066484) (same); Dkt. 32-18 (DONZ00026949) (same); Dkt. 32-12 (DONZ00062680)) at 1; Dkt. 8-9 at 2433:8-14 (Donziger: Cabrera Report as filed was “pretty much verbatim” as written by the LAPs’ counsel and consultants); Dkt. 6-2 (Ex. 1) at CRS-191-00-CLIP-03; Dkt. 7-5 (Ex. 2 (certified transcripts)) at 245-46 (Fajardo: “And here is where we do want the support of our entire technical team . . . of experts, scientists, attorneys, political scientists, so that all of us will contribute to that report—in other words—you see . . . the work isn’t going to be the expert’s. All of us bear the burden.”); Dkt. 32-13 (DONZ00061973) at 1 (2007.03.28 to 2007.04.03 email exchange in which David Chapman (Stratus) states: “I think the way this would work best is that if Stratus did much of the work, putting the pieces together and writing the report.”); Dkt. 400-1 (Ex. 2010) (Donziger Dep. Tr.) at 2165:2-6 (“Q. Did the plaintiffs’ team draft the Cabrera work plan? A. I believe the plaintiffs’ team drafted a work plan that was given to him for his adoption.”); Dkt. 8-9 at 2203:4-17 (the LAPs’ counsel and consultants ghostwrote Cabrera’s work plan, were involved in Cabrera’s site selection, and suggested Cabrera’s sampling protocols); Dkt. 6-2 (Ex. 1) at CRS-269-01-04, 269-01-08); Dkt. 7-10 (Ex. 2 (certified transcript)) at 355-62 (Donziger and Stratus discuss damages categories to include in Cabrera Report); Dkt. 33-2 (2008.02.22 email from Beltman to Stratus employees) (STRATUS-NATIVE043232) (Beltman: “We have to write, over the next 2 to 3 weeks, probably the single most important technical doc-

ument for the case.”); Dkt. 32-19 (email from Beltman to Donziger attaching draft copy of “Outline for PG Report”); Dkt. 32-20 (STRATUS-NATIVE043849) at 1 (Beltman: “The summary Peritaje Global report (~50 pages). This is what I will be working on mostly, and it will take most of my time over the next two weeks.”); *id.* (STRATUS-NATIVE043854-STRATUS-NATIVE043859) at 6-11 (plan for attributing authorship to Cabrera and others); Dkt. 33-4 at 1 (Beltman: “Attached is my rough start of the Peritaje Global report. . . . Would you let me know if you think I’m on track in terms of tone, language level, and content?”); Dkt. 33-5 (Powers Dep. Tr.) at 95:14-22, 109:2-7, 251:4-253:1, 255:5-256:13 (LAP expert Bill Powers testifying that a “similar” version of a report he prepared and emailed to Stratus was filed as Annex S of the Cabrera Report and that calculations he prepared were incorporated into Annex T of the Cabrera Report); Dkt. 34-7 (STRATUS-NATIVE063676) at 1 (Beltman emailing Donziger regarding the fact that Powers’ name needed to be taken off his report before it was filed as an annex to the Cabrera Report); Dkt. 53-6 (STRATUS-NATIVE063142) (Beltman emailing Ecuadorian counsel and Donziger revisions to the Cabrera Report less than one week before it was filed); Dkt. 104-2 (STRATUS-NATIVE069123-24) at 1-2 (Donziger asking Beltman for feedback regarding the damages tables for the Cabrera Report on March 30, 2008, less than 36 hours before the Cabrera Report was filed); Dkt. 53-8 (2008.04.01 email from Ann Maest to Beltman attaching Cabrera’s Declaration Of Findings”); Dkt. 355-42 (DONZ00045505) at 1 (2008.04.01 email from “gringograndote@gmail.com” to Donziger attaching a Word version of the Cabrera Report identical to filed version and last saved hours before the Cabrera Report was filed in Ecuador); Dkt. 355-43 (DONZ00045506) at 1-62 (2008.04.01 email from “gringograndote@gmail.com” to Donziger attaching a Word version of the Cabrera Report identical to filed version and last saved hours before the Cabrera Report was filed in Ecuador) at 1-62; Dkt. 400-1 (Ex. 2010) (Donziger

Dep. Tr.) at 5014:22-5016:7 (same); *id.* at 2490:12-18; Dkt. 33-3 (STRATUS-NATIVE053742) (Beltman “My goal is to have the entire report drafted by COB Tuesday. Based on how things are going, our current translators will take more than a week to turn it around . . . And [sic] that’s not much time before it has to go to the court on Monday.”); *see also* Dkt. 32-20 (STRATUS-NATIVE043849) at 1; Dkt. 32-21; Dkt. 33-10 (STRATUS-NATIVE058388 – 419) at 1 (email from Beltman to translators attaching a draft of the Cabrera Summary Report in English and requesting that it be translated into Spanish for the upcoming submission to the Ecuadorian court); Dkt. 400-1 (Ex. 2010) (Donziger Dep. Tr.) at 2962:9-2963:23 (Donziger testifying: “I believe Stratus prepared the [November report] materials in the hope that [Cabrera] would adopt them, sort of how they did the with annexes and executive summary.”).

56. Stratus created the initial draft of the April 1, 2008 “Summary Report of Expert Examination” in English, in the first person, and in the voice of Cabrera. Dkt. 400-16 (Ex. 2105) (McMenamin Report) at 1, 28.

57. Stratus drafted the majority of the Annexes to the Cabrera Report. Dkt. 400-4 (Ex. 2046) (DONZ00083815) at 1-2 (Internal memo admitting, “The Cabrera Report is a series of 17 annexes; in all, 11 of them were prepared by Stratus and adopted by Cabrera.”); Dkt. 400-4 (Ex. 2047) (DONZ-HDD-0004621) at 1-2 (Donziger admitting that if Chevron’s attorneys obtained discovery, “they will find that Stratus wrote the bulk of the report adopted by Cabrera and submitted to the court.”); Dkt. 47-55 (DONZ00031368) at 1, 3 (email exchange between the LAPs’ counsel, noting “we do better by explaining that we authored the report,” discussing a need “to acknowledge that we authored portions of the report,” and emphasizing that they would not benefit from “denying what is already apparent (that we authored portions of the report)”); Dkt. 400-1 (Ex. 2010) (Donziger Dep. Tr.) at 2377:21-2378:9 (Donziger testifies that Stratus

drafted “an actual report with annexes in Cabrera’s name”); *id.* at 3400:3-9 (Donziger testifies that, as of March 2010, he knew that “Stratus had drafted a substantial number of annexes that were adopted by [Cabrera] verbatim that were included in his report”); Dkt. 47-55 (DONZ00031368) (the LAPs’ counsel: “I wonder whether we do better by explaining that we authored the report rather than letting Chevron tell that story like Nancy Drew.”).

