TO THE PRESIDENT OF THE PROVINCIAL COURT OF JUSTICE OF SUCUMBÍOS:

I, Adolfo Callejas Ribadeneira, Counsel of Record for Chevron Corporation in summary oral suit No. 002-2003, brought against my client by María Aguinda et al., respectfully state to you:

I. MOTION

Article 117 of the Code of Civil Procedure provides that only evidence that is duly processed in accordance with the law shall be valid in litigation. As I will prove below, the reports presented by the Court-appointed global expert Richard Stalin Cabrera Vega, P.E. are the product of fraud on the Court and illegal collusion between plaintiffs and Cabrera, and thus are invalid. Because we are in a position to show that the so-called expert evidence is tainted and processed illegally, I move that the validity of the reports, their annexes and the supplements thereto be rejected in their entirety. It is on these reports that the plaintiffs base their claims; without these reports the plaintiffs' claims have no legal basis.

Furthermore, Article 251 of the Code of Civil Procedure provides that an expert appointed by the Court must be of "recognized honesty and probity." Article 256 of the Code of Civil Procedure also requires that experts perform their duties "faithfully and lawfully." Cabrera's conduct in performing the expert examination requested by the plaintiffs fails to live up to this standard. As I have shown and will prove again below, the appointment of Cabrera must be held null and void.

The reasons that support this request are presented below:

II. INTRODUCTION

This Court appointed Richard Stalin Cabrera Vega, P.E. to serve as an officer of the Court to perform an independent, impartial, and neutral investigation and evaluation of the environmental effects of activities related to the production of hydrocarbons in the former Concession area in the northeast region of the country. But from the outset, Cabrera had no intention of fulfilling his legal duties of impartiality and neutrality. My client has recently uncovered new evidence that demonstrates beyond doubt that Cabrera worked directly for plaintiffs' counsel before his appointment and has secretly colluded with them during his tenure as a "neutral" court expert. This evidence also proves that Cabrera is not the true author of the report that bears his signature but that he instead merely incorporated wholesale large portions of work product produced by plaintiffs' undisclosed consultants that plaintiffs secretly fed to him. This new evidence, especially when combined with the scientifically bankrupt analysis performed by Cabrera that my client has repeatedly brought to this Court's attention, proves that Cabrera has acted with bad faith, violated his legal duties, and worked a fraud in this case. Cabrera's April 1, 2008 report and November 17, 2008 supplemental

report, and all their annexes and supplements, are therefore fundamentally invalid and should be stricken.[1]

This Court has repeatedly ordered Cabrera to act independently of the parties and with complete transparency, stating that "the role of the expert is one of ***complete impartiality and transparency*** with respect to the parties and their attorneys" and requiring that Cabrera "shall ***observe and ensure . . . the impartiality of his work, and the transparency of his activities*** as a professional appointed" by the Court. (Ex. 1 [10/3/07 11H00 Order, 10 (R. 132850 (back)), 12 (R. 132851 (back))].) The Court also ordered that "[t]he activity of the assistants is included in the oath sworn by the expert Richard Cabrera, who was appointed as the sole expert." (Ex. 1 [10/3/07 11H00 Order, 17 (R. 132854)].) The law requires this independence and transparency. Articles 251 and 256 of the Code of Civil Procedure respectively require that experts appointed by a court must be of "recognized honesty and probity" and that experts perform their duties "faithfully and lawfully." These provisions mandate, among other things, that experts be impartial and neutral. Due process requires nothing less.

Cabrera himself has repeatedly acknowledged that this Court charged him with conducting an investigation independent from the parties, and he has repeatedly represented to this Court that he has adhered to this Court's order. Cabrera has claimed numerous times that he has no connection to and never worked with the plaintiffs or their representatives or experts, and that he did all of his own work without reliance on plaintiffs. He has even feigned indignation at the allegation that he lacked impartiality, swearing to this Court that he had "no relation or agreements with the plaintiff, and it seems to me to be an insult against me that I should be linked with the attorneys of the plaintiffs." (Ex. 3 [7/23/07 10H15 Filing, 1 (R. 131972)].). And he has proclaimed to the Court that it was "unthinkable" that "the plaintiffs would be helping me [with technical information]." (Ex. 75 [10/11/07 14H20 Filing, 3 (R. 133180)].) He even declared, "I am not, nor will I be, subject to the views or whims of either of the parties." (Ex. 79 [10/8/08 10H50 Filing, 8 (R. 151323)].)

But Cabrera's representations to this Court were false.

My client has recently uncovered dramatic and reliable evidence demonstrating that Cabrera has long been working with the plaintiffs' legal and technical teams and serving as their mouthpiece rather than this Court's impartial expert. In fact, the evidence proves that at the very time that this Court appointed Cabrera to serve as the Court's sole, independent expert investigator, Cabrera was already in the employ of plaintiffs' original counsel and another lawyer who was representing the Republic of Ecuador in a lawsuit against Chevron in the United

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[1] References to the Cabrera Report throughout this Petition refer collectively to Cabrera's report submitted on April 1, 2008 and the November 17, 2008 supplemental report, unless the text or the context indicates otherwise.

States, *Arias v. DynCorp* ("*DynCorp*"), brought in the United States on behalf of a very similar group of Ecuadorians. Cabrera has never disclosed this fact to the Court, nor that his *DynCorp* expert report directly contradicts key points in his reports in this case. In *DynCorp*, the chemical at issue is an herbicide, and Cabrera's *DynCorp* report concludes that the herbicide is the primary cause of the same general human health injuries alleged in the same province of Sucumbíos at issue in this case, in which, of course, Cabrera signed a report attributing those same harms to petroleum.

Furthermore, new evidence confirms that Cabrera's expert reports are not "independent" pieces of work or the result of his own investigation. Rather, they are the product of a secret collaboration between Cabrera and a team of plaintiffs' consultants, lawyers, and sponsors. Powerful new video evidence likewise reveals that one of the supposedly neutral experts on Cabrera's team, Carlos Martín Beristain, was actually working with plaintiffs' team in conducting the allegedly independent "health survey" on which Cabrera's assessment of $9.5 billion in damages relies. In a scene in the film "CRUDE" that appears in a version of the movie available only on the Internet, plaintiffs' lawyers Steven Donziger and Pablo Fajardo, and plaintiff representative Emergildo Criollo, work with Dr. Beristain at a focus group meeting with inhabitants of the region in connection with the so-called "independent" health survey. At plaintiffs' request, this scene was cut from the final version of the "CRUDE" DVD released in the United States—which a United States District Court recently noted is "a fact suggestive of an awareness of questionable activity." (Ex. 103 [*In re Application of Chevron Corp.*, No. M-19-111, at 24 (S.D.N.Y. May 10, 2010)].) Other evidence indicates that Beristain has extensive ties to plaintiffs and some of those working for plaintiffs, and himself made scathing public comments against TexPet—including accusing it of committing fraud—*before* supposedly joining Cabrera's team.

Similarly, documentary and expert evidence proves that paid litigation consultants hired by and working for plaintiffs' U.S. counsel are the original authors of significant portions of the Cabrera Report. New evidence reveals that Cabrera and whoever wrote significant portions of the Cabrera Report had secret access to plaintiffs' private databases, and surreptitiously incorporated into his report virtually verbatim substantial portions of undisclosed "studies" plaintiffs' consultants furnished him—reports that rely on, among other things, English-language sources that Cabrera could not have independently evaluated and for which there is no evidence Cabrera obtained translations. And the Cabrera Report includes legal concepts such as "unjust enrichment" that are unknown to Ecuadorian law but are features of United States law that have been the frequent subject of plaintiffs' U.S. expert consultants' work. Their inclusion in Cabrera's report thus is not an accident, but rather the result of secret communications with plaintiffs. In fact, plaintiffs have admitted in a United States court that Cabrera dealt directly with some of plaintiffs' consultants and had access to plaintiffs' consultants' work product, although they falsely asserted that this work product was given to Cabrera through an official court procedure that denied Chevron access to the documents. (Ex. 106 [5/18/10 Stratus Status Report, ¶ 3].) Such collabo-

ration clearly violates this Court's order that Cabrera "be responsible for all information and conclusions contained in the expert report." (Ex. 1 [10/3/07 11H00 Order, 17 (R. 132854)].) To reach his conclusions, the Court ruled that Cabrera must "limit the use of the information contained in the previous experts' reports and use ***his own*** results." (Ex. 2 [11/29/07 17H00 Order, 3 (R. 133756)].) And, equally clearly, it violates the Court's admonition that "all the documents that serve as support or a source of information for the work performed by the Expert must be presented together with the report. At that time all those documents will be provided to the parties. For the foregoing reasons, in his report the Expert is required to cite all of the scientific sources, and analytical and legal documents that he uses to perform his work." (Ex. 2 [11/29/07 17H00 Order, 1 (R. 133755)].)

And, as my client has recently brought to this Court's attention, Dr. Charles W. Calmbacher, a judicial inspection expert nominated by plaintiffs and one of the experts upon whose reports Cabrera relied, testified under penalty of perjury that the expert reports plaintiffs submitted in his name were not the reports he authored, that he had never seen them before, and in fact they contained conclusions contrary to those he believed were scientifically supportable.

There are numerous other improprieties connected with Cabrera's investigation and report. For example, even before Cabrera's appointment, the Amazon Defense Front improperly paid him money and then Cabrera attempted to cover it up by arranging to have it expunged from the court file. His appointment itself was irregular, because he failed to accept it before it expired, but contrary to law this failure was ignored. While his report purports to incorporate legal principles that do not exist in Ecuadorian law, it ignores highly relevant legal principles and facts such as TexPet's settlements with the Ecuadorian State and relevant municipalities, and the releases TexPet obtained thereby in exchange for its remediation work. And the scientifically flawed character of Cabrera's work has been demonstrated previously to this Court—including an "excess cancer death" study that does not have a basis to attribute even a single cancer death to petroleum contamination, let alone any contamination for which TexPet was responsible—and grossly inflated remediation cost estimates for items for which there is no basis to hold my client liable.

In sum, Chevron Corporation has discovered evidence proving that Cabrera has misled the Court, committed perjury, and relied on fundamentally tainted and invalid data. Cabrera has declared that he worked with the help of only a few named professionals in compiling his reports for this lawsuit, but this is not true. Cabrera, in fact, has been working with many more unidentified professionals, most, if not all, of them associated with and paid by plaintiffs. These professionals have secretly and improperly fed him biased and flawed materials that he has incorporated, without disclosing their sources, into his report. This evidence overwhelmingly confirms that Cabrera has betrayed his obligation to act as an impartial, independent, and neutral expert witness and "auxiliary" of the Court. Cabrera's numerous representations to the Court to the contrary are false.

The Court should not ignore the quickly mounting volume of evidence establishing that (1) Cabrera failed to conduct an unbiased investigation, (2) was merely a conduit and instrument for plaintiffs' claims, (3) did not perform his court-ordered duties as promised, (4) did not disclose all his sources and data, either to the judge or my client, so that my client could verify them, and (5) cannot defend his unsupported and irrational conclusions. By attempting to pass off his expert reports as unbiased and neutral, when they are actually the result of collusion with plaintiffs and are intended to advance plaintiffs' claims in every way, Cabrera has committed a fraud on this Court. Cabrera's acts of collusion with plaintiffs have denied my client its right to a fair and impartial expert determination of plaintiffs' claims. Through his reports, he has attempted to defraud this Court and impose on my client a fraudulent damage assessment. Because it is "necessary to determine the truth," the Court should order that my client's evidence of improper collaboration between plaintiffs and Cabrera be admitted *ex oficio*, which Article 118 of the Code of Civil Procedure permits "at any stage of the proceedings prior to judgment." Refusing to do so would violate my client's right to due process, as Article 76 of the Constitution guarantees "at any stage or level of the proceeding." And because plaintiffs' are actively seeking to obstruct Chevron's gathering of additional evidence in the United States, this Court should accord my client a meaningful opportunity to supplement this petition with additional evidence when it becomes available and to hold off on its determination of this Motion until that evidence becomes available, if it has any question that this Motion shall be granted. Finally, I move that the Court, based on the power established in Article 118 of the Code of Civil Procedure, initiate an independent inquiry to determine the extent of collusion between Cabrera and plaintiffs.

Given the arguments and proof herein contained, the Court should strike the Cabrera Report and all its annexes and supplements in their entirety.

III. CABRERA BREACHED HIS DUTY OF INDEPENDENCE AND IMPARTIALITY, COLLUDED WITH AND WORKED DIRECTLY FOR PLAINTIFFS AND THEIR COUNSEL, AND COMMITTED PERJURY IN THE PROCESS.

A. Cabrera Was Required to Be Neutral and Independent of the Parties.

This Court has instructed Cabrera to maintain neutrality and independence with respect to the parties. On October 3, 2007, this Court "reminded [Cabrera] that he is an auxiliary to the Court for purposes of providing to the process and to the Court scientific elements for determining the truth." (Ex. 1 [10/3/07 11H00 Order, 2 (R. 132846 (back))].) The Court ordered Cabrera to "perform his work in an impartial manner and independently with respect to the parties, as well as comply with the requirements contained in the Code of Civil Procedure for the appointment and performance of experts." (Ex. 1 [10/3/07 11H00 Order, 6 (R. 132848 (back))]). The Court further "direct[ed] him to maintain ***strict independence with regard to the parties***, . . . starting with the selection of his support personnel." (Ex. 1 [10/3/07 11H00 Order, 16 (R. 132853)].) The Court expressly required the same independence for those assisting Cabrera: "In reference to the persons

acting as assistants to the expert in the sampling and other work being performed by the expert, ***these must be independent from the two parties***." (Ex. 1 [10/3/07 11H00 Order, 6 (R. 132848 (back))].)

Respect for and enforcement of this Court's orders that Cabrera fulfill his obligations with neutrality, independence, and transparency is fundamental to the due process to which my client is entitled.

Regarding his duty to perform his work independently and transparently, the Court ordered Cabrera to disclose ***all*** the work and sources upon which he relied, so that my client could review and verify Cabrera's independence. The Court instructed that "***all*** the documents that serve as support or a source of information for the work performed by the Expert [Cabrera] must be presented together with the report. At that time ***all*** those documents will be provided to the parties. For the foregoing reasons, in his report the Expert is required to cite ***all*** of the scientific sources, and analytical and legal documents that he uses to perform his work." (Ex. 2 [11/29/07 17H00 Order, 1 (R. 133755)].) The Court additionally guaranteed that my client would have access to the documents while Cabrera's work was underway. "Independently, if the defendant company has an interest in having the documents requested by Engineer Richard Cabrera, then send official letters to the institutions for them to also provide these documents to the defendant." (Ex. 2 [11/29/07 17H00 Order, 1 (R. 133755)].)

Cabrera continually assured the Court of his commitment to "absolute impartiality, honesty and transparency." (Ex. 4 [10/31/07 16H55 Cabrera Filing, 1 (R. 133465)]; Ex. 5 [11/6/07 17H20 Cabrera Filing, 1-2 (R. 133487-133488)]; Ex. 6 [10/8/08 10H50 Cabrera Filing, 7-12 (R. 151322-151327)]; Ex. 7 [10/20/08 10H05 Cabrera Filing, 1-2 (R. 151398-151399) (Cabrera acknowledging his duty to advise the Court in an objective and impartial manner)].) The judge also ordered that Cabrera "agree[] to be responsible for ***all information and conclusions*** contained in the expert report," including that from assistants. (Ex. 1 [10/3/07 11H00 Order, 17 (R. 132854)].) Cabrera likewise assured the Court that his assistants were impartial. (Ex. 8 [12/7/07 17H55 Cabrera Filing, 1-2 (R. 133882-133883)].) In Annex V to his April 1, 2008 report, Cabrera purported to disclose each and every one of the people who assisted him in his work in this case. (Ex. 9 [4/1/08 08H30 Cabrera Report, 2 (R. 134231) ("These experts have therefore been part of my technical team, which consists of impartial professionals with impeccable credentials, as can be observed in Exhibit V to this report.")].) Later, when Cabrera was asked under oath for "the names of the professionals who assisted [him] with [his] assessment," he identified a total of five individuals, all included in Annex V. (Ex. 10 [7/2/09 Denuncia Proceeding, 2.) These included two chemical engineers, a zoologist, a botanist, and Carlos Martín Beristain, a social psychologist. (*Id.* (identifying Chemical Engineer Carlos Muñoz and Chemical Engineer Mauricio Naranjo, Nelson Gallo, Carlos Cerón, and Carlos Beristain).)

Even plaintiffs' counsel, Pablo Fajardo, has repeatedly affirmed that Cabrera is

supposed to be independent of the parties and impartial with respect to his expert work in this case. For example, before Cabrera was appointed, Mr. Fajardo argued for the court appointment of a single global expert "primarily [because of] impartiality . . . because, having not been named by either of the parties, he will have be even more objective in his analysis and conclusions." (*See* Ex. 11 [5/10/07 17H50 Plaintiffs' Brief, 2 (R. 129697)].) Similarly, after Cabrera had begun his work, Mr. Fajardo affirmed that "plaintiff[s] ha[ve] respected the authority of Cabrera as [an] assistant" of the court and that "Cabrera [is] an impartial court expert." (*See* Ex. 12 [10/17/07 17H50 Plaintiffs' Brief, 2 (R. 133260) (responding to "certain comments and accusations" by Dr. Patricio Campuzano)].)

But Cabrera's and plaintiffs' assurances are false.

B. Cabrera Breached His Duty of Independence by Failing to Disclose That He Was a Paid Expert for Plaintiffs' Former Counsel in *Arias v. DynCorp*, Another Pending Environmental Case Involving Alleged Harm in the Province of Sucumbíos.

