



4. My analysis revealed at least 32 instances where the Ecuadorian Judgment plagiarized from the Ecuadorian Plaintiffs' unfiled documents. The plagiarized text appears across 23 pages of the Ecuadorian Judgment. More specifically, I conclude to a reasonable degree of scientific certainty as follows:

5. Portions of pages 20, 21, 22, 24, and 25 of Ecuadorian Judgment were plagiarized from the Ecuadorian Plaintiffs' unfiled Fusion Memo, PX435. The unfiled Fusion Memo is an internal research memo produced from the hard drive of Steven Donziger. It was attached to an email dated November 15, 2007 from Juan Pablo Sáenz ([juanpasaenz@hotmail.com](mailto:juanpasaenz@hotmail.com)) to several recipients including Steven Donziger. PX435 is a true and correct copy of the unfiled Fusion Memo that I used in my analysis.

6. Portions of pages 23 and 24 of the Ecuadorian Judgment were plagiarized from the unfiled Fusion Memo and the unfiled Draft Alegato, PX438. The Draft Alegato is an unfiled version of the Ecuadorian Plaintiffs' trial brief before the trial court in Ecuador. The unfiled Draft Alegato was attached to an email from Juan Pablo Sáenz to Pablo Fajardo Mendoza and Steven Donziger dated November 11, 2010. PX438 is a true and correct copy of the unfiled Draft Alegato that I used in my analysis.

7. Portions of pages 6, 7, 100, 101, 114, 127, 128, 129, 133, 137, 138, 142, 146, and 150 of the Ecuadorian Judgment were plagiarized from the Ecuadorian Plaintiffs' unfiled Index Summaries. The Ecuadorian Plaintiffs' unfiled January Index Summary, marked as PX433, summarizes and lists certain filings made during the Ecuadorian litigation. This document was attached to an email sent on January 18, 2007 from Julio Prieto ([julprieto@hotmail.com](mailto:julprieto@hotmail.com)) to several recipients including Steven Donziger. PX438 is a true and correct copy of the unfiled January Index Summary that I used in my analysis. Another version of the Ecuadorian Plaintiffs' unfiled Index Summary, marked as PX865, whose metadata identifies it as "last modified" on June 1, 2007, will be referred to as the unfiled June Index Summary. PX865 is a true and correct copy of the unfiled June Index Summary that I used in my analysis.

8. Portions of page 186 of the Ecuadorian Judgment were plagiarized from the unfiled Fajardo Trust Email, PX437. The Fajardo Trust Email is an unfiled email from Pablo Fajardo Mendoza to Julio Prieto, Juan Pablo Sáenz, and Steven Donziger, dated Thursday, June 18, 2009. PX437 is a true and correct copy of the unfiled Fajardo Trust Email that I used in my analysis.

9. Portions of pages 109 and 110 were plagiarized from the Ecuadorian Plaintiffs' unfiled Clapp Report, PX928. The unfiled Clapp Report was written by Richard W. Clapp, PhD., Genevieve K. Howe, MPH, and Shevaun Aysa Mizrahi, and is dated November, 2006.<sup>1</sup> PX928 is a true and correct copy of the unfiled Clapp Report that I used in my analysis.

### **Qualifications and Background**

10. I received my Ph.D. in linguistics from Columbia University in 1982 with research specialties in Semantic Theory—theory of meaning—and Sociolinguistics. I received my B.A. from Columbia College in 1970, where I was elected to Phi Beta Kappa and graduated with honors, and received my M.A., M.Phil., and Ph.D. from Columbia Graduate School, where I was a Faculty Fellow. I was awarded a Fulbright Fellowship to conduct the research for my dissertation.

11. At Columbia, I studied Lexicography (“dictionary-making”) with one of the foremost American lexicographers, Allen Walker Read, who continued to collaborate with me for years afterwards.

12. I serve as a member of the Editorial Board of the Oxford University Press series *Language and the Law*. I am also a reviewer of the Professional Staff Congress of the City University of New York Research Award Program. In this capacity, I review applications for research grants made to the City University of New York.

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<sup>1</sup> Based on my review of the Report of Spencer Lynch, I understand that text from another unfiled document obtained from the Ecuadorian Plaintiffs, known as the “Selva Viva Data Compilation” (PX 439-41), also was found in the Ecuadorian judgment. I did not review the Selva Viva Data Compilation.

