



**STROZ FRIEDBERG**

**CHEVRON CORP. AND  
TEXACO PETROLEUM  
COMPANY**

**V.**

**THE REPUBLIC OF ECUADOR,**  
Bilateral Investment Treaty Arbitration

**Prepared by**  
Spencer Lynch

**Date**  
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## 1. BACKGROUND

### 1.1. Issues Addressed

1. Stroz Friedberg, LLC ("Stroz Friedberg") was retained by King & Spalding, counsel for Chevron Corporation and Texaco Petroleum Company (collectively, "Chevron"), to preserve, authenticate, and/or review data described below and provide an expert report for an international arbitration against the Republic of Ecuador. Stroz Friedberg was also retained in a related matter by Gibson Dunn & Crutcher, LLP (together with King & Spalding, "Counsel"). Counsel asked Stroz Friedberg to, among other things:
  - a. Authenticate and analyze forensic images of a computer and various storage devices belonging to former Ecuadorian Judge Alberto Guerra and compare 11 extracted documents to determine their chronological relationships, to identify their similarities with one another, and to analyze the metadata associated with each;
  - b. Authenticate and analyze the 11 extracted documents from former Judge Guerra's media and compare them to nine orders issued by former Ecuadorian Judge Nicolas Zambrano in the Lago Agrio litigation;
  - c. Authenticate and analyze 105 extracted documents from former Judge Guerra's media and compare them to rulings issued in other matters in the Ecuadorian Court System;
  - d. Authenticate and extract data from two Nokia cell phones belonging to former Judge Guerra;
  - e. Authenticate and extract data from an email account belonging to former Judge Guerra;
  - f. Analyze whether files provided by counsel and certain data contained within the Decision 2003-0002 of the Sucumbíos Provincial Court of Justice, dated February 14, 2011 ("Judgment") and issued in the Lago Agrio litigation, originated from the same data source;
  - g. Authenticate and analyze media that the Court ordered Steven Donziger to turn over to Chevron on January 21, 2011;
  - h. Authenticate and extract Short Message Service ("SMS") text messages from a BlackBerry 9700 Smartphone belonging to Mr. Donziger and from backups of the BlackBerry located on an office desktop computer produced by Mr. Donziger;
  - i. Analyze an attachment to two emails produced by Mr. Donziger and compare the attachment to a report filed by Richard Stalin Cabrera Vega on April 1, 2008 ("the 2008 Cabrera Report") in the Lago Agrio litigation; and
  - j. Analyze files provided by counsel to determine whether those files and certain data contained within a document filed with the Lago Agrio Court by Richard Stalin Cabrera Vega, dated February 5, 2009 ("the Cabrera February 2009 Filing"), originated from the same data source.

Each of these requested tasks is described in more detail below.

## 1.2. Summary of Findings

2. Based on my analysis of the data produced by multiple sources, I conclude, to a reasonable degree of scientific certainty, the following:
  - a. Attached are true and correct copies of documents found and extracted from digital media belonging to former Judge Alberto Guerra;
  - b. A chronological textual review of the 11 Draft Guerra Orders from former Judge Guerra's media revealed that some text from each document is carried verbatim to the next-in-time document;
  - c. This report and its exhibits accurately reflect the extent to which text in draft orders found on former Judge Guerra's media matches exactly with text contained in documents issued by former Judge Nicolas Zambrano in the Lago Agrio lawsuit brought against Chevron and based on the comparisons it is apparent the issued orders were created from the drafts located on the Guerra hard drive;
  - d. This report and its exhibits accurately reflect the extent to which text in draft documents found on former Judge Guerra's media matches exactly with text contained in rulings issued in 105 other cases in the Ecuadorian Court system, and the extent to which those cases could be demonstrably connected to former Judge Zambrano;
  - e. Attached are true and correct copies of data found and extracted from two cell phones and a SIM card belonging to former Judge Guerra;
  - f. Attached are true and correct copies of "contacts" data found and extracted from a Hotmail account belonging to former Judge Guerra;
  - g. Analysis of the 2011 Judgment issued in the Lago Agrio litigation shows that it repeats errors found in the Unfiled Selva Viva Data Compilation. This indicates that the Judgment was derived from material not filed with the court in the Lago Agrio litigation;
  - h. Attached is a true and accurate copy of 699 unique SMS text messages extracted from a BlackBerry Smartphone or BlackBerry backups belonging to Mr. Donziger; and
  - i. Analysis of two emails with the same attachment, produced by Mr. Donziger, shows that the attachment contained text identical to a report filed by Richard Stalin Cabrera Vega on April 1, 2008 in the Lago Agrio litigation. Further evidence shows that the person most likely responsible for last saving the attachment was Juan Pablo Saenz;
  - j. Analysis of the Cabrera February 2009 Filing indicates that it was derived from material not filed with the court in the Lago Agrio litigation in Ecuador.

### 1.3. Stroz Friedberg

3. Stroz Friedberg is a trusted international digital risk management and investigations company that specializes in computer forensics, data security and data breach response, complex electronic discovery, and business intelligence and investigations. Our clients include eight of the Fortune 10 companies and over 70 of the AmLaw 100 firms. The firm has over 290 staff in twelve offices across the U.S. the U.K, and Hong Kong. Our managers include former Assistant U.S. Attorneys, FBI Supervisory and IRS Special Agents, FTC and SEC managers, Air Force OSI Computer Crime Investigators, other U.S. and British military specialists, and security professionals from the private sector, all of whom have deep experience identifying, preserving, harvesting, processing, and analyzing data. Some of our public cases have included: testifying in the Martha Stewart and Enron trials; monitoring Bernard Madoff and Dominique Strauss Kahn by court appointment; advising the state Attorneys General in the T.J. Maxx data breach inquiry; providing Google with an independent analysis of its Street View collections; and responding to the Heartland Payment Systems and Ohio State breaches, which garnered international attention. Stroz Friedberg's principal offices and digital forensic labs are located in New York, Boston, Washington D.C., Dallas, Minneapolis, Chicago, Los Angeles, San Francisco, Seattle, London, and Hong Kong.

### 1.4. Expertise of Spencer C. Lynch

4. I am a Director of Digital Forensics for Stroz Friedberg and work out of the firm's London office. In this role, some of my responsibilities include co-managing the company's digital forensic employees, developing policies and procedures for the forensic team, managing the development of the company's capabilities through acquisition of tools and both internal and external training programs, and directly managing the forensic staff in the company's international forensic departments in London and Hong Kong.
5. In my role at Stroz Friedberg, I maintain an active case load of digital forensics engagements in internal investigations, civil, criminal, and regulatory matters relating to (but not limited to) document authentication, database analytics, theft or misappropriation of data, and investigation into computer intrusions or hacking. I am frequently involved in large eDiscovery matters including the preservation, analysis, and processing of data from laptops, desktops, servers, removable media, and mobile computing devices such as cellphones, smartphones, and tablets. I have testified as an expert in digital forensics in United States District Courts for the Northern, Eastern, and Southern Districts of New York, and the Royal Courts of Justice in the United Kingdom.
6. Prior to moving to London I worked in Stroz Friedberg's New York office. In New York, I was the lead examiner on multiple civil and criminal cases, including acting as the federal government's

expert in digital forensics for two separate criminal trials. In both matters I was responsible for the analysis of data seized by law enforcement, the authentication of that data, and the presentation of the findings of my analysis in court. In addition to my work on criminal cases, while in New York I frequently served as the lead examiner in civil cases and internal investigations on behalf of private law firms and corporate clients. My work has included performing or supervising the collection and analysis of thousands of distinct pieces of media, managing the eDiscovery process in cases involving terabytes of data, and coordinating immediate response to computer intrusion or hacking events.

7. Prior to joining Stroz Friedberg, I worked for Ernst & Young performing forensic analysis and database analytics within a fraud investigations group. I obtained a B.A from Duke University in Computer Science and Public Policy and a minor in Psychology. My CV setting forth my qualifications in more detail is set forth as Exhibit 1. Stroz Friedberg charges for its services in this case on a time and materials basis. My hourly rate is \$575. Neither the firm's compensation nor mine depend upon the outcome of this matter.

#### 1.5. Replacement of Michael L. Younger

8. This report is intended to replace the previous reports of a colleague of mine, Michael L. Younger. He previously filed a report dated December 21, 2011, and a supplemental report dated May 31, 2013 which included as exhibits two reports dated January 24, 2013 and February 28, 2013. He has been diagnosed with a medical condition that will prevent him from doing any work on this matter for the foreseeable future. Since his diagnosis, I have reviewed, re-performed, and verified the analysis that went into his previous reports. This report includes the discussions in Mr. Younger's previous reports. The exhibits found in this report are substantively the same as those in Mr. Younger's reports, and where possible I have maintained the same numbering system for those exhibits.

## 2. ANALYSIS

### 2.1. Guerra Media

9. Stroz Friedberg was asked to conduct a forensic analysis of a computer and various storage devices belonging to former Ecuadorian Judge Alberto Guerra. Specifically, Counsel asked Stroz Friedberg to:
  - 1) Authenticate a set of 11 documents located on former Judge Guerra's computer and his other storage devices (the "Draft Guerra Orders");

- 2) Provide an analysis of each of the embedded metadata<sup>1</sup> for the Draft Guerra Orders, determine the chronological relationships, and analyze similarities between the documents ;
- 3) Compare the Draft Guerra Orders to nine Orders that were issued by former Ecuadorian Judge Nicolas Zambrano in the Lago Agrio litigation (the “Lago Agrio Issued Zambrano Documents”);
- 4) Authenticate a set of documents located on former Judge Guerra’s computer related to 105 other cases and his other storage devices (the “Additional Extracted Guerra Documents”) and provide an analysis of the embedded metadata for them;
- 5) Compare the Additional Extracted Guerra Documents with documents obtained from a Government Website (the “Court Website Documents”); and
- 6) Review a set of Ecuadorian court documents to determine which Judge was assigned to the cases associated with the Court Website Documents.

#### Materials Reviewed by Stroz Friedberg

10. On July 23, 2012, Durand R. Begault, a Director at Audio Forensics Center (“AFC”), provided copies of EnCase Evidence Files, a type of forensic image,<sup>2</sup> for one Maxtor Hard Drive (the “Guerra Hard Drive”) and seven USB devices (collectively and together with the Guerra Hard Drive, the “Guerra Media”) to Cristina McBride, an evidence technician at Stroz Friedberg. Stroz Friedberg understands that the data was collected from former Judge Alberto Guerra’s hard drive and flash drives. Stroz Friedberg also has been informed that these EnCase Evidence Files were created by AFC on July 15, 2012 using EnCase, a standard forensic software.<sup>3</sup>
11. Stroz Friedberg used the acquisition hash values<sup>4</sup> to verify that the EnCase Evidence Files provided to Stroz Friedberg by AFC were a true and correct representation of the original media. If there were any differences between the original media at the time it was copied by AFC and the

<sup>1</sup> Metadata is information about a file’s characteristics and properties, and can generally be defined as “data about data.” The metadata available for a file depends on several factors, including the digital media on which the file was stored, the file system on the digital media, and the application or applications used to create, modify, and view the file. There generally are two types of metadata: file system metadata and embedded metadata. File system metadata typically includes the file’s physical location on the media and timestamps, such as when the file was first created on the file system and when the file was last accessed and modified. Embedded metadata is metadata stored within the files themselves. Embedded metadata is created and modified by the application (or applications) used to create, modify, and view a file of a particular type.

<sup>2</sup> The forensic imaging process captures not only the “active files” on the system, or those files that a user can interact with, but it also captures the “unallocated space” on the hard drive, where deleted content resides that a user cannot see.

<sup>3</sup> EnCase Forensic software is a standard forensic tool for acquiring and analyzing data contained on digital media, such as hard drives or flash drives. An EnCase Evidence File is a proprietary digital evidence storage format that contains a bit-for-bit copy of the original media as it existed at the time the copy was made. In this case, AFC provided to Stroz Friedberg data that was acquired in the EnCase Evidence File format. This format stores information about the source media that can be used both to verify the integrity of any subsequent copies of the evidence file, and to verify that the data contained on the copy is an identical match to the original media. This verification is possible because EnCase creates and records a digital fingerprint of the source media. This digital fingerprint is called an acquisition hash value, and it can subsequently be compared to the hash value of the copy to verify that the copy is an exact duplicate of the original.

<sup>4</sup> A hash value is a unique mathematical calculation using one of many hash functions that acts as an “electronic fingerprint” for the data set to which the hash function is applied.

copies received by Stroz Friedberg, the hash values of the copies would not have matched the acquisition hash values recorded in the EnCase Evidence Files. Since the hash values matched, the EnCase files were true and correct copies of the Guerra Media at the time they were imaged.

12. Table 1 lists each of the EnCase forensic images provided to Stroz Friedberg:

Table 1 - Guerra Media		
Custodian Name	Media ID	Description
Alberto Guerra	A	Evidence Files of Maxtor Hard Drive S/N 6QZ3QWJM
Alberto Guerra	B	Evidence Files of HP USB Drive "87276"
Alberto Guerra	C	Evidence Files of Kingston Black USB Drive "3389782"
Alberto Guerra	D	Evidence Files of Yellow-Silver USB Drive
Alberto Guerra	E	Evidence Files of Kingston Lt Blue USB Drive "4789789"
Alberto Guerra	F	Evidence Files of Kingston Lt Blue USB Drive "4461688"
Alberto Guerra	G	Evidence Files of DT101G2 USB Drive "5157687"
Alberto Guerra	H	Evidence Files of DT101G USB Drive "5024751"

13. After verifying that the EnCase Evidence Files received from AFC were exact copies of the original media, Stroz Friedberg harvested user documents from the Guerra Media and produced these documents to Counsel for review. As described herein, Counsel then identified two separate sets of documents that they wanted Stroz Friedberg to analyze (altogether, the "Extracted Guerra Documents"). Exhibit 2 shows the file system metadata and embedded metadata for each of the Extracted Guerra Documents<sup>5</sup>.

#### 2.1.1. Analysis of Eleven Draft Orders From the Lago Agrio Lawsuit Brought Against Chevron

14. Based on Stroz Friedberg's analysis of the data produced by multiple sources, I conclude, to a reasonable degree of scientific certainty, the following:

- a. A chronological textual review of the extracted documents from former Judge Alberto Guerra's media revealed that some text from each document is carried verbatim to the next-in-time document.
- b. This report and its exhibits accurately reflect the extent, based on comparison, to which text in documents found on former Judge Guerra's media matches exactly with text contained in documents issued by former Judge Nicolas Zambrano.

<sup>5</sup> As described later, while performing our analysis Stroz Friedberg identified duplicates of some of the Additional Extracted Guerra Documents, resulting in a total of 118 documents appearing in the listing for this set. In total, 129 documents appear in the Exhibit.



15. Of the Extracted Guerra Documents that Counsel asked Stroz Friedberg to analyze, 11 documents were identified as draft “providencias” (orders) by their file name or location (the “Draft Guerra Orders”). Each of these 11 Draft Guerra Orders was located on the Windows Partition of the Guerra Hard Drive and had a file system create date of July 23, 2010 (the installation date of Windows XP). However, older last modified dates show that these Draft Guerra Orders existed before July 2010. Therefore, these files most likely were copied from an external media source after Windows had been reinstalled.<sup>6</sup> Stroz Friedberg was not able to recover any copies of these documents from the external Guerra Media provided by AFC, and Stroz Friedberg was not provided the source media for these files.
16. Stroz Friedberg analyzed these 11 Draft Guerra Orders with regard to: similarities across the Draft Guerra Orders; and similarities between the 11 Draft Guerra Orders extracted from the Guerra media and the Lago Agrio Issued Zambrano Documents.