In July 2007, Cabrera swore to this Court that he "[did] not have any relation or agreements with the plaintiff, and it seems to me to be an insult against me that I should be linked with the attorneys of the plaintiffs." (Ex. 3 [7/23/07 10H15 Filing, 1 (R. 131972)].) He has also rejected the idea that "the plaintiffs would be helping me." (Ex. 75 [10/11/07 14H20 Filing, 3 (R. 133180)].) Despite these and other emphatic statements, my client has recently learned that Cabrera deceived this Court by failing to disclose a significant conflict of interest—namely, that he served as a paid expert for plaintiffs' former counsel in another environmental case both before and at the same time he was serving as the supposedly "neutral" expert in this case. Moreover, his reports in this case and the one he signed in *DynCorp* reach mutually contradictory conclusions as to the causes for the same and overlapping alleged human health and environmental harms. This stunning evidence reveals that Cabrera is simply a disguised mouthpiece for plaintiffs masquerading as a so-called "independent" expert of this Court. His failure to disclose this relationship casts doubts on his ability to perform his obligation in this case with "recognized honesty and probity," as Article 251 of the Code of Civil Procedure requires.

Plaintiffs' former counsel and a key architect of this litigation was Cristóbal Bonifaz, a U.S.-based lawyer. He represented plaintiffs in this case until at least February 2006. (Ex. 13 [10/8/07 Declaration of Alejandro Ponce-Villacis in *Gonzales* action, ¶ 4].) Another U.S. lawyer, Terry Collingsworth, represented the Republic of Ecuador from 2005 to 2007 in its effort to permanently stay my client's arbitration action under the American Arbitration Association rules in connection with this case. *Republic of Ecuador v. ChevronTexaco Corp.*, No. 04 Civ. 8378 (LBS) (S.D.N.Y.) (Sand, J.).

At the same time attorneys Bonifaz and Collingsworth were pursuing claims against my client, they were also lead plaintiffs' counsel in *DynCorp*, an environ-

mental case filed in the United States District Court for the District of Columbia on September 11, 2001. *DynCorp* alleged personal injury and property damage against DynCorp, a U.S.-based private military contractor and aircraft maintenance company, resulting from the spraying of an herbicide along the Colombia-Ecuador border, including alleged substantial damage to human health, water supplies, flora and fauna, and agricultural resources in the province of Sucumbíos.

Cabrera acted as a paid expert for the *DynCorp* plaintiffs. To support the herbicide-based damage claims in *DynCorp*,[2] the plaintiffs in that case filed an expert report authored by Dr. Henry Fishkind, who concluded that the inhabitants of Sucumbíos province had suffered significant environmental damage due to fumigation, that remediation was unrealistic, and that the individual plaintiffs should be relocated. (Ex. 14 [1/28/08 Expert Report of Fishkind].) Dr. Fishkind's report states that he "retained a team of professionals in Ecuador to assist [him] in gathering the data necessary to support the opinions" (Ex. 14 [1/28/08 Expert Report of Fishkind, 4]), and his report is almost entirely based on the report written by this "team of professionals" entitled "Preliminary Economic Valuation and Impact Assessment of the Environmental Assets and Services Affected by the Fumigation in the Northern Ecuadorian Border Along the Province of Sucumbíos" (the "*DynCorp* Report"). (Ex. 15 [January 2008 *DynCorp* Report].) Richard Cabrera is one of the co-authors of this underlying plaintiffs' report. (Ex. 15 [January 2008 *DynCorp* Report, 1].) In fact, Cabrera co-authored two versions of the *DynCorp* Report, dated August 2006 and January 2008. (Ex. 16 [August 2006 *DynCorp* Report]; Ex. 15 [January 2008 *DynCorp* Report].) Thus, Cabrera's work as a paid plaintiffs' expert in the *DynCorp* case was submitted both before and during his service as the supposedly "neutral" global expert in this case.

Neither Cabrera nor plaintiffs have ever disclosed to this Court the fact that Cabrera worked as an expert on behalf of the *DynCorp* plaintiffs hired by at least one of the same lawyers who represented the plaintiffs in this litigation. Cabrera's failure to reveal this serious conflict of interest is a grave violation of his sworn duties as a neutral and independent expert to this Court. And it directly contradicts Cabrera's sworn statement to this Court that he "[did] not have any relation or agreements with the plaintiff." (Ex. 3 [7/23/07 10H15 Filing, 1 (R. 131972)].)

This new revelation exemplifies on many levels Cabrera's bias for plaintiffs while pretending to serve as an "independent" expert. Not only did Cabrera and plaintiffs improperly fail to disclose Cabrera's *DynCorp* work, but that work concerns environmental issues that are highly relevant to this case. Cabrera's reports in *DynCorp* reach conclusions on the causes of the alleged harms in the northeast

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[2] Cabrera's *DynCorp* report (*see infra*) refers to the chemical at issue as both an herbicide and a pesticide. (*See* Ex. 15 [January 2008 *DynCorp* Report, 16-18].)

region of the country that are inconsistent with his findings in this case—but are equally favorable to the plaintiffs in that case and their counsel. In *DynCorp*, the report Cabrera co-authored uses second-hand information and other studies performed previously and concludes that the soil, water, flora, fauna, crops, and human health in the provinces of Sucumbíos, Carchi, and Esmeraldas were all negatively impacted by fumigations in these areas. (Ex. 15 [January 2008 *DynCorp* Report, 48-51].) It also concludes that fumigation caused abnormal discoloration of leaves, dead crops, health problems in animals, as well as drastic reductions in the opportunity for hunting of animals normally part of the affected ecosystems. (Ex. 15 [January 2008 *DynCorp* Report, 8, 52].)

Like the *DynCorp* Report, Cabrera's report as the "independent" expert in this case uses "self-reported" survey information to reach his conclusions regarding human health effects, population displacement, and the effects on hunting, fishing, and way of life. (Ex. 9 [4/1/08 08H30 Cabrera Report, 29-35 (R. 134262-134267).) However, in this case Cabrera concludes that petroleum—not herbicides—caused all of these same damages, which directly contradicts the *DynCorp* Report's conclusion that fumigation was the likely source of these overlapping alleged harms in the same region. He reaches this contradictory conclusion in his first report in this case over a year and a half after releasing the first *DynCorp* report in August 2006, and just less than three months after issuing his second *DynCorp* report in January 2008. Whether working directly for plaintiffs, as in *DynCorp*, or surreptitiously for plaintiffs, as in this case, Cabrera's "expert" conclusions simply support whatever the plaintiffs in each case claim. His contradictory conclusions cannot be trusted and cannot be considered a "reasoned" report as required by Article 253 of the Code of Civil Procedure, and thus his report in this case must be cast aside.

In sum, given Cabrera's close connection to the counsel who initiated this lawsuit for the plaintiffs, as demonstrated by the *DynCorp* case, his utter failure to divulge this connection, and the inconsistent conclusions reached in the reports in *DynCorp* and this case, Cabrera's reports in this case should be disregarded. Cabrera's abandonment of his sworn duties as a court-appointed and independent expert corrupts the fundamental fairness of the justice system in clear violation of my client's right to due process.

My client is continuing to investigate the full extent of Cabrera's involvement in *DynCorp* and how his association with plaintiffs' former counsel in *DynCorp* has affected his work in this case. Accordingly, I reserve the right to present supplemental evidence on this and any other subject that reveals Cabrera's true loyalties and bias.

C. Much, If Not All, of Cabrera's Supposedly "Independent Work" in This Case Was Performed by Plaintiffs' Environmental Consultants and Sponsors.

New evidence overwhelmingly establishes that much of Cabrera's "independent" report in this case was not authored by Cabrera at all, but rather was the work product of plaintiffs' representatives, consultants, and allied sponsors, including, at a minimum, Stratus Consulting, Adolfo Maldonado and Carolina Valladares of Acción Ecológica, and the Amazon Defense Front.

Your honor, there are many individuals and organizations aligned with the plaintiffs' side of this case who were involved in preparing what has been presented solely as the report of the court-appointed, and supposedly independent, expert Richard Cabrera. To understand the full extent of the fraud that is being perpetrated on this Court and the degree to which Cabrera has betrayed his appointment as "an auxiliary to the Court for purposes of providing to the process and to the Court scientific elements for determining the truth," it is helpful to briefly explain the role of each of these previously hidden contributors.

The Complaint in this case names the Amazon Defense Front, or FDA, as the beneficiary of any award. Selva Viva Cia. Ltda. is the logistics and funding arm of the FDA. It is an organization set up by a United States law firm to provide money and assistance from technical consultants to plaintiffs in this case. Selva Viva's President is Steven Donziger, one of plaintiffs' U.S. lawyers, and its general manager, Luis Yanza, is a legal coordinator of the FDA. Selva Viva's address and phone number have been listed as the same as the Quito office of Dr. Alberto Wray, former lead counsel for plaintiffs. "Selva Viva" is also a name the plaintiffs use to describe their legal team.

Stratus Consulting LLC, a Colorado-based environmental consulting company, is one of those technical consultants working for plaintiffs. Its involvement in this case has never been disclosed to the Court, but Stratus personnel are the true authors of much of the Cabrera Report. A federal judge in the United States has granted my client's request to obtain sworn statements and documents from Stratus on these issues. Attorneys for Stratus had initially represented to a U.S. court that Stratus personnel did not have any direct communications with Cabrera. However, in a stunning reversal, on May 18, 2010, Stratus counsel represented that there were communications between Cabrera and two Stratus representatives. (Ex. 106 [5/18/10 Stratus Status Report, ¶ 3].) This new revelation further suggests that Cabrera was colluding secretly with plaintiffs' representatives.

Another of plaintiffs' consultants is Adolfo Maldonado. He is a principal of Acción Ecológica, an organization allied with the FDA, and is an acknowledged member of the plaintiffs' technical team. As with Stratus, his involvement in Cabrera's reports has not been disclosed to the Court. However, as I explain below, much of the analysis by which the Cabrera Report purports to find an excess of cancer-related deaths in the Concession area is actually his. In the Cabrera Report and Cabrera's responses to questions, that finding was attributed to Carlos Martín Beristain, a Spanish social psychologist. Beristain, however, acted in conjunction with Maldonado, the FDA, and other Acción Ecológica personnel such as Caro-

lina Valladares, and administered a highly biased psychosocial survey on which Cabrera's claim of excess cancer is based. Beristain's work was not independent in any sense, but rather was directed by and done in cooperation with the FDA and Acción Ecológica. In fact, a scene in the film "CRUDE" that was removed from the DVD version at plaintiffs' lawyers' request shows Beristain conducting "focus group" survey meetings accompanied by plaintiffs' legal and other representatives.

1. Much of the Cabrera Report Was Not Written By Cabrera or Anyone On His Disclosed Team.

As explained above, the environmental consulting firm Stratus Consulting works for the plaintiffs in this case through plaintiffs' United States lawyers. Plaintiffs have never identified Stratus to this Court nor have they filed any brief or document in the record that they have identified as being from Stratus. However, it is now apparent that the work of Stratus and other consultants working for plaintiffs comprises much of the Cabrera Report.

a) Parts of the Main Text of the Cabrera Report Are Translated Stratus Work Product.

A United States District Court has authorized discovery in the United States of sworn statements and documents from Stratus and Stratus-associated individuals who contributed to the Cabrera Report. While that discovery has only recently begun, the evidence justifying it shows Stratus's involvement in the creation of the Cabrera Report.

1) Much of the Main Text of the Cabrera Report Is the Work of Stratus or Plaintiffs' Other U.S.-Based Consultants.

Linguistic analysis confirms that much of the main text of the Cabrera Report was not actually written by Cabrera. Most of it, including almost all of the core environmental contamination section, is likely a translation of text that was originally written in English.[3] In fact, part of that section was clearly translated from an English-language Stratus report that was not publicly available and never openly provided to Cabrera. The rest of the Cabrera Report was written by native Spanish writers who have had significant contact with English. There is no indication that Cabrera is anything other than purely Spanish monolingual. (*See* Ex. 17 [*Curriculum Vitae* of Cabrera (R. 122524-122529)].)

M. Teresa Turell, Ph.D. is a linguistic forensics expert who holds multiple degrees in forensic linguistics. (*See* Ex. 19 [Turell Report regarding the Cabrera

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[3] It is also possible that this text was written by a non-native Spanish writer, i.e., someone for whom Spanish is a second language.

Report ("Turell Report Regarding Cabrera Report"), 2].) Dr. Turell is the Director of ForensicLab, a forensics linguistics laboratory affiliated with the Universitat Pompeu Fabra in Barcelona, Spain, and the Academic Director of the Master's programme in Forensic Linguistics at the University. (Ex. 19 [Turell Report regarding the Cabrera Report ("Turell Report Regarding Cabrera Report"), 2].) She has provided forensic linguistic expert testimony for more than 15 years in both criminal and civil proceedings. (Ex. 19 [Turell Report regarding the Cabrera Report ("Turell Report Regarding Cabrera Report"), 2].) As Dr. Turell explains in her expert report, the Spanish and English languages have different lexical organization and grammatical structure. (Ex. 19 [Turell Report Regarding Cabrera Report, 5-6].) These differences allow a forensic linguist to determine whether a particular text written in Spanish follows the structural rules of Spanish or the structural rules of a language like English. (Ex. 19 [Turell Report regarding the Cabrera Report ("Turell Report Regarding Cabrera Report"), 5].)

Dr. Turell's analysis reveals that the core environmental contamination section of the Cabrera Report (Section 3, except for section 3.3), Section 4.3, entitled "Human Rights Violations Committed By Texpet Workers," and the damages section (Section 6) were not written by a native Spanish writer. (Ex. 19 [Turell Report Regarding Cabrera Report, 16 (These sections "have definitely NOT been written first hand by a native writer of Spanish.")].) Rather, they "exhibit a style which is full of non-congruent Spanish forms, markers of contact between English and Spanish and calques of many different types, that is, units borrowed most probably from English." (Ex. 19 [Turell Report Regarding Cabrera Report, 16].)

Independent evidence confirms Dr. Turell's analysis. My client is in possession of a November 12, 2007 Stratus Consulting Report from which portions were copied, with only minor revisions, into the Cabrera Report, which was first submitted to the Court approximately five months later on April 1, 2008. The Stratus Consulting Report was not listed by Cabrera as a source for his report, was to my client's knowledge never filed in this Court, and to my client's knowledge is not publicly available or otherwise available from any common source. Rather, this report was provided to my client during a November 2007 mediation. Yet it is inescapable that whoever wrote what has been presented as the environmental contamination section of the Cabrera Report had access to the content of the November 12, 2007 Stratus Consulting Report. Sections 3, 4.3, and 6 of the Cabrera Report are also replete with first person statements in which the writer represents himself to be Cabrera. (Ex. 9 [4/1/08 08H30 Cabrera Report, 11, 17, 42 (R. 134241, 134249, 134276)].) These representations are false and are intended to deceive the Court. The author is a non-native Spanish writer, which positively excludes Cabrera. Tellingly, some of those very sentences in which the author claims to be Cabrera contain linguistic combinations that were originally written in English, and therefore could not have been written by Cabrera. These include the sentences, "I carefully reviewed the environmental information on contaminants in the Concession that was compiled by me or by my technical team, as well as in other stages of the litigation, in order to ensure that it was reliable," and "[b]ased on my review of the technical reports prepared by the ex-

perts proposed by both parties for the Judicial Inspections, there are many ways that the chemicals in the crude oil, the drilling mud and other additives and in the produced water were released into the environment by Texpet." (Ex. 19 [Turell Report Regarding Cabrera Report, 8, 11]; Ex. 9 [4/1/08 08H30 Cabrera Report, 7 (R. 134236-134237).) The person who wrote these words was not Cabrera, but rather a non-native Spanish writer who was likely from Stratus or another consultant of the plaintiffs.

2) The Cabrera Report Contains Other Stratus Opinions That Were Never Publicly and Openly Provided to Cabrera.

Additional evidence confirms that the Cabrera Report is the work of plaintiffs' consultants. Also provided to Chevron during the November 2007 mediation was an Adobe Acrobat ".pdf" file of a Stratus PowerPoint presentation dated November 28, 2007 that addressed the cost of pit remediation in Ecuador. This presentation, entitled "Estimated Remediation Costs for the Napo Concession, Ecuador" ("Estimated Costs Presentation"), appears to summarize a report that 3TM International authored with Stratus with a similar title, "Estimated Costs for Remediating Contaminated Waste Pits from Oil Exploration and Production Activities in the Napo Concession, Ecuador." Counsel for 3TM recently confirmed that 3TM had a contract with Stratus concerning the same contract number indicated on the cover sheet of the 3TM Report. (Ex. 20 [4/20/10 Objections to Subpoenas Issued to 3TM, 2, 4-5].)

Like the November 12, 2007 Stratus Consulting Report, the contents of the Estimated Costs Presentation were never filed with this Court or openly provided to Cabrera. Yet, there are striking similarities between the Estimated Costs Presentation and the Cabrera Report that cannot be the result of coincidence. Both base remediation costs on non-oil related remediation sites in the United States (Ex. 21 [Rebuttal Report of Robert E. Hinchee, 42 (R. 148175)]), and, despite the fact that Cabrera does not claim to read or write English (Ex. 17 [*Curriculum Vitae* of Cabrera (R. 122524-122529)]), both use the same English-only website as a source for those costs.[4] Moreover, both the Estimated Costs Presentation and the Cabrera Report recommend exactly the same cleanup level, even though it is much more stringent than the level current Ecuadorian regulations require. (*See* Ex. 23 [11/17/08 08H25 Cabrera Supplemental Report, 17 (R. 152966)].) Other details of Cabrera's proposed remediation, including the percentage of pits

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[4] This is especially telling because Cabrera is the majority owner and legal representative of a Ecuadorian company that is registered to provide "control and cleanup of ***petroleum*** spills" services to Petroecuador in Ecuador. (Ex. 22 [CAMPET Listing of Services (emphasis added)].) It is difficult to imagine that when asked to estimate the cost of cleaning up petroleum spills in Ecuador by the Lago Agrio court, he spontaneously sought out non-petroleum cleanup costs in the United States.