58. The content of the “Summary Report of Expert Examination,” filed on April 1, 2008, by Cabrera, is identical to a Microsoft Word document circulated by the LAPs’ counsel that was created on March 30 and last printed on March 31, 2008. Dkt. 46-2 ¶ 24 (Declaration of Michael F. McGowan concluding that the “text of the ‘INFORME SUMARIO VERSION FINAL(Steve).doc’ document attached to the Gringograndote Email and the Forwarding Email is identical to text of the report filed by Richard Cabrera on April 1, 2008.”); *id.* ¶ 27 (providing last saved and print times); Dkt. 355-42 (DONZ00045505) and Dkt. 355-43 (DONZ00045506) (email from “gringograndote@gmail.com” to Donziger attaching a Word version of the Cabrera Report that according to the metadata was last saved mere hours before the Cabrera Report was filed in Ecuador and that is identical to the filed version of the Report); Dkt. 400-1 (Ex. 2010) (Donziger Dep. Tr.) at 5014:22-5016:7 (Donziger testifying regarding having in his possession a Word version of the Cabrera Report before the Report was filed in Ecuador).

59. Cabrera submitted the Cabrera Report with Annexes A through V to the Ecuadorian court at 8:30 a.m. on April 1, 2008. Dkts. 33-12 – 33-18; 34-2 – 34-3 (Cabrera Report).

60. The Cabrera Report states: “This report was prepared by the Expert Richard Stalin Cabrera Vega[.]” Dkts. 33-12 – 33-18; 34-2 – 34-3 (Cabrera Report) at 1.

61. Cabrera did not author any portion of the Cabrera Report or any Annex attached to it. Dkt. 400-1 (Ex. 2010) (Donziger Dep. Tr.) at 2249:3-12, 2590:20-2591:22 (Donziger testifying he does not know whether Cabrera drafted any portion of his report or whether he even reviewed it before it was filed); Dkt. 356-9 at 174-75 (Maest Dep. Tr.) at 53:25-54:4 (Maest testifying that she did not know whether Cabrera or a person identified as an independent member of Cabrera's team had actually drafted any portion of the Cabrera Report).

62. Cabrera Report Annexes were originally drafted in English and translated into Spanish. Dkt. 33-9 (STRATUS-NATIVE044716) (“There’s another set that we wrote in English, had translated into Spanish up here, then sent down the Spanish versions to Quito. Once in Quito, the team down there edited the Spanish versions to make them read better, and to fit them into Ecuadorean Spanish.”).

63. On July 28, 2008, Douglas Beltman emailed Stratus employee Brian Lazar, instructing him that if the differences between the filed Spanish Cabrera Report and Stratus’s draft Spanish version of the Cabrera Report “are minor in nature, then we go ahead and use our original English version as if it’s been translated.” Dkt. 33-9 (STRATUS-NATIVE044716).

64. The LAPs filed a pleading on September 16, 2008, with comments and objections to the Cabrera Report stating that the Cabrera Report was “unjustly favorable to [Chevron]” because the report’s calculations were “too conservative.” Dkt. 8-10 (LAP comments on Cabrera Report) at 40; Dkt. 402-5 (Ex. 2251) (STRATUS-NATIVE058697-98); Dkt. 111-13 ((DONZ00045581) at 1 (Fajardo instructing, after the Cabrera Report was filed, that “I think it’s good to maintain a uniform line. PLEASE WE ARE NOT HAPPY.”).

65. On November 17, 2008, Richard Cabrera filed “Answers by the Expert Richard Cabrera, with the Support of His Technical Team, to the Questions and Comments Made by the Plaintiffs,” as a supplement to the Cabrera Report. Dkt. 400-4 (Ex. 2048) (Cabrera Supplemental Report entitled “Answers by the Expert Richard Cabrera, with the Support of His Technical Team, to the Questions and Comments Made by the Plaintiff”).

66. The LAPs’ representatives and those working at their direction—not Richard Cabrera—wrote the November 17, 2008 supplement to the Cabrera Report increasing the damage assessment from \$16.3 billion to \$27.3 billion. Dkt. 9-4 at 2 (STRATUS-NATIVE051389) (Stratus team members discussed the preparation of the Supplemental Cabrera Report and the need to “clean up the language” of a portion of the supplemental report “so it sounds more like the Perito [Cabrera] and less like a comment.”); Dkt. 34-21 (STRATUS-NATIVE053480) at 1; Dkt. 400-1 (Ex. 2010) (Donziger Dep.) at 2962:9-2963:23 (Donziger testifies: “I believe Stratus prepared the [November report] materials in the hope that [Cabrera] would adopt them, sort of how they did the with annexes and executive summary.”); Dkt. 6-2 (Ex. 1) at CRS-193-00-CLIP-01; Dkt. 7-5 (Ex. 2 (certified transcript)) at 252-53 (2007.03.03 meeting during which Donziger states they could “jack this thing up to thirty billion” in one day).

67. Stratus was directed by the LAPs’ representatives to “ignore” the “ongoing PEPDA cleanup,” which was “cleaning up scores and scores of sites,” when developing the cost estimate for cleanup in the Cabrera Reports. Dkt. 32-20 (STRATUS-NATIVE043849-59) at 10 (An outline for the Cabrera Report circulated by Douglas Beltman notes “How do we deal with the ongoing PEPDA cleanup? They’re cleaning up scores and scores of sites, we have no or little data on how good the cleanup is. Our cost estimates assume

they haven't done anything, yet they have.?? Luis says proceed with data we have. We essentially ignore it.”).

68. Stratus evaluated TexPet's remediation and informed the LAPs' counsel on August 1, 2008, that after “carefully review[ing] the technical requirements for the cleanup,” there were “no clear instances where TexPet did not meet the conditions required in the cleanup.” Dkt. 356-14 at 41-42 (Beltman told Donziger that he could find no “clear instances where Texpet did not meet the conditions required in the cleanup”); *see also* Dkt. 356-15 (STRATUS-NATIVE062132-61) at 5 (the LAPs' technical team's internal comments on the Cabrera Report state that “results show that the pits were properly remediated” and “results indicate that Texaco did remediate and that the Expert is partial”).

69. A consulting epidemiologist for the LAPs stated on August 25, 2008, that “the calculation of excess [cancer] cases [in the Cabrera report] is incorrect.” Dkt. 355-22 (STRATUS-NATIVE052295-97) at 26 (the LAPs' consulting epidemiologist San Sebastian emailing David Mills of Stratus regarding the invalidity of Annex Q of the Cabrera Report: “The calculation of excess [cancer] cases is incorrect. The study uses the number 1.73 (which as mentioned above has no sense) to calculate that excess. To calculate excess of disease in epidemiology, we use the absolute difference between two risk or rates; the interpretation of this excess is done always assuming causality between the exposure (oil) and the outcome (cancer). These data are lacking in the study.”); *id.* at 1 (the LAPs' consulting epidemiologist Miguel San Sebastian emailing David Mills of Stratus regarding the excess cancer claims in the April 1, 2008 Cabrera Report: “Quality of data: Cancer cases are based on a questionnaire, from an epidemiological point of view this has little validity.”).

F. The LAPs' Counsel Attempted to Conceal Their Involvement in the Cabrera Fraud

70. LAPs' representatives contacted academic experts to try to obtain endorsements of the Cabrera report, and on July 20, 2008, Douglas Beltman emailed Donziger and others and explained, "Our original concerns about this have come to pass. . . . [S]ome of the underlying work in the Cabrera work has weaknesses that an academic would probably have a hard time defending." Dkt. 34-29 (STRATUS-NATIVE042610).