#### 2.1.2. Chronological Relationships and Comparison of the Draft Guerra Orders

17. Stroz Friedberg extracted the available file system and embedded metadata from each of the Draft Guerra Orders and then conducted a comparative, side-by-side analysis using “Beyond Compare 3.” Beyond Compare, made by Scooter Software, is a software application designed to enable comparisons of data. Stroz Friedberg used Beyond Compare’s “text compare”<sup>7</sup> utility to compare each document against the previous chronological document as determined by their metadata dates. Stroz Friedberg has validated the text compare functionality of Beyond Compare using test data with known differences. For further validation, Stroz Friedberg used another textual comparison tool called “Kdiff,” which Stroz Friedberg previously had validated and used in similar comparative analyses, to compare the same documents and verify that the separate tools had the same or similar results.<sup>8</sup> This type of validation is commonly called tool cross-validation. In addition, Stroz Friedberg conducted a manual review of Beyond Compare’s comparisons discussed below. The manual review confirmed the accuracy of Beyond Compare’s matching of similar text in the compared documents. However, in a few instances where the length of two documents varied, Beyond Compare failed to correctly identify text (usually the first paragraph) in one document as identical to text in another document. In other words, the comparisons

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<sup>6</sup> On July 23, 2010 at 11:37 AM, a Western Digital 120 GB hard drive with the serial number DE07083158FF was attached as an external storage device to former Judge Guerra’s computer, according to information contained in system logs on the hard drive. The 11 Draft Guerra Orders were all copied to the computer hard drive on July 23, 2010 at 11:44 AM. The copying of the Draft Guerra Orders was part of a much larger transfer process, during which 4,325 files and folders, including a folder named “ALBERTO GUERRA,” were placed on the computer hard drive between 11:43:56 AM and 12:00:31 PM.

<sup>7</sup> Beyond Compare visually compares two text files, in a side-by-side layout. Text is colored to highlight differences between the two files. The default colors are red, which denotes a mismatch (difference), and black, which denotes a match (the same text).

<sup>8</sup> “Kdiff” is an open-source Windows utility based on the UNIX “diff” command. The diff command is a commonly used tool to compare documents, source code, configurations, and other files that have common content and need to be quickly and efficiently compared.

generated by Beyond Compare slightly underrepresented the extent to which the documents compared contain identical text.

18. As part of its comparative analysis, Stroz Friedberg converted the documents from their native format, either Microsoft Word (DOC) or Rich Text Format (RTF), to text files. Stroz Friedberg converted these files using Microsoft Word. Once converted, Stroz Friedberg conducted a manual review of the converted text to confirm that no content of the file was altered during the conversion process.<sup>9</sup>
19. Table 2<sup>10</sup> lists the 11 Draft Guerra Orders, their file system metadata, and where they were found on the Guerra Hard Drive. Table 3 lists the 11 Draft Guerra Orders and their embedded metadata.

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<sup>9</sup> In the testing and validation Stroz Friedberg completed, it found that converting DOC and RTF documents to text files and comparing the resulting text files resulted in Beyond Compare matching the content of the files more accurately.

<sup>10</sup> The metadata for creation and last saved times are reported in Ecuador time. However, since a computer could be set to any number of time zones, the reported times could be different if the time zone settings used to report the times were changed. For example, because Ecuador does not observe Daylight Savings Time, times reported in the Eastern time zone would be one hour off during the time that Eastern Standard Time was in effect. This is shown in some of the embedded metadata fields in the attachments to former Judge Guerra's declaration, which were generated using Eastern Time. As such, some of those embedded metadata fields are one hour off from the corresponding metadata fields listed in this report in Ecuador time.

**Table 2 - File System Metadata for 11 Draft Guerra Orders Extracted from Guerra Hard Drive<sup>11</sup>**

Document #	Name	File System			Full Path	Exhibit
		Last Written	Last Accessed	Created		
Document 1	PROVIDENCIA TEXACO.doc	10/20/09 06:24:13 AM	07/13/12 05:25:03 PM	07/23/10 11:44:06 AM	Guerra Hard Drive\C\Documents and Settings\Usuario\Ms documentos\ALBERTO GUERRA\PROVIDENCIA TEXACO.doc	Exhibit 3
Document 2	PROVIDENCIA_TEXACO.doc	10/20/09 06:42:45 AM	07/13/12 05:15:27 PM	07/23/10 11:44:07 AM	Guerra Hard Drive\C\Documents and Settings\Usuario\Ms documentos\ALBERTO GUERRA\PROVIDENCIA_TEXACO.doc	Exhibit 4
Document 3	PROVIDENCIA_TEXACO ( noviembre 23 tercera).doc	11/18/09 05:54:28 PM	07/13/12 05:10:17 PM	07/23/10 11:44:07 AM	Guerra Hard Drive\C\Documents and Settings\Usuario\Ms documentos\ALBERTO GUERRA\PROVIDENCIA_TEXACO ( noviembre 23 tercera).doc	Exhibit 5
Document 4	PROVIDENCIA_TEXACO ( diciembre primera).doc	11/28/09 04:12:09 AM	07/13/12 05:16:18 PM	07/23/10 11:44:06 AM	Guerra Hard Drive\C\Documents and Settings\Usuario\Ms documentos\ALBERTO GUERRA\PROVIDENCIA_TEXACO ( diciembre primera).doc	Exhibit 6
Document 5	PROVIDENCIA_TEXACO ( diciembre primera).doc	11/29/09 10:12:00 AM	07/13/12 05:24:49 PM	07/23/10 11:44:09 AM	Guerra Hard Drive\C\Documents and Settings\Usuario\Ms documentos\ALBERTO GUERRA\PROVIDENCIAS\PROVIDENCIA_TEXACO ( diciembre primera).doc	Exhibit 7
Document 6	PROVIDENCIA_TEXACO ( diciembre segunda).doc	12/06/09 08:15:53 AM	07/13/12 05:22:58 PM	07/23/10 11:44:09 AM	Guerra Hard Drive\C\Documents and Settings\Usuario\Ms documentos\ALBERTO GUERRA\PROVIDENCIAS\PROVIDENCIA_TEXACO ( diciembre segunda).doc	Exhibit 8
Document 7	PROVIDENCIA_TEXACO ( diciembre tercera- 13).doc	12/12/09 04:34:38 PM	07/13/12 06:23:28 PM	07/23/10 11:44:09 AM	Guerra Hard Drive\C\Documents and Settings\Usuario\Ms documentos\ALBERTO GUERRA\PROVIDENCIAS\PROVIDENCIA_TEXACO ( diciembre tercera- 13).doc	Exhibit 9
Document 8	PROVIDENCIA_TEXACO ( diciembre Cuarta- 21).doc	12/19/09 12:10:26 PM	07/13/12 05:18:16 PM	07/23/10 11:44:09 AM	Guerra Hard Drive\C\Documents and Settings\Usuario\Ms documentos\ALBERTO GUERRA\PROVIDENCIAS\PROVIDENCIA_TEXACO ( diciembre Cuarta- 21).doc	Exhibit 10
Document 9	PROVIDENCIA_TEXACO ( enero 2010 segunda).doc	01/16/10 11:18:25 AM	07/13/12 05:31:39 PM	07/23/10 11:44:09 AM	Guerra Hard Drive\C\Documents and Settings\Usuario\Ms documentos\ALBERTO GUERRA\PROVIDENCIAS\PROVIDENCIA_TEXACO ( enero 2010 segunda).doc	Exhibit 11
Document 10	PROVIDENCIA_TEXACO ( enero 2010 tercera).doc	01/29/10 11:29:58 PM	07/13/12 06:23:30 PM	07/23/10 11:44:09 AM	Guerra Hard Drive\C\Documents and Settings\Usuario\Ms documentos\ALBERTO GUERRA\PROVIDENCIAS\PROVIDENCIA_TEXACO ( enero 2010 tercera).doc	Exhibit 12
Document 11	texaco.- segundmda de febrero 2010- 17-2-010.rtf	03/07/10 02:47:13 AM	07/13/12 06:23:27 PM	07/23/10 11:44:09 AM	Guerra Hard Drive\C\Documents and Settings\Usuario\Ms documentos\ALBERTO GUERRA\PROVIDENCIAS\texaco.- segundmda de febrero 2010- 17-2-010.rtf	Exhibit 13

**Table 3 – Embedded Metadata for 11 Draft Guerra Orders Extracted from Guerra Hard Drive**

Document #	Name	Embedded					
		Last Saved By	# of Revisions	Total Edit Time	File Created	Last Saved	Time Last Printed
Document 1	PROVIDENCIA TEXACO.doc	Usuario	2	18 Minutes	10/20/09 06:24:00 AM	10/20/09 06:24:00 AM	--
Document 2	PROVIDENCIA_TEXACO.doc	Usuario	2	18 Minutes	10/20/09 06:24:00 AM	10/20/09 06:24:00 AM	--
Document 3	PROVIDENCIA_TEXACO ( noviembre 23 tercera).doc	Usuario	5	241 Minutes	11/18/09 01:54:00 PM	11/18/09 05:54:00 PM	--
Document 4	PROVIDENCIA_TEXACO ( diciembre primera).doc	Usuario	2	2 Minutes	11/28/09 04:12:00 AM	11/28/09 04:12:00 AM	--
Document 5	PROVIDENCIA_TEXACO ( diciembre primera).doc	Usuario	18	639 Minutes	11/28/09 11:34:00 AM	11/29/09 10:11:00 AM	11/29/09 10:08:00 AM
Document 6	PROVIDENCIA_TEXACO ( diciembre segunda).doc	Usuario	12	1028 Minutes	12/04/09 01:07:00 PM	12/06/09 08:15:00 AM	12/06/09 07:39:00 AM
Document 7	PROVIDENCIA_TEXACO ( diciembre tercera- 13).doc	Usuario	14	820 Minutes	12/12/09 02:56:00 AM	12/12/09 04:34:00 PM	12/06/09 07:39:00 AM
Document 8	PROVIDENCIA_TEXACO ( diciembre Cuarta- 21).doc	Usuario	14	735 Minutes	12/18/09 01:28:00 PM	12/19/09 12:10:00 PM	12/19/09 12:04:00 PM
Document 9	PROVIDENCIA_TEXACO ( enero 2010 segunda).doc	Usuario	32	649 Minutes	01/15/10 07:51:00 AM	01/16/10 11:18:00 AM	01/16/10 11:17:00 AM
Document 10	PROVIDENCIA_TEXACO ( enero 2010 tercera).doc	Usuario	30	595 Minutes	01/20/10 01:06:00 AM	01/29/10 11:29:00 PM	01/29/10 11:28:00 PM
Document 11	texaco.- segundmda de febrero 2010- 17-2-010.rtf	Usuario	2	2 Minutes	03/07/10 08:45:00 AM	03/07/10 08:47:00 AM	--

20. During Stroz Friedberg's analysis of the 11 Draft Guerra Orders, it was determined that Draft Guerra Order 2 was an exact copy of Draft Guerra Order 1. It also was determined that Draft Guerra Order 3 and 4 contained the same content; however, unlike Draft Guerra Orders 1 and 2, there were differences in the metadata between Draft Guerra Orders 3 and 4.

21. Overall, according to the embedded metadata and the comparative analysis conducted by Stroz Friedberg, many documents have large sections of text that are identical to text in previously edited documents. For example, paragraphs 3 to 259 in Draft Providencia 10 are identical to

<sup>11</sup> In Mr. Younger's January 24, 2013 report, Exhibit 6 was inadvertently omitted. Instead, Exhibit 7 was attached twice, once as Exhibit 6 and once as Exhibit 7. This report includes the correct document as Exhibit 6. In any event, the content of Exhibit 6 is identical to the content of Exhibit 5.

paragraphs 80 to 336 in Draft Providencia 11. One possible explanation for this observed pattern is that the user who created and edited these documents may have had a practice of leaving unused text from a template document at the bottom of the new document. True and correct copies of these comparisons are attached hereto as Exhibits 14 through 21.

**2.1.3. Comparison of Draft Guerra Orders to those Subsequently Issued by former Judge Nicolas Zambrano in the Lago Agrio Litigation**

22. Besides comparing the 11 Draft Guerra Orders to each other, Stroz Friedberg conducted a side-by-side analysis of these Draft Guerra Orders and the Lago Agrio Issued Zambrano Documents, namely nine orders provided to Stroz Friedberg by counsel<sup>12</sup> and issued by former Judge Nicolas Zambrano in the Lago Agrio Litigation. For this comparative analysis Stroz Friedberg again used Beyond Compare.
23. Based on Stroz Friedberg's analysis of the data produced by multiple sources, I conclude, to a reasonable degree of scientific certainty, the following:
  - a. This report and its exhibits accurately reflect, through document comparisons, the extent to which text in Draft Guerra Orders found on former Judge Guerra's media matches exactly with text contained in documents filed by former Judge Zambrano in the Lago Agrio litigation.
24. Stroz Friedberg converted the Lago Agrio Filed Zambrano Documents from either Microsoft Word documents (DOC) or Rich Text Format documents (RTF) to text files and found that no content of the file was altered in this conversion. Stroz Friedberg conducted a preliminary manual review of each of these documents and noted that the Lago Agrio Filed Zambrano Documents contained numbered sections in one uninterrupted paragraph. In contrast, the documents extracted from the Guerra Media contained numbered paragraphs separated by a line break. To allow the Beyond Compare tool to perform a more accurate side-by-side comparison of the text, Stroz Friedberg manually inserted carriage returns in the Lago Agrio Filed Zambrano Documents so that each of the numbered sections also were individual paragraphs separated by a line break. Stroz Friedberg made no other alterations for Comparison 1, 2, and 4 through 9. For comparison 3, paragraph number 1 from Extracted Guerra Document 5 was a closer match to paragraph number 2 in the corresponding providencia issued by former Judge Zambrano. Thus, to compare the documents more accurately, Stroz Friedberg switched the order of the paragraphs numbered 1 and 2 in Extracted Guerra Document 5. Other than the order of those paragraphs and the carriage returns inserted, no content was altered for Comparison 3.

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<sup>12</sup> Initially, Stroz Friedberg was provided the Filed Zambrano Documents in Adobe Portable Document Format ("PDF"). However, they later were provided to us by counsel as either Microsoft Word documents (DOC) or Rich Text Format documents (RTF). Stroz Friedberg reviewed the original PDFs and compared them to the provided DOC and RTF documents and no differences were found.

25. Table 4 sets forth a chart of the Beyond Compare comparisons between different Draft Guerra Orders and the nine Lago Agrio Issued Zambrano Documents. Stroz Friedberg's manual review confirmed the accuracy of Beyond Compare's ability to match text across documents. However, in some instances, Beyond Compare slightly under-reported matching paragraphs of text. True and correct copies of these comparisons are attached hereto as Exhibits 22 through 30.