13. I have been qualified as an Expert in Linguistics in state courts in Arizona, California, Colorado, Florida, Illinois, Indiana, Michigan, Montana, New Jersey, New York, Nevada and Pennsylvania, and in federal district courts in Newark, New Jersey, and Austin, Texas.

14. I have provided expert opinions to a wide range of clients, such as Apple, Inc., the Prime Minister of Canada, the NYPD Hate Crimes Task Force, and the FBI, in cases dealing with a wide range of forensic linguistic issues.

15. The FBI has employed me to work on specific cases, to train their agents, and to analyze and advise on their Communicated Threat Assessment Database (CTAD), a “computerized database/software program designed to be the primary repository for all communicated threats and other criminally oriented communications (COC)” within the FBI and the United States. Its purpose is to assist Behavioral Analysis Unit-1 (Counterterrorism and Threat Assessment) agents in the assessment and analysis of all submitted communications (*Forensic Linguistic Services at the Behavioral Analysis Unit-1*, p.16).

16. I have trained British law enforcement agencies, consulted on domestic terrorism for two law enforcement agencies on the West Coast, analyzed murder-related letters for the Pennsylvania State Police, analyzed testimony that resulted in perjury indictments for the DA in Dauphin County, Pennsylvania, have traced threatening letters for the Baltimore Police and the NYPD Hate Crimes Task Force, have traced bomb-threat calls to the Nassau County, New York courthouse, and have consulted on a number of other criminal cases at the request of law enforcement throughout the United States, Canada and the UK.

### **Methodology**

17. Linguistics is the scientific study of language. Linguists—as all scientists—seek to identify discernible patterns in the empirical evidence that we study. Bullets do not randomly issue from firearms. Similarly, words are not randomly found to issue from the keyboards and mouths of speakers of English or any other language. Language adheres to patterns; these patterns are the subject of systematic observation by linguists.

18. Linguists systematically observe patterns of data, and build theories that explain and predict those patterns through the construction and testing of hypotheses. The principles that emerge from linguistic analysis are published in professional journals that are vetted prior to publication and are subject to peer review which comments upon and tests the hypotheses contained therein. The linguistic principles and analytical procedures that I have applied in my analysis in this matter spring from this scientific, peer-reviewed process.

#### *Plagiarism*

19. Plagiarism is generally defined as “the practice of taking someone else’s work or ideas and passing them off as one’s own” (*Oxford Online Dictionary*, 2010). This includes submitting work written entirely or in part by another author and representing it as one’s own regardless of whether consent has been obtained from the earlier author.

20. In some cases, however, the repetition of multiword strings such as set phrases, idioms, proverbs, or other culturally specific phrases that occur with frequency are not considered plagiarism. For example, the phrase “Once upon a time” occurs as a predictable set combination of words, but is readily available for anyone to use, that is, its reuse would not necessarily be considered plagiarism due to its broad cultural connection to fairy tales. Similarly, set phrases such as “thank you” or “to whom it may concern” reoccur as set forms in specific language registers, or textual contexts, and their reuse should not in and of itself be considered evidence of plagiarism.

21. In linguistics, these reoccurring multiword strings are called **lexical or word bundles**—sequences of words that commonly go together in speech or writing. So, by definition, if a writer were to use a well-established lexical bundle that a prior writer has also used, it would not necessarily constitute a case of plagiarism.

#### *Word (Lexical) Bundles*

22. A widely cited work on this topic is Biber, D., S. Johansson, G. Leech, S. Conrad, E. Finegan. 1999. *The Longman Grammar of Spoken and Written English*. London: Longman.

23. As a measure of what is counted as a bundle, Biber et al. set the bar for 3 and 4 word strings as those that occur more than 20 times per million words and (so the finding would not be skewed by one author's idiosyncratic use) across five different authors.

24. Biber's research on lexical bundles has demonstrated that 3 and 4 word bundles are the most common in English (e.g., "I don't know," "I don't know if," "I don't think so"), with 5 and 6 word bundles much less common (e.g., "and I said to her," "I don't know what to do").

25. Like 3 or 4 word strings, 5 and 6 word strings have to occur across five authors but only need to occur 10 times per million words (as opposed to 20 million for 3 and 4 word strings) in order to be considered frequent enough to qualify as a lexical bundle.

26. Importantly, Biber et al.'s research indicates that with strings of 7, 8, or more words the number of reoccurring lexical bundles falls off quickly from 5 or 6 words. Indeed, in Biber's study none reportedly fulfilled the requirements.