71. On December 1, 2008, Stratus published a review of the Cabrera Report entitled "Comments on the Report of the Court-Appointed Expert Ing. Richard Cabrera Vega in the Case of Maria Aguinda y Otros v. Chevron Corp." Dkt. 34-26 at 2 ("We have reviewed the report 'Informe Sumario del Pericial' that was prepared by Ing. Richard Cabrera Vega, who was appointed as the technical expert by the Court in the case of Maria Aguinda y Otros against Chevron Corporation.").

72. Stratus did not disclose in its review of the Cabrera Report that it had developed the findings attributed to Cabrera and drafted language in the Cabrera Report. Dkt. 34-26 (Stratus' comments on the Cabrera Report); Dkt. 402-11 (Ex. 2288) (Beltman Dep. Tr.) at 264:2-16.

73. Stratus's comments on the Cabrera Report were "written in a manner to give the impression that Cabrera was entirely independent and conducted his own research and came up with his own findings," and an attorney for the LAPs stated that it "appears not only that Cabrera and plaintiffs can be charged with a 'fraud' respecting the former's report, but that Stratus was an active conspirator." Dkt. 9-7 (DONZ00056679) at 1; Dkt. 34-26.

74. The LAPs’ counsel used code names in internal emails when discussing their dealings with Cabrera. Dkt. 402-2 (Ex. 2221) (DONZ00060634) at 1 (referring to the judge as the “Big Boss”); Dkt. 400-2 (Ex. 2012) (DONZ00042758) (referring to the judge as the “cook”, Cabrera as the “waiter” and Chevron as “the other restaurant”); Dkt. 32-7 (DONZ00108564) at 1 (referring to the judge as the “boss”); Dkt. 356-9 (DONZ00043514) (referring to Donziger as “Lagarto 3”, Fajardo as “Lagarto 2” while instructing Donziger to only refer to himself on a specific Hotmail address as “Lagarto 3”); Dkt. 46-3 (DONZ-HDD-0125950) (referring to Cabrera as the “Wao”); Dkt. 402-2 (Ex. 2222) (DONZ00066208) (referring to Cabrera as the “wao”).

75. Stratus understood that their meetings with Cabrera and their work on the Cabrera Report and its Annexes were to be kept “confidential” or “secret.” Dkt. 402-11 (Ex. 2288) (2010.12.09 Beltman Dep. Tr.) at 156:15-19 (“Q. At that same time, was any instruction given to persons at Stratus whether or not to keep confidential any of its work with respect to the Peritaje Global? A. Yes.”); Dkt. 400-2 (Ex. 2015) (2011.01.19 Maest Dep. Tr.) at 121:23-122:3 (“Q. After the meeting at Juan Aulestia’s house in January of 2008 with Mr. Cabrera, did you have an understanding that your contacts with Mr. Cabrera . . . needed to be kept confidential or secret? A. Yes.”); *see also id.* at 111:20-24.

II. DONZIGER, AS COUNSEL FOR THE LAPs, LED A SCHEME TO DECEIVE U.S. COURTS, INCLUDING COURTS IN NEW YORK, REGARDING THE NEUTRALITY AND INDEPENDENCE OF CABRERA

A. Donziger Has Served as Lead U.S. Counsel for the LAPs and Coordinated the Litigation Against Chevron

76. Donziger was one of the lawyers who represented the plaintiffs in *Aguinda v. Texaco* and appears on the complaint filed in 1993. Mastro Decl. 2824 (Complaint, *Aguinda v. Texaco, Inc.*, No. 93 Civ. 7527 (JSR) (S.D.N.Y. Nov. 3, 1993)), at 38.

77. **Following dismissal of *Aguinda*, Donziger continued his involvement in the Ecuadorian litigation. He has explained that his “role is to be the lawyer and manage the Ecuadorian legal team,” and that he “play[s] an integral role i[n] designing the trial strategy and working closely with the local team of lawyers.” Dkt. 9-9 (2006.11.03 S. Donziger Book Proposal) (DONZ00006707) at 20, 21.**

78. **Donziger has stated that he was responsible for recruiting and managing the team of lawyers representing the LAPs: “I am the person primarily responsible for putting this team together and supervising it.” Dkt. 9-9 (2006.11.03 S. Donziger Book Proposal) (DONZ00006707) at 2.**

79. **Donziger has stated that he “had various face to face meetings with counsel for the Lago plaintiffs, particularly the Emery Celli counsel, counsel from other law firms as well, where we discussed a whole variety of issues including the Cabrera issue.” Mastro Decl. 2801 (Donziger Dep. Tr.) at 1162:8-13.**

80. **When asked whether he had “a meeting or meetings where the subject of the Stratus work product and Mr. Cabrera’s report was discussed,” Donziger testified: “I’ve had a number of discussions with counsel about that issue, both by phone, e-mail, in person.” Mastro Decl. 2801 (Donziger Dep. Tr.) at 1162:25-1163:15.**

81. **In an April 17, 2010, letter to co-counsel, Donziger stated: “The traditional Ecuadorian law perspective (which will be asserted by Chevron) would hold that the level of collaboration between one party and the expert is problematic and improper in that all court-appointed experts in Ecuador should be independent. By working so closely with our local counsel and Stratus Cabrera violated his duties to the court.” Dkt. 400-4 (Ex. 2047) (DONZ-HDD-0004621-22).**

B. Donziger Convinced Consultant Mark Quarles to Submit a False Declaration Regarding Cabrera's Independence

82. In September 2007, Donziger and his co-conspirators induced one of the LAPs' consultants, Mark Quarles, to sign a declaration that attested to the independence of Cabrera. Dkt. 48-31 (2007.09.17 Declaration of M. Quarles, *Republic of Ecuador v. Chevron-Texaco*, No. 04CV8378LBS (S.D.N.Y.)) at 3.

83. Quarles's declaration was submitted on September 17, 2007 in an action that the Republic of Ecuador and Petroecuador had filed in the Southern District of New York and that was pending before Judge Sand. Dkt. 48-31 (2007.09.17 Declaration of M. Quarles, *Republic of Ecuador v. ChevronTexaco*, No. 04CV8378LBS (S.D.N.Y.)).

84. Quarles's declaration stated that "Mr. Cabrera and his team have acted independently from both the [Lago Agrio] plaintiffs and the defendant at the three (3) Phase II inspections that were witnessed on September 6 – 7, 2007." Dkt. 48-31 (2007.09.17 Declaration of M. Quarles, *Republic of Ecuador v. ChevronTexaco*, No. 04CV8378LBS (S.D.N.Y.)) at 3-4.

85. On September 16, 2007, Donziger sent Quarles an email attaching Quarles's draft declaration. Dkt. 48-33 (2007.09.16 Email with attachment from S. Donziger to M. Quarles re "your affidavit edited") (DONZ00063081) at 4-5.

86. Where Quarles had written a paragraph discussing the qualifications of Cabrera's team, Donziger requested that he replace that language with the following statements: "Mr. Cabrera has at all times acted independently from both the plaintiffs and the defendant. At no time has Mr. Cabrera entertained suggestions or even met with plaintiffs or their representatives regarding his current work plan." Dkt. 48-33 (2007.09.16

Email with attachment from S. Donziger to M. Quarles re “your affidavit edited”) (DONZ00063081) at 4.