Cabrera assumed would require remediation, the depth to which he assumed they must be remediated, and the remediation technology selected, all match exactly the Estimated Costs Presentation. (*See* Ex. 23 [11/17/08 08H25 Cabrera Supplemental Report, 17-18 (R. 152966-152967)]; Ex. 9 [4/1/08 08H30 Cabrera Report, 42 (R. 134276)]; Ex. 24 [4/1/08 08H30 Cabrera Report, Annex R, 9-21 (R. 139893-139905)].)

b) The Authors of the Cabrera Report Had Access to Plaintiffs' Private Litigation Database.

It is now beyond dispute that whoever wrote the Cabrera Report and other documents purporting to be from Cabrera had access to the plaintiffs' litigation database controlled by Selva Viva and the FDA. The database was never filed with this Court, and neither plaintiffs nor Cabrera ever disclosed he had access to it. Plaintiffs' lawyers in the United States are now working to keep evidence establishing exactly when, by whom, and how the database was placed at the disposal of Cabrera, but they do not deny that it was used by the author of the Cabrera Report. My client is confident that it will overcome the plaintiffs' lawyers' tactics and will later be able to supplement this motion with additional evidence proving that the author of the Cabrera Report secretly had access to the plaintiffs' database.

In any event, other existing evidence already demonstrates that Cabrera used charts and figures from plaintiffs' Selva Viva Database. As noted above, Annex R to the Cabrera Report includes figures marked with the names of the FDA and Selva Viva. (Ex. 24 [4/1/08 08H30 Cabrera Report, Annex R, 4 (R. 139888) [Figure 1], 14 (R. 139898) [Figure 3]].) But it is not a matter of a few figures. Spanish reports of one of plaintiffs' judicial inspection experts contain geographical figures rendered from the Selva Viva database labeled "pits" in English (as opposed to the equivalent Spanish Word, "piscinas"). (*E.g.*, Ex. 26 [9/9/08 José Pilamunga Report for Aguarico 2, R. 141039-141052].) Similarly, in Annexes H-1 and U-4 of the Cabrera Report, pits are labeled in English, not Spanish. (Ex. 27 [4/1/08 08H30 Cabrera Report, Annex U-4, 62-146 (R. 134845-134929)]; Ex. 25 [4/1/08 08H30 Cabrera Report, Annex H-1].) Further, both Cabrera's geographic figures and those of plaintiffs' judicial inspection expert use the same color scheme to trace features: red for platforms and green for pits. (Ex. 27 [4/1/08 08H30 Cabrera Report, Annex U-4, 62-101 (R. 134845-134884].)

In addition, many of the pits identified in Annexes E and Annex H-1 of the Cabrera Report are taken directly from an FDA-commissioned report identifying so-called "hidden" pits and likely generated using the Selva Viva database. (Ex. 28 [6/6/06 FDA report entitled "FDA Report entitled "Chevron's Hidden Waste Pits in the Ecuador Napo Concession"].) Indeed, the so-called "hidden" pits identified in the FDA report appear in Cabrera's Annex H-1, including some that were blatantly erroneous: Cabrera's blind reliance on the FDA and the Selva Viva da-

tabase caused him to adopt plaintiffs' numerous errors and deliberate mischaracterizations wholesale. As a result, Annexes E and H-1 to the Cabrera Report identify pits that never existed by claiming that dark areas and tree shadows in aerial photographs are pits even after field observations proved that no such pits exist. For example, Cabrera (and plaintiffs) misidentified pits in Parahuacu 3 by labeling low lying vegetation as Pit 2 and including tree shadows and the obvious non-pit well pad within the Pit 1 outline, inflating its size. (Ex. 29 [4/1/08 08H30 Cabrera Report, Annex E, 45 (R. 139234)]; Ex. 30 [Rebuttal Report of Di Paolo & Hall, 17-18 (R. 148313-148314)].) Similarly, the area Cabrera (and plaintiffs) described as Pit 3 in Shushufindi 33 is in fact a large tree. (Ex. 29 [4/1/08 8H30 Cabrera Report, Annex E, 72 (R. 139268)]; Ex. 30 [Rebuttal Report of Di Paolo & Hall, 19-20 (R. 148315-148316)].) A better quality photo of the site clearly shows the tree's shadow visible to the left (northwest) and the light-colored platform visible through the leaves. (Ex. 30 [Rebuttal Report of Di Paolo & Hall, 19-20 (R. 148315-148316)].)[5] Cabrera also identifies pits drilled by Petroecuador well after Texaco ceased operations in Ecuador as pits that my client should remediate, even though such pits are the full responsibility of Petroecuador. (Ex. 30 [Rebuttal Report of Di Paolo & Hall, 21-22 (R. 148317-148318)].) Cabrera's adherence to the plaintiffs' pit list was so absolute that he concluded that previously remediated pits at Sacha 53 would require millions of dollars to remediate, despite the fact that the independent Settling Experts already had determined that these areas were not contaminated and did not require any remediation. (Ex. 25 [4/1/08 08H30 Cabrera Report, Annex H, 29-30 (R. 139349-139350) (listing SA 53 pits for remediation)].) In addition, Petroecuador has its own aerial photographs, from which they marked pits and counted 270 pits within the former Concession area. It is clear that not only did Cabrera rely on plaintiffs' interpretations of the aerial photography, but also he failed to obtain Petroecuador's records to conduct a proper and accurate accounting of pits as was his duty.

Whether the author of these Annexes was Cabrera, one of his assistants, or one of plaintiffs' consultants, one thing is absolutely clear: the author used and incorporated demonstrably biased and incorrect information lifted directly from the

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[5] Also in Annex H, Cabrera lists as a reference a compilation of documents that he refers to as Chevron's Judicial Inspection reports, specifically Annexes A-F and J. This is a clear reference to a "Resource Book" that my client compiled to gather the key scientific and technical annexes presented with the judicial inspection reports submitted by my client's proposed experts. But this compilation was never submitted to the Court or otherwise made public. In discussions between the parties designed to determine common ground on certain scientific issues, my client's counsel provided plaintiffs' attorneys—on a confidential basis—with an excerpt of the "Resource Book," containing only Annexes A-F and J, precisely the same annexes that Cabrera cites in his report. Given that this resource was not otherwise available to Cabrera, his reference to it proves that plaintiffs' attorneys provided Cabrera with this resource or helped him draft that portion of Annex H that refers to it.

FDA and the Selva Viva Database, rather than independent data that should have been—and were required by the Court to be—developed by Cabrera and his team.

c) The Cabrera Report Advances Recovery Theories That Do Not Exist in Ecuadorian Law and Have Never Been Argued to This Court.

Cabrera himself has no legal or economic expertise nor does his "team" include an attorney or economist. Nonetheless, the Cabrera Report purports to apply legal and economic theories, such as the statistical value of life and unjust enrichment that do not exist in Ecuadorian law. In contrast, these are theories in which Stratus regularly traffics for clients in the United States. The Cabrera Report discusses and applies these theories unrestrained by the limits that law in the United States places on them.

The Cabrera Report recommends an award of US$6.8 million for each of the "excess deaths" it claims occurred in the Concession Area as a result of TexPet's operations. That number comes from section 1.3 of Annex Q, which purports to assign "a monetary value to each excessive death" using "a concept for the statistical life value" based "on a recent value EPA used for risk assessments (U.S EPA, 2005)." (Ex. 31 [4/1/08 08H30 Cabrera Report, Annex Q, R. 139877-139878].) Statistical value of life is a concept used under United States law to justify rules or regulations. Many statutes in the United States require the agency issuing a regulation to perform a cost-benefit analysis of the regulation. The statistical value of life is simply a way to compute the benefit of the regulation, and "should be thought of as a convenient way to summarize the value of small changes in mortality risks." (Ex. 32 [Don Kenkel, *Using Estimates of the Value of Statistical Life in Evaluating Consumer Policy Regulations*, 26 Journal of Consumer Policy, 1, 2 (2003)].)

The concept of statistical value of life "is not meant to be applied to the value of saving the life of an identified person (i.e., the value of changing the risk of mortality from one to zero)." (*Id.*) In the United States, courts uniformly dismiss the use of statistical value of life in cases seeking damages for death as "a troubled science in the courtroom," that is "subject to easy manipulation to arrive at [a] pre-determined figure" in litigation. (Ex. 33 [*Estate of Dubose v. City of San Diego*, Case No. 99cv2279, 2002 U.S. Dist. LEXIS 28297, **6-8 (S.D. Cal. Sept. 30, 2002) (collecting cases)].) Stratus's Lauraine Chestnut was one of the early advocates of this rejected approach; she proposed using regulatory "[willingness to pay] type estimates in determining wrongful death compensations in order to minimize the total social cost of accidents and accident prevention." (Ex. 34 [Lauraine G. Chestnut & Daniel M. Violette, *The Relevance of Willingness-to-Pay Estimates of the Value of a Statistical Life in Determining Wrongful Death Awards*, 3(3) Journal of Forensic Economics 75, 88 (1990)].)

It is extremely unlikely that Cabrera could or would independently and spontaneously decide to use the United States concept of statistical value of life for a purpose forbidden by United States courts, especially when more relevant and applicable Ecuadorian measures of damages are available. Ecuadorian Labor Code Article 369, for example, provides that "[i]f an accident causes the death of the worker and it is produced within one hundred eighty days following the accident, the employer is obliged to compensate the heirs of the deceased with a sum equal to salary or wages of four years." The average annual salary in Ecuador is $3,640.[6] Neither Article 369 nor any other Ecuadorian code allows damages to be varied based on nationality of the entity alleged to have caused them.[7] Yet Annex Q to the Cabrera Report directly states that Chevron should pay much higher damages because it is a United States national and Ecuador "is relatively poor compared to the standards of the US." (Ex. 31 [4/1/08 08H30 Cabrera Report, Annex Q, R. 139879].)

In sum, overwhelming evidence proves that (1) much of the Cabrera Report was secretly written by or originated with Stratus, an environmental consulting firm retained by plaintiffs, or subcontractors of Stratus including 3TM, (2) the Cabrera Report incorporates data from plaintiffs' non-public database, and (3) it contains other hallmarks of having been written by native English-speakers and not by Cabrera or anyone on his "independent team." My client is still investigating and pursuing discovery in the United States concerning the extent Stratus and 3TM were involved in drafting, or conducting the work underlying, the Cabrera Report and my client intends to supplement this motion with further evidence proving Cabrera's lack of independence and his illicit relationships with plaintiffs' consultants and advisors.

2. The Report of "Cabrera Assistant" Carlos Martín Beristain Was Performed in Large Part by Parties Associated with Plaintiffs.

Cabrera's "cancer deaths" damages study is the product of improper undisclosed collaboration with plaintiffs and their allies. In his Amended Report filed in November 2008, Cabrera assessed "damages" of more than US$9.5 billion for supposed "excess cancer deaths" without identifying a single alleged cancer victim. Instead, Cabrera reaches this conclusion based solely on "statistical data" that "come from the field study conducted by [Carlos Martín] Beristain" (the "Beristain Report"). (*See* Ex. 9 [4/1/08 08H30 Cabrera Report, 29 (R. 134261)].) Because Beristain was one of "the persons acting as assistants to the expert in the sampling and other work being performed by the expert," he was required to "be in-

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6 http://www.unicef.org/infobycountry/ecuador_statistics.html.

7 In fact, the Cabrera Report ignores ***all*** Ecuadorian law in calculating his alleged "damages assessment." For example he ignored the [Forestry law], which provides a specific methodology for calculating forest restoration costs. (Ex. 35 [Rebuttal Report of Theodore Tomasi, 11 (R. 146674)].)

dependent from the two parties." (*See* Ex. 1 [10/3/07 11H00 Order, 6 (R. 132848 (back))].) But instead of being independent from the litigants, Beristain's work was performed largely by personnel from the FDA and Acción Ecológica, with the active involvement of plaintiffs' legal team. In fact, the survey work jointly conducted by Beristain and the plaintiff team that was ultimately adopted in whole by Cabrera actually began at least five months ***before*** Cabrera was even appointed to serve as an independent expert in this case. Perhaps most strikingly, new documentary evidence demonstrates that Beristain and plaintiffs' team worked side by side on the study that Cabrera ultimately relied on for this issue.

Thus, the plaintiff team's involvement in the work underlying the Beristain Report—and likely in writing the Report itself—requires that the Court strike the Cabrera Report as reflecting the partial, biased work of the FDA and its allies instead of the independent, impartial work ordered by the Court and which constitutional due process requires.

a) Beristain Began Work on His Report Before Cabrera Was Even Appointed As an Independent Expert in This Case.

Cabrera was first appointed as global expert in the Lago Agrio trial on March 19, 2007, and he formally began his duties on June 13, 2007. (*See* Ex. 9 [4/1/08 08H30 Cabrera Report, 1 (R. 134230)].) However, on June 16, 2009, Beristain appeared at an event in Quito, Ecuador to present the book version of his Oriente human impact study, called *Las Palabras de la Selva*. According to an account of the event published in El Comercio, Beristain stated that the study was initiated in the second half of 2006—at least five months before Cabrera's initial appointment and at least eight months before Cabrera began his official duties as *Perito*. (Ex. 36 ["Expertos tratarán los efectos por los derrames petroleros en la Amazonia," El Comercio, June 17, 2009].) Beristain was in Ecuador from October 19 to October 25, 2006, and during that time, he attended a conference in the city of El Coca, sponsored by Oilwatch, a self-described resistance network that opposes the activities of oil companies in tropical countries. (Ex. 37 [Oilwatch Conference Web Pages].) These dates correspond to the time Beristain claimed to have initiated his human impact study. Beristain was again in Ecuador from February 3 to 6, 2007. Both of these trips to Ecuador predate Mr. Cabrera's appointment and records of these journeys corroborate Beristain's own admission that his work on his report began earlier. Thus, it is not possible that Beristain's work was ordered, requested, or commissioned by Cabrera as an expert in the case. As it turns out, the work was in fact initiated by the FDA, Acción Ecológica, and other known members of the plaintiffs' legal and technical teams.

b) Beristain Has Close Ties to Acción Ecológica and Adolfo Maldonado, an Acknowledged Member of Plaintiffs' Team.

As explained above, Adolfo Maldonado is a principal of Acción Ecológica and an acknowledged member of the plaintiffs' technical team. For example, in the documentary film "CRUDE," plaintiffs' U.S. counsel, Steven Donziger, describes Maldonado as a member of "a team of experts" assisting plaintiffs "to help design a health treatment plan." ("CRUDE" at 1:16:20.) Acción Ecológica has published at least 56 articles on its website regarding this case, all of which support the plaintiffs and the FDA. Acción Ecológica and the FDA have also cross-published and hosted each other's material on their respective websites and press releases and provided links and references to one another's websites. For example, the current FDA website lists Acción Ecológica as one of the FDA's partners/supporters. (*See* Ex. 38 [http://www.texacotoxico.org/node/263].) And a December 2008 post from Amazonía Por la Vida (a subgroup of Acción Ecológica) on its website announced an event sponsored by the FDA at which two of the featured speakers were Ermel Chavez (President of the FDA) and Adolfo Maldonado. (*See* Ex. 39 [http://www.amazoniaporlavida.org/es/Eventos-pasados/19-2012-coca-encuentro-para-la-construccie-una-agenda-amaza.html].) Moreover, Amazon Watch—the plaintiffs' public relations arm in the United States—lists both the FDA and Acción Ecológica as its partners and it has made financial contributions to both groups. (*See* Ex. 40 [Amazon Watch 2008 Annual Report, at 18]; Ex. 41 [Excerpt of Amazon Watch 2007 form 990].) There can be no dispute, then, that Acción Ecológica and Maldonado are part of the team supporting plaintiffs in this case.

Beristain also maintains ties to Acción Ecológica that predate the appointment of Cabrera. In October 2006, he attended a convention in the city of El Coca, sponsored by Oilwatch regarding human rights and environmental issues in the oil industry. On October 22, 2006, he participated as a member of a panel with Acción Ecológica calling for the repair of damages in the Amazon caused by oil production. (Ex. 37 [Oilwatch Conference Web Pages]; Ex. 42 [Report of Oilwatch Conference, at 20-23].) Thus, it is clear that beginning no later than October 2006, Beristain was aligned with Acción Ecológica, which was well before Cabrera's initial appointment in March 2007.

During the Oilwatch Conference in October 2006, Beristain also made scathing public remarks regarding oil contamination and against TexPet's remediation efforts. He alleged that the TexPet remediation was "done in a fraudulent manner." He also accused TexPet of not using many available remediation technologies and alleged that other remediation techniques "were done precariously or fraudulently or polluted once again. We've heard of closing [pits], [about] detergents, etc., in the face of these cleanup alternatives, [but] many of them have not been used or were used negligently." (Ex. 116 [Audio Recording of Oilwatch Conference, October 22, 2006]; Ex. 43 [Transcript of Beristain Declarations at Oilwatch Conference Petroleum Forum, October 22, 2006].)[8] His public statements, made

[8] I submit both an audio recording of Beristain's remarks at the Oilwatch conference on October 22, 2006, as well as a written transcript of the recording. If the

almost six months prior to Cabrera's initial appointment as the global expert in this case, demonstrate a clear bias against my client, even though he, like Cabrera, was obligated to conduct an investigation of the issues in this case in an unbiased and neutral manner.