27. Common strings of over 6 words that do occur consist primarily of smaller lexical bundles strung together (e.g., *As a result* + *I don't know what to wear.*)

28. Therefore, when longer strings of words are found to be exactly, or nearly exactly, the same as in another prior text—especially when there are multiple occurrences of it in a matching text—this increases the likelihood of such co-occurrence being held to constitute plagiarism rather than being explainable by chance or as an instance of a set phrase.

29. Research on Spanish lexical bundles is not as prolific as research on English lexical bundles. However, it has been found (e.g., Cortes, V. 2008. A comparative analysis of lexical bundles in academic history writing in English and Spanish. *Corpora*, 3(1): 43-57) that Spanish, like English, has 3 and 4 word lexical bundles that occur frequently (i.e., there are bundles that occur 20 times per million words across 5 authors). In fact, a recent study comparing Spanish and English bundles in academic texts found that Spanish possesses more 4 word bundles than English—English had 87 in the corpus of approximately 1,000,000 words studied and Spanish had 163 in a similar sized corpus. This study also reported that while 21%

of the bundles were word for word translations between Spanish and English, there were many bundles in Spanish that possess one more word than in English due to the more frequent inclusion of the article (e.g., la, el, las, los) in Spanish phrases (e.g., *of human rights* vs. *de los derechos humanos*). Thus, while Spanish may possess more 5 and 6 word bundles than English, there is no evidence in the studies I have seen of Spanish word strings of more than 7 words being considered lexical bundles.

30. Current research therefore suggests that matches of strings of even 7 words must be treated as highly suspect for plagiarism, and strings of words longer than 7 are of course even more highly suspect. When such strings are detected, linguists examine whether alternative non-plagiaristic explanations exist, such as the strings being quotations from a common source, or set phrases common to a variety of language. For example, in this present case, a common stereotyped phrase such as “Presidente de la Corte Superior de Justicia de Nueva Loja” (“Chief Judge of the Superior Court of Nueva Loja”) occurs in documents I have examined but would not be considered plagiarism even though it is 10 words long and co-occurs in the documents because it is a commonly used phrase in Ecuadorian jurisprudence.

31. Thus, plagiarism detection involves both screening documents to detect common strings and performing a linguistic analysis of the strings to determine whether they are or are not indicative of plagiarism.

32. For example, obviously the use of the Spanish language, in and of itself, in a set of documents is not necessarily evidence of plagiarism. Part of what it means for people to “speak the same language” is to be able to command a common and overlapping inventory of words and grammar. The use of scientific, technical, or legal vocabulary, in and of itself, is not necessarily evidence of plagiarism, for these vocabularies are part of the shared knowledge of the writers and readers of the documents analyzed. The use of 4, 5, or 6 word bundles are by definition commonly used and learned verbatim, as are highly-encoded, well-established longer phrases such as the above-mentioned “Presidente de la Corte Superior de Justicia de Nueva Loja”; thus, their use is also not necessarily evidence of plagiarism.

33. But precisely overlapping word strings of the length and type that I will discuss below—stretches in the range of 20, 30, 40 words and more, arranged in the exact same order—likely cannot be explained away as being well-known or learned verbatim, or as having been generated by chance, by multiple authors, with just those same words in just that same order. More likely, they indicate direct copying. Other evidence that I will discuss—presentational idiosyncrasies, orthographic errors, and citation errors that occur in precisely the same form in different documents—are similarly difficult to explain, in any way other than as direct copying from one document to the other.

### **Analysis**

34. I analyzed the Ecuadorian Judgment, PX399, to determine whether it was “plagiarized” in whole or in part from the Ecuadorian Plaintiffs’ unfiled work product. As noted above, the term “plagiarism” is used in this declaration to mean “the practice of taking someone else’s work or ideas and passing them off as one’s own,” as defined, for example, by *Oxford Online Dictionary*, 2010; this definition includes submitting work written entirely or in part by another author and representing it as one’s own, regardless of whether consent has been obtained from the earlier author.

35. To perform this task I was assisted by Tammy Gales, Ph.D. of Hofstra University, a specialist in corpus linguistics. I was also originally assisted by three computational language experts: David Woolls, founder and CEO of CFL Software, Inc., and the author of the Copycatch Investigation Software program; Patrick Juola, Ph.D., of J Computing, Inc., and of Duquesne University; and Jason Brenier, Ph.D., who in addition to holding a doctorate in linguistics is a computational linguist in private practice. The three computational experts—Woolls, Juola, and Brenier—performed searches at my direction comparing the Ecuadorian Judgment to documents which I understand were produced by the Ecuadorian Plaintiffs’ consultants, lawyers, or affiliates.