87. Donziger then told Quarles to delete language suggesting that if any such contacts had taken place, “a degree of biasness would have been introduced into the sampling plan.” Dkt. 48-33 (2007.09.16 Email with attachment from S. Donziger to M. Quarles re “your affidavit edited”) (DONZ00063081) at 5.

88. Quarles accepted Donziger’s request to delete the “biasness” passage, and ultimately signed a version containing the core of the claim of independence that Donziger had added. Dkt. 48-31 (2007.09.17 Declaration of M. Quarles, *Republic of Ecuador v. ChevronTexaco*, No. 04CV8378LBS (S.D.N.Y.)), at 3 (“Mr. Cabrera and his team have acted independently from both the plaintiffs and the defendant”).

89. Quarles later testified the statement concerning Cabrera’s independence in his declaration was based not only on his observation of the global assessment process in 2007, but also on specific false representations by Donziger. Dkt. 48-32 (2010.09.01 Deposition of Mark Quarles, *In re Application of Chevron Corp.*, No. 3:10-cv-00686 (M.D. Tenn.)) at 115-16, 118-19, 121-22.

90. Quarles further testified that Donziger paid him to conduct his observations and sign the declaration, and that if he had known that Cabrera was working directly with the lawyers for the LAPs, he would not have signed the declaration. Dkt. 48-32 (2010.09.01 Deposition of Mark Quarles, *In re Application of Chevron Corp.*, No. 3:10-cv-00686 (M.D. Tenn.)) at 115-16, 118-19, 121-22.

C. Donziger Recruited Emery Celli to Represent the LAPs in the United States

91. Donziger and Jonathan S. Abady, a partner at the law firm Emery Celli Brinckerhoff & Abady LLP, have been friends since college. Mastro Decl. 2801 (Donziger Dep. Tr.) at 3198:24-3199:2 (both attended American University); Mastro Decl. 2802 (DONZ00018643) (2010.01.21 email in which Donziger describes Abady as a “college friend”); Mastro Decl. 2803 (DONZ00105785) (2010.09.08 email in which Abady states he has known Donziger for 30 years).

92. Abady attended Donziger’s wedding. Mastro Decl. 2801 (Donziger Dep. Tr.) at 3202:3-10.

93. Abady and Donziger traveled to Ecuador together in 1993 or 1994. Mastro Decl. 2801 (Donziger Dep. Tr.) at 3199:5-10.

94. Abady began to represent the Republic of Ecuador in 1996. *See* Mastro Decl. 2804 (Republic of Ecuador’s Motion to Intervene, *Aguinda v. Texaco, Inc.*, No. 93-CV-7527 (JSR) (S.D.N.Y. Dec. 20, 1996) (Jonathan Abady for Beldock, Levine & Hoffman LLP listed as attorney for the Republic of Ecuador; Abady signed the filing).

95. Donziger, on behalf of the LAPs, hired Emery Celli in the fall of 2009 to bring an action on behalf of the LAPs in the Southern District of New York seeking to stay the Bilateral Investment Treaty (“BIT”) arbitration that Chevron had initiated against the Republic of Ecuador. Mastro Decl. 2801 (Donziger Dep. Tr.) at 3202:13-17; *see also* Mastro Decl. 2800 (DONZ00036556-58) (Donziger writes, “I proposed to the clients in the meeting in Quito that we contract with the Abady law firm . . .”).

96. The LAPs’ initial retainer agreement with Emery Celli was signed by Donziger “in [his] capacity as the [LAPs’] U.S. representative at the time.” Mastro Decl.

2801 (Donziger Dep. Tr.) at 3208:11-13; *see also* Mastro Decl. 2805 (DONZ-HDD-0215169-73) (executed retainer agreement with Emery Celli) at DONZ-HDD-0215171.

97. In mid-2010, Emery Celli began to represent the LAPs in Chevron’s discovery actions brought under 28 U.S.C. § 1782. Mastro Decl. 2806 (2010.04.23 Notice of Entry of Appearance by Ilann Maazel, *Chevron Corp. v. Stratus Consulting, Inc.*, No. 1:10-cv-00047 (MSK) (MEH) (D. Colo.)), Dkt. 62).

98. A second retainer agreement between the LAPs and Emery Celli, which Donziger may also have signed, was executed in either September or October 2010. Mastro Decl. 2807 (2010.09.16 draft agreement between Emery Celli, Plaintiffs “through their duly authorized representatives,” the Frente, and the Asamblea de Afectados por Texaco); Mastro Decl. 2801 (Donziger Dep. Tr.) at 3208:23-3209:11 (testifying that Emery Celli entered into an agreement with Fajardo, Yanza, and Chavez, the president of the Frente, in September or October 2010 and that Donziger may have signed the agreement).

D. When Seeking to Stay the BIT Arbitration, Defendants Falsely Claimed That Cabrera Was Neutral and Independent

99. On January 14, 2010, Emery Celli filed an action on behalf of the LAPs in the Southern District of New York that sought to stay the BIT arbitration. Dkt. 30-5 (2010.01.14 Lago Agrio Plaintiffs’ Complaint to Stay Arbitration, *Yaiguaje v. Chevron Corp.*, No. 10-CV-0316 (LBS) (S.D.N.Y.), Dkt. 1).

100. Donziger entered an appearance as counsel for the LAPs in the BIT arbitration stay proceeding. Mastro Decl. 2823 (2010.03.09 Notice of Appearance by Steven Donziger, *Yaiguaje v. Chevron Corp.*, No. 10-CV-0316 (LBS) (S.D.N.Y.), Dkt. 30).

101. The LAPs’ complaint in the BIT arbitration stay proceeding alleged that “[t]he best and most recent *independent* estimate available of the human health impact of

this contamination is provided by the *neutral Special Master* [Cabrera] appointed by the [Lago Agrio] court to provide advice on damages,” and that “the final report [was] *produced by the Cabrera team*” consisting of “14 technical officials” that Cabrera had appointed. Dkt. 30-5 (2010.01.14 Lago Agrio Plaintiffs’ Complaint to Stay Arbitration, *Yaiguaje v. Chevron Corp.*, No. 10-CV-0316 (LBS) (S.D.N.Y.), Dkt. 1 ¶¶ 29-30)) (emphasis added).

102. This statement closely tracked Donziger’s statement to the congressional Tom Lantos Human Rights Commission on April 28, 2009: “The best and most recent independent estimate available of the human health impact of this contamination is provided by the expert appointed by the court, Richard Cabrera. This expert, along with a team of 14 technical officials, reviewed all the data in evidence as well as several peer-reviewed health studies.” Dkt. 47-30 at 7.

103. The LAPs’ complaint in the BIT arbitration stay proceeding alleged that “[e]nvironmental remediation experts from the United States have reviewed the Cabrera report and found its conclusions reasonable and its damages assessment consistent with the costs of other large environmental clean-ups around the world.” Dkt. 30-5 (2010.01.14 Lago Agrio Plaintiffs’ Complaint to Stay Arbitration, *Yaiguaje v. Chevron Corp.*, No. 10-CV-0316 (LBS) (S.D.N.Y.)), ¶ 31.

104. This statement closely tracked Donziger’s statement to the congressional Tom Lantos Human Rights Commission on April 28, 2009: “Numerous qualified scientists have reviewed this report and found its conclusions reasonable and the damages assessment consistent with the costs of other large environmental clean-ups.” Dkt. 47-30 at 5.