**Table 4 - Comparative Analysis of Draft Guerra Orders with Nine Orders Issued by former Judge Zambrano in the Lago Agrio Litigation**

<u>Comparison #</u>	<u>Document from Guerra Media</u>	<u>Last Saved Date of Document from Guerra Media</u>	<u>Date Providencia Issued by Judge Zambrano in the Lago Agrio Litigation</u>	<u>Exhibit</u>
Comparison 1	Document 1 and Document 2	October 20, 2009	October 21, 2009	Exhibit 22
Comparison 2	Document 3 and Document 4	November 18, 2009	November 23, 2009	Exhibit 23
Comparison 3	Document 5	November 29, 2009	November 30, 2009	Exhibit 24
Comparison 4	Document 6	December 06, 2009	December 07, 2009	Exhibit 25
Comparison 5	Document 7	December 12, 2009	December 14, 2009	Exhibit 26
Comparison 6	Document 8	December 19, 2009	January 05, 2010	Exhibit 27
Comparison 7	Document 9	January 16, 2010	January 19, 2010	Exhibit 28
Comparison 8	Document 10	January 29, 2010	February 02, 2010	Exhibit 29
Comparison 9	Document 11	March 07, 2010	February 18, 2010	Exhibit 30

26. As reflected in Comparisons 1 through 9, there are widespread portions of identical textual overlap between the 11 Draft Guerra Orders and the Lago Agrio Issued Zambrano Documents.
27. By comparing the last saved date with the issued date, Stroz Friedberg found that the average number of days between editing of the 11 Draft Guerra Orders and issuing of the associated Lago Agrio Issued Zambrano Document was 4.25. The shortest time between editing and issuing was one day, and the longest time was 17 days.
28. Based on the comparisons described above it is apparent the nine issued orders were created from the drafts located on the Guerra hard drive.

#### 2.1.4. Comparison of Additional Extracted Guerra Documents to Documents Obtained From the Ecuadorian Government Website

29. Based on Stroz Friedberg's analysis of the data produced by multiple sources, Stroz Friedberg concludes, to a reasonable degree of scientific certainty, the following:
- a. This report and its exhibits accurately reflect the extent to which text in other documents found on former Judge Guerra's media matches exactly with text contained in rulings for 105 other cases.
30. In addition to the 11 Extracted Guerra Documents compared as described above, there were 105 Extracted Guerra Documents (the "Additional Extracted Guerra Documents")<sup>13</sup> that Stroz

<sup>13</sup> This report consolidates a discussion in Mr. Younger's January 24, 2013 report, which discusses 2 of these 105 documents, with his February 24, 2013 and May 31, 2013 reports, which discuss the remaining 103 documents.

Friedberg was asked to compare with rulings issued in the Ecuadorian court system. True and correct copies of these documents are attached as exhibits C1 through C105.

31. Stroz Friedberg was asked to extract these rulings from a Government website identified by Counsel (<http://www.funcionjudicial-sucumbios.gob.ec/index.php/consulta-de-causas>). Figure G1 is a partial screenshot of the website that Stroz Friedberg used to capture the Court Website Documents. As described later, Stroz Friedberg was later provided with court copies of some of the rulings and found those to match.

**Figure G1 – Ecuadorian Judicial Website**

The screenshot shows the website <http://www.funcionjudicial-sucumbios.gob.ec/index.php/consulta-de-causas>. The header includes the logo of the Consejo de la Judicatura and the slogan "¡Por una justicia oportuna y transparente!". The main navigation bar contains links: Inicio, Transparencia, Concursos, Correo, Foros, Contactenos, and Sugerencias. The left sidebar lists various services under "La Institución" and "Consultas". The main content area is titled "Dirección Provincial de Sucumbios Consulta de Causas" and contains a search form with the following fields:

- Instancia: --Seleccione-- (dropdown menu)
- Juzgado: (dropdown menu)
- Año Juicio: TODOS (dropdown menu)
- No. Juicio: (text input)
- Actor/Ofendido: (text input)
- Demandado/Imputado: (text input)
- Consultar (button)

Below the form, there is a link to "Constitución de la República del Ecuador".

32. Using case information that Counsel had provided (which was also easily viewable in the documents) Stroz Friedberg queried the website shown in Figure G1. This returned several court documents associated with the queried case information. Using the file name of the Additional Extracted Guerra Documents, Stroz Friedberg was able to locate a matching court document identified either as "Sentencia," "Resolución," "Auto Resolutorio," or "Nulidad" for all but one case.<sup>14</sup> Stroz Friedberg then copied the text for the identified court issued document and saved it

<sup>14</sup> For the case with case number 218-2008, Stroz Friedberg was not able to locate a matching court document using the website. Instead, Counsel provided a PDF document and a text file and identified them both as containing the text of that judgment. Stroz Friedberg used the text from the document for the purposes of this comparison, and confirmed that the content of the PDF matched the content of the text file. Additionally, as reflected in the exhibits for the case with case number 415-2009, the document Stroz Friedberg identified on the website appeared to be missing certain characters with accent marks, and those characters instead appeared as question marks on the website. Stroz Friedberg also received a PDF document from Counsel that was identified as a

as a text file (".txt") for comparison to the corresponding Extracted Guerra Document. In addition, Stroz Friedberg copied and saved the HTML source code for the returned query page to show where the comparison information came from. Attached as Exhibit D is a spreadsheet that shows the case information related to the Additional Extracted Guerra Documents, the name of the document extracted from the Guerra Media, the issued date as listed on the court website, the names Stroz Friedberg applied to the saved text and HTML files, and the type of court document as identified on the website. Table 5 is an excerpt from Exhibit D.

**Table 5 - 105 Extracted Guerra Documents and Associated Website Capture Files**

Guerra Media - Additional Draft Documents - Website Captures					
Case Number	File Name (Guerra Media)	Date Issued	File Name (Extracted Website Text)	File Name (Website Capture)	Type of Document
002-2011-S-CPJS	002-2011- laboral- David Loor Fabian Checa Pozo.doc	20/07/2011	002-2011-S-CPJS.txt	002-2011-S-CPJS.html	Sentencia
005-2010-S-CSJNL	005-2010 indemnización daños -Ramón García- Petrocomercial.doc	26/01/2011	005-2010-S-CSJNL.txt	005-2010-S-CSJNL.html	Sentencia
005-2010-S-CSJNL	005-2010 indemnización daños -Ramón García- Petrocomercial.doc	dupe	dupe	dupe	dupe
	009-2010- Especial - daños y perjuicios - Luz Moreira - Norma valdiviezo.doc	24/06/2011	009-2010-S-CPJS.txt	009-2010-S-CPJS.html	Nulidad
011-2011-S-CPJS	0011-2011- laboral- Aurora Villota- Vicariato Sucumbios.doc	08/02/2011	011-2011-S-CPJS.txt	011-2011-S-CPJS.html	Sentencia

33. As with the comparisons described above, Stroz Friedberg used Beyond Compare to compare the text extracted from the website to the Extracted Guerra Documents. As part of this analysis, Stroz Friedberg conducted a preliminary manual review and identified that the Court Website Documents, as presented on the website, contained one uninterrupted paragraph. As with the comparisons described above, this was in contrast to the drafts identified as part of the Extracted Guerra Documents. To allow Beyond Compare to perform a more accurate side-by-side comparison, Stroz Friedberg, where necessary, manually inserted carriage returns in the Court Website Documents so that each of the sections were individual paragraphs. Other than the insertion of these line breaks in the Court Website Documents, no alterations were made to the Court Website Documents or the Extracted Guerra Documents.
34. During the comparison of these 105 documents, Stroz Friedberg identified that in some instances there were more than one copy of a given file located on the Guerra Media (see Exhibit 2 and Exhibit D). These documents were compared using Beyond Compare and Stroz Friedberg found that while there were some differences in the metadata of the files, each contained the same content as its duplicately named file.
35. Overall, according to the comparative analysis performed by Stroz Friedberg, there were widespread portions of identical textual overlap between these Additional Extracted Guerra Documents and the Court Website Documents. True and Correct copies of these comparisons are attached hereto as Exhibits E1 through E105.

36. By comparing the embedded metadata for “File Created” and “Last Saved” dates with the issued date, Stroz Friedberg found that all but two of the 105 Additional Extracted Guerra Documents preceded the issue date.

2.1.5. Determination of Judge Assigned to the Cases Associated with the Court Website Documents

37. In addition to reviewing the Court Website Documents, we were asked to review a set of court documents to determine what judge was assigned to the cases associated with those documents. To make that determination, Stroz Friedberg was provided with the following documents along with translations of the documents (together as Exhibits 31 – 35):

- a. Adobe Acrobat file “ACTAS DE SORTEO-2008.pdf”
- b. Adobe Acrobat file “ACTAS DE SORTEO-2009.pdf”
- c. Adobe Acrobat file “ACTAS DE SORTEO-2010.pdf”
- d. Adobe Acrobat file “ACTAS DE SORTEO-2011.pdf”
- e. Adobe Acrobat file “ACTAS DE SORTEO-2012.pdf”

38. The PDF files were represented to be various dockets of case assignments retrieved from the Ecuadorian judicial system showing which Judge was assigned to various matters before the court (the “Actas De Sorteo”). Stroz Friedberg also received translated copies of these files, and used those translations to confirm that they do appear to document case assignments to Judges. Figure A1 is an excerpt of one of these court filings from an Actas De Sorteo listed above.

**Figure A1 - Excerpt from ACTAS DE SORTEO-2008.pdf**

<b><u>AB. NICOLAS ZAMBRANO LOZADA</u></b>		
<b>1. Causa No. 073–2008</b>	<b>Alimentos</b>	<b>(Orellana)</b>
<b>2. Causa No. 074–2008</b>	<b>Alimentos</b>	<b>(Orellana)</b>
<b>3. Causa No. 090–2008</b>	<b>Atropello y Muerte</b>	<b>(Orellana)</b>
<b>4. Causa No. 103–2007</b>	<b>Menor Infractor</b>	<b>(Orellana)</b>
<b>5. Causa No. 276–2008</b>	<b>Violación</b>	

39. Using the same “Case Number” listed in Exhibit D, we compared the case numbers to those listed in the Actas De Sorteo to determine what Judge was chosen to preside over that case and the cause of action. This analysis showed that of the 105 unique cases associated with the



Additional Extracted Guerra Documents, 97<sup>15</sup> of the cases were assigned to "AB. Judge Nicolas Zambrano Lozada," five were assigned to other Judges, and three were not found.

40. Based on the comparisons described above, the forensic evidence shows that the Court Website Documents were created from the drafts located on the Guerra Media, and that those Rulings and Court Website Documents were, in almost all cases, linked to former Judge Zambrano.

## 2.2. Guerra Cell Phones

41. On August 16, 2012, Christopher Peltier of AFC provided two Nokia cell phones to Melanie Maugeri, a Digital Forensic Examiner at Stroz Friedberg. Stroz Friedberg understands that the Nokia cell phones belonged to former Judge Alberto Guerra (the "Nokia Cell Phones"). On September 26, 2012, Counsel provided Stroz Friedberg with documents that they identified as bills for the Nokia 2730 Cell Phone. Below is a description of the evidence received:

- a. Nokia cell phone, model 2600b (RH-60), IMEI: 010474005207647 (the "Nokia 2600");
- b. SIM<sup>16</sup> card phone with ICCID 8959301000199642849 and branded for the service provider "Porta" (the "SIM Card") from Nokia 2600b;
- c. Nokia cell phone, model 2730c-1b (RM-579), IMEI: 353767047506479 (the "Nokia 2730"); and
- d. Phone bills for the telephone number 94899288 (the "Guerra Phone Bills").

42. Stroz Friedberg used forensic software and hardware tools designed specifically for the extraction of digital data from mobile devices to extract call history, calendar entries, SMS text messages, and phone address book entries (commonly referred to as "contacts") from the Nokia Cell Phones. Stroz Friedberg validated data extracted from the Nokia Cell Phones by comparing the output from different forensic tools. This cross-validation allowed Stroz Friedberg to confirm the accuracy of the output and to ensure that it had extracted all of the accessible data on the Nokia Cell Phones. Stroz Friedberg further validated the extracted information by comparing the information with the contents of the Guerra Phone Bills.

43. Based on Stroz Friedberg's analysis of the data produced by multiple sources, I conclude, to a reasonable degree of scientific certainty, the following:

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<sup>15</sup> As described earlier, this report consolidates the discussion of these 105 documents from three separate reports. Specifically, this consolidation added two cases discussed in the January 24, 2013 report to the original count of 94 cases assigned to "AB. Judge Nicolas Zambrano Lozada," to make 96 cases. In addition, in re-performing the analysis I identified two cases that are listed twice, in two separate Actas De Sorteo, and appear to have been re-assigned to "AB. Judge Nicolas Zambrano Lozada" in the second Acta De Sorteo, for a total of 98 cases. Finally, I identified that one case was counted twice in Mr. Younger's May 31, 2013 report, resulting in the final total of 97 documents.

<sup>16</sup> SIM stands for "Subscriber Identity Module" and is used by cell phone service providers to store information necessary for connecting and using the provider's cellular network. Also stored on the SIM are contacts, dialed numbers, and SMS text messages relating to the user activity on the cell phone or phones with which the SIM was used.

- a. Attached are true and correct copies of data found and extracted from two cell phones belonging to former Judge Alberto Guerra. Included in these attachments are a telephone number that is identified as belonging to for Pablo Fajardo in the contacts on both of the Nokia Cell Phones.
- b. The Guerra Phone Bills dated June 6, 2012, June 17, 2012, and June 23, 2012 show three phone calls between former Judge Guerra and a phone number that is identified as belonging to former Judge Zambrano in the contacts on both of the Nokia Cell Phones.

#### The Nokia 2600

44. Among other things, Stroz Friedberg recovered call history from the Nokia 2600 phone. In total there were five calls, one incoming and four outgoing. The incoming call was dated March 15, 2012 at 5:23 PM<sup>17</sup> and the outgoing calls were all dated December 13, 1981 at 3:45 PM. The outgoing calls are incorrectly dated from the year 1981, which predates the manufacture of this cell phone model, likely due to the date and time not being properly set when the phone was placed into service. Stroz Friedberg was not able to verify the real dates and times for these calls, or confirm whether these calls were successfully made based on the information extracted from the Nokia 2600. The one incoming call was a deleted record recovered on the phone.

#### The SIM Card

45. When Stroz Friedberg received the Nokia 2600, it found the SIM<sup>18</sup> Card within the device. However, the SIM Card, which is tied to the Porta service provider, is designed to be portable to any cell phone that can access the Porta network. Since the SIM card is portable and can contain information separate from any specific phone, Stroz Friedberg treated the card as a separate and distinct source of data.
46. The SIM Card contained 236 contacts and seven deleted but recoverable SMS text messages. The SMS text messages ranged in time from December 27, 2009 to July 8, 2010.

#### The Nokia 2730

47. Stroz Friedberg validated the Nokia 2730 extracted data both by comparing the data between forensic tools and by comparing the data with the Guerra Phone Bills.

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<sup>17</sup> All dates and times in this section of the report are in local Ecuador time, unless otherwise indicated in the exhibits. Dates and times provided in Exhibit 37 are in Coordinated Universal Time (UTC), which is five hours ahead of Ecuadorian time.

<sup>18</sup> Stroz Friedberg has tested and validated our SIM card data extraction tool, using industry standard validation techniques, including cross-tool validation and comparison between data extracted from our tool and the data's native rendering on mobile devices.

### The Guerra Phone Bills

48. Stroz Friedberg found that the Guerra Phone Bills traced back to the Nokia 2730 phone, but not the Nokia 2600 phone. From the Nokia 2730 phone itself, Stroz Friedberg extracted 116 calls in the call history. Specifically, Stroz Friedberg extracted information for 39 incoming calls, 27 missed calls, and 50 outgoing calls. Only 31 of the 116 calls on the Nokia 2730 also were on the Guerra Phone Bills because only outgoing calls, or dialed calls, with duration times greater than zero seconds were recorded on the Guerra Phone Bills. The Guerra Phone Bills did not include any incoming calls, whether received or missed. Based on Stroz Friedberg's knowledge and experience, it is likely that received calls, and some attempted outgoing calls, did not appear on the Guerra Phone Bills because some phone companies and cellular service providers only include items on a bill that incur a fee.
49. Stroz Friedberg observed that the times for the outgoing calls on the Nokia 2730 were approximately three to four minutes behind the times reported for the same calls on the Guerra Phone Bills. The slight difference between the Guerra Phone Bills and the call history from the Nokia 2730 likely is due to the handset time being set three to four minutes behind the actual time when these calls were made. Since the time reported on the device could depend on the settings made by the user, and the time reported on the phone bill typically depends on the connection time to a cell tower (which is regularly synced), the times reported on the Guerra Phone Bills are likely to be the most accurate time.
50. Attached hereto as Exhibits 37 through 39 are true and correct copies of call history, contacts, calendar entries, and SMS text messages that Stroz Friedberg extracted from the Nokia Cell Phones and the SIM Card. Attached as Exhibit 40 is a true and correct copy of the Guerra Phone Bills for the Nokia 2730.