36. Using results from these and other searches, I examined the language evidence for plagiaristic overlap between the Ecuadorian Judgment and other documents. The computational

experts, principally Dr. Juola, then performed searches comparing the documents I identified as having potential plagiaristic overlap to the Ecuadorian court record so as to evaluate whether or not the overlap was attributable to a filed document.

37. Based on my analysis, education, training and specific experience in the field, I conclude, to a reasonable degree of scientific certainty, that portions of the Ecuadorian Judgment and the Ecuadorian Plaintiffs' unfiled work product contain matching or similar word strings and strings of symbols whose presence is not explainable either as set phrases or by chance, and that those portions of the Ecuadorian Judgment are therefore plagiarized from Plaintiffs' unfiled work product. That is, I compared two hypotheses:

- Hypothesis 1, co-occurrence of language due to common authorship—this suggests that the co-occurring strings were plagiaristically copied from one document to the other; and
- Hypothesis 2, co-occurrence of language that is explainable as set phrases (including word bundles) and/or by random chance.

38. Analysis of the language evidence revealed at least 32 matches between the Ecuadorian Judgment and six of the Ecuadorian Plaintiffs' unfiled documents that predate the Ecuadorian Judgment. Since we know that copying must be done at a later time from a previously existing document, I conclude that parts of the Ecuadorian Judgment most likely have had their origin in the Ecuadorian Plaintiffs' unfiled work product. Much of the data, adduced below, such as identical or nearly identical strings of more than 90 words, identical idiosyncratic numerical ordering, and identical series of orthographic errors, militates against hypothesis 2 and supports the opinion, to a reasonable degree of scientific certainty, that hypothesis 1 is superior—that the co-occurrence of language between parts of the Ecuadorian Judgment and the Ecuadorian Plaintiffs' unfiled work product is due to common authorship.

39. Several hundred thousand pages have been analyzed and I have discovered many examples that support my conclusion. Many of the individual examples adduced in this declaration, however, could by themselves provide sufficient support for my opinion that

portions of the Ecuadorian Judgment were plagiaristically copied from the Ecuadorian Plaintiffs' unfiled work product.

The object of my analysis was to determine whether the Ecuadorian Judgment was plagiaristically copied, in whole or in part, from Ecuadorian Plaintiffs' unfiled documents that predate the Ecuadorian Judgment. Selected examples are discussed below, with additional examples identified in PX2164. My other examples are set forth on PX2164. PX2164 is a true and correct illustration of 39 examples of plagiarized text from the Ecuadorian plaintiffs' unfiled work product that appears in the Ecuadorian Judgment. PX2165 is a true and correct copy of the February 14, 2011 Ecuadorian Judgment highlighted to show strings of text and symbols which were plagiaristically copied from the Ecuadorian Plaintiffs' unfiled Fusion Memo, unfiled Draft Alegato, unfiled Index Summaries, unfiled Fajardo Trust Email and unfiled Clapp Report. PX2166 is a true and correct copy of the Ecuadorian Plaintiffs' unfiled Fusion Memo highlighted to show strings of words and symbols which were plagiaristically copied into the Ecuadorian Judgment. PX2167 is a true and correct copy of the Ecuadorian Plaintiffs' unfiled Draft Alegato highlighted to show strings of words and symbols which were plagiaristically copied into the Ecuadorian Judgment. PX2168 is a true and correct copy of the Ecuadorian Plaintiffs' unfiled Fajardo Trust Email highlighted to show strings of words and symbols which were plagiaristically copied into the Ecuadorian Judgment. PX2169 is a true and correct copy of the Ecuadorian Plaintiffs' unfiled Clapp Report highlighted to show strings of words and symbols which were plagiaristically copied into the Ecuadorian Judgment. PX2170 is a true and correct copy of a video of an interactive application that contains side-by-side comparisons highlighting text from the Ecuadorian Plaintiffs' unfiled work product in the above five exhibits that appears verbatim or nearly verbatim in the Ecuadorian Judgment.

***Identical Or Nearly Identical Word Strings Linking Unfiled Fusion Memo And Ecuadorian Judgment***

40. A document with overwhelming plagiaristic overlap that I examined was the **Fusion Memo**, PX435, which was attached as “Primer Borrador Memo Fusión JPS [Nov2007].doc” to an email on November 15, 2007 from Juan Pablo Sáenz ([juanpasaenz@hotmail.com](mailto:juanpasaenz@hotmail.com)) to several recipients including Steven Donziger.