105. As Donziger has admitted, while the LAPs attempted to obtain endorsements from other scientists, “no expert other than Stratus signed on to the written endorsement of the Cabrera report.” Mastro Decl. 2801 (Donziger Dep. Tr.) at 2967:7-18.

106. On December 1, 2008, Stratus released a fifteen-page document purporting to analyze and defend the Cabrera Report. In this document, which bears the signatures of Beltman and Maest, as well as other Stratus employees, Stratus claimed, “Mr. Cabrera is thus acting in the capacity of a neutral ‘expert’ to the Court, and his role is to assist the Court in evaluating the scientific and technical information that was collected and compiled for the case. In the U.S. Court system, Mr. Cabrera would be called a Technical Special Master.” Dkt. 34-26 (2008.12.01 Comments on the Report of the Court-Appointed Expert Richard Cabrera Vega in the Case of *Maria Aguinda y Otros v. Chevron Corp.*, Stratus Consulting) at 1.

107. One of the LAPs’ lawyers wrote regarding the Stratus comments: “This document might end the discussion. These ‘comments’ are written in a manner to give the impression that Cabrera was entirely independent and conducted his own research and came up with his own findings. There is no indication in this document that Stratus, ostensibly the company of experts independent from Cabrera, was itself involved in ‘ghosting’ the Cabrera report. This might not be dispositive if there were other evidence showing that Chevron had actual or constructive knowledge that Stratus had been involved in the creation of the Cabrera report. In such a case Stratus’s ‘comments’ may have been a rather crude and awkward spin by a biased expert - but it would not have been a ‘fraud’ upon Chevron. But, in the absence of such evidence, then it appears not only that Cabrera and [the Lago Agrio] plaintiffs can be charged with a ‘fraud’ respecting the former’s report,

but that Stratus was an active conspirator.” Dkt. 9-7 (2010.05.16 Email chain among J. Horowitz, A. Wilson, S. Donziger, and others re “Rule60(b) And Stratus Materials”) (DONZ00056679)) at 1.

108. Donziger testified that he personally initiated the process that led to the Stratus review of the Cabrera report: “I asked [Stratus] to prepare what we call a peer review of the Cabrera report ... and it evolved into this piece of work.” Mastro Decl. 2801 (Donziger Dep. Tr.) at 2966:18-23.

109. Asked whether he “instruct[ed] Stratus not to disclose in the Stratus comments that were published the fact that they had been involved in writing the Cabrera report,” Donziger testified that “as a general policy it was understood that that would be kept confidential.” Mastro Decl. 2801 (2011.01.14 Donziger Dep. Tr.) at 2966:24-2967:6.

E. In Opposing Chevron’s § 1782 Applications, Defendants Resorted to Deception In an Attempt to Prevent the Revelation of the Cabrera Fraud

110. Julio Prieto sent an email to Donziger and Fajardo that stated that: “[T]he effects are potentially devastating in Ecuador (apart from destroying the proceeding, all of us, your attorneys, might go to jail)[.]” Dkt. 9-6 (2010.03.30 Email from J. Prieto to S. Donziger, P. Fajardo, L. Yanza and J. Saenz re “Protection Action”) (DONZ00055225)).

111. Donziger has stated that Defendants and their co-conspirators set out to prevent any disclosure of the true nature of their relationship with Cabrera in Chevron’s § 1782 proceedings. Mastro Decl. 2801 (Donziger Dep. Tr.) at 3358:22-3363:20 (Donziger testifying that “the truth about Stratus’ role in drafting the Cabrera report” was “not something [defendants] wanted known”; and that defendants “[s]ought to prevent Stratus’ role relative to the Cabrera report from coming out”).

112. The LAPs’ counsel sought to prevent the disclosure of their relationship with Cabrera and their role in his work before and after Chevron filed a Section 1782 proceeding in the District of Colorado seeking discovery from Stratus. Dkt. 6-2 (Ex. 1) at CRS-191-00-CLIP-03 (2007.03.03 Crude outtake video clip of meeting among P. Fajardo, A. Maest, and others); Dkt. 7-5 (Ex. 2 (certified transcript)) at 244 (Fajardo: “Chevron’s main problem right now is that it doesn’t know what the hell is going to happen in the global expert examination. In other words, they don’t know that. I hope none of you tell them, please. [laughter]...[I]t’s Chevron’s problem.”); Dkt. 6-2 (Ex. 1) at CRS-196-00-CLIP-01 (2007.03.04 meeting among S. Donziger, A. Maest, R. Kamp, and C. Champ discussing groundwater evidence); Dkt. 7-6 (Ex. 2 (certified transcript)) at 265-67 (LAPs’ consultant Charles Champ told Donziger, “I know we have to be totally transparent with Chevron in showing them what we’re doing,” but Donziger responded, “No, no,” and stated, “because they will find out everything we do.” He continued: “Our goal is that they [Chevron] don’t know shit . . . and that’s why they’re so panicked.”); Dkt. 32-7 (DONZ00108564) at 1 (Donziger: the LAPs’ counsel should consider having Cabrera take action “AGAINST us to prove his independence” and “find ways to Keep Texaco from finding out much about his plan and his work”); Dkt. 47-6 (JB-NONWAIVER00008870) (LAPs’ counsel Pablo Fajardo imploring the Crude filmmakers to “remove the images that we discussed” of Cabrera team member Dr. Beristain working with LAPs’ attorneys because “[t]his is so serious that we could lose everything”); Dkt. 48-31 ¶ 7.1 (Declaration of Mark Quarles stating, among other things, that “Mr. Cabrera and his team have acted independently from both the plaintiffs and the defendant”); Dkt. 48-32 (Quarles Dep. Tr.) at 122:1-5 (testifying that he “would not have signed this declaration” if he had known that “Mr. Cabrera was working directly with the plaintiffs.”); Dkt. 33-9 (STRATUS-NATIVE044716) at 1 (Beltman: plan is to treat

“our original English version as if it’s a translated version” of Cabrera Report); Dkt. 34-23 (STRATUS-NATIVE065062); Dkt. 34-13 (STRATUS-NATIVE061311) at 1 (“We have to talk to Clapp about that 5-pager, and how we have to limit its distribution. It CANNOT go into the Congressional Record as being authored by [Clapp].”); Dkt. 34-14 (STRATUS-NATIVE057803) (Stratus principal Douglas Beltman writes of incriminating citation in the Cabrera Report, “Oh what a tangled web . . .”).

113. At an April 2010 hearing in the Stratus 1782, counsel for Defendant Stratus told a U.S. magistrate judge that Stratus had been “astonish[ed]” to see similarity between its work product and the Cabrera Report. Dkt. 47-62 (2010.04.27 Hr’g Tr., *Chevron Corp. v. Stratus Consulting, Inc.*, No. 10-cv-00047 (MSK) (MEH) (D. Colo.)) at 69:12-13.