### 2.3. Guerra Email Contacts

51. On July 17, 2011, Stroz Friedberg preserved the Hotmail account of former Judge Guerra for the email address "albertoguerrab@hotmail.com." In the preservation of former Judge Guerra's Hotmail account, Stroz Friedberg used standard digital forensic practices and tools. Former Judge Guerra maintained, as part of his Hotmail account, an online address book containing 132 records. Stroz Friedberg collected this information as part of its preservation of former Judge Guerra's Hotmail account. Attached as Exhibit 41 is a true and correct copy<sup>19</sup> of the address book data preserved from the "albertoguerrab@hotmail.com" Hotmail account. One of these contacts is for "sdonziger@gmail.com".

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<sup>19</sup> The output from our collection contained a myriad of empty columns which Stroz Friedberg removed in order to make the exhibit more readable. To the extent there was data in any column, we left that column in the attached exhibit.

#### 2.4. The 2011 Judgment

52. Based on Stroz Friedberg's analysis of the data produced by multiple sources, I conclude, to a reasonable degree of scientific certainty, the following:

- a. Analysis of the 2011 Judgment issued in the Lago Agrio litigation shows that it repeated text and errors found in the Unfiled Selva Viva Data Compilation. This indicates that the Judgment was derived from material not filed with the court in the Lago Agrio litigation.
- b. Analysis further shows that the pit count of 880 listed in the 2011 Judgment was derived from the Stratus Compilation and/or Anexo H-1.

53. Apart from the Guerra Media and the data described in Sections 2.1 – 2.3, Stroz Friedberg also was asked to review the Decision 2003-0002 of the Sucumbíos Provincial Court of Justice, dated February 14, 2011, also known as the "Sentencia" or "Judgment." Specifically, Stroz Friedberg was asked to review pages 101 to 112 in the Judgment and compare the environmental data contained therein to the lab results in the official court record (the "Filed Lab Results") and to the Unfiled Selva Viva Data Compilation.<sup>20</sup> In addition, Stroz Friedberg was asked to look at page 125 in the Judgment and compare the number of pits identified (880) to the information within the Stratus Compilation. The Stratus Compilation is a collection of pit information.

54. For its analysis related to the 2011 Judgment, Stroz Friedberg was provided with the following documents, select excerpts of which are included as Exhibit 47:

- a. Adobe Acrobat file "Sentencia 1.pdf" (the "Judgment"), which Stroz Friedberg understands is the Court's decision from the Lago Agrio litigation
- b. Adobe Acrobat file "LAGO AGRIO JUDGMENT (Cert Eng).pdf," which Stroz Friedberg understands is an English translation of the Judgment.
- c. Three Microsoft Excel spreadsheet files: "DA00000040.xls" (65,076 rows), "DA00000041.xls" (65,076 rows), and "DA00000042.xls" (65,076 rows), which Stroz Friedberg understands were produced by Douglas Allen, an expert for the Lago Agrio plaintiffs, including Selva Viva (the "Unfiled Selva Viva Data Compilation"). It also is our understanding that these three XLS files, while produced in discovery in the United States to Chevron, were never filed with the court in the Lago Agrio litigation.
- d. One Microsoft Excel spreadsheet file named "STRATUS-NATIVE073597.xls" ("Stratus Compilation"), which Stroz Friedberg understands was produced by Stratus Consulting. It also is our understanding that this XLS file, while produced in discovery in the United

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<sup>20</sup> Three Microsoft Excel spreadsheet files: "DA00000040.xls" (65,076 rows), "DA00000041.xls" (65,076 rows), and "DA00000042.xls" (65,076 rows) which Stroz Friedberg understands were produced by Douglas Allen, an expert for the Lago Agrio plaintiffs, including Selva Viva (the "Unfiled Selva Viva Data Compilation"). It also is our understanding that these three XLS files, while produced in discovery in the United States to Chevron, were never filed with the court in the Lago Agrio litigation.

States to Chevron, was never filed with the Court in the Lago Agrio litigation. This XLS file is a compilation of pit information.

- e. Adobe Acrobat file "2010\_08\_05 Expt Rpt\_Eng.pdf," which is a report titled "Expert Opinion of John A. Connor, P.E., P.G., E.C.E.E., Regarding Remediation Activities and Environmental Conditions in the Former Petroecuador-Exxon Concession, Oriente Region, Ecuador," ("The Connor Report"), issued September 3, 2010.
- f. Adobe Acrobat file "SA-013\_INFORME DE LA INSPECCION JUDICIAL DEL POZO SACHA 13\_with signature.pdf," which Stroz Friedberg understands to be the Judicial Inspection of the Sacha 13 Well, conducted by defendant's expert Doctor Gino Bianchi.
- g. Adobe Acrobat file "SN053598 peers saying to add DRO GRO.pdf." This file contains several email messages in a thread with the subject of "RE: QC for Ecuador report?" between various individuals that begins on December 22, 2008 at 12:55 PM and continues until January 26, 2009 at 9:39 AM.
- h. Adobe Acrobat file "sn61479 peers need to add dro gro for texco.pdf." This file contains several email messages in a thread with the subject of "New Ecuador standards table" between various individuals that begins on March 04, 2008 at 1:37 PM and continues until approximately 1:20 PM that same day.<sup>21</sup>
- i. Adobe Acrobat file "SN066426 email re gro dro.pdf." This file contains several email messages in a thread with the subject of "follow up" between various individuals that begins on March 11, 2008 at 3:52 PM and continues until March 12, 2008 at 11:39 AM.
- j. Adobe Acrobat file "Tablas SA13 sampling results.pdf," which Stroz Friedberg understands to be sampling results from the Sacha 13 inspection completed by the defendant.
- k. Forty-seven Adobe Acrobat files, including 24 "Judicial Inspection Reports" and 23 "Filed Lab Results." It is Stroz Friedberg's understanding that these 47 documents were part of the official court record associated with the Lago Agrio litigation.
- l. Adobe Acrobat file "SN 049997-SN 050000.pdf." This file contains an email thread with messages back and forth between individuals preparing a data compilation that begins on March 4, 2008 at 11:40 AM and continues until approximately 2:43 PM that same day.<sup>22</sup>

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<sup>21</sup> The email header at the top of the most recent message in this email thread reads "Tuesday March 4, 2008 1:20 PM," but the flow of the email threads shows a consistent short gap between the parties' replies to each other. Based on the last "embedded" email header showing a time of 2:18 PM, it appears that Mr. Hodgson's computer likely is one hour off of the server time reflected in previous messages in the email thread, thus making the last message time 1:20 PM. This type of one hour off-set is common if the clocks on the email server and a particular user's computer are set to different time zones.

<sup>22</sup> The email header at the top of the most recent message in this email thread reads "Tuesday March 4, 2008 1:43 pm," but the flow of the email threads shows a consistent short gap between the parties' replies to each other. Based on the last "embedded" email header showing a time of 2:30 PM, it appears that Mr. Hodgson's computer likely is one hour off of the server time reflected in previous messages in the email thread, thus making the last message time 2:43 PM.

55. These PDF files were represented to be parts of various court filings associated with litigation in Lago Agrio, Ecuador, or documents produced by the Lago Agrio plaintiffs' consultant. For purposes of its analysis, Stroz Friedberg did not conduct any independent environmental studies, but assumed that the lab results filed with the Judicial Inspection Reports in the Lago Agrio Court (the "Filed Lab Results") were accurate representations of the data collected during the various site inspections. Stroz Friedberg made this assumption both because the Filed Lab Results were officially filed with the Lago Agrio Court and because they appeared to be copies of the original lab reports prepared for individual sites, not summaries or compilations of data. To the extent that Stroz Friedberg has determined that other data may be erroneous, it is based on a comparison of that data to the Filed Lab Results.
56. Stroz Friedberg's review of the data in the Filed Lab Results showed that they were similar in many ways to the Unfiled Selva Viva Data Compilation. However, several notable differences revealed that the Unfiled Selva Viva Data Compilation was more likely the source of the information cited within the Judgment, and therefore the Judgment was not authored independent of the Unfiled Selva Viva Data Compilation. Stroz Friedberg also found that reliance on the Unfiled Selva Viva Data Compilation introduced several numerical errors into the Judgment, indicating that the data was copied from this source. These differences are described below.
57. Stroz Friedberg's separate review of Anexo H-1 from the 2008 Cabrera Report and the Stratus Compilation revealed that the pit count of 880 stated in the Judgment likely was derived from the Stratus Compilation or the Anexo H-1 document for the reasons set forth below.

#### 2.4.1. Naming Irregularities

58. SV and TX Suffixes – Many of the sampling results set forth in the Judgment on pages 104 through 112 end with the suffix "\_sv" or "\_tx." However, a review of the Judicial Inspection Reports and Filed Lab Results provided to me did not identify a single sample result referenced in this manner. In contrast, a review of the data within the Unfiled Selva Viva Data Compilation showed that a majority of the sampling results referenced in the reviewed portion of the Judgment contained these "\_sv" or "\_tx" suffixes. Figures 1 and 2 show examples of data in the Filed Lab Results and the Unfiled Selva Viva Data Compilation, respectively. Figure 3 shows a list of sampling results extracted from the Judgment where the names match the Unfiled Selva Viva Data Compilation but do not match any of the Filed Lab Results.

**Figure 1 Sample Name as Set Forth in the Filed Lab Results**

PUNTO DE MUESTREO	Código HAVOC	HAPs mg/kg	TPH mg/kg
MÉTODO DE REFERENCIA	-----	EPA 8100	EPA 418.1
SSF4-PIT1-SD1-SU1-R(1.3 a 1.6)	S050801	2.59430	>900000

Figure 2 - Sample Name from the Unfiled Selva Viva Data Compilation

Muestra	Parametro	Metodo	Resultado	Unidad
SSF4-PIT1-SD1-SU1-R(1.3-1.6)_sv	TPH	EPA 418,1	900000	mg/Kg

Figure 3 - Sampling Results from the Judgment with \_sv or \_tx Suffixes

AU01-A1-SD1-SU1-R(60-100cm)_sv	LAN-ESTB-ASUE2_sv	SSF08-PIT1-S3_sv
AU01-PIT1-SD2-SU2-R (220-240cm)_sv	LAN-ESTB-D1_sv	SSF08-PIT2-S11_sv,
CON6-A2-SE1_sv	LAN-ESTB-D2_sv	SSF08-PIT2-S3_SV
CON6-PIT1-SD1-DU1-R(160-260cm)_sv	LAN-ESTB-E1_sv	SSF08-PIT2-S4-1_sv
EAG-A2-SE1_sv	LAN-ESTB-H2_sv	SSF08-PIT2-S5_sv
ESN2-PIT2-SE1_sv	SA13-SE1(1.0-1.5m)_sv	SSF08-PIT2-S6_sv
ESN2-PIT3-SE2_sv	SA13-SW3(1.0-1.4m)_sv	SSF13-JI-SB1-1.6M_tx
GTA07-A1-SD1-SU1-R(20-60cm)_sv	SA14-AS_sv	SSF13-PIT3-SD2-SU1-R(0.2-1.0)_sv
GTA07-PIT2-SE1_sv	SA14-P3 (0.10-0.80m)_sv	SSF13-PY0-SD1-SU1-R(2.1-2.3)_sv
LA02-PIT1-SD1-SU1-R (0.4-0.8m)_sv	SA18-NE1-1_sv	SSF18-A1-SU1-R(0.0m)_sv
LA06-PIT1-SD1-R(1.4-1.9m)_sv	SA18-NW6-A2_sv	SSF18-A1-SU2-R(0.0m)_sv
LA09-PIT2-SD1-SU1-R(1.8-2.8m)_sv	SA18-SE3_sv	SSF18-PIT2-SD1-SU1-R(1.5-2.0m)_sv
LA15-PIT1-SD1-SU1-R(1.8-2.2m)_sv	SA51-NE2(1.25-1.77m)_sv	SSF45A-A1-SE2_sv
LA15-PIT1-SD2-SU1-R(1.8-2.2m)_sv	SAC-EST-S1_sv	SSF4-PIT1-SD1-SU1-R(1.3-1.6)_sv
LA15-PIT2-SD2-SU1-R(1.4-1.8m)_sv	SAC-PIT1-S1-1_sv	SSF4-PIT3-SD1-SU1-R(0.0 a 0.4)_sv
LAC-PIT1-SD1-SU1-R (1.6-2.4m)_sv	SAC-PIT1-S1-2_sv	SSF4-PIT5-SD1-SU1-R(1.2-1.6)_sv
LAN-ESTA-B_sv	SAC-PIT2-S1_sv	SSF4-PIT5-SD2-SU2-R(1.6-3.3)_sv
LAN-ESTA-B1_sv	SSF07-A2-SD1-SU1-R(1.3-1.9)_sv	SSF-SUR-C1-TW(0.60-0.80m)_sv
LAN-ESTA-B2_sv	SSF08-PIT1-S1_sv	SSF-SW-PNT-SClib_sv
LAN-ESTA-C_sv	SSF08-PIT1-S2_sv	YU2B-A1-SE1_sv
LAN-ESTB-ASUE1_sv		

59. Parentheses Placement – Further review of the sampling results listed in the Judgment show another naming convention used in the Unfiled Selva Viva Data Compilation but not in the Filed Lab Results. Both the Judgment and the Unfiled Selva Viva Data Compilation used a naming convention ending with numeric ranges and an “m” or “cm” enclosed within parentheses. In contrast, the Filed Lab Results in the court record used a naming convention that ended with numeric ranges in parentheses, followed by an “m” or “cm” outside of the parentheses. Figures 4 and 5 show data for the same inspection location from the Filed Lab Results and the Unfiled Selva Viva Data Compilation. Figure 6 shows a comparison of the affected names across these data sources and the Judgment.