41. The Fusion Memo does not to my knowledge exist as a filed document in the Ecuadorian Court record.<sup>2</sup>

42. There are multiple instances of verbatim copying of word strings from the Fusion Memo to the Ecuadorian Judgment that do not appear to be set phrases nor explainable by chance. As illustration, Example 1 below demonstrates a co-occurring identical or nearly identical word string of more than 90 words found in both the Ecuadorian Judgment and Fusion Memo. That is, there is a 95 word string from the unfiled Fusion Memo that appears, with 8 interstitial words added, in the Ecuadorian Judgment.

**Example 1. Identical or nearly identical word strings in the unfiled Fusion Memo and the Ecuadorian Judgment (more than 90 words)**

Fusion Memo: page 8	Ecuadorian Judgment: page 24
<p><b>Es cierto que por norma general una empresa puede tener subsidiarias con personalidad jurídica completamente distinta. Sin embargo, cuando las subsidiarias comparten el mismo nombre informal, el mismo personal, y están directamente vinculadas con la empresa madre en una cadena ininterrumpida de toma de decisiones operativas, la separación entre personas y patrimonios se difumina bastante. En este caso, se ha probado que en la realidad Texpet y Texaco Inc. funcionaron en el Ecuador como una operación única e inseparable. Las decisiones importante pasaban por diversos niveles de ejecutivos y órganos de decisión</b></p>	<p><b>Es cierto que por norma general una empresa puede tener subsidiarias con personalidad jurídica completamente distinta. Sin embargo, cuando las subsidiarias comparten el mismo nombre informal, el mismo personal, y están directamente vinculadas con la empresa madre en una cadena ininterrumpida de toma de decisiones operativas, la separación entre personas y patrimonios se difumina bastante, o incluso llega desaparecer. En este caso, se ha probado que en la realidad Texpet y Texaco Inc. funcionaron en el Ecuador como una operación única e inseparable. Tanto las decisiones importantes como las triviales pasaban por diversos niveles de ejecutivos y órganos de</b></p>

<sup>2</sup> Computer and manual searches of the record have not discovered this document in the Ecuadorian Court record as explained in the declarations of Dr. Patrick Joula and Mr. Samuel Hernandez.

<b>de Texaco Inc.,</b>	<b>decisión de Texaco Inc.,</b>
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Note: Bolding and color in Example 1 are added and indicate identical or nearly identical matches between the documents.

43. Example 2 below demonstrates co-occurring word strings of more than 150 words found in both the Ecuadorian Judgment and Fusion Memo.

**Example 2. Identical or nearly identical word strings in the unfiled Fusion Memo and the Ecuadorian Judgment (more than 150 words)**

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

Note: Bolded, color, and underlining in Example 2 are added. Bolded red text indicates identical or nearly identical matches between the documents. Purple underlining emphasizes the particular language feature being exemplified. Curly brackets are used to interject text or comments not in the original documents.

44. In addition to demonstrating the more than 150 identical or nearly identical words in the Fusion Memo and the Ecuadorian Judgment, both texts in Example 2 also exhibit idiosyncratic use of the references *doc s/n* and *doc s/r*. These uses are unique in that they are the only examples of *doc s/n* and *doc s/r* references found in the Fusion Memo and the Ecuadorian Judgment. Further, these appear to be matching citation errors, for no clarity is obtained by looking at the cited foja numbers—*doc s/n* and *doc s/r* are not found in those fojas.

***Identical Idiosyncratic Numerical Ordering Linking Unfiled Fusion Memo And Ecuadorian Judgment***

45. The language evidence indicates not only verbatim apparent copying of identical or nearly identical text and references but also, as seen in Example 3 below, verbatim apparent copying of identical idiosyncratic numerical ordering. This type of overlap is clearly not attributable to the use of lexical bundles. Specifically, both the unfiled Fusion Memo and the Ecuadorian Judgment use the *same* unique numerical ordering of foja numbers, including one foja number—foja 6964—underlined below, which is out of numerical order when compared with the rest of the foja numbers.