114. Counsel for Stratus also stated to the court in the Stratus 1782 that Stratus did not have “an opportunity to review Cabrera’s report in draft form,” that there had been no “direct communications between anyone at Stratus and Mr. Cabrera,” and that what they provided the LAPs’ counsel including Donziger was “intended to assist them in their analysis of data,” and in the “mediation,” not “to assist Cabrera.” Dkt. 47-62 (2010.04.27 Hr’g Tr., *Chevron Corp. v. Stratus Consulting, Inc.*, No. 10-cv-00047 (MSK) (MEH) (D. Colo.)) at 40:10-12; 58.5-17; 56:25-57:4.

115. The LAPs filed a declaration on May 5, 2010 from Fajardo in the Stratus 1782 containing statements about the expert process in the Lago Agrio Litigation and the independence of Cabrera. Dkt. 48-13-48-14 (2010.05.05 Declaration of P. Fajardo in Support of Lago Agrio Plaintiffs’ Motion for Protective Order, *Chevron Corp. v. Stratus Consulting, Inc.*, No. 10-cv-00047 (MSK) (MEH) (D. Colo.)).

116. The LAPs filed the same Fajardo declaration on August 28, 2010 in the Donziger 1782, in support of their motion to quash subpoenas that Chevron had served on Donziger. Mastro Decl. 2811 (*In re Application of Chevron Corp.*, No. 1:10-mc-00002-LAK (S.D.N.Y. Aug. 28, 2010), Dkt. 31-6).

117. The Fajardo declaration states that Cabrera was “independent” and that “Chevron enjoyed the same opportunity as Plaintiffs to provide materials to Cabrera.” Mastro Decl. 2811 (*In re Application of Chevron Corp.*, No. 1:10-mc-00002-LAK (S.D.N.Y. Aug. 28, 2010), Dkt. 31-6), ¶¶ 11, 21.

118. Fajardo’s declaration omitted the improper pressure Donziger and his co-counsel placed on the Ecuadorian judge to appoint Cabrera. Mastro Decl. 2811 (*In re Application of Chevron Corp.*, No. 1:10-mc-00002-LAK (S.D.N.Y. Aug. 28, 2010), Dkt. 31-6), ¶ 11.

119. Fajardo’s declaration states that the court independently appointed Cabrera “from the pool of seven independent experts it previously appointed in the case” because the “parties ultimately could not reach an agreement” on who should be the global damages expert. Mastro Decl. 2811 (*In re Application of Chevron Corp.*, No. 1:10-mc-00002-LAK (S.D.N.Y. Aug. 28, 2010), Dkt. 31-6), ¶ 11.

120. Fajardo’s declaration states that “On November 6, 2007, Mr. Cabrera filed an official complaint with the Lago Agrio Court claiming that members of Chevron’s legal team in Ecuador subjected him to threats and insults when he would complete his field work.” Mastro Decl. 2811 (*In re Application of Chevron Corp.*, No. 1:10-mc-00002-LAK (S.D.N.Y. Aug. 28, 2010), Dkt. 31-6), ¶ 15.

121. Fajardo’s declaration failed to disclose that Fajardo personally ghostwrote that complaint for Cabrera. Dkt. 400-3 (Ex. 2036) (2007.12.17 email from Fajardo to Donziger attaching draft of the Cabrera letter in which Cabrera claimed to be threatened by Chevron (“Cabrera threat letter”)); Dkt. 400-3 (Ex. 2037) (draft of Cabrera threat letter sent by Fajardo to Donziger with the metadata showing the author as “Pablo” and that the document was last modified six days before the threat letter was filed in Cabrera’s name); Dkt. 402-13 (Ex. 2318) at 133,469 (2007.11.05 filed version of the Cabrera threat letter in which Fajardo, writing as Cabrera, claims “my life, as well as the lives of my family and collaborators, are in serious danger” because of Chevron); *see also* Dkt. 32-11 at 133,759 (2007.11.29 Ecuadorian court order ordering police protection for Cabrera as a result of Fajardo’s ghostwritten letter).

122. Fajardo’s declaration states that “Mr. Cabrera performed no less than forty-eight (48) separate site inspections on his own, in constant communication with the court.” Mastro Decl. 2811 (*In re Application of Chevron Corp.*, No. 1:10-mc-00002-LAK (S.D.N.Y. Aug. 28, 2010), Dkt. 31-6), ¶ 13.

123. A contemporaneous email from Donziger accurately states that Cabrera’s field work would only “continue under the most strict control with an extremely limited number of samples.” Donziger continued, “And we’ll change the focus of the data at our offices.” Dkt. 32-12 (DONZ00062680) (2007.07.17 email from Donziger to Yanza and Fajardo).

124. Fajardo’s declaration was drafted by Donziger and other lawyers for the LAPs. *See* Mastro Decl. 2809 (DONZ00067809) at 2 (Edward Yennock of Patton Boggs sending a “revised draft of the Fajardo Declaration” to Donziger and lawyers from Emery Celli and

Patton Boggs); Mastro Decl. 2810 (DONZ00067813) (Donziger sending “Final slight edits to Fajardo affidavit”).

125. Donziger testified that he had, at least in part, provided the facts on which Edward Yennock of Patton Boggs based the original draft of the Fajardo declaration. Mastro Decl. 2801 (Donziger Dep. Tr.) at 2783:22-25.

126. Donziger participated in a discussion between lawyers from Emery Celli and Patton Boggs that focused on how best to present the Defendants’ improper relationship with Cabrera in the declaration they were drafting, and which they eventually decided Fajardo should sign. Dkt. 48-6 (DONZ00031261) (2010.05.04 email chain among Donziger and attorneys at Emery Celli and Patton Boggs regarding the Fajardo declaration); *see also* Mastro Decl. 2801 (Donziger Dep. Tr.) at 2773:3-15 (Donziger testifying that he had “conversations with [Patton Boggs] about the contents of [the declaration] as it was being drafted” and made edits to the declaration).

127. One Emery Celli attorney wrote that the declaration should not describe Cabrera as “neutral,” while another noted that “[t]he more we emphasize [sic] his neutrality the less sense it makes that we were talking to him out of school.” Dkt. 48-6 (DONZ00031261) (2010.05.04 email chain among Donziger and attorneys at Emery Celli and Patton Boggs regarding the Fajardo declaration).

128. After Abady asked “Isn’t Cabrera a non testifying expert whether or not he labeled ‘nuetral’ [sic]?” Donziger responded, “Will call u later.” Dkt. 48-6 (DONZ00031261) (2010.05.04 email chain among Donziger and attorneys at Emery Celli and Patton Boggs regarding the Fajardo declaration).

129. In the days leading up to the filing of his declaration, Fajardo was staying at Donziger's apartment. Mastro Decl. 2808 (DONZ00056160) at 2 (2010.05.02 email from Fajardo: "I am staying at Steven's house.").

130. Fajardo was originally scheduled to return to Ecuador on May 4, 2010. Mastro Decl. 2825 (DONZ00067808) (2010.05.04 email from S. Donziger to A. Woods).

131. On the morning of May 4, 2010, Donziger emailed Woods and informed him that the "top priority" was to change the flight so that Fajardo would not leave New York until May 5, 2010, the day the defendants filed Fajardo's declaration. Mastro Decl. 2825 (DONZ00067808) (2010.05.04 email from S. Donziger to A. Woods).