Moreover, since 2003, Beristain has been a member of the board of directors of Hegoa, a Spanish-Basque human rights organization affiliated with the Universidad del País Vasco, where Beristain formerly taught. According to Hegoa's website, Hegoa published three reports or studies between 2003 and 2005 that were written or co-authored by Maldonado. (Ex. 44 [Hegoa Website, at http://biblioteca.hegoa.efaber.net/registros/author/13947].) Thus, it is clear that Beristain and Maldonado share common ties and it is highly likely that Beristain has allegiance to Acción Ecológica and the plaintiffs' team. As such, he is far from being an independent and impartial expert. Given his obvious bias, Beristain should never have been permitted to serve on Cabrera's team and his participation violates this Court's orders.

c) Beristain's Report Is Not Independent Because It Is Based on Work Performed in Collaboration With Maldonado, Acción Ecológica, and the FDA.

The evidence demonstrates conclusively that Beristain worked hand in hand with plaintiffs' counsel and representatives, including Maldonado, Acción Ecológica, and the FDA.

1) Film Footage from "CRUDE" Confirms Beristain Worked with Plaintiffs' Team.

Newly discovered evidence reveals that plaintiff representatives actively participated in focus group meetings that form one of the primary bases for Beristain's conclusions in his report, and indeed, may have organized and managed the meetings directly. Newly available scenes in the film "CRUDE" provide undeniable, documentary evidence that plaintiffs' counsel Steven Donziger and Pablo Fajardo, Adolfo Maldonado of Acción Ecológica, and Luis Yanza of the FDA attended and actively participated in a May 2007 meeting with Beristain in the Cofán Dureno community. The film shows that plaintiffs' counsel were actively involved in the meeting. Fajardo is shown ringing a tire rim like a bell, apparently to call villagers to the meeting; he is later shown addressing the participants at the meeting, appearing to manage the proceedings, and he appears in one scene at the meeting with Beristain. Plaintiff representative Emergildo Criollo also appears to be the primary facilitator and Spanish/Cofán translator. Donziger also describes the Cofán meeting as one called for the people "to talk to their lawyers . . . to talk about what they want as compensation for all the damage." Throughout these scenes, Beristain appears on film with Donziger, Fajardo, and

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Court deems it necessary, I request that the Court appoint an expert to authenticate the transcript pursuant to Article 118 of the Code of Civil Procedure.

Criollo. Carolina Valladares, who Beristain credited as his local coordinator, was also present at the meeting.

At a minimum, this evidence demonstrates that Beristain, far from being an independent expert, was engaged in a close collaboration with plaintiffs' counsel that both Cabrera and plaintiffs' counsel have denied to this Court. In spite of statements to the contrary, the evidence is overwhelming that this meeting in the Cofán Dureno community, and another meeting in a Secoya village also shown in "CRUDE," were in fact two of the six meetings in which Beristain claims to have gathered independent evidence in support of the opinions ultimately adopted by Cabrera and included in his reports. The meetings in "CRUDE" and one of the meetings described in the Beristain Report occur in Dureno. The Cofán meeting in "CRUDE" also shows at least 33 individuals of Cofán nationality attending (with some individuals not shown on camera), while the focus group described in the Beristain Report states that 45 members of the Cofán community participated. The purposes of both the meeting in "CRUDE" and the focus groups centered on how to compensate the groups for the alleged damages. Individuals also provide alleged first-hand accounts of the impact of TexPet's operations in both the "CRUDE" meetings and the focus groups. And the meetings in both "CRUDE" and in the focus groups were held in native languages and used translators.

In an effort to hide the evidence of Beristain's collaboration with plaintiffs' counsel, these scenes were removed or altered in the version of "CRUDE" released to the public on DVD on February 23, 2010. In that version, three of the shots showing Beristain are replaced with different footage of the meeting, and one is actually altered only slightly for the sole purpose of cropping Beristain out of the frame. (Ex. 45 [Side-by-side images of Netflix Instant Streaming v. DVD Footage].) My client became aware of this difference only when it viewed a different version of the film available on the Internet through the Netflix video service. The version available over the Internet from Netflix (www.netflix.com) contains the unaltered scenes showing Beristain with plaintiffs' counsel and allies, while the version on DVDs purchased in the United States does not. (*See* Netflix Version of "CRUDE" at 1:15:35-1:16:20.) These edits to exclude Beristain are the *only* differences my client has found between the different versions of the film. Apparently, the film was edited to remove the footage of Beristain from the DVD-release version in order to hide from the Court evidence of Beristain's collaboration with plaintiffs' counsel. And the filmmaker, Joe Berlinger, director of the film "CRUDE," has admitted in a declaration filed in federal court in New York that he edited the film to remove evidence of Beristain's presence at the meeting with plaintiffs' team ***at the request of plaintiffs' lawyers***. (Ex. 46 [Declaration of Joseph A. Berlinger, ¶¶ 32-33.)

Despite this last-minute attempt to conceal Beristain's presence at the meetings with Plaintiffs' representatives, "CRUDE" provides further evidence that plaintiffs' counsel, the FDA, and Acción Ecológica worked together in connection with the preparation of the Beristain Report.

2) Hegoa Has Acknowledged That the FDA and Acción Ecológica Collaborated with Beristain in the Development of the Beristain Report.

Hegoa provided much or all of the funding for the human impact study resulting in the Beristain Report. On December 2, 2008, Hegoa posted an article on its website describing the study and acknowledging that Acción Ecológica and the FDA worked with Beristain in conducting the study. (*See* Ex. 47 [Hegoa, "Proyecto de Investigación sobre la dimensión psico-social, comunitaria y de género de los conflictos bélicos y socio-ambientales: derechos humanos, ayuda internacional y construcción de la paz," accessed March 10, 2009].). This study included studying the impacts of TexPet on the indigenous and mestizo communities of the Concession zone. Hegoa also received a December 2007 grant from the Fondo Cooperación al Desarrollo ("FOCAD") administered by the Departmento de Vivienda y Asuntos Sociales of the Basque state government to support this investigation. However, the article was subsequently removed from Hegoa's website and was replaced with a version of the article that was identical except that the reference to the FDA's and Acción Ecológica's participation with Beristain was omitted. (*See* Ex. 48 [Hegoa, "Proyecto de Investigación sobre la dimensión psico-social, comunitaria y de género de los conflictos bélicos y socio-ambientales: derechos humanos, ayuda internacional y construcción de la paz," accessed April 22, 2010].) Similarly, the copy of the report Beristain provided to Cabrera and the Court did not disclose the assistance of Acción Ecológica or the FDA in the work underlying that report—even though Hegoa had initially admitted it. (*See* Ex. 49 [4/1/08 08H30 Cabrera Report, Annex L].)[9]

3) Beristain Himself Has Acknowledged the Participation of Acción Ecológica Personnel in the Beristain Report.

In 2009, Hegoa published a book-version of Beristain's report, *Las Palabras de la Selva*. That book credited "Carolina Valladares, Sociologa" for "Coordinación Local" in connection with Beristain's work in Ecuador. (*See* Ex. 52 [Carlos Martín

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[9] In response to questions submitted by my client, Cabrera cited a study performed by Miguel San Sebastián as corroborating the conclusions in Beristain's human impact study for Cabrera. (Ex. 50 [2/5/09 09H10 Cabrera Response, Annex 7, R. 154114].) Putting aside the fact that San Sebastián's study does not support Beristain's conclusions, San Sebastián has admitted that his work in Ecuador was also done in connection with the FDA (and at the behest of the FDA). (Ex. 51 [Miguel San Sebastián, et al., *Oil Development and Health in the Amazon Basin of Ecuador: the Popular Epidemiology Process*, 60 Soc. Sci. Med. 799, 799-805 (2005)].) Thus, neither the Beristain Report nor the San Sebastián study can be described as independent of the plaintiffs in this case: both represent the ***advocacy*** of the FDA.

Beristain, Darío Páez Rovira & Itziar Fernández, Las palabras de la selva, Title Page].) About this matter and in response to questions submitted by my client, Cabrera himself admitted that Valladares was the local coordinator of Beristain's work in Ecuador (Ex. 53 [2/5/09 09H10 Cabrera Filing, R. 154177.) But Valladares is listed as an "active partner" of Acción Ecológica in a resolution of the Ministry of Environment dated August 30, 2009, and she is identified in association with Acción Ecológica's "Clínica Ambiental" program on the Acción Ecológica website.[10] Neither Beristain nor Cabrera disclosed Valladares' affiliation with Acción Ecológica at the time Cabrera submitted his report. Again, the report Beristain submitted to Cabrera and the Court was fundamentally tainted by assistance from personnel associated with the plaintiffs.

4) Other Evidence Proves That Acción Ecológica, the FDA, and Plaintiffs' Counsel Contributed to the Beristain Report.

Finally, further evidence also proves that Acción Ecológica and the FDA worked closely with plaintiffs' counsel in developing the Beristain report. In January 17, 2008, Luis Yanza of the FDA attempted to send an email to Maldonado to discuss a contract to gather witness testimonials from "affected populations" in the concession area. (*See* Ex. 56 [6/4/08 Chevron Rebuttal to Cabrera Report, Annex F, R. 141268-141273].) The timing and subject matter of the contract coincide with the dates and content of the Beristain study.[11]

In addition, expert analysis confirms that the Beristain Report is largely based on—without acknowledging its source—Adolfo Maldonado's 2001 report, "Ecua-

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[10] *See* Ex. 54 [http://www.ambiente.gov.ec/userfiles/1322/file/256.PDF (identifying Valladares as an active partner of Acción Ecológica)]. Numerous third party websites also describe her affiliation with Clínica Ambiental (an Acción Ecológica sub-group) and with Acción Ecológica. (*See, e.g.*, Ex. 55 [http://www.amazoniaporlavida.org/es/files/informe_visita_yasuni.pdf].)

[11] Moreover, Beristain's bias against my client is demonstrated by the fact that his report finds cancer death rates at rates an order of magnitude greater than even Maldonado's highest published estimates and at rates *two* orders of magnitude higher than any peer-reviewed study. Beristain reaches a cancer death rate of approximately 50 per 1,000 people (i.e., 5,000 per 100,000). (*See* Ex. 49 [4/1/08 08H30 Cabrera Report, Annex L].) This is extremely high compared to the cancer death rates found in Maldonado's 2001 study (136 per 100,000). (*See* Ex. 58 [Maldonado, "Ecuador Ni Es Ni Será Ya País Amazónico" (2001)].) The difference is even more astronomical when compared to Miguel San Sebastián's 2002 study (cancer incidence rates of 39.49 per 100,000 men and 68.25 per 100,000 women) and Michael Kelsh's 2008 study (19 cancer deaths per 100,000). (*See* Ex. 59 [Miguel San Sebastián, "Cáncer en la Amazonía del Ecuador (1985-1998)," 37 (2002)]; Ex. 60 [Rebuttal Expert Report of Michael Kelsh].)

dor Ni Es Ni Será Ya País Amazónico," a study of human health and other impacts allegedly resulting from TexPet operations in the Oriente region of Ecuador. This study is substantially similar in study design, methodology, analytical models, and findings to the quantitative analysis contained in the Beristain Report, which was adopted in Annex L to the Cabrera Report. (Ex. 58 [Adolfo Maldonado, "Ecuador Ni Es Ni Será Ya País Amazónico" (2001)]; Ex. 49 [4/1/08 08H30 Cabrera Report, Annex L].) Dr. Turell conducted a textual analysis comparing Maldonado's report and Annex L. She concluded, "When ECUADOR [the Maldonado study] and ANNEX L are compared, the quite high percentage of textual similitude (67%) and the very low percentage of unique vocabulary in each case confirm that ANNEX L was not produced independently from ECUADOR; rather, it is likely that, either the author of ECUADOR was involved in writing ANNEX L, or ANNEX L was plagiarized significantly from ECUADOR." (Ex. 18 [Turell Report Comparing "Ecuador Ni Es Ni Será Ya País Amazónico," "Las Palabras de la Selva," and Annex L of the Cabrera Report, 32].) This evidence provides even further support that the FDA and Acción Ecológica, with which Maldonado is closely affiliated, contributed significantly to the Beristain Report.

In sum, all of this evidence demonstrates that Cabrera's associate Beristain was not a neutral expert. Rather, Beristain actively colluded with plaintiffs and their representatives in creating a biased report ultimately relied upon by Cabrera.

D. New Evidence from Dr. Charles W. Calmbacher, a Former Judicial Inspection Expert Nominated by Plaintiffs, Confirms What My Client Has Long Said: Plaintiffs' Judicial Inspection Data, on Which Cabrera Blindly Relied, Are Tainted and Unreliable.

In addition to the new evidence explained above, I remind the Court of the evidence my client recently presented concerning the fabricated judicial inspection expert reports of Dr. Charles W. Calmbacher, the first expert appointed during the judicial inspection process and nominated by plaintiffs. I refer this Court to the prior submission of April 14, 2010 for a complete account of this damaging evidence. [Ex. 61 [4/14/10 15H42 Chevron Filing].)

To briefly summarize that evidence, Dr. Calmbacher testified in a deposition on March 29, 2010, pursuant to a subpoena authorized by a U.S. federal court and under penalty of perjury, that the two reports the plaintiffs' lawyers submitted to this Court in Dr. Calmbacher's name were falsified documents that he had never authorized and never signed. He testified that the fabricated reports, which purported to represent his assessment of judicial inspection sites Sacha-94 ("SA-94") and Shushufindi-48 ("SSF-48"), were directly contrary to his actual conclusions, which found no evidence indicating a threat to human health or need for remediation. (Ex. 62 [Calmbacher Dep. 112:1 – 117:20].) Dr. Calmbacher also testified that Steven Donziger knew Dr. Calmbacher's real opinions and would have known that the reports submitted under his name were false. (Ex. 62 [Calmbacher Dep. 118:22 – 119:1].)

Dr. Calmbacher further testified that plaintiffs' lawyers never informed him during the judicial inspection process, or at any time prior to Cabrera issuing his report, that this Court had ordered him to respond to questions my client had raised concerning the SA-94 and SSF-48 reports and other evidentiary issues concerning Dr. Calmbacher's sampling. (Ex. 62 [Calmbacher Dep. 141:4 – 148:17].) He also revealed during his deposition that plaintiffs' attorneys sought to corrupt the judicial inspection process by not allowing experts to conduct all their requested tests and by using portable test equipment in their technical team's hotel room (known as the "Selva Viva laboratory") to analyze samples when, in fact, they agreed to and were ordered by the Court to send collected samples to a qualified laboratory. (Ex. 62 [Calmbacher Dep. 106:1 – 109:11; 132:6 – 133:19].) This testimony not only taints the fabricated judicial inspection reports, but also discredits all the data and results submitted by plaintiffs during the judicial inspection process.

Cabrera's substantial reliance on these data casts serious doubts on the validity and trustworthiness of his conclusions and cannot possibly assist this Court in fairly adjudicating the issues at stake in this litigation.

E. There Have Been Additional, Important Indications That Cabrera Was Working with the Plaintiffs' Team from the Beginning.

My client has uncovered and previously brought to the Court's attention several additional pieces of evidence indicating an inappropriate relationship between Cabrera and the FDA, the entity designated by the plaintiffs as the beneficiary of any judgment in their favor.

Even before Cabrera was appointed as the global expert in this case, plaintiffs' representatives made improper payments to Cabrera, who tried to cover them up. In connection with the judicial inspections in this case, the Court nominated Cabrera as the "court expert," or settling expert, for judicial inspections at three sites (YU-02, AU-01, and CO-06). While Cabrera attended the judicial inspections at those sites, he did not submit a report with regard to any of them. Contrary to the established procedure by which each party provided funds to the Court for the payment of settling experts, on February 7, 2007, Cabrera filed a letter with the Court asking that Chevron be ordered to pay an "honoraria" for his work as a "settling expert" and indicating that he had already received direct payments from the FDA on plaintiffs' behalf. (Ex. 63 [6/4/08 Chevron Rebuttal to Cabrera Expert Report, Annex E, R. 141237-141267].) Cabrera also hand-delivered a copy of this letter to my client's attorneys and orally requested that his fees be paid. Counsel for my client immediately told Cabrera that the arrangement described in the letter—a direct payment to Cabrera from the FDA—was illegal and contrary to the Court's procedures. Soon thereafter, Cabrera returned to the courthouse and enlisted the help of former judge Dr. German Yánez to withdraw his letter and "erase" all evidence of the payment arrangement between him and the FDA from court records. A clerk later confirmed in writing that Cabrera and Dr. Yánez removed the document from the case file without notice

to my client. (Ex. 63 [6/4/08 Chevron Rebuttal to Cabrera Expert Report, Annex E, R. 141237-141267].) This improper payment confirms that the FDA and Cabrera had an inappropriate relationship long before Cabrera was appointed as the global expert in this case. Thus, he was tainted with bias against my client and lack of independence from the start.

Then, from the beginning of his "field work," Cabrera abandoned any pretense of impartiality by working closely with plaintiffs and excluding Chevron at every turn. For example, at the first site he visited during his field work (Charapa 1), Cabrera was accompanied on the first day by activists of the FDA. (Ex. 64 [7/5/07 Chevron Filing, R. 131276].) Throughout his field work, he was seen and photographed regularly communicating with members of the FDA. [Ex. 65 [7/17/07 15H10 Chevron Filing, R. 131965-131966]; Ex. 66 [8/20/07 09H40 Chevron Filing, R. 132486-132489]; Ex. 67 [10/9/07 11H25 Chevron Filing, R. 133068-133069].) He also had lunch with plaintiffs' representatives during the field work, and communicated with them regarding schedule changes or delays. (Ex. 68 [7/12/07 15H00 Chevron Filing, R. 131342].) At Cabrera's visit of Well Lago Agrio-1, Cabrera showed up over five-and-a-half hours after he was scheduled to begin the visit. Surprisingly, while my client's representatives waited at the site the entire time, plaintiffs' representatives arrived just moments before Cabrera, indicating that they had either been with him the whole time or had been privy to his schedule. (Ex. 69 [7/11/07 17H50 Chevron Filing, R. 131332-131333].) Moreover, as documented in numerous photographs and other evidence previously submitted to the Court, members of the plaintiffs' technical team, including Donald Moncayo and Silvio Jaya (as well as a number of unidentified individuals who also were not a part of the team of assistants he disclosed to the Court) openly assisted Cabrera during this field work. (*See* Ex. 66 [8/20/07 09H40 Chevron Filing, R. 132486-132489].)