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**Example 3. Identical idiosyncratic numerical ordering and identical or nearly identical word strings in the unfiled Fusion Memo and the Ecuadorian Judgment (22 words)**

Fusion Memo: page 5	Ecuadorian Judgment: page 21
<p>d) <b>Cartas y memorandos de Shields y Palmer a John McKinley (Archivos Texaco Inc. y Texpet)</b>{footnote12}.- Como se mencionó antes, McKinley era otro alto ejecutivo de Texaco Inc. de quien dependían importantes aprobaciones y decisiones. <b>Tanto Shields como Palmer mantenían un flujo constante de cartas y memos con McKinley, solicitando su autorización e informándole acerca de acontecimientos</b> importantes.</p> <p>{footnote12}Comunicaciones Palmer-McKinley y Shields-McKinley [PSV-018/F] <b>Cuerpo 66, fojas 6957, 6958, <u>6964</u>, 6959, 6960, 6974.</b></p>	<p>Existen además en el expediente <b>cartas y memorandos de Shields y Palmer a John McKinley</b>, provenientes de los <b>archivos Texaco Inc, y Texpet</b>. En el <b>cuerpo 66, fojas 6957, 6958, <u>6964</u>, 6959, 6960, 6974.</b> Que demuestran que <b>tanto Shields como Palmer mantenían un flujo constante de cartas y memos con McKinley, solicitando su autorización e informándole acerca de acontecimientos</b> relacionados con la Concesión Napo.</p>

Note: Bolding, color, and underlining in Example 3 are added. Bolded red text indicates identical or nearly identical matches between the documents. Purple underlining emphasizes the particular language feature being exemplified. Curly brackets are used to interject text or comments not in the original documents.

46. As noted in bolded red text, there is a 22 word string from the Fusion Memo that demonstrates similar text and reference document citations; further, the foja citation list in both the Fusion Memo and the Ecuadorian Judgment contain 6964, which is numerically out of order when compared to the ordering of the other foja numbers. Further, the period after the number string (6957, 6958, 6964, 6959, 6960, 6974.) is, in the Fusion Memo orthographically correct, because it is the end of a footnote, yet in the Ecuadorian Judgment, there is no reason for it as it does not signal the end of a sentence; rather, it creates a sentence fragment.

***Relationship Between Unfiled Fusion Memo And Unfiled Draft Alegato***

47. My understanding is that the unfiled **Draft Alegato**, PX438, which was circulated in a November 11, 2010 email, is an unfiled version of the Ecuadorian Plaintiffs' trial brief

before the trial court in Ecuador. The unfiled Draft Alegato is distinct from the filed **Final Alegato**.

48. The relationship between the Fusion Memo and the Draft Alegato, as seen in Excerpt 1 below, is that the Fusion Memo is *un anexo* (an appendix) to the Draft Alegato. Specifically, on page 60, in footnote 128 of the Draft Alegato, it references *Anexo de Fusión (Anexo #X)*, which appears to indicate that the Fusion Memo was intended to be attached to the Draft Alegato to supply greater detail than is found in the Draft Alegato. In fact, the reference to *figura 1* (figure 1) in the Draft Alegato, which claims that Texpet is a fourth tier subsidiary to Texaco, Inc., matches the corresponding figure found in the Fusion Memo.

**Excerpt 1. Appendix to the Unfiled Draft Alegato**

A continuación presentamos brevemente esta evidencia, vinculando primero a Texpet con Texaco Inc., y posteriormente a Texaco Inc. con Chevron Corp. {footnote 128: Dada la cantidad de documentos y argumentos disponibles, se adjunta al presente un **Anexo de Fusión (Anexo #X)**, en el que se explica en mayor detalles la relación societaria entre las tres compañías.}

**La real relación entre Texpet y Texaco Inc.**

Texpet es, formalmente, una subsidiaria de cuarto nivel de Texaco Inc. (Ver figura 1 Anexo **Fusión**). Esto significa que, al menos en papel, existen dos empresas adicionales que separan a Texpet de Texaco Inc.

Note: The purple highlighting in Excerpt 1 is included in the original Draft Alegato. Curly brackets are used to interject text or comments not in the original documents.

***Identical Or Nearly Identical Language Linking Unfiled Fusion Memo, Unfiled Draft Alegato, And Ecuadorian Judgment, But Not Filed Final Alegato***

49. The Draft Alegato contains several verbatim word strings from the Fusion Memo. Based upon my review of the filed Final Alegato, the Fusion Memo was not attached to it—indeed any reference to the Fusion Memo was omitted—yet the Ecuadorian Judgment contains examples of strings of words and symbols identical or nearly identical to both the unfiled Fusion Memo, as shown in Examples 1-3 above, and to the unfiled Draft Alegato, as shown in Example 4 below.