132. On May 4, 2010, the day before filing, a Patton Boggs lawyer asked Donziger in an email if he could "push for sign off on the declaration asap, if Pablo believes the facts set forth therein to be accurate." Donziger responded "going over it now." Mastro Decl. 2809 (DONZ00067809).

133. On May 4, 2010, Donziger sent attorneys at Patton Boggs "Final slight edits to Fajardo affidavit." Mastro Decl. 2810 (DONZ00067813); *see also* Mastro Decl. 2801 (Donziger Dep. Tr.) at 2773:3-15 (Donziger testifying that he had "conversations with [Patton Boggs] about the contents of [the declaration] as it was being drafted" and made edits to the declaration).

134. Donziger, meeting with Fajardo in his own apartment, finalized the declaration and obtained Fajardo's signature on the declaration. Mastro Decl. 2809 (DONZ00067809) (2010.05.04 email from Patton Boggs lawyer asking Donziger if he could "push for sign off on the declaration asap, if Pablo believes the facts set forth therein to be accurate." Donziger responded "going over it now."); Mastro Decl. 2810 (DONZ00067813)

(2010.05.04 email from Donziger to Patton Boggs lawyers sending “Final slight edits to Fajardo affidavit); Mastro Decl. 2801 (Donziger Dep. Tr.) at 2794:24-2795:15 (Donziger testifying that, meeting in his New York apartment, he “translat[ed] the declaration paragraph by paragraph and discuss[ed] any concerns [Fajardo] had.”).

135. Donziger had to explain the document to Fajardo. See Mastro Decl. 2801 (Donziger Dep. Tr.) at 2772:19-2773:2 (asked whether, in May 2010, Fajardo could read English, Donziger testified: “Maybe a teeny bit. Generally he is not bilingual”); *id.* at 2779:15-23 (Donziger testifying that he did not know if there was a Spanish translation of the declaration before Fajardo signed it on May 5, 2010, but that Donziger had orally translated the declaration for Fajardo).

136. The LAPs’ U.S. counsel prepared a petition for Fajardo to submit to “the Ecuadorian court in an effort to ‘cleanse’ any perceived impropriety related to the Cabrera Report.” Dkt. 9-8 (DONZ00067932-33) (2010.05.20 email from Westenberger to Abady, Donziger, and others).

137. The LAPs’ U.S. counsel submitted the Fajardo petition to the Second Circuit in their appeal of Judge Sand’s decision in the BIT arbitration stay proceeding on August 23, 2010. Mastro Decl. 2812 (*Republic of Ecuador v. Chevron Corp.*, Case No. 10-1020 (2d Cir. Aug. 23, 2010), Ex. 5 to Declaration of Andrew Wilson, Dkt. 202-6).

138. The LAPs’ U.S. counsel submitted the Fajardo petition to this Court in the Berlinger 1782 on August 12, 2010. Mastro Decl. 2813 (*In re Chevron Corp.*, Case No. 1:10-mc-00001 (LAK) (S.D.N.Y. Aug. 12, 2010), Ex. 11 to Declaration of Andrew Wilson, Dkt. 18-11).

139. The LAPs’ U.S. counsel submitted the Fajardo petition to this Court in the Donziger 1782 on August 28, 2010. Mastro Decl. 2814 (*In re Chevron Corp.*, Case No. 1:10-mc-00002 (LAK) (S.D.N.Y. Aug. 28, 2010), Ex. 11 to Declaration of Andrew Wilson, Dkt. 29-11).

140. The Fajardo petition falsely claimed that Cabrera was “independent” and that “Chevron enjoyed the same opportunity as Plaintiffs to provide information to Cabrera in support of its position in the case.” Mastro Decl. 2812 (*Republic of Ecuador v. Chevron Corp.*, Case No. 10-1020 (2d Cir. Aug. 23, 2010), Ex. 5 to Declaration of Andrew Wilson, Dkt. 202-6) at 6, 7; Mastro Decl. 2813 (*In re Chevron Corp.*, Case No. 1:10-mc-00001 (LAK) (S.D.N.Y. Aug. 12, 2010), Ex. 11 to Declaration of Andrew Wilson, Dkt. 18-11) at 6, 7; Mastro Decl. 2814 (*In re Chevron Corp.*, Case No. 1:10-mc-00002 (LAK) (S.D.N.Y. Aug. 28, 2010), Ex. 11 to Declaration of Andrew Wilson, Dkt. 29-11) at 6, 7.

141. Donziger has testified that he and James Tyrrell of Patton Boggs were the two U.S. attorneys who had “[f]inal approval over the draft that would be sent to local counsel.” Mastro Decl. 2801 (Donziger Dep. Tr.) at 2606:3-2607:5.

142. In email discussions with the LAPs’ other U.S. lawyers, Donziger argued against admitting in the petition that Stratus-prepared annexes appeared “verbatim” in Cabrera’s report, because doing so would lead to “negative fallout in a number of areas.” Mastro Decl. 2815 (DONZ00031341) (2010.06.01 email from Donziger to Abady).

143. Donziger was copied on emails discussing the “Final Proposed Draft” of the petition and whether the LAPs should fully disclose their relationship with Cabrera. Dkt. 47-55 (2010.06.15 email chain among Donziger and lawyers from Patton Boggs, Emery Celli, and Motley Rice).

144. Asked whether he was involved in preparing the petition, Donziger testified “I looked at it and made comments on it.” Mastro Decl. 2801 (Donziger Dep. Tr.) at 2342:6-10.

145. Donziger testified that he was “personally involved in the editing of” the English and Spanish versions of the petition. Mastro Decl. 2801 (Donziger Dep. Tr.) at 2603:16-2604:4.

146. In response to Chevron’s discovery that a scene in *Crude* had been modified at the Defendants’ request in order to suppress evidence of meetings between them and Cabrera team member Carlos Beristain, the LAPs told this Court that the meeting was “innocuous” and “of no relevance to anything.” Dkt. 48-27 (2010.04.23 Lago Agrio Plaintiffs’ Memorandum in Opposition to Application, *In re Application of Chevron*, No. M-19-111 (S.D.N.Y.) at 8.

147. The LAPs also stated that Chevron’s contention that the “outtakes [would] reveal evidence of substantial relevance to the Lago Agrio Court or the BIT” was “unsupported speculation.” Dkt. 48-27 (2010.04.23 Lago Agrio Plaintiffs’ Memorandum in Opposition to Application, *In re Application of Chevron*, No. M-19-111 (S.D.N.Y.) at 8.

148. The LAPs told the Second Circuit that they had requested Berlinger to delete the scene from the DVD version of *Crude* only to “avoid the misimpression, cynically fostered by Chevron below, that [the Lago Agrio] plaintiffs participated in one of Dr. Beristain’s focus groups after he was a court expert.” Dkt. 48-28 (2010.06.14 Brief and Special Appendix for Respondent-Appellant Lago Agrio Plaintiffs, *Chevron Corp. v. Berlinger*, No. 10-1918-cv(L) (2d Cir.)) at 22-23.