Figure 4 - Sample Name as Set Forth in the Filed Lab Results

INFORMACIÓN CODIGO CLIENTE
METODO
AU01-PIT2-SD1-SU1-R(130-180) cm
AU01-PIT1-SD2-SU1-R(100-150) cm
AU01-A1-SD1-SU1-R(60-100) cm
AU01-A2-SD1-SU1-R(3.0-3.2) m
AU01-PIT1-SD1-SU1-R(150-210) cm
AU01-PIT1-SD2-SU2-R(220-240) cm

Figure 5 - Sample Name from the Unfiled Selva Viva Data Compilation

Muestra	Parametro	Metodo	Resultado	Unidad
AU01-PIT1-SD2-SU2-R(220-240cm)_sv	TPH	EPA 418.1	22842.4	mg/Kg

Figure 6 - Sampling Results from the Judgment with Misplaced Units

Judgment	Selva Viva Data Compilation	Lab Results
AU01-A1-SD1-SU1-R(60-100cm)_sv	AU01-A1-SD1-SU1-R(60-100cm)_sv	AU01-A1-SD1-SU1-R(60-100) cm
AU01-PIT1-SD2-SU2-R(220-240 cm)_sv	AU01-PIT1-SD2-SU2-R(220-240cm)_sv	AU01-PIT1-SD2-SU2-R(220-240) cm
CON6-PIT1-SD1-DU1-R(160-260cm)_sv	CON6-PIT1-SD1-SU1-R(160-260cm)_sv	CON6-PIT1-SD1-SU1-R(160-260) cm
GTA07-A1-SD1-SU1-R(20-60cm)_sv	GTA07-A1-SD1-SU1-R(20-60cm)_sv	GTA07-A1-SD1-SU1-R (20-60)cm
LA02-PIT1-SD1-SU1-R (0,4-0,8m)_sv	LA02-PIT1-SD1-SU1-R(0,4-0,8m)_sv	LA02-PIT1-SD1-SU1-R(0.4-0.8)m
LA06-PIT1-SD1-R(1.4-1.9m)_sv	LA06-PIT1-SD1-R(1.4-1.9m)_sv	LA06-PIT1SD1-R(1.4-1.9)m
LA06-PIT2-SD1-SU1-R(1.8-2.8m)_sv	LA06-PIT2-SD1-SU1-R(1.8-2.8m)_sv	LA06-PIT2-SD1-SU1-R(1.8-2.8)m
LAC-PIT1-SD1-SU1-R (1.6-2.4m)_sv	LAC-PIT1-SD1-SU1-R(1.6-2.4m)_sv	LAC-PIT1-SD1-SU1-R(1.6-2.4)m
SA13-SE1(1.0-1.5m)_sv	SA13-SE1(1.0-1.5m)_sv	SA13-SE1(1,0-1,5)m
SA13-SW3(1.0-1.4m)_sv	SA13-SW3(1.0-1.4m)_sv	SA13-SW3(1,0-1,4)m

60. Underscore Separators – Stroz Friedberg found another naming irregularity in the Judgment that shows its reliance on the Unfiled Selva Viva Data Compilation. When discussing benzene results on page 108, the Judgment referred to sample result “SA\_13\_JI\_AM1\_0.1M.” This name contained underscores between various parts of the title, and this naming format matches that used in the Unfiled Selva Viva Data Compilation. In contrast, the Filed Lab Results contained no such underscores. Instead, data for the SA13 sample clearly shows dashes used as separators within the title of the sample result. Figures 7 and 8 show the data for this sample in the Filed Lab Results and the Unfiled Selva Viva Data Compilation, respectively.

Figure 7 - Sample Name as Set Forth in Filed Lab Results

AREA DE MUESTREO	AREA DEL DERRAME	
PUNTO DE MUESTREO	SA-13-JI-AM1	
FECHA DE MUESTREO:	10/11/04	
PROFUNDIDAD DE MUESTREO:	0,10	
INTERVALO DE MUESTREO	0,0 - 0,10 m	
ANALITO	CAS No.	Criterios Internacionales
<b>BTEX (Método 8260B de la USEPA SW-846)</b>		
Benceno	71-43-2	17
Etilbenceno	100-41-4	60
Tolueno	108-88-3	97
Xilenos (totales)	1330-20-7	220
		8
		400
		650
		410

Figure 8 - Sample Name from the Unfiled Selva Viva Data Compilation

Muestra	Fuente de datos	Matriz	Parametro	Resultado	Unidad
SA_13_JI_AM1_0.1M	Texaco	Suelo	Benceno	17	mg/kg

61. Incorrectly Identified Expert – Finally, page 108 of the Judgment stated, “Chevron’s expert, John Connor, submitted results showing 9.9 and 2.3 mg/Kg (see samples JL-LAC-PIT1-SD2-SU1.R (1.30-1.90) M y JI-LAC-PIT1-SD1-SU1-R (1.6-2.4)M) during the judicial inspection in Lago Agrio Central...” (from translation). The Unfiled Selva Viva Data Compilation also shows John Connor



as the examiner responsible for that test data. However, the Judicial Inspection Report filed with the Court shows Professor Fernando Morales as Chevron's expert for that inspection, not John Connor.

#### 2.4.2. Data Irregularities

62. Apart from the naming conventions described above, Stroz Friedberg also found data irregularities in the Unfiled Selva Viva Data Compilation that were replicated within the Judgment. These irregularities show that certain statements made in the Judgment were based on erroneous information from the Unfiled Selva Viva Data Compilation, and not from data presented in the Filed Lab Reports.
63. Non-Detects – Based on data that Stroz Friedberg has reviewed in this case, I am aware that some environmental sampling procedures have a detection limit based on the equipment, the methods used in the sampling procedure, and/or the substance being tested. Samples under a detection limit often are referred to as a “non-detect” and, when a non-detect is recorded, it often is shown as a less-than sign (“<”) followed by a number that represents the minimum concentration of a substance that can be detected by the applied test or sampling method. In this case, the Filed Lab Results show that the concentrations of mercury for various inspection sites were recorded as non-detects, and expressed as “<7.” The Judgment, however, dropped the “<” and failed to acknowledge that the level of mercury fell below detectible levels for several sites. Instead, the Court stated in its decision that “alarming levels of mercury have been found” with “several samples reaching 7mg/Kg” of mercury.”
64. The evidence again revealed that the Court likely relied on and subsequently misinterpreted the Unfiled Selva Viva Data Compilation, rather than relying on the Filed Lab Results submitted with the Judicial Inspection Reports. The Unfiled Selva Viva Data Compilation placed the “<” in a separate column, as described in the email thread dated March 4, 2008 and found in the SN 049997-SN 050000.pdf. The Unfiled Selva Viva Data Compilation listed the “7” in its own column, and the Court appeared to have misinterpreted this as the actual concentration of mercury for various sites. In doing so, the Judgment eliminated any non-detect results and made mercury levels appear higher and more certain than the actual filed results. The Judgment appears to have made the same mistake with respect to concentrations of benzene and toluene at other sites. Figures 9 and 10 show an example of the Filed Lab Results versus the spreadsheets from the Unfiled Selva Viva Data Compilation. Figure 11 shows a comparison of the non-detects located in the Unfiled Selva Viva Data Compilation and the Filed Lab Results relative to how they appear in the Judgment.

Figure 9 - Presentation of Non-Detects in Filed Lab Results

PUNTO DE MUESTREO	Mercurio mg/Kg
LAN-ESTB-E1	<7
LAN-ESTB-D1	<7
LAN-ESTB-C1	<7
LAN-PT1-A	<7
LAN-ESTA-B2	<7
LAN-ESTA-C	<7
LAN-ESTA-B	<7

Figure 10 - Non-Detect in the Unfiled Selva Viva Data Compilation

Muestra	Parametro	Resultado	Unidad	Flag
LAN-ESTB-E1_sv	Mercurio	7	mg/Kg	<

Figure 11 - Comparison of Non-Detects across Data Sources

Value (mg/kg)				
Sample Name	Substance	Judgment	Selva Viva Data Compilation	Lab Results
LAN-ESTA-B	Mercury	7	7	< 7
LAN-ESTA-B1	Mercury	7	7	< 7
LAN-ESTA-B2	Mercury	7	7	< 7
LAN-ESTA-C	Mercury	7	7	< 7
LAN-ESTB-ASUE1	Mercury	7	7	< 7
LAN-ESTB-ASUE2	Mercury	7	7	< 7
LAN-ESTB-D1	Mercury	7	7	< 7
LAN-ESTB-D2	Mercury	7	7	< 7
LAN-ESTB-E1	Mercury	7	7	< 7
SA51-NE2(1.25-1.77m)	Benzene	1	1	< 1
SA51-NE2(1.25-1.77m)	Toluene	1	1	< 1
SAC-EST-S1	Mercury	7	7	< 7
SAC-PIT1-S1-1	Mercury	7	7	< 7
SAC-PIT1-S1-2	Mercury	7	7	< 7
SSF08-PIT1-S1	Mercury	7	7	< 7
SSF08-PIT1-S2	Mercury	7	7	< 7
SSF08-PIT1-S3	Mercury	7	7	< 7
SSF08-PIT2-S11	Mercury	7	7	< 7
SSF08-PIT2-S3	Mercury	7	7	< 7
SSF08-PIT2-S4-1	Mercury	7	7	< 7
SSF08-PIT2-S5	Mercury	7	7	< 7
SSF08-PIT2-S6	Mercury	7	7	< 7
SSF-SW-PNT-SCIIIb	Benzene	5	5	< 5
SSF-SW-PNT-SCIIIb	Toluene	5	5	< 5

65. Milligram (mg) vs. Microgram (µg) – While comparing data points, Stroz Friedberg observed instances where concentrations of substances at specific sites were listed in both the Judgment and the Unfiled Selva Viva Data Compilation as milligrams per kilogram (mg/Kg). However, the Filed Lab Results indicate that concentrations for those same substances and sites should have been listed as micrograms per kilogram (µg/Kg) – a thousand times less concentrated than the levels reported in the Judgment. Again, the Unfiled Selva Viva Data Compilation appears to be the source of the erroneous information cited. Figures 12 and 13 show examples of the Filed Lab

Results and corresponding data from the Unfiled Selva Viva Data Compilation. Figure 14 shows a comparison of the concentrations referenced in the Judgment and data for those sites reflected in the Filed Lab Results and the Unfiled Selva Viva Data Compilation, respectively.

**Figure 12 - Microgram (µg) from the Filed Lab Results**

INFORMACIÓN CODIGO CLIENTE	Código HAVOC	HAPs ug/kg
METODO	----	EPA8310/3545
AU01-PIT2-SD1-SU1-R(130-180) cm	S061111	----
AU01-PIT1-SD2-SU1-R(100-150) cm	S061112	----
AU01-A1-SD1-SU1-R(60-100) cm	S061113	466

**Figure 13 - Milligram (mg) from the Unfiled Selva Viva Data Compilation**

Muestra	Parametro	Metodo	Resultado	Unidad
AU01-A1-SD1-SU1-R(60-100cm)_sv	HAPs	EPA 8310/3545	466	mg/Kg

**Figure 14 - Sampling Results from all Data Sources with Misstated Units**

Sample Name	Substance	Reported Units		
		Sentencia	Selva Viva Data Compilation	Lab Results
AU01-A1-SD1-SU1-R(60-100cm)	HAPs	mg/kg	mg/kg	µg/kg
AU01-PIT1-SD2-SU2-R(220-240cm)	HAPs	mg/kg	mg/kg	µg/kg
CON6-A2-SE1	HAPs	mg/kg	mg/kg	µg/kg
CON6-PIT1-SD1-SU1-R(160-260cm)	HAPs	mg/kg	mg/kg	µg/kg

#### 2.4.3. Numerical Errors

66. Finally, Stroz Friedberg observed several numerical errors in the Judgment related to test results, percentages, and pit counts that further showed a reliance on documents not filed with the court – namely, the Unfiled Selva Viva Data Compilation and the Stratus Compilation.
67. Chevron TPH Results – On page 102 of the Judgment, the author referred to 1,984 TPH test results “... brought by the defendants’ experts....” Based on Stroz Friedberg’s review of The Connor Report and Anexo B to the Cabrera Report, this number appears to be too high. Those reports indicate that between 932 and 964 soil samples were taken by Chevron. An examination of the Unfiled Selva Viva Data Compilation confirmed that 1,984 was inaccurate and based on the Unfiled Selva Viva Data Compilation and not documents filed with the Court. In short, the Unfiled Selva Viva Data Compilation broke the TPH results down into two parts, and the Judgment appears to have made the mistake of double-counting these test results. Stroz Friedberg found this error when it sorted the Unfiled Selva Viva Data Compilation by the following columns and unique entries: “Fuente de datos” (Texaco); “Matriz” (Suelo); and “Parametro” (“Begins with” TPH). This sorting had the effect of limiting results to soil samples attributed to Chevron and analyzed for TPH. When Stroz Friedberg did this sorting, it found that the count of all Chevron’s TPH test results in the Unfiled Selva Viva Data Compilation equaled the number cited in the Judgment – 1,984. However, the TPH results in the Unfiled Selva Viva Data Compilation

contained two parts – one row for Diesel Range Organics (DRO) readings and one row for Gasoline Range Organics (GRO) readings (See Figure 15).

**Figure 15 - Defendant's Data as Set Forth in the Unfiled Selva Viva Data Compilation**

Muestra	Fuente de datos	Matriz	Parametro	Resultado	Unidad
JI-CO-06-SB3-0,3M	Texaco	Suelo	TPH-DRO	3	mg/Kg
JI-CO-06-SB3-0,3M	Texaco	Suelo	TPH-GRO	0.26	mg/Kg

68. The Judgment stated that DRO and GRO readings “have to be added up to in order to have a relatively comparable equivalence with TPHs.” However, to reach 1,984 TPH results for Chevron, it is necessary to count the DRO and GRO readings for the same sample as separate TPH results. The resulting 1,984 number was inconsistent with the court record because, when Stroz Friedberg counted just the TPH results from the Filed Lab Results in the record, it arrived at a number (935) that was approximately half that of the number cited in the Judgment and generally consistent with the counts given in The Connor Report (932) and Anexo B to the Cabrera Report (964). Based on this analysis, Stroz Friedberg concludes that the most likely reason the Judgment effectively double counted most of Chevron’s TPH results was its author’s reliance on the Unfiled Selva Viva Data Compilation, where the DRO and GRO readings for Chevron appeared in separate rows.
69. Lago Agrio Plaintiff TPH Results – In addition to the erroneous reporting of 1,984 Chevron TPH results described above, the Judgment inaccurately counted the Lago Agrio plaintiffs’ TPH results, again based on its apparent reliance on the Unfiled Selva Viva Data Compilation. When discussing TPH levels, the Judgment stated, in part, “[t]he plaintiffs’ expert have submitted 420 results” for TPH soil sample. Stroz Friedberg again found that this number was overstated. As a preliminary matter, The Connor Report and Anexo B to the Cabrera Report indicate that between 308 and 339 soil samples were taken by the plaintiffs. To perform the analysis, Stroz Friedberg reviewed entries associated with the plaintiffs’ data in the Unfiled Selva Viva Data Compilation. Stroz Friedberg sorted the data first on the column and unique item labeled “Fuente de datos” (Demandantes), then on “Matriz” (Suelo), and finally on “Parametro” (“Begins with” TPH). This sorting had the effect of limiting results to soil samples attributed to the Lago Agrio plaintiffs and analyzed for TPH. This yielded 420 results, thereby showing a match between the Unfiled Selva Viva Data Compilation and the Judgment. Once again, there were many instances where DRO and GRO tests were counted as individual results, rather than being combined to represent one TPH value. Further distorting plaintiffs’ numbers in the Judgment, some test sites in the Unfiled Selva Viva Data Compilation listed both the DRO and GRO individual tests, as well as a separate TPH value that combined these two tests. Figure 16 shows an example of this data extracted from the Unfiled Selva Viva Data Compilation. Based on this analysis, Stroz Friedberg concludes that reliance on the Unfiled Selva Viva Data Compilation resulted in a substantial over counting of the plaintiffs’ test results within the Judgment.

**Figure 16 - Plaintiffs' Data as Set Forth in the Unfiled Selva Viva Data Compilation**

Muestra	Fuente de datos	Matriz	Parametro	Resultado	Unidad
SA51-N2(1.70-2.25m)_sv	Demandantes	Suelo	TPH	1445	mg/Kg
SA51-N2(1.70-2.25m)_sv	Demandantes	Suelo	TPH-DRO	685	mg/Kg
SA51-N2(1.70-2.25m)_sv	Demandantes	Suelo	TPH-GRO	760	mg/Kg

70. Computed Percentages – The erroneous TPH counts in the Judgment had the additional effect of distorting the sample percentages listed in the decision. Stroz Friedberg was able to use the “DA00000040.xls” spreadsheet containing the Unfiled Selva Viva Data Compilation to reproduce the percentages listed in the Judgment. Stroz Friedberg did so by sorting the Unfiled Selva Viva Data Compilation spreadsheet to represent the three groups of “Texaco,” “Demandantes,” and “Corte,” removing any reference to “Cabrera” from the Perito column, and then grouping by the three categories discussed in the Judgment (<1000, 1000-5000, >5000). Stroz Friedberg then divided the sums in each of these columns by the inaccurate TPH counts listed in the Judgment. The percentages listed in the Judgment, along with the percentages computed using the Unfiled Selva Viva Data Compilation, are shown in Figure 17. The percentages are almost identical, and any slight differences between the Judgment and the Unfiled Selva Viva Data Compilation appear to be due to variations in decimal rounding.