In contrast to his hand-in-hand cooperation with plaintiffs' representatives, Cabrera refused to allow Chevron access to observe adequately his field work, in violation of the law and of the Court's order that "his actions must be public concerning taking samples in the field." (Ex. 2 [11/29/07 17H00 Order, 9 (R. 133759)].) He even instructed local landowners to deny Chevron access to their property during his sampling. (Ex. 70 [8/17/07 15H30 Chevron Filing, R. 132236.) He used police officers and security guards to keep Chevron personnel from observing his team's gathering of evidence. (Ex. 68 [7/12/07 15H00 Chevron Filing, R. 131341]; Ex. 64 [7/5/07 Chevron Filing, R. 131277-131278]; Ex. 70 [8/17/07 15H30 Chevron Filing, R. 132238].) He also cordoned off the area where he and his team were working in order to prevent Chevron personnel from adequately observing, filming, or photographing his sampling procedures, even going so far as to erect a tent over his work area so that he could not be observed. (Ex. 71 [7/6/07 17H30 Chevron Filing, R. 131317]; Ex. 69 [7/11/07 17H50 Chevron Filing, R. 131334]; Ex. 70 [8/17/07 15H30 Chevron Filing, R. 132236].) These actions directly violated the principle of publicity of evidence set forth in Article 120 of the Code of Civil Procedure, and as a result, my client's right to observe the sampling practices of a supposedly neutral court expert.

Thus, early on in his field work, Cabrera demonstrated a clear bias in favor of plaintiffs and suggested an inappropriate working relationship with them and their representatives, including the FDA.

Cabrera's close relationship and secret communications with plaintiffs continued right up to the time that Cabrera delivered his expert report to the Court. Though he made no public announcement or informed Chevron that he had completed his work or when he would present it to the Court, plaintiffs, their counsel, FDA representatives, and the crew filming the documentary "CRUDE" accompanied Cabrera to the Lago Agrio courthouse to deliver his first report. (*See* Ex. 72 [8/20/08 16H35 Chevron Filing, R. 140930].)

F. Cabrera Has Misled This Court and Even Committed Perjury, Warranting the Exclusion of His Report and All Its Annexes and Supplements as Proof in this Case.

Cabrera has repeatedly stated that he would be impartial and independent in conducting his expert examination. But given the voluminous evidence demonstrating that Cabrera breached his legal duties of impartiality and independence by colluding with plaintiffs and their representatives and by passing off the work of others associated with plaintiffs as his own, Cabrera has lied to this Court and committed perjury, for which he should be sanctioned and punished.

Cabrera has filed in or submitted to this Court over a dozen separate statements, in which he asserted and vowed to maintain his impartiality and neutrality throughout his expert examination:

- "With the aim of ensuring the ***complete and absolute impartiality*** with which I must act in carrying out the expert evaluation, and faced with the constant climactic changes that exist in the area, I did not establish the schedule of sites that I will actually be sampling." (Ex. 73 [7/12/07 10H12 Filing, 1 (R. 131338), emphasis added].)

- "The Expert [Cabrera] states that he is not under any legal impediment whatsoever and swears to perform his duties faithfully and in accordance with science, technology, and the law, with ***complete impartiality and independence*** vis-à-vis the parties." (Ex. 74 [6/13/07 09H45 Order, 3 (R. 130169), emphasis added].)

- "I should clarify that I ***do not have any relation or agreements with the plaintiff***, and it seems to me to be an insult against me that I should be linked with the attorneys of the plaintiffs." (Ex. 3 [7/23/07 10H15 Filing, 1 (R. 131972), emphasis added].)

- "Your Honor, being the professional that I am and in compliance with the orders issued by you regarding my designation, confirmation and acceptance of my appointment as Expert, I have performed my work with ***abso-***

lute impartiality, honesty, transparency and professionalism. I reject the descriptions or attacks that have been leveled against me alleging that I am biased toward one of the parties, and I also reject the unfounded accusations that I am performing my work surreptitiously. That is completely untrue." (Ex. 75 [10/11/07 14H20 Filing, 1 (R. 133178), emphasis added].)

- "The defendant's attorneys allege that the plaintiff is in 'close contact' with me, and that the plaintiff has provided me with technical information and support staff to assist with the expert examination. This is untrue. If I need any technical information in connection with this case, all I have to do is request it from this Court; ***the idea that the plaintiffs would be helping me with that is unthinkable.*** With regard to personnel, I admit that initially, a person associated with the plaintiff did provide me with logistical support for the expert examination, but this has had no bearing on the core subjects of the expert examination, and therefore no influence or actual relationship exists. After the first days, ***I decided to rectify this situation and not allow any person associated with the parties to participate in my work*** in order to avoid absurd or ill-intentioned comments." (Ex. 75 [10/11/07 14H20 Filing, 3 (R. 133180), emphasis added].)

- "In response to each and every one of said briefs, Your Honor, I can only confirm my commitment to continue my work with ***absolute impartiality, honesty and transparency***." (Ex. 4 [10/31/07 16H55 Filing, 1 (R. 133465), emphasis added].)

- "I would clarify, Your Honor, that despite all of the above, I confirm my commitment to continue performing my work in the expert examination in a ***clear, objective, professional, impartial, and transparent manner***." (Ex. 76 [11/6/07 14H45 Filing, 2-3 (R. 133470-133471), emphasis added].)

- "The Work Plan was implemented as designed, with ***complete transparency and impartiality***." (Ex. 5 [11/6/07 17H20 Filing, 1 (R. 133487), emphasis added].)

- "In order to conduct a ***thorough, impartial and objective investigation in strict observance of the law and the facts of the case***, since July and August of this year I have asked you, Your Honor, to send official letters to various public and private institutions requesting that they provide me with essential information related to the expert examination for which I am responsible." (Ex. 77 [11/9/07 09H30 Filing, 1 (R. 133582), emphasis added].)

- "Your Honor, I do not believe it is proper for the parties to tell me where and how I should collect the samples. I have stated that I accept the technical suggestions the parties make to me, but I cannot subject myself to their criteria, as this would mean becoming biased toward one party or the other. . . . Your Honor, I hope and I am certain that my report, which is

completely impartial, will help bring to light the truth of the matters in dispute." (Ex. 78 [12/11/07 14H20 Filing, 1 (R. 133907), emphasis added].)

- "As stipulated in the Court order mentioned initially, my work is based on the assistance provided by other experts in making some of the technical analyses. These experts have therefore been part of my technical team, which consists of ***impartial professionals with impeccable credentials***, as can be observed in Exhibit V to this report." (Ex. 9 [4/1/08 08H30 Cabrera Report, 2 (R. 134231), emphasis added].)

- "Mr. President, I am an ***honest man with nothing to hide***, and my conduct as an expert in this case has been ***as professional, impartial and objective as possible***, as can be seen from my expert report. The fact that neither of the two parties is fully satisfied with my report is clear evidence of ***my impartiality***." (Ex. 79 [10/8/08 10H50 Filing, 7 (R. 151322), emphasis added].)

- "I do not take orders from either of the parties to the lawsuit. . . .This means, Mr. President, that ***I am not, nor will I be, subject to the views or whims of either of the parties***; I act in accordance with rulings by the judge, with the law and my principles. Not being subject to orders from either of the parties leads me to believe that I have or should have some guarantee of protection from the Court. I cannot be subject or overly vulnerable to the pressures that have been exerted on me by both parties, and with particular forcefulness by the defendant." (Ex. 79 [10/8/08 10H50 Filing, 8 (R. 151323), emphasis added].)

- "Mr. President, I once again confirm my utmost willingness to cooperate as an ***absolutely impartial adjunct to the judge*** to ensure that the judge has sufficient, clear technical information." (Ex. 79 [10/8/08 10H50 Filing, 12 (R. 151327), emphasis added].)

- "There were two basic reasons for my presence in the field at that time: a) to offer ***objective, impartial, and timely advice*** to the Judge regarding technical matters being addressed in the proceeding . . . ." (Ex. 7 [10/20/08 10H05 Filing, 1 (R. 151398), emphasis added].)

- "To ensure that there is ***no doubt as to the impartiality, integrity, and transparency of my work***, I would like to clarify, at this time, certain details about the questions posed by the Chevron attorneys in view of the results of the control sample, results that were delivered by the representative of the CORLAB [sic] laboratory. . . . Once more I make it a matter of record that I have done my work, with my technical team, in ***adherence to my principles and my integrity and, without a desire to negatively affect or benefit either party***, I have limited myself to providing a docu-

mented report of everything that I am convinced is the truth." (Ex. 80 [3/4/09 09H50 Filing, 1 (R. 154580), emphasis added.)

- "I declare that I have acted and performed my work ***impartially and objectively***, I have complied with the Judge's orders." (Ex. 80 [3/4/09 09H50 Filing, 2 (R. 154581), emphasis added.)

- "Since I have clarified, in detail, the entire sample analysis procedure, I believe that there is ***not the slightest question about the validity, objectivity, impartiality, and clarity of my work***." (Ex. 80 [3/4/09 09H50 Filing, 10 (R. 154589), emphasis added.)

As Cabrera acknowledged, Cabrera's assurances of independence, neutrality, and objectivity, demanded by law also extended to members of his team. But, as demonstrated above, Cabrera's statements are nothing more than empty words, as he has repeatedly and continuously colluded with plaintiffs and their representatives in preparing and presenting a biased report in plaintiffs' favor.

Cabrera's deposition testimony offered in the criminal proceeding No. 09-2008-DRR is similarly misleading. Although he acknowledged his responsibility for the work of his team members to be independent and unbiased, and purported to disclose all of their identities, this was not true. Cabrera testified: "Concurrently, the professionals in the biotic and social components were performing their work at the various sites in accordance with the technical criteria; all of these activities were carried out under my responsibility and supervision." (Ex. 10 [7/2/09 09H30 Denuncia Proceeding, 1].) And in response to the question, "Please give the names of the professionals who assisted you with your assessment," Cabrera testified:

> For the physical component, the persons with me were Chemical Engineer Carlos Muñoz and Chemical Engineer Mauricio Naranjo; the biotic part is divided into flora and fauna, and each of these was a group, but I contracted the professional who was an expert, and he in turn had his assistants; for the zoological part there was Nelson Gallo, Director of the School of Zoology at the Universidad Central, and for the botanical part there was Carlos Cerón, Director of the Department of Biology at the Universidad Central del Ecuador; as for the social or anthropic part, Carlos Beristein [sic] was coordinator of that area; he is a Spanish citizen, a Doctor of Medicine and Sociology, a professor at the Universidad de Deusto in the Basque country and an expert before the Inter-American Court of Human Rights.

(Ex. 10 [7/2/09 09H30 Denuncia Proceeding, 2].) Cabrera thus states that he supervised all of Beristain's activities, but, as explained in detail above, Beristain's study was commissioned by the plaintiffs and began long before Cabrera was appointed to be the Court's expert. Thus, Cabrera could not have "directed"

or "supervised" all of Beristain's activities. And Cabrera lists only five professionals who assisted him with his expert evaluation (and 15 in his Annex V). He thus affirmatively fails to disclose all of the *other* professionals—members of plaintiffs' team of consultants and allies, including Stratus—that in fact have assisted him.

Thus, in addition to misleading the Court with his promises of impartiality, Cabrera has committed perjury.

IV. CABRERA'S IMPROPER ALLEGIANCE TO PLAINTIFFS IS ALSO ESTABLISHED BY THE DEMONSTRABLY BIASED AND SCIENTIFICALLY BANKRUPT NATURE OF HIS WORK.

These new pieces of evidence illustrating the biased and fraudulent nature of Cabrera's "expert" report are simply the latest examples of Cabrera's vast catalog of violations. In several previous filings, my client has outlined the striking and seemingly endless instances of Cabrera's scientific errors and unabashed partiality for plaintiffs. I will briefly summarize these examples below.

A. Cabrera's Results Are Unsupported by Any Scientific Data or Reasonable Methodology.

The Court appointed Cabrera as "an auxiliary to the Court for purposes of providing to the process and to the Court scientific elements for determining the truth" and instructed him that "[i]n performing his work, the Expert shall refer to the technical task with which he is charged, without making any value judgments" of his own. (Ex. 1 [10/03/07 11H00 Order, 2 (R. 132846 (back))].) Yet as I have shown above, Cabrera has acted as a disguised agent for plaintiffs, not an independent ancillary of the Court. He does little other than make "value judgments" for plaintiffs' benefit, such as that my client must pay for Petroecuador's pollution, and that "equity" requires assessing damages based on the nationality of the defendant. The opinions he has delivered to the Court are simply plaintiffs' opinions for which there are absolutely no supporting scientific data. In this way plaintiffs have substituted the collusion the law prohibits for the evidence the law demands but plaintiffs lack: Plaintiffs deliver unsupportable demands through Cabrera, then cite Cabrera's findings as evidence supporting those demands. Detailed rebuttals by eminent scientists have demonstrated that Cabrera's conclusions and recommendations are completely contrary to science and reason and in violation of Article 253 of the Code of Civil Procedure, which provides that a court-appointed expert "must" submit an expert report that "state[s] the ground on which it is based." Cabrera's findings and damage assessments are so lacking in intellectual integrity and scientific rigor that they cannot be the result of an objective investigation. Below are some examples.

1. Cabrera Recommends That Some Unspecified Entity Receive $9.5 Billion for Imaginary Cancer Deaths.

Cabrera recommends that my client pay what would be the largest toxic tort award in human history—US$9.5 billion—without proof that a single person developed cancer from petroleum exposure, much less from a petroleum exposure for which TexPet is responsible. Cabrera purports to charge my client US$6.8 million per "excess cancer" death, and claims there have been 1,401 deaths due to petroleum exposure. (Ex. 23 [11/17/08 08H25 Cabrera Supplemental Report, 35-38, R. 152984-152986].) He does this without identifying a single individual who prematurely died from cancer, without pointing to a single death certificate, and without consulting a single medical record or medical professional who does not work or has not worked for plaintiffs. (Ex. 23 [11/17/08 08H25 Cabrera Supplemental Report, 35-38, R. 152984-152986]; Ex. 60 [Rebuttal Report of Michael Kelsh, 4 (R. 146381)].)

As I explained above, the claim of excess cancer comes from Maldonado and Beristain, who are both affiliated with plaintiffs. Their associated agenda of blaming TexPet for alleged harm when there is no scientific proof can be seen throughout Annex L of the Cabrera Report. The questionnaire used was overtly biased with loaded questions like "Texaco's petroleum activities and pollution altered children's activities as follows . . ." (Ex. 49 [4/1/08 08H30 Cabrera Report, Annex L, R. 139738]), "if you live close to a river, at what distance . . . was Texaco's pollution from your house?" (Ex. 49 [4/1/08 08H30 Cabrera Report, Annex L, R. 139736 (back)]), and "did the rainforest animals die as a consequence of pollution?" (Ex. 49 [4/1/08 08H30 Cabrera Report, Annex L, R. 139737]). That same bias extended to computing results in a manner disguised to inflate the cancer rate. The cancer rate from the survey, for example, is based on the number of cancers reported for any family member over the past 44 years by all those interviewed (306) divided by the total number of family members currently living with those interviewees (6,066) to arrive at a cancer rate of 50 per 1,000. (Ex. 60 [Rebuttal Report of Michael Kelsh, 12-15 (R. 146389-146393)].) Even a lay person can easily see that this analysis is flawed, as the number of cancers over 44 years must be divided by the number of family members over that period, not the number currently living at some particular address. Take the example of a respondent who lived alone when polled in 2008 but had 10 family members (brothers, sisters, children, parents) from 1964-2008. If he reported one case of cancer among them, the cancer rate using the methodology in the Cabrera Report would be 100% when it is actually 10%. As explained in Chevron's rebuttals, this is only one of many invalidating errors in Cabrera's reports that a professional epidemiologist simply would not make.

The surest proof that Maldonado's and Beristain's actual interest was in supporting plaintiffs by issuing a document with a very high rate of reported cancer cases is the lack of medical validation of the survey respondents' reported cancers. The Beristain/Maldonado instrument is more of an opinion poll than a health survey. But even setting that aside, cancer incidents reported in surveys, even unbiased professionally conducted ones, must be validated. (Ex. 60 [Rebuttal Report of Michael Kelsh, 10-11 (R. 146387-146388)].) Cabrera and Beristain responded to the fact that "manifestations of health problems were not

medically verified or validated in any way" by claiming that for cancer "the interviewers checked with the person interviewed regarding the place where the diagnosis was made in order to validate that information with the existence of a medical diagnosis." (Ex. 50 [2/5/09 09H10 Cabrera Response, Annex 7, R. 154110-154111].) Cabrera and Beristain notably does not say that the investigators actually checked and confirmed that there was such a diagnosis from a qualified professional. To state the obvious, obtaining information that supposedly would allow an investigator to validate medical results with hospital records is not the same as actually doing so.

An article published by the United States Agency for Toxic Substance Disease Registry ("ATSDR"), which is responsible for surveying for disease from chemical exposure in the United States, describes the phenomena Beristain and Maldonado seek to exploit in a peer-reviewed article entitled *Recall Bias Associated with Perceived Exposure to Hazardous Substances*. ATSDR administered health surveys to a community that incorrectly believed it had been exposed to contaminated groundwater and to a control community that did not believe it was exposed. The community that believed it was exposed reported double the cancer rate reported in the control community. But when ATSDR used actual records to check the accuracy of those reports, it turned out that both communities had suffered only the same lower cancer rate reported by the control community. There was no evidence showing an excess cancer rate in either community. ATSDR concluded:

> This study demonstrates the importance of verifying reported cases of disease, even a disease as well defined as cancer, in emotionally charged situations such as living in communities surrounding hazardous waste sites. If reported cases of cancer had not been verified, it would have incorrectly appeared that community A had almost twice the rate of cancer as community B and that an association existed between living in community A and having cancer.