**Example 4. Similar text and source citations in unfiled Fusion Memo, unfiled Draft Alegato, and Ecuadorian Judgment, but not in filed Final Alegato**

Fusion Memo: pages 3-4	Draft Alegato: page 61	Ecuadorian Judgment: page 24	Final Alegato: Enero 17, 2011 - 16H55, page 99
<p><b>Al igual que Shields, Bischoff participaba activamente en las complejas cadenas y procesos de toma de decisiones que involucraban a Texaco Inc. y Texpet. En su declaración juramentada Bischoff explica cómo los contratos del cuartel general de Texpet, ubicados en Florida, que se excedieran de USD 500.000,00 debían ser aprobados por un abogado de apellido Wissel, jefe de los abogados de Texaco Inc</b>{footnote 8}. <b>En este caso, vemos como la relación entre Texpet y Texaco Inc. no estaba limitada a que ésta sea propietaria de las acciones de aquella. Ambas trabajaban íntimamente vinculadas, tomando Texaco Inc. todas las decisiones y Texpet limitándose a ejecutarlas.</b> {footnote 7} <b>Declaración Juramentada de Robert M. Bischoff</b> [PSV-018/C] Cuerpo 63, foja 6621. {footnote 8} <b>Ibíd..</b></p>	<p><b>Al igual que Shields, Bischoff participaba activamente en las complejas cadenas y procesos de toma de decisiones que involucraban a Texaco Inc. y Texpet. En su declaración juramentada Bischoff explica cómo los contratos de Texpet que excedían ciertos valores debían ser aprobados por el jefe de los abogados de Texaco Inc.,</b> lo cual ayuda a probar la forma en que Texpet dependía de Texaco Inc.</p>	<p><b>Al igual que Shields,</b> ha quedado claro en el expediente <b>que Bischoff participaba activamente en las complejas cadenas y procesos de toma de decisiones que involucraban a Texaco Inc. y Texpet. En su declaración juramentada Bischoff explica cómo los contratos del cuartel general de Texpet, ubicados en Florida, que se excedieran de USD 500.000,00 debían ser aprobados por un abogado de apellido Wissel, jefe de los abogado de Texaco Inc. En este caso, vemos como la relación entre Texpet y Texaco Inc. no estaba limitada a que ésta sea propietaria de las acciones de aquella,</b> sino que <b>ambas trabajaban íntimamente vinculadas, tomando Texaco Inc. todas las decisiones</b> mientras que <b>Texpet se limita a ejecutarlas.</b></p>	<p>De hecho, las instancias en las <b>que Bischoff</b> tomó la medida de marcar la distinción demuestran la inseparabilidad de las comañias, en lugar de desacreditarla. Por ejemplo, <b>en una declaración</b> bajo <b>juramento Bischoff</b> describió <b>cómo</b> debía asegurarse de que <b>los contratos de Texpet que superaban ciertos valores</b> recibieran la aprobación necesaria de los ejecutivos y de los asesores letrados <b>de Texaco</b> {footnote 362}. Se trata de otro ejemplo de cómo las estructuras de Texpet/Texaco eran, en efecto, indiferenciables.</p> <p>La tradición de ejecutivos que se desempeñan al mismo tiempo en ambas compañías o que pasan de una a otra, una y otra vez, continúa con Chevron y Texpet en la actualidad.</p> <p>{footnote 362: Foja 6639: Transcripción de la <b>declaración de Robert M. Bischoff</b> (17 de agosto de 1995).</p>

Note: Bolding and color in Example 4 are added and indicate identical or nearly identical matches in two or more documents. Curly brackets are used to interject text or comments not in the original documents.

50. The section of the filed Final Alegato in Example 4 that I present here for comparison to the Ecuadorian Plaintiffs' unfiled documents and the Ecuadorian Judgment is not an exact verbatim match, but it discusses similar topics; thus I include it as the closest example I could locate.

51. Example 4 above demonstrates identical or nearly identical word strings of approximately 50 to more than 100 words among the unfiled Fusion Memo, the unfiled Draft Alegato, and the Ecuadorian Judgment, but these strings are not found in the filed Final Alegato. This is evidence that there is a considerable difference between the Draft Alegato and the Final Alegato, and that the Ecuadorian Judgment was plagiarized from the unfiled Fusion Memo and the unfiled Draft Alegato, as opposed to relying on the filed Final Alegato.