**Figure 17 - Sample Statistics in Judgment vs. Unfiled Selva Viva Data Compilation**

Description	% in Sentencia	% in Compilation
TPH > 5,000	10.0%	10.2%
TPH 1,000 - 5,000	10.3%	10.1%
TPH < 1,000	79.7%	79.7%
-----		
Texaco % of Total	80.4%	80.5%
Texaco <1,000	88.2%	88.2%
-----		
Plaintiff % Total	17.0%	17.0%
Plaintiff <1,000	38.0%	38.1%
Plaintiff >1,000	62.0%	61.9%
-----		
Texaco <1,000 % of All Samples	70.9%	71.0%
Texaco <1,000 % of Results <1,000	89.0%	89.1%

71. Pit Counts – On page 125 of the Judgment, the author referred to 880 pits. An examination revealed that this number likely was based on the Stratus Compilation or Anexo H-1. Stroz Friedberg observed that the Stratus Compilation contained almost the exact same data in the exact same format as the information in the Anexo H-1 document filed earlier with the Cabrera Report. Although the Anexo H-1 document listed 916 pits and the Stratus Compilation had

records or rows for 917 pits,<sup>23</sup> Stroz Friedberg observed that the Judgment did not include “no impact” figures or similar entries or those related to “Petroecuador” and “Petroduccion.” Therefore, Stroz Friedberg sorted the “COMENTARIO DEL RAP” column and removed all references to these entries as shown in Figure 18. The result was 880 records – the same number that appeared in the Judgment. Therefore, the count of 880 probably was arrived at by simply sorting on the RAP Comment column within the Stratus Compilation, which itself contains almost the exact same data in the exact same format as Anexo H-1.

**Figure 18 - Data Counts from Stratus Compilation**

<b>Comentario Del Rap</b>	<b>Full Count</b>	<b>Revised Count</b>
Cerrada previamente	21	21
Construida despues del 6/30/90 por Petroecuador	3	
Construida despues del 6/30/98 por Petroecuador	2	
El propietario no permitio el paso	3	3
Impact below action levels	1	1
Modificada despues del 6/30/90 por Petroecuador	6	
No detectó impactos	18	
No determinada como piscina	1	
Petroecuador construyo sobre la piscina	1	
Petroproduccion usó la piscina	1	
Petroproduccion solYa descargar basura	1	
Piscina cerrada	1	1
Pit was graded and revegetated	1	1
Plantacion de maiz	1	1
Remediación completa	156	156
Responsabilidad de Petroecuador	1	
Revegetada	1	1
Soil TPH below action levels	1	1
Usada como piscina para peces por la comunidad	2	2
Usada por la comunidad local	15	15
Usada por Petroecuador	1	
Used as a municipal landfill	2	2
Utilizada por Petroproducción cmo piscina de quema	1	
(blank)*	676	675
<b>Grand Total</b>	<b>917</b>	<b>880</b>

\* Charapa 4 pit is not part of the former Concession Area

## 2.5. Donziger Media

72. On January 21, 2011, this Court ordered Steven Donziger to turn over to Chevron various forms of electronic media (the “January 21 Order.”). The findings in this section are based on consultation with my colleagues and a review of filed declarations and the data associated with those filings.

<sup>23</sup> This single difference in pits between Anexo H-1 and the Stratus Compilation appears to be an absence of the Charapa 4 pit record from the Anexo H-1 document.

73. Based on Stroz Friedberg's analysis of the data produced by multiple sources, I conclude to a reasonable degree of scientific certainty the following:

- a. Attached is a true and accurate copy of 699 unique SMS text messages extracted from a BlackBerry Smartphone or BlackBerry backups belonging to Mr. Donziger;
- b. Analysis of two emails, both sent April 1, 2008 with the same attachment, produced by Mr. Donziger, show that the attachment contained text identical to a report filed by Richard Stalin Cabrera Vega on April 1, 2008 in the Lago Agrio litigation. Further evidence shows the person most likely responsible for last saving the attachment on March 31, 2008 was Juan Pablo Saenz.

#### 2.5.1. Donziger Media Received

74. On January 24, 2011, Adam Lew, a representative of the law firm Friedman Kaplan Seiler & Adelman LLP ("Friedman Kaplan"), which formerly represented Steven Donziger, turned over to my colleague, Marc-Anthony Mattioli, three forensic images of hard drives that Friedman Kaplan represented had been collected from Mr. Donziger. These images were named (a) "v63819 1v-aia8a laptop;" (b) "desktop v63819;" and (c) "MacBookAir\_V63819." According to Mr. Donziger's counsel, the devices were imaged by vDiscovery, a digital forensics consulting firm retained by Mr. Donziger, on January 19 and 20, 2011 (See Exhibits 42 and 43).

75. On Tuesday, January 25, 2011, Mr. Lew turned over to Mr. Mattioli three additional images of hard drives that Friedman Kaplan represented had been collected from Mr. Donziger. These images were named (a) "Dozinger\_Steven\_DCI [sic];" (b) "Dozinger\_Steven\_LCI [sic];" and (c) "Woods\_Andrew\_LCI." According to Mr. Donziger's counsel, the devices were imaged by UHY Consulting, a Houston-based digital forensics consulting firm retained by Mr. Donziger, on September 29 and 30, 2010 (See Exhibits 42 and 43). Stroz Friedberg understands through counsel that Andrew Woods' name appears on some media produced in this litigation because he was an associate in Mr. Donziger's legal practice.

76. Two days later, on January 27, 2011, Mr. Lew turned over to Mr. Mattioli two additional images of external hard drives that Friedman Kaplan represented had been collected from Mr. Donziger. These images were named (a) "Woods\_Andrew\_EDI;" and (b) "Donzinger\_Steven\_EDI." According to Mr. Donziger's counsel, the devices were imaged by UHY Consulting on September 29, and 30, 2010 (See Exhibits 42 and 43). Upon inspection, Stroz Friedberg discovered that the images provided on January 27 were corrupt; that is, unreliable for forensic analysis. Counsel requested that Friedman Kaplan provide a new copy of each of those images (See Exhibit 44). On February 9, 2011, Stroz Friedberg received new copies of the "Woods\_Andrew\_EDI" and "Donzinger\_Steven\_EDI" images and determined that they were valid forensic images.

77. On Friday, January 28, 2011, my colleague Lance Nudd accompanied representatives of Counsel, Friedman Kaplan, and vDiscovery to Mr. Donziger's home and the offices of Friedman Kaplan, where the vDiscovery representatives re-imaged five of the devices that were previously imaged by vDiscovery on January 19 and 20, 2011 and by UHY Consulting on September 29 and 30, 2010, respectively (See Exhibit 45). The vDiscovery representatives and Stroz Friedberg also created a forensic preservation of the data on a BlackBerry used by Mr. Donziger that had not been preserved previously (See Exhibit 45).
78. Following the collection of Mr. Donziger's media, Stroz Friedberg extracted documents from the hard drive which were provided to counsel for Chevron. It is Stroz Friedberg's understanding that those documents were then Bates labeled with the prefixes DONZ-HDD and WOODS-HDD.

#### 2.5.2. Donziger SMS Text Messages

79. During its forensic examination of the foregoing media provided by Mr. Donziger or his former counsel, Stroz Friedberg determined that the following devices contained data related to Mr. Donziger's BlackBerry usage:
- a. The BlackBerry 9700 Smartphone bearing International Mobile Equipment Identity (IMEI) number 357360030084534, identified as having been used by Mr. Donziger and preserved by vDiscovery and Stroz Friedberg on January 28, 2011 (the "Donziger BlackBerry"); and
  - b. The forensic image that was made by vDiscovery on January 19, 2011, described as a forensic image of the hard drive contained within the office desktop computer used by Mr. Donziger (the "Donziger Office Desktop").
80. Specifically, Stroz Friedberg determined that: (a) the Donziger BlackBerry contained copies of SMS text messages sent by or received from the Donziger BlackBerry; and (b) the Donziger Office Desktop had been used to back up the contents of the Donziger BlackBerry. When a BlackBerry device is backed up, data is copied from the BlackBerry to a BlackBerry backup file. The BlackBerry backup file would reflect the contents on the BlackBerry as of the time of the backup.
81. Stroz Friedberg observed two BlackBerry backup files that contained SMS text messages on the Donziger Office Desktop under the "stephen" user account profile. One backup was dated September 4, 2008 and one was dated January 2, 2009.
82. Using a forensic tool capable of analyzing BlackBerry data, Stroz Friedberg examined the data from the Donziger BlackBerry and the data contained in the two BlackBerry backups found on the Donziger Office Desktop. Stroz Friedberg exported the information about the SMS text messages



to Excel spreadsheet listings. Since the data is comprised of multiple snapshots at different points in time, Stroz Friedberg performed a process to deduplicate the records so that the listings would only contain one copy of a record, even if the record was found in more than one data source.

83. Attached as Exhibit 46 is a summary of information about the SMS text messages. It lists 699 SMS text messages identified by Stroz Friedberg and provides information about: (i) the content of the text messages; (ii) when the messages were sent; (iii) whether they were incoming messages received by the Donziger BlackBerry or outgoing messages sent from the Donziger BlackBerry; and (iv) the phone numbers and the contact information maintained in the BlackBerry about the individuals with whom the messages were exchanged.

### 2.5.3. Donziger Emails

84. Stroz Friedberg also reviewed the Donziger media described in Section 2.5.1 and compared data from this media to two Adobe Portable Document Format ("PDF") copies of email separately provided by Mr. Donziger in the course of this litigation. Specifically, Stroz Friedberg reviewed the following PDFs separately provided by Mr. Donziger: (a) a document bearing Bates stamp DONZ00045505, which was an email dated April 1, 2008 at 9:16 AM from "gringograndote@gmail.com" to "sdonziger@gmail.com" (the "Gringograndote Email")<sup>24</sup> with a document titled "INFORME SUMARIO VERSION FINAL(Steve).doc" attached; and (b) a document bearing Bates stamp DONZ00064048, which was an email dated April 1, 2008 at 8:18 AM from "sdonziger@gmail.com" to Doug Beltman and Ann Maest (the "Forwarding Email") with a document titled "INFORME SUMARIO VERSION FINAL(Steve).doc" attached.
85. On its face, the Forwarding Email appears to be a forwarded copy of the Gringograndote Email. However, there was a discrepancy between the dates and times of the Gringograndote Email and the copy of that email in the Forwarding Email. Specifically, the Gringograndote Email shows that it was sent on April 1, 2008 at 9:16 AM, but the forwarded copy of the Gringograndote Email contained within the Forwarding Email bears a sent time of 12:15 PM that same day.
86. Stroz Friedberg was asked to investigate the differences in the listed sent times between the Gringograndote Email and the version of that email forwarded as part of the Forwarding Email. Stroz Friedberg also was asked to conduct a metadata analysis of the file attached to both emails, named "INFORME SUMARIO VERSION FINAL(Steve).doc," to ascertain the editing

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<sup>24</sup> Counsel also provided the subscriber information for the "gringograndote@gmail.com" email account that it obtained from Google, which owns and operates the Gmail email service. According to the Google subscriber information, the "gringograndote@gmail.com" account was created on March 31, 2008 at 12:47 AM Eastern Daylight Time, approximately one day before the Gringograndote Email was sent and, as will be discussed in greater detail below, the same day that the "INFORME SUMARIO VERSION FINAL(Steve).doc" attachment was last modified.

history of the document. Finally, Stroz Friedberg was asked to, to the extent possible, determine the last computer used to work with the attached document.

#### Behavior of Microsoft Outlook Sent On Metadata

87. Messages in Microsoft Outlook format store the date and time at which they were sent in Coordinated Universal Time ("UTC"). When a message is viewed using Microsoft Outlook, the date and time the message was sent is converted from UTC to the local time zone the computer is set to, and then displayed in that time zone. For example, an email sent by Outlook on March 4, 2011 at 9:00 PM Eastern Standard Time ("EST") stores its time as March 5, 2011 1:00 AM UTC. A computer set to display the time in Eastern Standard Time would display this email as having been sent on March 4, 2011 at 9:00 PM, while a computer set to display the time in Pacific Standard Time ("PST") would display this email as having been sent on March 4, 2011 at 6:00 PM.
88. When a user forwards or replies to an email, the email being forwarded or replied to is typically included, in full, in the body text of the forward or the response. The body text of the forwarded message or the response generally would include the date and time the original email was sent. However, the date and time displayed in the body text would correspond to the time zone of the computer of the person who responded or forwarded the message, not the time zone of the current recipient. For example, if an email was sent from the Eastern time zone at 9:00 PM EST, the email would appear as having been sent at 6:00 PM PST in a response or forwarded message from a user whose computer clock was set to PST.
89. Thus, the different time-stamps on the Gringograndote Email and the Forwarding email appear to be the result of a time zone difference between the computers used to that send or forward them. For confirmation, Stroz Friedberg analyzed native copies of these emails as found within the media provided by Donziger.

#### Identification of Native Copies of the Correspondence on the Donziger Media

90. Stroz Friedberg built databases containing the metadata of the parent<sup>25</sup> email messages found across the Donziger electronic media. Stroz Friedberg compared the metadata of the Gringograndote Email and the Forwarding Email to the metadata present in the database to identify native copies of these emails in the Donziger electronic media. These native email contained the full metadata for each message and showed that the Gringograndote Email was sent from "gringograndote@gmail.com" to "sdonziger@gmail.com" on April 1, 2008 at 12:15:54 PM Eastern Daylight Time ("EDT"). The metadata on the native copy of the Forwarding Email

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<sup>25</sup> In reference to this case, a "parent" email would be the original email received prior to it being forwarded to other recipients.

showed that was sent from Steven Donziger to Doug Beltman and Ann Maest on April 1, 2008 at 12:17:42 PM EDT. Stroz Friedberg also identified copies of additional related correspondence between Ann Maest and Steven Donziger. This correspondence included an email from Ann Maest to Steven Donziger at 12:40:03 PM EDT in response to a message sent by Steven Donziger at 12:34:07 PM EDT. In Ms. Maest's response, the date and time of Steven Donziger's earlier email appeared as April 1, 2008 10:34:07 AM, indicating that her computer was set to operate in the Mountain Daylight time zone.

91. Based on this forensic evidence, Stroz Friedberg found that the apparent discrepancy between the sent dates and times of the Gringograndote Email (April 1, 2008 at 9:16 AM) and the forwarded copy of the Gringograndote Email contained within the Forwarding Email (April 1, 2008 at 12:15 PM) is not present when one examines the native copies of the email correspondence on the Donziger electronic media.