(Ex. 81 [Wendy Kaye, Irene Hall & Jeffrey A. Lybarger, *Recall bias in disease status associated with perceived exposure to hazardous substances*, 4 Ann Epidemiol 393, 395-96 (1994)].) The difference between the actions of ATSDR in that study and those of Beristain and Maldonado in this case is the difference between those intent on "determining the truth" about a possible cancer excess and those seeking to profit by hiding that truth. Based on this information, I submit that it is possible that Beristain and Maldonado did initially attempt to validate the reported cases of cancer, but abandoned the effort when it did not yield the results they wanted. In any event, they did not validate the results they reported.

Finally, reliable evidence proves Maldonado and Beristain wrong about the cancer issues they addressed. "The weight of evidence from the current epidemiological literature finds no excess cancer risks from petroleum products or working in the petroleum industry. The International Agency for Research on Cancer (IARC) has determined that crude oil is 'unclassifiable' as a human carcinogen

(IARC 1989)." (Ex. 60 [Rebuttal Report of Michael Kelsh, 5 (R. 146382)].) As detailed extensively in the reports of Dr. Michael Kelsh, reliable, peer-reviewed studies confirm that there is no excess rate of cancer cases in the former Concession area. Thus Cabrera's claim of US$9.5 billion in damages for excess cancer deaths as a result of TexPet's operations in the former Concession area is bogus and unfounded.

2. Cabrera Asserts a Claim for "Unjust Enrichment," a Non-Existent Principle Under Ecuadorian Law.

Plaintiffs would have this Court believe the implausible scenario in which Cabrera, a mining engineer, spontaneously assesses more than $8 billion in "unjust enrichment" damages, even though the concept of unjust enrichment does not exist in Ecuadorian law, and he was never asked to make any such assessment. (*See* Ex. 9 [4/1/08 08H30 Cabrera Report, 1-2 (R. 134230-134231)].) As my client has explained in multiple briefs, "unjust enrichment" as proposed in the Cabrera Report is not a form of damages; rather, it is a penalty that some U.S. government agencies assess in limited circumstances and is non-existent under Ecuadorian law.

Even if the U.S. legal concept of unjust enrichment were available under Ecuadorian law, it would not apply in this case. If a company has paid for a remediation, it has not, by definition, been unjustly enriched. (Ex. 82 [Rebuttal Report of Douglas Southgate, 5-6 (R. 146346)].) Further, if one imposes an unjust enrichment assessment, it is limited by the party's level of benefits. The Cabrera Report ignores the reality that TexPet was not only a minority owner in a consortium, but also subject to income taxes up to 87.31%. "Texpet in theory would only be responsible for 4.75875 percent of the supposed unjust enrichment." (Ex. 82 [Rebuttal Report of Douglas Southgate, 7 (R. 146348).) None of the Cabrera Report's arguments for unjust enrichment passes muster.

3. Cabrera Habitually Exaggerates Costs By Orders of Magnitude.

Throughout the Cabrera Report, the costs of remediation actions are exaggerated to such a degree that those estimates could not possibly be the result of an impartial investigation.

Soil Remediation. A rational assessment of the cost to perform any needed soil remediation in the former Concession area would take into account the fact that Petroecuador is already contractually obligated to perform, and is in the process of conducting, all of the necessary soil remediation. Because no party other than Petroecuador will need to do such work, it will cost nothing beyond what Petroecuador is currently paying to perform all of the needed soil remediation. Petroecuador has planned as part of a program called Proyecto Eliminación de Piscinas en el Distrito Amazónico, translated as Project for the Elimination of Pits in the Amazon District ("PEPDA"), to remediate the entire former Concession

area for only US$67.8 million, US$31.45 million of which is to remediate pits. Since the plaintiffs cannot profit from this truth, the Cabrera Report ignores it and fabricates unrealistic estimates of work that will never be done. The Cabrera Report claims it will cost US$1.7 billion to remediate all the soil. (Ex. 21 [Rebuttal Report of Robert Hinchee, 5 (R. 148134)].) To get this exorbitantly high number, the Cabrera Report ignores Petroecuador's data and exaggerates the number of pits in the former concession area that require cleanup by nearly four times (this is based on an aerial photograph review, which claims the existence of pits based on shadows in photographs that turned out to be trees or wells). (Ex. 21 [Rebuttal Report of Robert E. Hinchee, 2 (R. 148130)]; Ex. 30 [Rebuttal Report of Di Paolo, 7-8 (R. 148303-148304)].) The report exaggerates the depth of remediation that would be required – asserting that all pits would have to be cleaned to 4 meters deep, even where the presence of hydrocarbons was not found below 1-2 meters from the surface. (Ex. 21 [Rebuttal Report of Robert Hinchee, 20-21 (R. 148148-148149)].) Then it exaggerates the area required to be remediated, arbitrarily increasing the surface area of each pit by 50%. (Ex. 21 [Rebuttal Report of Robert E. Hinchee, 20 (R. 148148)].)

Then, to capitalize on their overstated volume of soil to be remediated, the Cabrera Report uses remediation unit costs more than 30 times higher than Petroecuador is actually paying for remediation of soil in the area. The Cabrera Report claims soil costs of US$489 per cubic meter to remediate. But Petroecuador is currently paying only US$15.71 per cubic meter to remediate the exact same soil in the exact same locations in the concession area. (Ex. 21 [Rebuttal Report of Robert E. Hinchee, 11 (R. 148139-148140)].)

Groundwater Remediation Costs. The original and supplemental Cabrera Reports both concede that no estimate of groundwater remediation costs can be made. Furthermore, extensive sampling by experts proposed by my client has confirmed that hydrocarbons either are not present in groundwater or that if present, they are below levels that could put humans at risk. (Ex. 83 [Rebuttal Report of Robert Hinchee Regarding Groundwater, 1 (R. 154466)].) Nonetheless, after stating, "I am unable to define the cost of cleaning up the groundwater" (Ex. 23 [11/17/08 08H25 Cabrera Supplemental Report, 12 (R. 152962)]), a table in the Supplemental Cabrera Report defines those costs, stating that "[c]ost of [r]emediation per site Ranges from 3.5 to 13.4 million from which an average was obtained of (8.45)*(359 wells and 24 stations)," totaling $3,236,350,000. The agent who estimated the supposed groundwater remediation costs used as a reference remediation costs from non-oil sites that had been impacted by chemicals that are extremely expensive to remediate. (Ex. 83 [Rebuttal Report of Robert Hinchee Regarding Groundwater, 4-6 (R. 154469-154471)].) Clearly these two contradictory statements were made by different people, and, given what I have explained above, all of them were probably working for plaintiffs. As I have proven, Cabrera's reports lack any valid data showing the presence of petroleum-related contamination in the groundwater that could justify the damage assessments claimed by Cabrera.

4. The Cabrera Report Makes Up Expensive and Irrational Remedies for Harms That Do Not Exist.

The Cabrera Report goes to extremes to fabricate damages that do not exist, and then recommends bizarre and exorbitantly expensive remedies for them.

Rainforest Losses. Cabrera's ecological damage determination of US$1.697 billion is based on a purported need to restore 5,153 hectares of rainforest. Over 99% of that "loss" is based on legal government-authorized and government-mandated activities that have nothing to do with any alleged contamination. (Ex. 35 [Rebuttal Report of Theodore Tomasi, ES-3 (R. 146654)].) Indeed, of that amount, US$1.502 billion is for losses due to legally constructed—and in many cases government-required—roads that the author of Annex O of the Cabrera Report freely admits will never be "replace[d] . . . with a natural ecosystem" (Ex. 84 [4/1/08 08H30 Cabrera Report, Annex O, 4 (R. 139784)]), because they are in use and remain the property of the government of Ecuador. (Ex. 85 [Rebuttal Report of Wasserstrom, 3 (R. 146900)].) Indeed, historical maps show that the roads built were planned by the Government of Ecuador before the Concession was even granted. (Ex. 85 [Rebuttal Report of Wasserstrom, 9 (R. 146906)].) The Cabrera Report fails to show that any significant ecological damage can be attributed to petroleum operations. Cabrera compounds his errors by using invalid methods to calculate his exorbitant ecological damage assessment. As explained in detail in the Rebuttal of Dr. Theodore Tomasi, the analysis in Annex O is methodologically invalid. It, for example, multiplies the theoretical value of a hectare of rainforest to one person by the population of the world even though any alleged rainforest losses only apply to Ecuadorians and only 48 of them are parties to this lawsuit. (Ex. 35 [Rebuttal Report of Theodore Tomasi, 21-22 (R. 146685-146686)].) However, the premise that a public good like roads that were legally constructed at the request or instruction of the government of Ecuador can form the basis for damages is so irrational that the most serious methodological errors seem minor by comparison.

Potable Water. Right after claiming that my client must pay US$1.7 billion in damages for having built at the behest of the Government of Ecuador certain form of public infrastructure, the authors of the Cabrera Report recommend that my client pay $428 million to build a different form of infrastructure—a new potable water system. This expensive drinking water system is proposed even though there are no impacts to drinking water supplies or groundwater attributable to the operations of the former Petroecuador-Texaco Consortium: "results of the analysis of 206 samples located in the former Concession show that the groundwater resources are not impacted by compounds from the former oilfield activities of Texpet . . . ." (Ex. 86 [Rebuttal Report of John Connor, 6 (R. 148362)].) The major problem with the water in the concession area is contamination with dangers levels of E. coli bacteria from untreated sewage. (Ex. 86 [Rebuttal Report of John Connor, 8 (R. 148364)].) Further, the potable water system proposed in Annex R goes against the recommendations of official Ecuadorian government health studies and is vastly overpriced.

Cultural Loss. Annex M purports to assess US$430 million to breed game animals, buy land, and build a cultural center. Almost none of this amount is for any harm from supposed contamination. Rather, it is from the impact in the Oriente of colonization encouraged by the Government of Ecuador. (Ex. 85 [Rebuttal Report of Wasserstrom, 4 (R. 146901)].)

Health Care System. The Cabrera Report proposes US$480 million for a creation of a health care bureaucracy of some sort based on Annex P. The proposal is bizarre. At one point it calls for "perfecting human genotypes and phenotypes" as part of human health. (Ex. 87 [4/1/08 08H30 Cabrera Report, Annex P, R. 139800].) Although this sounds like the author of Annex P is advocating some form of eugenics, presumably the author is merely using biological terms he or she does not understand. Equally troubling is the Annex's inflammatory, politicized tone, such as where the author claims that "the prevailing Western view despises other cultures (specifically community and indigenous cultures) and the richness of their tribal knowledge and customs." (Ex. 87 [4/1/08 08H30 Cabrera Report, Annex P, R. 139799].) Similarly troubling and indicative of a political agenda is a claim that the proposal is "included in a debate to promote change within a comprehensive paradigm in politics and civilization. The paradigm is being built by the people; it is based upon equal rights, an economy whose primary goal is to benefit the population as a whole instead of corporate earnings[.]" (Ex. 87 [4/1/08 08H30 Cabrera Report, Annex P, R. 139800].) Not only are such indications of political bias inappropriate in a report by a court-appointed neutral expert, but such a program is not needed because of TexPet's past activities. As I explained above, there is no excess of disease in the former Concession area attributable to petroleum exploration and production. Further, the cost numbers in this proposal are simply fabricated. Epidemiologist Dr. Michael Kelsh concluded that the costs "appear to be numbers fabricated to reach a 'significant' total. They do not appear to be based on current expenditures as a starting point, nor are they based on a careful assessment and evaluation of the current resources and infrastructure needs in the Oriente." (Ex. 60 [Rebuttal Report of Michael Kelsh, 6 (R. 146383)].)

Petroecuador Infrastructure Improvements. Annex S to the Cabrera Report makes the illogical proposal that my client pay US$375 million to modernize the oil infrastructure Petroecuador has exclusively owned for the last 18 years and used to generate billions of dollars in revenue. As with most of the obligations to pay reparations and/or other payments established in the Cabrera Report, this one is riddled with methodological errors attempting to develop dollar values for work that cannot be justified. (*See, e.g.*, Ex. 88 [Rebuttal Report of John Connor and William Hutton, 16 (R. 146746)].) But these are overshadowed by the sheer ridiculousness of the premise that my client is responsible for renovating oil production equipment Petroecuador has solely owned for the last 18 years—and for which this government corporation and its predecessor (CEPE) was the majority owner for decades longer.

In sum, the Cabrera Report and its annexes and supplements are riddled with conclusions utterly lacking scientific support and designed only to bolster plaintiffs' unfounded claims.

B. Cabrera's Determination of Damages Ignores Settlements Between TexPet and the Government of Ecuador and Local Government Entities Acting on Behalf of Ecuadorian Citizens.

In addition to the factual errors concerning substantive environmental issues underlying Cabrera's determinations, Cabrera's statements ignore highly relevant legal facts and principles, even though his report is otherwise replete with legal notions that are unsupported. For example, Cabrera's conclusions can hold only if the Court ignores the fact that the Government of Ecuador ("GOE") settled any environmental issue arising from the former Consortium's actions through the Remedial Action Plan ("RAP") process and the Actas confirming TexPet's compliance with the RAP. Indeed, as Ecuador's Ambassador represented to a United States District Court:

> The Republic of Ecuador, by virtue of the "Acta Final" of September 30, 1998, in accordance with the "Contrato para la Ejecución de Trabajos de Reparación Medioambiental" (Contract for Implementation of Environment Repair Works) of May 4, 1995, absolved, liberated and forever freed TEXPET, Texas Petroleum Company, Compañía TEXACO de Petróleos del Ecuador, S.A., TEXACO Inc., its employees, principals and subsidiaries of any claim or litigation by the Government of the Republic of Ecuador concerning the obligations acquired by TEXPET in the fore-mentioned contract.

(Ex. 109 [11/11/98 Letter from Ambassador Ivonne A. Baki to Honorable Jed S. Rakoff].)

The GOE, TexPet, and citizen advocacy groups all understood that in negotiating, executing, and confirming compliance with the Settlement Agreement, the GOE was acting on behalf of the interests of the Ecuadorian people. (*See, e.g.,* Ex. 110 [4/28/93 Letter from Rodrigo Perez Pallares, legal representative for Texpet, to Esperanza Martinez of Campaña Amazonía Por La Vida (Acción Ecológica) (noting Texpet's belief "that the interests of the Ecuadorian people are duly represented in the [environmental] audit by the Ministry of Energy and Mines")]; Ex. 111 [11/9/94 Report of the Special Permanent Environmental Commission of the National Congress, Official Communication No. 131-CEPMA-CN-94 (indicating that the Committee will stop its work "during the negotiations designed to resolve all environmental damages" which laid the groundwork for the remediation)]; Ex. 112 [Ministry of Energy and Mines, *Work Session Record: Texpet Remediation Agreement* (Feb. 22, 1995) (including two dozen signatories from such groups at the FDA and Acción Ecológica and stating that "[w]e who sign this record in democratic representation of the peoples of the Ecuadorian Oriente and especially of the areas affected by the petroleum operation and the

indigenous organizations, as well as non-governmental organizations, agree that the process of understanding and the immediate performance of the environmental remediation work should continue. . . .")]; Ex. 113 [6/20/95 Letter from Consorcio de Municipios de Napo ("Comuna") to Adolfo Bárcenas and Daniel Pauker G., Presidents of the municipalities of La Joya De Los Sachas and Orellana (expressing solidarity and support for the negotiations with TexPet)]; Ex. 114 [10/10/06 Deposition of Gabriel Abril Ojeda, 76-77 (noting that "what we did was to consider the official communication of the National Congress to take into account the problems that Amazonian groups were having. And that is why we invited before the remediation contract with Texaco was signed the representatives of indigenous peoples [–] one was FECUNAE . . . and the representatives of local governments. And congressman representing the Provinces of Amazonia. Texaco agreed there on some types of compensation.")]; Ex. 115 [10/19/06 Deposition of Giovanni Elicio Rosania Schiavone, 78-79 ("Q: Was it an – an additional goal, then, of these negotiations to represent and protect the interests of the – the individuals in the affected communities? A: Yes. Q: And did – did you accomplish that? A: I can answer a yes until the day I was there in the Ministry. After that, I don't know any more.")].

This documentary evidence, which Cabrera has ignored in reaching his global damages assessment, confirms that government entities—both the GOE and local governments—acted on behalf of the Ecuadorian people in settling any potential claims against TexPet and thus provides further support for striking Cabrera's reports.

C. Cabrera Was Invalidly Appointed as a "Global Expert."

My client also previously complained of the process by which Cabrera was appointed as the Court's "global expert" whose objective was to evaluate the impact of petroleum activities in the former concession area and the possible means of remediating the same. Plaintiffs requested and the Court allowed the same experts who participated in the judicial inspections completed in this lawsuit to participate in the "expert examination." (Ex. 89 [10/29/03 17H55 Order, R. 4681-4684 (back)].) Cabrera was not one of these experts. Nonetheless, despite the parties' procedural agreement approved by the Court, plaintiffs circumvented this procedure by requesting the appointment of a single expert on December 4, 2006. (Ex. 90 [12/4/06 17H20 Plaintiffs' Filing, R. 123434].) Notwithstanding the many objections my client filed, the then Presiding Judge granted plaintiffs' motion by order dated March 19, 2007, and appointed Cabrera as the "sole expert" for the expert investigation. This action violated both the procedural agreement approved by the Court and Article 292 of the Code of Civil Procedure, which provides that requests "whose purpose is to change the sense of . . . orders . . . or to intentionally harm the other party, shall be dismissed and penalized." In sum, my client's due process rights were violated when plaintiffs' request to appoint a single expert, in direct contravention of the established and court-approved procedure for appointing experts, was granted.