149. The meeting from which Beristain was carefully edited out of was not “innocuous” and not “of no relevance to anything.” Dkt. 6-2 (Ex. 1), CRS-161-01-01-CLIP-01 (Crude outtake video clip of meeting among S. Donziger, P. Fajardo, and L. Yanza re C. Beristain’s role in expert report); Dkt. 6-10 (Ex. 2) at 128-135; Dkt. 30-2 (Transcript of J. Berlinger film Crude) (MB-NONWAIVER00092726) at 48-49; Dkt. 8-7 (Crude DVD) at 2:14-2:16; Dkt. 48-29 (2007.05.07 Email from P. Fajardo to C. Beristain re “CALENDARIO DE REUNIONES” [“MEETINGS PLAN WITH C”]) (DONZ00043170) at 1.

150. When Fajardo asked Berlinger to edit Beristain out of *Crude*, he stated that the potential disclosure of the relationship between the LAPs’ counsel and Beristain was “so serious that we could lose everything.” Dkt. 47-6 (2010.08.03 Email chain between J. Berlinger and S. Donziger re “GRACIAS”) (JB-NONWAIVER91320).

151. The *Crude* outtakes revealed that the LAPs’ counsel and consultants secretly met with Cabrera himself two weeks before his appointment to plan the expert report. Dkt. 6-2 (Ex. 1), CRS-187-01-02 (2007.03.03 Crude outtake video clip of meeting at Selva Viva headquarters among S. Donziger, P. Fajardo, L. Yanza, A. Maest, R. Kamp, C. Champ, R. Cabrera, and others).

152. When the Second Circuit ordered Berlinger to produce the outtake footage, one of Donziger’s attorneys, Ilann Maazel of Emery Celli, disclosed in an email to Donziger and others that he already knew that this Cabrera meeting was captured on those tapes. Dkt. 48-30 at 3.

153. Maazel had signed the brief calling Chevron’s argument that the tapes would reveal just such a relationship, “unsupported speculation.” Dkt. 48-27 at 8.

F. Chevron Incurred Damages as the Result of the Misrepresentations to New York Courts

154. The LAPs filed an opposition to Chevron’s application in the Berlinger 1782 in which they falsely claimed that the meeting with Beristain found in a Crude out-take—which the LAPs deemed “the linchpin for [Chevron’s] extraordinary application”—was an “innocuous meeting, which is of no relevance to anything.” Dkt. 48-27 (2010.04.23 Lago Agrio Plaintiffs’ Memorandum in Opposition to Application, *In re Application of Chevron Corp.*, No. M-19-111-LAK (S.D.N.Y.) at 8.

155. In response, Chevron was forced to address in its reply brief the relevance of the Beristain meeting. Mastro Decl. 2816 (*In re Application of Chevron Corp.*, M-19-111-LAK, Reply Memorandum in Support of Petition and Application for an Order Pursuant to 28 U.S.C. § 1782 to Conduct Discovery for Use in Foreign Proceedings (S.D.N.Y. Apr. 29, 2010)) at 2-3, 16-19.

156. When the LAPs appealed this Court’s decision in the Berlinger 1782, they again relied on false statements regarding the Beristain meeting. Dkt. 48-28 (2010.06.14 Brief and Special Appendix for Respondent-Appellant Lago Agrio Plaintiffs, *Chevron Corp. v. Berlinger*, No. 10-1918-cv(L) (2d Cir.))

157. In an attempt to undermine what they called the “centerpiece of [Chevron’s] entire application,” the LAPs claimed that they had requested Berlinger to delete the Beristain scene from the DVD version of the film only to “avoid the misimpression, cynically fostered by Chevron below, that [the Lago Agrio] plaintiffs participated in one of Dr. Beristain’s focus groups after he was a court expert.” Dkt. 48-28 (2010.06.14 Brief and Special Appendix for Respondent-Appellant Lago Agrio Plaintiffs, *Chevron Corp. v. Berlinger*, No. 10-1918-cv(L) (2d Cir.)), at 22-23.

158. In its appellate brief, Chevron was forced to counter the LAPs’ false statements regarding the Beristain meeting by again establishing the relevance of the out-takes. Mastro Decl. 2817 (Brief for Petitioner-Appellee Chevron Corporation, *Chevron Corp. v. Berlinger*, No. 10-1918-cv(L) (2d Cir. June 21, 2010)).

159. Chevron argued that “[t]he presence of Plaintiffs’ legal team at a meeting with Dr. Beristain is directly relevant to the issue of whether Cabrera and his team were ‘neutral’ and ‘independent of the parties.’” Mastro Decl. 2817 (Brief for Petitioner-Appellee Chevron Corporation, *Chevron Corp. v. Berlinger*, No. 10-1918-cv(L) (2d Cir. June 21, 2010)), at 22.

160. In support of their motion to quash subpoenas issued in the Donziger 1782, the LAPs submitted Fajardo’s declaration and petition, both containing false statements regarding the defendants’ relationship with Cabrera. Mastro Decl. 2811 (*In re Application of Chevron Corp.*, No. 1:10-mc-00002-LAK (S.D.N.Y. Aug. 28, 2010), Dkt. 31-6), ¶¶ 11, 21 (Fajardo declaration claiming that Cabrera was “independent” and that “Chevron enjoyed the same opportunity as Plaintiffs to provide materials to Cabrera.”); Mastro Decl. 2814 (*In re Application of Chevron Corp.*, No. 1:10-mc-00002 (LAK) (S.D.N.Y. Aug. 28, 2010), Ex. 11 to Declaration of Andrew Wilson, Dkt. 29-11) (Ecuador Petition making same claims).

161. The LAPs’ made the propriety of contact with Cabrera a significant focus of their brief. Mastro Decl. 2818 (The Ecuadorian Plaintiffs’ Memorandum of Law In Support of Their Motion to Quash or Modify Subpoenas Served Upon Steven R. Donziger, *In re Application of Chevron Corp.*, No. 1:10-mc-00002-LAK, (S.D.N.Y. Aug. 28, 2010), Dkt. 28), at 2.

162. Chevron’s opposition to the motion to quash specifically countered the LAPs’ false statements regarding Cabrera—statements that were supported by the false

Fajardo declaration and petition. Mastro Decl. 2819 (*In re Application of Chevron Corp.*, No. 1:10-mc-00002 (LAK) (S.D.N.Y. Sept. 1, 2010), Chevron's Combined Opposition to the Motions to Quash or Modify Subpoenas Submitted by (1) Steven R. Donziger and (2) the Ecuadorian Plaintiffs, Dkt. 38).

163. Chevron's opposition focused heavily on the LAPs' relationship with Cabrera and the impropriety of that relationship. Mastro Decl. 2819 (*In re Application of Chevron Corp.*, No. 1:10-mc-00002 (LAK) (S.D.N.Y. Sept. 1, 2010), Chevron's Combined Opposition to the Motions to Quash or Modify Subpoenas Submitted by (1) Steven R. Donziger and (2) the Ecuadorian Plaintiffs, Dkt. 38), at 13-14, 20-22.

164. Chevron devoted more than five full pages to establishing, contrary to the LAPs' misrepresentations, that the LAPs' relationship with Cabrera violated both U.S. and Ecuadorian law. Mastro Decl. 2819 (*In re Application of Chevron Corp.*, No. 1:10-mc-00002 (LAK) (S.D.N.Y. Sept. 1, 2010), Chevron's Combined Opposition to the Motions to Quash or Modify Subpoenas Submitted by (1) Steven R. Donziger and (2) the Ecuadorian Plaintiffs, Dkt. 38), at 22-27.

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