#### Matching Different Copies of "INFORME SUMARIO VERSION FINAL(Steve).doc"

92. Both the Gringograndote Email and the Forwarding Email had documents titled "INFORME SUMARIO VERSION FINAL(Steve).doc" attached to them. In addition to bearing the same name, Stroz Friedberg conducted a hash value comparison of the attachments and determined that the copies of the "INFORME SUMARIO VERSION FINAL(Steve).doc" attached to the two emails were identical.
93. Stroz Friedberg also conducted a comparison between the complete textual content of the "INFORME SUMARIO VERSION FINAL(Steve).doc" document and the complete textual content of the 2008 Cabrera Report. Using the Adobe Acrobat X software, Stroz Friedberg ran a Spanish-language Optical Character Recognition ("OCR") tool across the text in a scanned copy of the 2008 Cabrera Report. Stroz Friedberg then used the "Compare Documents" feature of Adobe Acrobat to compare the text of the "INFORME SUMARIO VERSION FINAL(Steve).doc" document to the filed version of the 2008 Cabrera Report. Stroz Friedberg found that the text of the "INFORME SUMARIO VERSION FINAL(Steve).doc" document (attached to the Gringograndote Email and the Forwarding Email) was identical to text of the 2008 Cabrera Report.

#### The Last Source of Edits on "INFORME SUMARIO VERSION FINAL(Steve).doc"

94. Finally, Stroz Friedberg examined the metadata of the "INFORME SUMARIO VERSION FINAL(Steve).doc" document in an attempt to determine who last edited the document.
95. A Microsoft Word file contains both the content created by a user and metadata recorded by Microsoft Word when a file is created, viewed, or modified. Metadata recorded by Microsoft Word

can include, but is not limited to, when the original document was created, last printed, and last saved, the number of revisions the document has undergone, the document's author, and who last saved the document.

96. Reviewing the metadata within the "INFORME SUMARIO VERSION FINAL(Steve).doc" Microsoft Word document showed that it was created on March 30, 2008 at 9:17:00 AM EDT, was last printed on March 31, 2008 at 10:26 AM EDT, and was last saved on March 31, 2008 at 11:09:00 AM EDT. In addition, the metadata of the document showed that it was created by a user account with the name "Computer" and last saved by a user account with the name "Aries Productions." The metadata of the document shows that the document was the 36th revision, and versions of the document had been edited for a total of six hours and 46 minutes.
97. Stroz Friedberg performed an analysis to identify the user of the "Aries Productions" account through a search of Donziger's electronic media and other productions made in this litigation. Stroz Friedberg first searched Stratus Consulting's October 5, 2010 production for the phrase "Aries Productions." In that search, Stroz Friedberg identified an email sent on March 4, 2008 at 11:31 AM EST from Juan Pablo Saenz to Doug Beltman. Attached to this email was a Microsoft Excel spreadsheet named "Tabla limites maximos.xls," the metadata for which shows that it was last saved by "Aries Productions." Stroz Friedberg also identified an email sent on June 2, 2009 at 4:38:29 PM from Juan Pablo Saenz to Andrew Woods. Attached to this email was a PDF document named "Invoice\_JPS\_Apr2009.pdf," which the metadata lists the author as "Aries Productions." Based upon the content of the document, it appeared to be an invoice for legal fees for Juan Pablo Saenz addressed to Steven Donziger, which was signed by Mr. Saenz.
98. Stroz Friedberg then searched the Donziger media for email containing both the phrase "Saenz" and "Aries Productions." Doing so led to the identification of 49 documents where "Aries Productions" was listed as the last user to save the documents. Of these 49 documents, 42 had been attached to emails sent from the email address "juanpasaenz@hotmail.com." Further analysis of these 49 documents showed that 20 of them listed "Aries Productions" in both the "Author" and "Last Saved By" metadata fields. Seventeen of these documents were sent from the "juanpasaenz@hotmail.com" email address.
99. Based upon the number of instances whereby Juan Pablo Saenz appeared as the sender of emails with attachments created and/or last saved by the "Aries Productions" user, Stroz Friedberg determined that Mr. Saenz was most likely the person who worked with and saved the final version of the "INFORME SUMARIO VERSION FINAL(Steve).doc" document approximately one day before it was filed as the 2008 Cabrera Report.

## 2.6. Garr Hard Drive

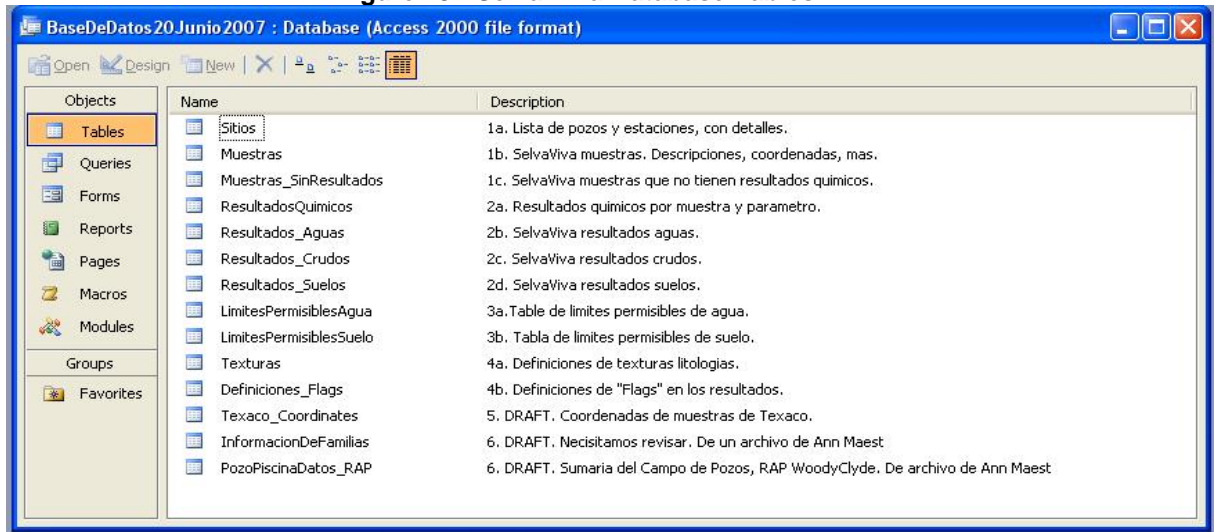
100. Apart from the Donziger media and the data described in Section 2.5, Stroz Friedberg was asked to preserve the electronic data on a computer hard drive that it understands was used by Laura Garr. From that data and hard drive, Stroz Friedberg extracted and prepared documents in a format that could be viewed using Counsel's litigation review software. This set of documents is identified by control numbers beginning with GARR-HDD.
101. Specifically, Stroz Friedberg received a 500 gigabyte Western Digital external hard drive bearing serial number WX61C50J0899T from Counsel on June 9, 2011 (the "Garr Hard Drive"). The drive was labeled "TDS 100806-Z01-001 Laura Garr's Docs Mac accessible only." Stroz Friedberg made a forensic preservation of the files contained on the hard drive using standard forensic tools and methodologies.
102. Stroz Friedberg then worked with counsel to identify and process 652 unique or non-duplicative documents from the hard drive into a format known as a load file production. A load file production can be loaded in a litigation review software program, such as Concordance to facilitate the attorneys' review of the documents. As part of the process to prepare the load file production, Stroz Friedberg assigned identifiers or control numbers to each page of the document set. The documents in the set from the Garr Hard Drive bore control numbers GARR-HDD-0000001 through GARR-HDD-0007333.

## 2.7. Cabrera's February 2009 Filing

103. Separate from the 2011 Judgment in Section 2.4, Stroz Friedberg also evaluated specific files related to the Cabrera February 2009 Filing, dated February 5, 2009 and filed with the Lago Agrio Court. Specifically, Stroz Friedberg was asked to determine if it could trace certain data contained within the report to their likely origin. In doing so, Stroz Friedberg compared these court documents with data compilations, spreadsheets, and other files provided by counsel that Stroz Friedberg understands were obtained through discovery in the United States but were not filed in court in the Lago Agrio litigation in Ecuador.
104. Based on Stroz Friedberg's analysis of the data produced by multiple sources, I conclude, to a reasonable degree of scientific certainty, the following:
- a. Analysis of the Cabrera February 2009 Filing indicates it was derived from material not filed with the court in the Lago Agrio litigation in Ecuador.
105. For its analysis related to the Cabrera February 2009 Filing, Stroz Friedberg was provided with the following documents, select excerpts of which are included as Exhibit 47:

- a. Adobe Acrobat file “Escrito R Cabrera 02-05-2009 - 09h10 - Surveys Documents.pdf,” which is the Cabrera February 2009 Filing.
  - b. Adobe Acrobat file “2009.02.05 Cabrera's Response dated February 5 2009 at 9 10 am R 154171-154191 CERT Geotext.pdf,” which Stroz Friedberg understands to be an English translation of the Cabrera February 2009 Filing.
  - c. Adobe Acrobat file “2008.04.01 Anexo B ENG&SP.pdf,” which is titled “ANNEX B: EVALUATION OF THE USE OF DATA” and purportedly authored by Richard Stalin Cabrera Vega (“Anexo B to the Cabrera Report”).
  - d. Adobe Acrobat file “Anexo H - Historia e inventario de las piscinas de desecho abiertas por la operacion de TEXPET en la amazonia Ecuatoriana.pdf,” which contains an exhibit called “Anexo H-1, Inventario de Piscinas” filed with the Cabrera Report.
  - e. Microsoft Access 2000 Database “BaseDeDatos20Junio2007.mdb,” internally identified as “Base de datos de SelvaViva del caso Aguinda v. ChevronTexaco en 20 Junio 2007 en forma INCOMPLETA” (hereafter the “Selva Viva Database”). Through counsel, Stroz Friedberg understands that the Selva Viva Database was produced by Laura Belanger, a consultant retained by the plaintiffs in the Lago Agrio matter.
106. It is Stroz Friedberg’s understanding that the Cabrera February 2009 Filing is a document filed by Richard Stalin Cabrera Vega purporting to respond to questions or criticisms from Chevron about his report filed in the Lago Agrio Court. As part of the analysis of the origins of the data contained within the Cabrera February 2009 Filing, Stroz Friedberg reviewed the Selva Viva Database originally produced by the Lago Agrio plaintiffs’ consultant Laura Belanger in response to a subpoena authorized by the United States District Court for the District of Colorado. Stroz Friedberg’s analysis revealed that the “Objects” called Reports, Pages, Macros, and Modules were all blank, but that there were fourteen Tables and fourteen Queries as shown below in Figures 19 and 20. There was only one Form and it consisted of a “Menu” that described the contents of the Tables and Queries. See Figure 21.

**Figure 19 - Selva Viva Database Tables**



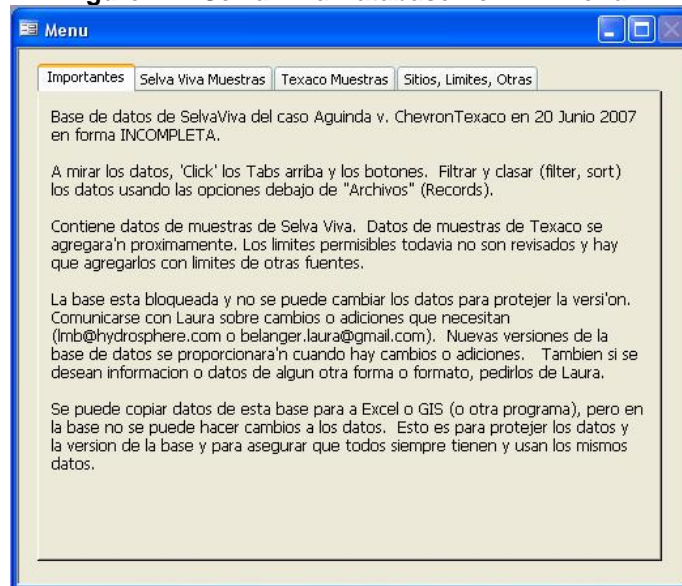
Name	Description
Sitios	1a. Lista de pozos y estaciones, con detalles.
Muestras	1b. SelvaViva muestras. Descripciones, coordenadas, mas.
Muestras_SinResultados	1c. SelvaViva muestras que no tienen resultados quimicos.
ResultadosQuimicos	2a. Resultados quimicos por muestra y parametro.
Resultados_Aguas	2b. SelvaViva resultados aguas.
Resultados_Crudos	2c. SelvaViva resultados crudos.
Resultados_Suelos	2d. SelvaViva resultados suelos.
LimitesPermisiblesAgua	3a. Table de limites permisibles de agua.
LimitesPermisiblesSuelo	3b. Tabla de limites permisibles de suelo.
Texturas	4a. Definiciones de texturas litologias.
Definiciones_Flags	4b. Definiciones de "Flags" en los resultados.
Texaco_Coordinates	5. DRAFT. Coordenadas de muestras de Texaco.
InformacionDeFamilias	6. DRAFT. Necesitamos revisar. De un archivo de Ann Maest
PozoPiscinaDatos_RAP	6. DRAFT. Sumaria del Campo de Pozos, RAP WoodyClyde. De archivo de Ann Maest

**Figure 20 - Selva Viva Database Queries**



Name	Description
SelvaViva_Resultados_Agua	1a. SelvaViva - Resultados aguas
SelvaViva_Resultados_Crudo	1b. SelvaViva - Resultados crudos
SelvaViva_Resultados_Suelo	1c. SelvaViva - Resultados suelos
SelvaViva_Resultados_Todos	2a. SelvaViva - Resultados todos (sin unidades)
ParametroUnidades_Resumen	2b. SelvaViva - Unidades por resultados todos
SelvaViva_Resumen_Muestras	3a. SelvaViva - Resumen de muestras tomadas
SelvaViva_Resumen_Analises	3b. SelvaViva - Resumen de los análisis realizado
SelvaViva_Resumen_TipoDeAnalises	3c. SelvaViva - Resumen de los tipos de análisis realizado
SelvaViva_ExcesosDeAgua	4a. SelvaViva - Resultados en excesos de limites de agua
SelvaViva_ExcesosDeAguaEcuadorian	4b. SelvaViva - Resultados en excesos de limites de agua Ecuadoriano
SelvaViva_ExcesosDeSuelo	4c. SelvaViva - Resultados en excesos de limites de suelo
TPHSum_Borrador	99. Calculos de TPH total. Analises de TPH-total o (TPH-DRO + TPH-GRO)
Resultados_Crosstab	99. Calculos para otro consulta
ResultadosFlags_Crosstab	99. Calculos para otro consulta

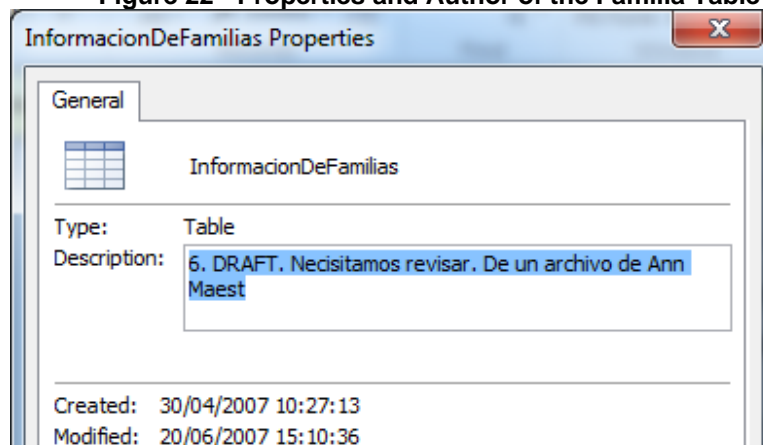
**Figure 21 - Selva Viva Database Form - "Menu"**



### 2.7.1. Matching Data Characteristics

107. Stroz Friedberg was asked to determine whether there were any data in the Selva Viva Database that were the source of provided PDFs or data from the Cabrera February 2009 Filing. Stroz Friedberg performed a number of comparisons and found that the Selva Viva Database Table labeled "InformacionDeFamilia\_20100421" (hereafter the "Familia Table") was virtually identical to the spreadsheet found in Anexo 4 to the "Escrito R Cabrera 02-05-2009 - 09h10 - Surveys Documents.pdf" (hereafter the "Anexo 4 Spreadsheet"). The Familia Table properties indicated that it was a file of Ann Maest, as seen in Figure 22.