Cabrera's appointment was also invalid because he did not take office within the five-day period required by Article 261 of the Code of Civil Procedure, which states that the "appointment of an expert or experts shall lapse if they have not accepted the position within five days from the notice of their appointment." My client timely pointed out to the Court this fatal flaw in Cabrera's appointment, but instead of following the law, the then-Presiding Judge illegally ruled that he should be "notified again." (Ex. 91 [5/17/07 08H30 Order, R. 129719].) This order violated Article 254 of the Code of Civil Procedure, which requires a judge to appoint a new expert should the first expert's appointment lapse, which it did in the case of Cabrera's designation.

Furthermore, Cabrera received irregular accreditation to be an expert in this case. The Presiding Judge appointed Cabrera as the sole expert pursuant to Article 252 of the Code of Civil Procedure, which requires an expert to be chosen "from among the persons registered with the appellate courts." Despite this clear requirement for experts, Cabrera was not registered with the Nueva Loja Court of Appeals at the time of his appointment. My client promptly objected, but the Presiding Judge delayed ruling on the motion, in violation of Article 288 of the Code of Civil Procedure, which requires judges to issue interlocutory orders within three days. During this court delay, Cabrera registered as an expert with the ***Prosecutor General's Office***, which is different from the registration required by the Code of Civil Procedure. Moreover, Cabrera's registration with the Prosecutor occurred on April 16, 2007, almost one month after the Presiding Judge's first failed appointment of Cabrera as the "sole expert." Despite my client's objections and evidence showing that Cabrera was not registered with the Nueva Loja Court of Appeals, the Presiding Judge allowed Cabrera to take office as the "sole expert," even with an accreditation inconsistent with the requirements of Article 252 of the Code of Civil Procedure. This is yet another reason why Cabrera's appointment as the "sole expert" was, from the beginning, illegally and illegitimately done.

Cabrera's illegal appointment as an expert in this case, the lapse in his taking office as an expert, and his irregular accreditation as an expert violate the constitutional guarantees of due process for my client, as well as the order issued on October 29, 2003, at 5:55 p.m., which is enforceable and clearly governs the judge and the parties. The illegal and illegitimate procedures used to appoint Cabrera should have disqualified him as an expert from the beginning.

D. Cabrera Lacked the Basic Qualifications to Serve as an Expert.

Besides the illegal circumstances surrounding his appointment, Cabrera lacked the basic and fundamental qualifications to serve as an expert in this lawsuit. Article 251 of the Code of Civil Procedure requires that a court-appointed expert have, among other things, "sufficient knowledge of the matter on which they must report." Cabrera failed to satisfy this requisite.

Here, the original motion for an expert determination filed by plaintiffs' joint representative, Dr. Alberto Wray, requested that appointed experts be specialized professionals who were qualified in the fields of "applied ecology and environmental engineering." (Ex. 92 [10/29/03 17H45 Filing, R. 4677 (back)].) Cabrera has no such academic or professional background. His *curriculum vitae* shows that he is a mining engineer, and thus lacks the "sufficient knowledge" and accreditation in the required fields. In his rebuttal expert report, Dr. Gregory Douglas commented:

> Mr. Cabrera does not have the necessary education, training, publication history, or related experience required to design, implement, or evaluate complex petroleum-related environmental programs such as the one required here. He lacks any formal training in environmental chemistry or petroleum chemistry, his list of projects is extremely limited, he has no relevant scientific publications, and he lacks experience working at exploration and production sites, or at any type of petroleum-impacted site.

(Ex. 93 [Rebuttal Report of Gregory Douglas, 8 (R. 148187)].) In other words, Cabrera is simply unqualified to conduct an expert examination of the issues in this lawsuit.

Moreover, in 2009 the Escuela Politécnica Javeriana del Ecuador, which Cabrera attended from 2004 to 2006 for a Master's in environmental studies and listed in his *curriculum vitae,* received an "E" rating—the lowest rating possible—from the Consejo Nacional de Evaluación y Acreditación de la Educación Superior del Ecuador, translated as the National Council for Assessment and Accreditation of Higher Education in Ecuador ("CONEA"). (*See* Ex. 94 [CONEA 2009 Report].) According to the CONEA report, an "E" grade is given to "institutions that definitely do not have conditions required to operate a university." (*Id.* at 10-11.) The courses taught at these institutions are "curious and ingenious," and the facilities lack resources such as laboratories, libraries, and classrooms. (*Id.* at 11.) The fact that Cabrera received his "advanced" degree from a school of dubious quality further highlights his lack of proper credentials and the questionable nature of any report supposedly authored by him.

E. Cabrera's So-Called "Investigation" Was a Sham.

Cabrera's investigation of the environmental issues at stake in this lawsuit was in reality a sham. From the beginning, Cabrera's work plan far exceeded the scope of the Court's charge to him. The Court ordered Cabrera to (1) evaluate and describe in detail the environmental damage, if any, to natural resources; (2) specify the origins, both causal and chronological, of any damage; (3) ascertain the existence of substances posing an ongoing threat to the environment or population; (4) specify technical measures to remediate and restore the environment; and (5) determine the various methodological parameters for the restoration and the environmental standards to be attained. (Ex. 74 [6/13/07 09H45 Order, 2 (R.

130169)].) In essence, the Court's mandate directed Cabrera's scope of analysis to focus largely on evaluating ***environmental*** damage.

But despite this clear and focused mandate from the Court, Cabrera ventured into areas that went far beyond the topics listed by the Court—namely, environmental damage, health risks, and remediation and restoration. Instead, he defined his task as searching for "contamination wherever it may be" and broadened his work plan to include socioeconomic and economic conditions. By going beyond the scope of his charge, he breached his legal obligation as set forth in Article 260 of the Code of Civil Procedure, which requires an expert to submit a report that is consistent with the purpose and instructions given by the judge. In providing a report that is too far-reaching and beyond the scope of his charge, his report lacks probative value, and the Court must so rule because Cabrera has failed to comply with the Court's mandate. Even if the Court were to consider the expanded topics of the Cabrera Report, which it cannot, my client has already shown that the report's discussions in those additional subject areas have no scientific foundation and should be ignored.

Experts evaluating Cabrera's work plan also concluded that it was poorly conceived, lacked transparency, and was too generalized to yield results that would withstand peer review or scientific study. (Ex. 95 [7/2/07 09H00 Chevron Filing, R. 130663-130670.) Other outside experts determined that Cabrera's proposed work plan would take up to two years to complete and involve scores of other experts in different disciplines, who would have to be compensated hundreds of thousands of dollars. (Ex. 96 [10/5/07 10H40 Chevron Filing, attaching 9/6/07 Marquez Report, R. 132887 (back)-132895].) Cabrera, however, proposed to complete his work plan in six months at a cost of $40,000 for experts. (Ex. 97 [6/25/07 Cabrera Work Plan, R. 130641].)

Moreover, his work plan called for him to take only 88 samples, a miniscule number given that he was supposed to be visiting over 120 sites. (Ex. 97 [6/25/07 Cabrera Work Plan], R. 130641.) Ultimately, and in direct contravention of repeated court orders, Cabrera failed to visit each and every site. Instead, he visited only 49 out of 316 well sites and only one out of 19 production stations (or less than 15% of the sites identified by plaintiffs) over a nine-month period. (*See* Ex. 72 [8/20/08 16H35 Chevron Filing, R. 140930; Ex. 98 12/12/08 17H30 Chevron Filing, R. 153594].) To compensate for the sites he failed to visit, he cherry picked data from the judicial inspections of those sites, but such selective use of those data does not make up for his failure to visit every site, as required by the Court. And as demonstrated above with the evidence regarding the fabrication of Dr. Calmbacher's reports, the data he relied upon from plaintiffs' judicial inspections are tainted—even falsified—and thus unreliable.

Cabrera's sampling techniques and methodology throughout his field work also demonstrate his clear incompetence. The following list details the many instances of Cabrera's egregious sampling errors:

- He refused to provide chain of custody records for samples. (Ex. 65 [7/17/07 15H10 Chevron Filing, R. 131966].)

- He took multiple samples at each site, but recorded only some of them. (Ex. 65 [7/17/07 15H10 Chevron Filing, R. 131966].)

- When he took soil or water samples that he thought may be clean, he discarded them and sometimes replaced them with unknown samples from undisclosed locations. (Ex. 100 [7/6/07 09H50 Chevron Filing, R. 131313-131316]; Ex. 101 [7/25/07 10H20 Chevron Filing, R. 131981-131985].)

- He picked out and discarded the parts of a soil sample that appeared clean, leaving only those portions of the samples he believed were contaminated. (Ex. 101 [7/25/07 10H20 Chevron Filing, R. 131981-131985].)

- He took excess material from samples with him in plastic bags when he left sites, raising serious questions about whether he later tampered with samples. (Ex. 102 [10/10/2007 Chevron Filing attaching 9/27/07 Alvarez Report, R. 133136-133137 (back)].)

- When asked why he was discarding samples that he thought were clean, he answered that his "mission is to find contamination." (Ex. 99 [7/31/07 Chevron Filing, R. 132063].)

- He used drills and sampling equipment in multiple locations without cleaning the equipment between uses. Sometimes, his team cleaned his drilling equipment ***with gasoline***, even though he was sampling for ***hydrocarbons*** and the residual gasoline would cause false positives when the samples were analyzed. (Ex. 104 [9/10/07 14H25 Chevron Filing, R. 132559].)

- He sampled pits and wells used by Petroecuador without noting that they were not Petroecuador-TexPet Consortium sites. (Ex. 105 [7/17/07 15H15 Chevron Filing, R. 131967-131968].)

In sum, this laundry list of sampling defects and errors illustrates both Cabrera's inability to conduct scientifically sound testing and his clear bias in favor of trying to find any contamination whatsoever instead of examining each site to determine its environmental condition, in an impartial manner. Any results and analyses arising from this "investigation" are suspect and dubious at best.

F. Cabrera Failed to Comply with His Own Work Plan.

Despite presenting a work plan that supposedly would satisfy the Court's clear mandate, which it did not, Cabrera in any event failed to comply with the express steps promised in his work plan.

First, in Section 6.1 of his work plan, Cabrera stated that he would compile reliable information about each inspected site, "for which the location of the pits will be determined through aerial photography, and various drillings will be performed to determine the area of the pit." (Ex. 97 [6/25/07 Cabrera Workplan, R. 130646].) However, Cabrera could not determine the extent of impacts, as he did not make perimeter drillings, which is the only physically valid way to determine the area of pits. He also failed to include aerial photographs for 74% of the sites in which he says pits are found. (Ex. 30 [Rebuttal Report of Di Paolo and Hall, 7 (R. 148302)].)

Second, in Section 6.1 of his work plan, Cabrera stated, "The following components will be studied, establishing the origin and chronology of the impacts." (Ex. 97 [6/25/07 Cabrera Workplan, R. 130647].) Cabrera, however, did not address the origin and chronology of impacts in his report. If he did, he would have had to admit that the vast majority of impacts were not related to the operations of the former Consortium but rather to Petroecuador's own operations since 1992.

Third, in paragraph (d) of Section 6.1.1 of his work plan, he said: "In addition, at various appropriate sites, additional drillings will be performed depending on the relief, nearby water currents, the freatic level and the possible route of migration of contaminants from the pit will be determined." (Ex. 97 [6/25/07 Cabrera Workplan, R. 130646].) Cabrera did not take any delimitation samples or valid groundwater samples and only collected inadequate numbers of surface soil and groundwater samples, and thus failed to report whether components resulting from hydrocarbon activities had migrated or not, and whether any migration affected or might affect people or the environment in any way. As demonstrated in the earlier judicial inspection reports, no contaminant migration occurred from the pits in the Concession area due to the soil characteristics and the characteristics of the materials deposited there.

Fourth, in paragraph (d) of Section 6.1.1 of his work plan, Cabrera said: "A sampling plan will be followed that will indicate the guidelines, specifications, instructions and procedures for collecting and analyzing samples and other details of the sampling that must be performed in the field at the established sites." (Ex. 97 [6/25/07 Cabrera Workplan, R. 130646].) In carrying out the field work, Cabrera failed to have an adequate sampling plan, as he refused to follow the analysis and sampling plan that the parties agreed to for the judicial inspection process, and the plan in Annex B of his report was absolutely deficient. Thus, any results from his sampling are suspect and invalid.

Fifth, in paragraph (d) of Section 6.1.1, Cabrera stated that the "sampling techniques will be based on recognized standards," and that collected samples "will be analyzed in laboratories accredited by the Ecuadorian Accreditation Agency (OAE)." (Ex. 97 [6/25/07 Cabrera Workplan, R. 130646].) Moreover, he said that "[a]ll current Ecuadorian standards applicable to expert investigations in Ecuador will be followed, as will everything ordered by the Court with regard to this procedure." (Ex. 97 [6/25/07 Cabrera Workplan, R. 130649].) As evidenced above,

Cabrera failed to live up to this promise. He used questionable sampling procedures and laboratories that failed to have all the necessary official certifications. Any scientific results arising out of these data thus cannot be relied upon.

Sixth, Cabrera stated in his work plan that he would make a complete inventory of all installations built and operated by the former Consortium. However, his failure to visit each and every site listed in Annex A to the complaint prevented him from fulfilling this objective of making an "exact inventory" of the status of environmental liabilities and allegedly contaminated sites.

G. Cabrera Was Granted Insufficient Time to Complete His Work.

When Cabrera was appointed as the "sole expert," the Presiding Judge gave Cabrera a clearly insufficient amount of time to complete his expert report. During the judicial inspection process, the Chief Judge granted the experts conducting these inspections between 60 and 90 days to prepare their reports. Additionally, the settling experts for well Sacha-53 were given 85 working days to prepare their report on just a single site. In contrast, the Presiding Judge gave Cabrera only 120 days to complete his field work (which was to cover all fields "exploited" by Texpet) ***and*** prepare the expert report.

It is nearly impossible to complete a proper examination of all the sites described in Annex A to the complaint (including 316 well sites and 19 production stations) in just 120 days. My client objected to the insufficiency of the time, yet the Court ignored these objections. My client previously presented evidence demonstrating that given the complexity and volume of work, "it is simply impossible for a single expert, even with the help of other experts" to carry out this assignment in "a technically valid manner." (Ex. 107 [8/27/07 17H30 Chevron Filing, attaching 7/18/07 Alvarez Report, R. 132417 (back) - 132418.) Nonetheless, Cabrera did not worry about being allowed such a short amount of time, as he failed to carry out the Court's original order to visit each and every site cited in Annex A to the complaint. Instead, he visited only a "representative sample" of sites over the course of only less than 50 days of actual field work. His short shrift to the enormous issues at stake further illustrates that his expert report lacks validity.

H. Cabrera Used Secret Teams for His Work.

Another questionable aspect of Cabrera's work is his use of secret teams other than his own, the extent of whose work is presently unknown to my client. Cabrera failed to disclose much of his work to my client, which greatly hindered my client's right to monitor his work and completely defend itself. My client's inability to validate the results of these unidentified teams violates the principle of publicity of evidence set forth in Article 120 of the Code of Civil Procedure, which provides that the parties have the right to be present at the production of evidence.

Cabrera's expert report and its various annexes fail to identify which results came from the work of these other teams. Cabrera had even orally promised on July 4, 2007 that the activity of the "other fronts" indicated in his work plan would not begin until he presented the Presiding Judge with a list of the composition of the technical teams for those "other fronts." He also promised to include an indication of the work they would do and the sites visited. Unsurprisingly, Cabrera failed to follow through and provide this information. My client has had to conduct its own investigation to try to determine who these other teams are, and as demonstrated above, has already begun to uncover evidence that these other teams were directly linked to plaintiffs.

In addition, a closer look at the Cabrera Report indicates that more than 50% of the samples purportedly taken by "his team" were in fact taken after the last field visit Cabrera told the Court and my client he would make. Thus, these samples were taken by the other secret teams and violate my client's right to the publicity of evidence as outlined in Article 120 of the Code of Civil Procedure.

I. Cabrera Failed to Disclose a Material Conflict of Interest in Concealing His Affiliation with CAMPET.

As described in my client's motion filed on February 9, 2010, at 9:07 a.m., Cabrera deliberately concealed from the Court and from my client his financial interest in Compañía Ambiental Minera-Petrolera S.A. ("CAMPET") and the relationship between CAMPET and Petroecuador. Cabrera is the co-founder, majority shareholder, general manager, and legal representative of CAMPET, an oil remediation company that is registered to do business with Petroecuador and is well situated to directly profit from any remediation work that might eventually be ordered by the Court on the basis of Cabrera's expert reports. Cabrera's deliberate failure to disclose this material conflict of interest further illuminates his bias in favor of plaintiffs, as he could stand to profit financially from any court-ordered remediation based on his report.

PETITIONS:

Since his appointment as the "sole" and "global expert" in this lawsuit, Richard Stalin Cabrera Vega, P.E. has mocked and offended the principles upon which any fair legal system must be based. Cabrera's acts of fraud on the Court and collusion with the plaintiffs, in violation of his legal duty to serve as an impartial, independent, and neutral expert, deprive my client of due process and a fair opportunity to defend against the plaintiffs' claims. All the evidence of bias, collusion, secret assistance from plaintiffs' friends, perjury, unsound methodological practices, and illogical scientific results, as presented in this motion, wholly discredits and disqualifies Cabrera as an impartial expert and invalidates the conclusions reached in his expert reports. Therefore, because Cabrera's findings and conclusions are completely unreliable for the many reasons explained

above, I respectfully request that this Court strike the Cabrera Report in its entirety, as well as any annexes, supplements, or clarifications thereof. Without Cabrera's reports to support their claims, plaintiffs' case fails, and this Court should eventually dismiss the case for lack of any other basis for liability.