**Figure 22 - Properties and Author of the Familia Table**



108. After observing that some columns were simply in a different order, the near-identical nature of the two files was immediately apparent based on a visual comparison, as shown in



Table 6 and Table 7. The similarity of the two files was even more striking when Stroz Friedberg examined the details of the file layouts, column headings, and cell contents.

**Table 6 - Excerpt from InformacionDeFamilia Table**

NOMBRE	APELLIDO	XCOORD	YCOORD	CAMPO	POZOQUEAFE	OTROSPZOS	N-MERODEAD	N-MERODENI	N-MEROANCI
Carmen	Mera	289841.000000	9921772.000000	Auca	12.000000	0	2.000000	1.000000	0.000000
Yolanda	Fajardo	289874.000000	9922356.000000	Auca	12.000000	1 auca 30	2.000000	1.000000	0.000000
Leonel	Corea	289748.000000	9922278.000000	Auca	12.000000	0	6.000000	1.000000	0.000000
Jose	Mashumar	290055.000000	9922036.000000	Auca	12.000000	1 auca 35	2.000000	3.000000	0.000000
Manuel	Quezada	289876.000000	9921278.000000	Auca	13.000000	0	4.000000	2.000000	0.000000
Carlos	Quezada	289954.000000	9920938.000000	Auca	13.000000	0	2.000000	4.000000	0.000000
Arturo	Coles	289866.000000	9920662.000000	Auca	13.000000	0	7.000000	1.000000	0.000000
Pablo	Quezada	289843.000000	9919908.000000	Auca	14.000000	0	3.000000	1.000000	0.000000
Angel	Grefa	289916.000000	9919892.000000	Auca	14.000000	0	3.000000	1.000000	0.000000
Marlene	Encarnacion	290094.000000	9919222.000000	Auca	14.000000	0	2.000000	2.000000	0.000000
Francisco	Encarnacion	289922.000000	9919270.000000	Auca	14.000000	0	2.000000	1.000000	0.000000
Cleofe	Herrera	289868.000000	9919272.000000	Auca	14.000000	0	6.000000	4.000000	0.000000

**Table 7 - Excerpt from Anexo 4 Spreadsheet - page 13**

CAMPO	POZO QUE LE AFECTA	OTROS POZOS	APELLIDO	NOMBRE	# ADULTOS EN CASA	# NIROS	# ANCIANOS
Auca	12		Mera	Carmen	2	1	0
Auca	12	1 auca 30	Fajardo	Yolanda	2	1	0
Auca	12		Corea	Leonel	6	1	0
Auca	12	1 auca 35	Mashumar	Jose	2	3	0
Auca	13		Quezada	Manuel	4	2	0
Auca	13		Quezada	Carlos	2	4	0
Auca	13		Coles	Arturo	7	1	0
Auca	14		Quezada	Pablo	3	1	0
Auca	14		Grefa	Angel	3	1	0
Auca	14		Encarnacion	Marlene	2	2	0
Auca	14		Encarnacion	Francisco	2	1	0
Auca	14		Herrera	Cleofe	6	4	0

109. Matching File Layout – The Familia Table had 1017 rows and 42 columns, for a total of 42,714 cells. At first glance, the Anexo 4 Spreadsheet appeared substantially smaller, but this was only because the printout contained a right-hand page break and “wrapped” the data at two different points over 57 pages. Accounting for this page break and placing the Anexo 4 Spreadsheet data side-by-side reveals that the spreadsheet contains one extra row at the end, either blank or filled with zeroes, and six less columns than the Familia Table. Therefore, in terms of actual content, the Anexo 4 Spreadsheet consists of the same 1017 rows and 36 of the 42 columns described above, for a total of 36,612 cells. This significant overlap indicates to me that the Anexo 4 Spreadsheet was a subset of the Familia Table and more likely was copied from the Selva Viva Database.

110. Matching Column Headings – The column headings of the Familia Table and the Anexo 4 Spreadsheet also indicate that they contain almost identical data. As a side-by-side comparison in Table 10 shows, the files contain similar column headings, describing the same content. Where differences appear in the column headings, the Anexo 4 Spreadsheet provides a more complete or reader-friendly description of the same content (e.g. “Pozo Que Le Afecta” instead of

“POZOQUEAFE”) or the columns are not present in the Anexo 4 Spreadsheet. For example, the “ID” field is not present in the Anexo 4 Spreadsheet. The “ID” field is a common database column used to “count” the number of records in a database.

**Table 8 - Familia Table v. Anexo 4 Spreadsheet - Column Headings**

#	Familia Table	Anexo 4 Spreadsheet
1	ID	
2	Timestamp	Hora Entrevista
3	Nombre	Nombre
4	Apellido	Apellido
5	Xcoord	Xcoord
6	Ycoord	Ycoord
7	Campo	Campo
8	Pozoqueafe	Pozo Que Le Afecta
9	Otrospozos	Otros Pozos
10	N·merodead	# Adultos En Casa
11	N·merodeni	# Niños
12	N·meroanci	# Ancianos
13	Estßafecta	Está Afectado
14	A±Osdeperm	Años De Permanencia
15	Vivyaantes	Vivá Antes Aquí
16	Quúpozo	Pozo Cercano
17	Tiempodepe	
18	Caracterýs	
19	Ni±Osafect	Niños Afectados
20	Adultosafe	Adultos Afectados
21	Ancianosaf	Ancianos Afectados
22	Hamuertoal	Muertes En La Familia
23	Muertes	
24	Gastosmúdi	\$ Gastos Médicos
25	Animalesmu	Animales Muertos
26	Vacas	Vacas
27	Abortosvac	Abortosvac
28	Caballos	Caballos
29	Gallinas	Gallinas
30	Hanmuertoa	Hanmuertoa
31	Extensiond	Extension
32	Estimacion	Estimación
33	Distanciaa	Distancia A Foco Contaminación (M)
34	Hahechoalg	Ha Hecho Algo
35	Tuvoalg·nr	Tuvoalguna Respuesta
36	Cußntopien	Cuánto Piensa Indeminización Por Muerte
37	Localidad	Licalidad
38	Observacio	Observacio
39	Clasedetec	Clase De Techo Su Casa
40	Techom2	Area De Techo
41	X	
42	Y	

111. Matching Cell Contents – In addition, the contents of the Familia Table and the Anexo 4 Spreadsheet are identical, except as noted below. Stroz Friedberg personnel reviewed all 36,612

cells of the Anexo 4 Spreadsheet and could find no instances within the Familia Table where the contents differed in substance. Put differently, all 36,612 cells in the Anexo 4 Spreadsheet have the same content as the corresponding cells in the Familia Table. Any perceived differences only relate to truncated numbers and other formatting variations, and not to the content of any cells. For example, numbers in the Anexo 4 Spreadsheet have no decimal point, while the Familia Table numbers all have a decimal point followed by six digits, but the integers in both data sets all matched (See Table 9 and Table 10). In Stroz Friedberg's experience it only would expect to see this level of matching data in situations where someone had copied a large amount of information from one data set to another.

**Table 9 - Excerpt Showing Formatting of Familia Table**

CAMPO	POZOQUEAFE	N-MERODEAD	N-MERODENI	N-MEROANCI
Shushufindi	45.200000	3.000000	1.000000	0.000000
Shushufindi	45.200000	4.000000	8.000000	0.000000
Shushufindi	45.100000	3.000000	4.000000	0.000000
Shushufindi	47.000000	1.000000	0.000000	0.000000
Shushufindi	45.200000	5.000000	4.000000	0.000000
Shushufindi	45.100000	3.000000	3.000000	0.000000
Shushufindi	45.200000	2.000000	4.000000	0.000000
Shushufindi	5.000000	2.000000	3.000000	1.000000

**Table 10 - Excerpt Showing Formatting of Anexo 4 Spreadsheet**

CAMPO	POZO QUE LE AFECTA	# ADULTOS EN CASA	# NIÑOS	# ANCIANOS
Shushufindi	45	3	1	0
Shushufindi	45	4	8	0
Shushufindi	45	3	4	0
Shushufindi	47	1	0	0
Shushufindi	45	5	4	0
Shushufindi	45	3	3	0
Shushufindi	45	2	4	0
Shushufindi	5	2	3	1

112. Matching Timestamps – Among the data that match across the Familia Table and Anexo 4 Spreadsheet, all 1,017 timestamp entries were the same down to the second. On the Familia Table, this content appears under the “Timestamp” column, and on the Anexo 4 Spreadsheet it appears under the “Hora Entrevista” column. This matching data further indicates that the Anexo 4 Spreadsheet was copied from the Familia Table because such precise time stamping would be a common, computer-derived function of entering data into a database rather than a person manually entering dates and times into a spreadsheet.

113. Matching Cell Anomalies – Most importantly, Stroz Friedberg found anomalies, such as misspellings or unique abbreviations, punctuation, or use/lack of spacing, that were repeated

across both data sets. For example, the location known as “Dayuma” is misspelled and appears on both the Familia Table and the Anexo 4 Spreadsheet as “Dayumma.” Other examples of these matching anomalies appear in Table 13. The fact that such unique errors or attributes appear in both data sets further confirms Stroz Friedberg’s opinion that the Anexo 4 Spreadsheet most likely was copied from the Familia Table.

**Table 11 - Matching Anomalies in Familia Table and the Anexo 4 Spreadsheet**

Page	Line	Column	Familia Table	Anexo 4 Spreadsheet	"Should Be"
3	155	5	Ra-l	Ra-l	Raúl
4	207	5	Ra-l	Ra-l	Raúl
4	212	5	Ra-l	Ra-l	Raúl
11	637	5	Ra-l	Ra-l	Raúl
13	726	5	Ra-l	Ra-l	Raúl
4	226	3	2 pozos auca 24,y auca 41	2 pozos auca 24,y auca 41	2 pozos auca 24, y auca 41
5	270	5	Jes-s	Jes-s	Jesús
8	397	5	Jes-s	Jes-s	Jesús
8	409	3	Atacapi 3,	Atacapi 3,	Atacapi 3
9	427	12	Valle hermosw	Valle hermosw	Valle hermosa
9	486	3	1 conunaco 9	1 conunaco 9	1 cononaco 9
10	569	12	Conga1y2	Conga1y2	Conga 1 y 2
13	719	3	Sacha central	Sacha central	Sacha Central
13	736	3	Sacha central	Sacha central	Sacha Central
13	746	3	Sacha central	Sacha central	Sacha Central
16	869	3	Sacha 35 33 119 12	Sacha 35 33 119 12	Sacha 35, 33, 119, 12
39	11	1	Shushufindi estacion Sur oeste	Shushufindi estacion Sur oeste	Shushufindi estacion sur oeste
46 / 47	448	4	Dolor de huesos, cabeza, estomago, garganta, granos en la piel, hongos, Dayumma	Dolor de huesos, cabeza, estomago, garganta, granos en la piel, hongos, Dayumma	Dolor de huesos, cabeza, estomago, garganta, granos en la piel, hongos, Dayuma
47	481	3	Precoop 16de abril	Precoop 16de abril	Precoop 16 de abril
48	523	3	Precoop 16de abril	Precoop 16de abril	Precoop 16 de abril
56	978	3	Precooperativa Reina de oriente	Precooperativa Reina de oriente	Precooperativa Reina del oriente
56	1004	3	Barrio la Carolina	Barrio la Carolina	Barrio La Carolina

### 3. CONCLUSIONS

114. Based on Stroz Friedberg’s analysis of the data produced by multiple sources, I conclude, to a reasonable degree of scientific certainty, the following:

#### Guerra Media

115. Exhibits 37 - 39 are true and correct copies of call history, contacts, calendar entries, and SMS text messages extracted from the Nokia Cell Phones produced by former Ecuadorian Judge Alberto Guerra, and Exhibit 40 are true and correct copies of phone bills for one of these Nokia Cell Phones, as received by Stroz Friedberg through counsel.
116. Exhibit 41 is a true and correct copies of “contacts” data found and extracted from a Hotmail account belonging to former Judge Guerra;
117. Separately, Exhibits 3 - 13 and C1 – C105 are true and correct copies of documents extracted by Stroz Friedberg from hard drive images produced by Judge Guerra in this litigation. Exhibits 14 – 30, subject to the qualifications set forth in this report, accurately reflect the extent to which identical text was found when Draft Guerra Orders were compared to each other or

when they were compared to the Lago Agrio Issued Zambrano Documents. Exhibits E1 – E105, subject to the qualifications set forth in this report, accurately reflect the extent to which identical text was found when Additional Extracted Guerra Documents were compared to rulings issued in the Ecuadorian court system. Overall, drafts of nine of the 12 orders issued by former Judge Zambrano between October 2009 and March 2010 and drafts of 105 other rulings issued between July 2009 and January 2012 were located on the Guerra Media. Based on the comparisons it is apparent the Lago Agrio Issued Zambrano Documents were created from the drafts located on the Guerra hard drive.

118. Forensic analysis shows that the Draft Guerra Orders (11 including 2 duplicates) were written in a chronological sequence, each using text from a previous version. The evidence indicates that the files identified as “providencias” in their file name or location were, with one exception, last edited within a short time before the date on which Stroz Friedberg has been advised the filed documents were issued by former Judge Zambrano in the Lago Agrio litigation. Overall, from the time of final edits on Draft Guerra Orders to the filing time of corresponding Filed Zambrano Documents, an average of 4.25 days elapsed, with the shortest period being 1 day and the longest period being 17 days.

#### The 2011 Judgment

119. Analysis of the 2011 Judgment indicates that it was derived from material not filed with the Court in the Lago Agrio litigation in Ecuador. Over 100 specific and repeated naming and data irregularities indicate that the data points cited in the 2011 Judgment were copied, cut-and-pasted, or otherwise taken directly from the Unfiled Selva Viva Data Compilation. Other forensic evidence shows that it is highly unlikely that the TPH counts, statistical percentages, or pit counts discussed in this report and cited in the 2011 Judgment were independently derived from the Filed Lab Results. In addition, evidence shows that the pit count of 880 listed in the 2011 Judgment was derived from the Stratus Compilation and/or Anexo H-1.

#### Donziger Media

120. Exhibit 46 contains a true and accurate copy of 699 unique SMS text messages that Stroz Friedberg found on a BlackBerry device or BlackBerry backups produced by Mr. Donziger.
121. Separately, within the images of the Donziger media there were native copies of two emails previously produced in PDF form. These emails had an attachment named "INFORME SUMARIO VERSION FINAL(Steve).doc," which forensic data shows was last saved and printed from Mr. Donziger's media on March 31, 2008. This attachment contains text identical to a report filed by Richard Stalin Cabrera Vega one day later on April 1, 2008 in the Lago Agrio litigation.

Forensic evidence shows that the person most likely responsible for last saving the attachment was Juan Pablo Saenz.

Cabrera's February 2009 Filing

122. Finally, the evidence shows that the Cabrera February 2009 Filing was derived from material not filed with the Court in the Lago Agrio litigation in Ecuador. In particular, based on matching data characteristics related to file layout, column headings, cell content, timestamps, and cell anomalies, the evidence shows that the Familia Table from the Selva Viva Database (not filed with the Court) was more likely the source of the Anexo 4 Spreadsheet found within the Cabrera February 2009 Filing.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Spencer C. Lynch', with a stylized, cursive script.

Spencer C. Lynch  
Director, Digital Forensics

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