My client is still investigating the full extent of this collusion and the efforts to gather the evidence needed to demonstrate Cabrera's fraud on this Court are in full force. Accordingly, I request that the Court not declare *autos para sentencia* until receiving and reviewing all evidence relating to the fraudulent Cabrera Report, so that my client may have additional time to complete its investigation. Plaintiffs' attorneys in the United States have even represented to the U.S. courts that a "swift resolution" to the proceedings before this Court is "just not on the horizon." (Ex. 108 [4/27/10 Hearing Transcript at 12:9-14].) To prevent my client from gathering all this evidence would be an obvious denial of my client's right to due process, as guaranteed by Article 76 of the Constitution. Furthermore, I move that the Court initiate a full inquiry to determine the extent of collusion between Cabrera and plaintiffs.

I also move that if you deem it appropriate to do so, you order the commencement of the appropriate legal actions aimed at investigating and punishing the unethical and unlawful conduct of the expert Richard Stalin Cabrera Vega, as permitted under Articles 214 and 215 of the Code of Civil Procedure.

As support for the allegations and petitions made herein, I attach the following documents:

EXHIBIT 1: Court Order dated October 3, 2007 at 11:00 a.m., R. 132846-132856.

EXHIBIT 2: Court Order dated November 29, 2007 at 5:00 p.m., R. 133755-133761.

EXHIBIT 3: Cabrera Filing dated July 23, 2007 at 10:15 a.m., R. 131972.

EXHIBIT 4: Cabrera Filing dated October 31, 2007 at 4:55 p.m., R. 133465.

EXHIBIT 5: Cabrera Filing dated November 6, 2007 at 5:20 p.m., R. 133487-133488.

EXHIBIT 6: Cabrera Filing dated October 8, 2008 at 10:50 a.m., R. 151316-151327.

EXHIBIT 7: Cabrera Filing dated October 20, 2008 at 10:05 a.m., R. 151398-151399.

EXHIBIT 8: Cabrera Filing dated December 7, 2007 at 5:55 p.m., R. 133882-133883.

EXHIBIT 9: Expert Report of Richard Stalin Cabrera Vega, P.E. dated April 1, 2008 at 8:30 a.m., R. 134228-134289.

EXHIBIT 10: Denuncia Proceeding dated July 2, 2009 at 9:30 a.m.

EXHIBIT 11: Plaintiffs' Brief dated May 10, 2007 at 5:50 p.m., R. 129696-129698.

EXHIBIT 12: Plaintiffs' Brief dated October 17, 2007 at 5:50 p.m., R. 133259-133261.

EXHIBIT 13: Declaration of Alejandro Ponce-Villacis dated October 8, 2007 from *Gonzales* action.

EXHIBIT 14: Expert Report of Henry Fishkind dated January 28, 2008 from *Arias v. DynCorp*.

EXHIBIT 15: Expert Report entitled "Preliminary Economic Valuation and Impact Assessment of the Environmental Assets and Services Affected by the Fumigation in the Northern Ecuadorian Border Along the Province of Sucumbíos" (the "DynCorp Report") dated January 2008.

EXHIBIT 16: Expert Report entitled "Preliminary Economic Valuation and Impact Assessment of the Environmental Assets and Services Affected by the Fumigation in the Northern Ecuadorian Border Along the Province of Sucumbíos" (the "DynCorp Report") dated August 2006.

EXHIBIT 17: *Curriculum Vitae* of Cabrera, R. 122524-122529.

EXHIBIT 18: Expert Report of Teresa M. Turell Regarding "Ecuador Ni Es Ni Será Ya País Amazónico," "Las Palabras de la Selva," and Annex L of Cabrera Report dated May 19, 2010.

EXHIBIT 19: Expert Report of Teresa M. Turell Regarding Cabrera Report dated February 19, 2010.

EXHIBIT 20: 3TM Objections to Subpoenas Filed April 20, 2010, *Chevron Corp. v. 3TM Consulting*, Case No. 4:10-mc-00134, United States District Court for the Southern District of Texas.

EXHIBIT 21: Expert Rebuttal Report of Robert E. Hinchee Regarding Remediation Costs dated September 8, 2008, R. 148129-148179.

EXHIBIT 22: CAMPET Listing of Services.

EXHIBIT 23: Supplemental Expert Report of Richard Stalin Cabrera Vega, P.E. dated November 17, 2008 at 8:25 a.m., R. 152949-153000.

EXHIBIT 24: Annex R to the Expert Report of Richard Stalin Cabrera Vega, P.E. dated April 1, 2008 at 8:30 a.m., R. 139882-139906.

EXHIBIT 25: Annexes H and H-1 to the Expert Report of Richard Stalin Cabrera Vega, P.E. dated April 1, 2008 at 8:30 a.m., R. 139321-139399.

EXHIBIT 26: José Pilamunga Report Regarding Aguarico-2 dated September 9, 2008, R. 140968-141059.

EXHIBIT 27: Annex U-4 to the Expert Report of Richard Stalin Cabrera Vega, P.E. dated April 1, 2008 at 8:30 a.m., R. 134776-135204.

EXHIBIT 28: FDA Report entitled "Chevron's Hidden Waste Pits in the Ecuador Napo Concession" dated June 6, 2006.

EXHIBIT 29: Annex E to the Expert Report of Richard Stalin Cabrera Vega, P.E. dated April 1, 2008 at 8:30 a.m., R. 139180-139270.

EXHIBIT 30: Expert Rebuttal Report of Bill DiPaolo & Laura B. Hall dated September 8, 2008, R. 148296-148351.

EXHIBIT 31: Annex Q to the Expert Report of Richard Stalin Cabrera Vega, P.E. dated April 1, 2008 at 8:30 a.m., R. 139875-139881.

EXHIBIT 32: Translated Excerpt of Don Kenkel, *Using Estimates of the Value of Statistical Life in Evaluating Consumer Policy Regulations*, 26:1 Journal of Consumer Policy, 1 (2003).

EXHIBIT 33: *Estate of Dubose v. City of San Francisco*, Case No. 99cv2279, 2002 U.S. Dist. LEXIS 28297, **6-8 (S.D. Cal. Sept. 30, 2002).

EXHIBIT 34: Translated Excerpt of Lauraine G. Chestnut & Daniel M. Violette, *The Relevance of Willingness-to-Pay Estimates of the Value of a Statistical Life in Determining Wrongful Death Awards*, 3(3) Journal of Forensic Economics 75 (1990).

EXHIBIT 35: Expert Rebuttal Report of Theodore Tomasi dated September 8, 2008, R. 146650-146725.

EXHIBIT 36: "Expertos tratarán los efectos por los derrames petroleros en la Amazonia," El Comercio, June 17, 2009.

EXHIBIT 37: Oilwatch Conference Web Pages, October 20-22, 2006, *available at* http://www.oilwatch.org/reparacion/index.php?option=com_content&task=view&id=29&Itemid=41.

EXHIBIT 38: Printout of http://www.texacotoxico.org/node/263.

EXHIBIT 39: Printout of http://www.amazoniaporlavida.org/es/Eventos-pasados/19-20/12-Coca-Encuentro-para-la-construccion-de-una-agenda-amaza.html.

EXHIBIT 40: Translated Excerpt of Amazon Watch 2008 Annual Report, *available at* http://www.amazonwatch.org/about_us/annual_reports/aw_annual_report_2008.pdf.

EXHIBIT 41: Translated Excerpt of Amazon Watch 2007 form 990.

EXHIBIT 42: Report of Oilwatch Conference, October 20-22, 2006, *available at* http://www.oilwatch.org/reparacion/docs/memoria_del_foro.pdf.

EXHIBIT 43: Transcript of Carlos Martín Beristain Declarations at Petroleum Forum at Oilwatch Conference, October 22, 2006.

EXHIBIT 44: Hegoa Website, at http://biblioteca.hegoa.efaber.net/registros/author/13947.

EXHIBIT 45: Side-by-side images of Netflix Instant Streaming v. DVD Footage.

EXHIBIT 46: Declaration of Joseph A. Berlinger dated April 22, 2010, filed in *In re Application of Rodrigo Perez Pallares, et al.*, Case No. M-19-111, U.S. District Court, Southern District of New York.

EXHIBIT 47: Hegoa, "Proyecto de Investigación sobre la dimensión psico-social, comunitaria y de género de los conflictos bélicos y socio-ambientales : derechos humanos, ayuda internacional y construcción de la paz," accessed March 10, 2009.

EXHIBIT 48: Hegoa, "Proyecto de Investigación sobre la dimensión psico-social, comunitaria y de género de los conflictos bélicos y socio-ambientales : derechos humanos, ayuda internacional y construcción de la paz," accessed April 22, 2010.

EXHIBIT 49: Annex L to the Expert Report of Richard Stalin Cabrera Vega, P.E. dated April 1, 2008 at 8:30 a.m., R. 139560-139751.

EXHIBIT 50: Annex 7 to Cabrera's Response dated February 5, 2009 at 9:10 a.m., R. 154073-154145.

EXHIBIT 51: Miguel San Sebastián and Anna Karin Hurtig, *Oil development and health in the Amazon basin of Ecuador: the popular epidemiology process*, Social Science & Medicine 60 (2005) 799-807.

EXHIBIT 52: Carlos Martín Beristain, Darío Páez, & Itziar Fernández, *Las palabras de la selva* (2009).

EXHIBIT 53: Cabrera's Response dated February 5, 2009 at 9:10 a.m., R. 154174-154191.

EXHIBIT 54: Printout of http://www.ambiente.gov.ec/userfiles/1322/file/256.PDF.

EXHIBIT 55: Printout of http://www.amazoniaporlavida.org/es/files/informe_visita_yasuni.pdf.

EXHIBIT 56: Annex F to Chevron Rebuttal to Cabrera Report dated June 4, 2008, R. 141268-141273.

EXHIBIT 57: Intentionally left blank.

EXHIBIT 58: Adolfo Maldonado and Alberto Narváez, "Ecuador Ni Es, Ni Será Ya País Amazónico" (2001).

EXHIBIT 59: Anna-Karin Hurtig and Miguel San Sebastián, *Cáncer en la Amazonia del Ecuador (1985-1998)*, Instituto de Epidemiología y Salud Comunitaria "Manuel Amunárriz," 2002.

EXHIBIT 60: Rebuttal Expert Report of Michael Kelsh dated September 8, 2008, R. 146371-146649.

EXHIBIT 61: Chevron Filing Regarding Motion to Strike Calmbacher Reports dated April 14, 2010 at 3:42 p.m.

EXHIBIT 62: Excerpts of Certified Official Transcript of Deposition of Charles W. Calmbacher dated March 29, 2010.

EXHIBIT 63: Chevron Rebuttal to Cabrera Expert Report, Annex E, dated June 4, 2008, R. 141237-141267.

EXHIBIT 64: Chevron Filing dated July 5, 2007, R. 131275-131283.

EXHIBIT 65: Chevron Filing dated July 17, 2007 at 3:10 p.m., R. 131965-131966.

EXHIBIT 66: Chevron Filing dated August 20, 2007 at 9:40 a.m., R. 132486-132489.

EXHIBIT 67: Chevron Filing dated October 9, 2007 at 11:25 a.m., R. 133068-133069.

EXHIBIT 68: Chevron Filing dated July 12, 2007 at 3:00 p.m., R. 131341-131343.

EXHIBIT 69: Chevron Filing dated July 11, 2007 at 5:50 p.m., R. 131332-131335.

EXHIBIT 70: Chevron Filing dated August 17, 2007 at 3:30 p.m., R. 132235-132249.

EXHIBIT 71: Chevron Filing dated July 6, 2007 at 5:30 p.m., R. 131317-131319.

EXHIBIT 72: Chevron Filing dated August 20, 2008 at 4:35 p.m., R. 140930-140931.

EXHIBIT 73: Cabrera Filing dated July 12, 2007 at 10:12 a.m., R. 131338-131339.

EXHIBIT 74: Court Order dated June 13, 2007 at 9:45 a.m., R. 130169.

EXHIBIT 75: Cabrera Filing dated October 11, 2007, at 2:20 p.m., R. 133178-133180.

EXHIBIT 76: Cabrera Filing dated November 6, 2007, at 2:45 p.m., R. 133469-133471.

EXHIBIT 77: Cabrera Filing dated November 9, 2007, at 9:30 a.m., R. 133582.

EXHIBIT 78: Cabrera Filing dated December 11, 2007 at 2:20 p.m., R. 133907.

EXHIBIT 79: Cabrera Filing dated October 8, 2008 at 10:50 a.m., R. 151316-151327.

EXHIBIT 80: Cabrera Filing dated March 4, 2009 at 9:50 a.m., R. 154580-154589.

EXHIBIT 81: Translated Excerpt of Wendy Kaye, Irene Hall & Jeffrey A. Lybarger, *Recall bias in disease status associated with perceived exposure to hazardous substances*, 4 Ann Epidemiol 393 (1994).

EXHIBIT 82: Rebuttal Expert Report of Douglas Southgate, John A. Connor, and Douglas MacNair dated September 8, 2008, R. 146342-146370.

EXHIBIT 83: Rebuttal Expert Report of Robert E. Hinchee Regarding Groundwater Costs dated January 23, 2009, R. 154465-154474.

EXHIBIT 84: Annex O to the Expert Report of Richard Stalin Cabrera Vega, P.E. dated April 1, 2008 at 8:30 a.m., R. 139781-139796.

EXHIBIT 85: Rebuttal Expert Report of Douglas Southgate and Robert Wasserstrom dated September 8, 2008, R. 146898-146991.

EXHIBIT 86: Rebuttal Expert Report of John Connor dated August 29, 2008, R. 148352-148478.

EXHIBIT 87: Annex P to the Expert Report of Richard Stalin Cabrera Vega, P.E. dated April 1, 2008 at 8:30 a.m., R. 139797-139874.

EXHIBIT 88: Rebuttal Expert Report of John Connor and William Hutton Regarding Infrastructure dated August 29, 2008, R. 146426-146887.

EXHIBIT 89: Court Order dated October 29, 2003 at 5:55 p.m., R. 4681-4684.

EXHIBIT 90: Plaintiffs' Filing dated December 4, 2006 at 5:20 p.m., R. 123454-123455.

EXHIBIT 91: Court Order dated May 17, 2007 at 8:30 a.m., R. 129719-129721.

EXHIBIT 92: Plaintiffs' Filing dated October 29, 2003 at 5:45 p.m., R. 4677-4684.

EXHIBIT 93: Rebuttal Expert Report of Gregory Douglas dated September 8, 2008, R. 148180-148267.

EXHIBIT 94: CONEA Report dated November 4, 2009.

EXHIBIT 95: Chevron Filing dated July 2, 2007 at 9:00 a.m., R. 130663-130672.

EXHIBIT 96: Chevron Filing dated October 5, 2007 at 10:40 a.m., attaching Marquez Report dated September 6, 2007, R. 132883-132896.

EXHIBIT 97: Cabrera Work Plan dated June 25, 2007, R. 130640-130651.

EXHIBIT 98: Chevron Filing dated December 12, 2008 at 5:30 p.m., R. 153588-153612.

EXHIBIT 99: Chevron Filing dated July 31, 2007, R. 132063-132066.

EXHIBIT 100: Chevron Filing dated July 6, 2007 at 9:50 a.m., R. 131313-131316.

EXHIBIT 101: Chevron Filing dated July 25, 2007 at 10:20 a.m., R. 131981-131985.

EXHIBIT 102: Chevron Filing dated October 10, 2007, attaching Alvarez Report dated September 27, 2007, R. 133136-133137.

EXHIBIT 103: Excerpt from May 10, 2010 Order, *In re Application of Chevron Corp.*, No. M-19-111, at 24, United States District Court for the Southern District of New York.

EXHIBIT 104: Chevron Filing dated September 10, 2007 at 2:25 p.m., R. 132559-132567.

EXHIBIT 105: Chevron Filing dated July 17, 2007 at 3:15 p.m., R. 131967-131968.

EXHIBIT 106: May 18, 2010 Stratus Status Report, *Chevron v. Stratus Consulting, Inc.*, Case No. 10-CV-00047, United States District Court for the District of Colorado.

EXHIBIT 107: Chevron Filing dated August 27, 2007 at 5:30 p.m., attaching Alvarez Report dated July 18, 2007, R. 132414-132421.

EXHIBIT 108: Excerpt from Hearing Transcript dated April 27, 2010, *Chevron v. Stratus Consulting, Inc.*, Case No. 10-CV-00047, United States District Court for the District of Colorado, at 12-14.

EXHIBIT 109: Letter from Ambassador Ivonne A. Baki to Honorable Jed S. Rakoff dated November 11, 1998.

EXHIBIT 110: Letter from Rodrigo Perez Pallares, legal representative for Texpet, to Esperanza Martinez of Campaña Amazonía Por La Vida (Acción Ecológica) dated April 28, 1993.

EXHIBIT 111: Report of the Special Permanent Environmental Commission of the National Congress, Official Communication No. 131-CEPMA-CN-94 dated November 9, 1994.

EXHIBIT 112: Ministry of Energy and Mines, *Work Session Record: Texpet Remediation Agreement* dated February 22, 1995.

EXHIBIT 113: Letter from Consorcio de Municipios de Napo ("Comuna") to Adolfo Bárcenas and Daniel Pauker G., Presidents of the municipalities of La Joya De Los Sachas and Orellana, dated June 20, 1995.

EXHIBIT 114: Transcript of Deposition of Gabriel Abril Ojeda dated October 10, 2006, 76-77.

EXHIBIT 115: Transcript of Deposition of Giovanni Elicio Rosania Schiavone dated October 19, 2006, 78-79.

EXHIBIT 116: Audio Recording of Carlos Martín Beristain Declarations at Petroleum Forum at Oilwatch Conference, October 22, 2006.

From the Petitioner, signed as defense counsel of record.

DR. IVAN ALBERTO RACINES E.
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