***Orthographic Errors Linking Unfiled January Index Summary And Ecuadorian Judgment, But Not Found In The Filed Record***

52. An additional document plagiarized by the Ecuadorian Judgment is the Ecuadorian Plaintiffs' **January Index Summary**, PX433, a Microsoft Excel spreadsheet titled "pruebas pedidas en etapa de prueba.xls" and sent as an email attachment on January 18, 2007. The circulation email describes the attachment as an index of the filings made during the Ecuadorian litigation. The Index Summary consists of five worksheets labeled "INDICE", "Pruebas pedidas por SV", "PSV 018", "PSV 019", and "Pruebas pedidas por CVX", and was to the best of my knowledge not filed with the court.

53. Example 5, below, shows a pattern of correct orthography, followed by an orthographic error, followed by correct orthography (*ambientales/ambiéntales/ambiental*), repeated in both the unfiled Index Summary and the Ecuadorian Judgment, but not the filed Record.

**Example 5. Identical orthographic errors and identical or nearly identical word strings in Ecuadorian Plaintiffs’ unfiled Index Summary and Ecuadorian Judgment, but not in the filed Record**

Index Summary: Pruebas pedidas por CVX, Row 46, Column B	Ecuadorian Judgment: pages 127-128	Record: foja 159.199
<p><b>Que se agregue a los autos como prueba</b>, el documento <b>Informe sobre Desarrollo Humano Ecuador 1999</b> publicado por UNICEF en el que se consignan datos sobre <b>políticas ambientales y sostenibilidad en el Ecuador en 1990</b>, <u>págs. 61-74</u>. Si bien estos datos registran los <b>problemas ambientales del Ecuador</b>, las técnicas de explotación petrolera no constan como uno de los <b>problemas ambientales</b>. En las <u>páginas 63 y 64</u> de dicho informe se señala la <b>carencia de políticas ambientales en el país en 1980</b> en la que <b>recién se da inicio a una insipiente política de protección ambiental</b>.</p>	<p>Se considera <b>como prueba las páginas. 61-74 del documento “Informe sobre Desarrollo humano, Ecuador 1999”</b>, publicado por UNICEF en el que se consignan datos sobre <b>políticas ambientales y sostenibilidad en el Ecuador</b> en la década de los noventa. Se considera que la parte demandada alegó que <b>si bien estos datos registran los problemas ambientales del Ecuador</b>, las técnicas de explotación petrolera no constan como uno de los <b>problemas ambientales</b>, sin embargo, al revisar el documento el juzgador ha encontrado bajo el título: {quotation omitted} La parte demandada también ha alegado que <b>en las páginas 63 y 64 de dicho informe se señala la carencia de políticas ambientales en el país en el decenio de 1980</b>, cuando <b>recién se da inicio a una insipiente política de protección ambiental</b>,</p>	<p><b>Que se agregue a los autos</b> y se tenga <b>como prueba</b> de mi parte las copias certificadas de <b>las páginas 61 a 74</b>, que en catorce fojas útiles acompaño, <b>del documento denominado “INFORME SOBRE DESARROLLO HUMANO ECUADOR 1999”</b>, publicado por <u>la UNICEF</u>, en el que se consignan <b>los datos sobre “políticas ambientales y sostenibilidad en el Ecuador 1990”</b>.</p> <p>En estos datos y cifras se puede observar principalmente los <b>problemas ambientales</b> de tratamiento prioritario en el País (recuadro 4.4, página 64), en el que <b>las técnicas de explotación petrolera no constan como uno de los problemas ambientales</b>.</p> <p>{...}</p> <p>Cabe anotar que <b>las páginas 63 y 64 se señala la carencia de políticas ambientales en el País</b> durante el siglo pasado hasta el año <b>1980</b> en que <b>recién se da inicio a una incipiente política de protección ambiental</b>,</p>

Note: Bolding, color, and underlining in Example 5 are added. Bolded red text indicates identical or nearly identical matches between the documents. Purple underlining emphasizes the particular language feature being exemplified. Curly brackets are used to interject text or comments not in the original documents.

54. Example 5 demonstrates an identical or nearly identical overlap of word strings, an identical pattern of correct and incorrect orthography, and further an orthographic

transcription error that links the unfiled Index Summary and the Ecuadorian Judgment: in the unfiled Index Summary, *páginas* (pages) is abbreviated, with a period (*págs. 61-74*). In the Ecuadorian Judgment, *páginas* is not abbreviated (*páginas. 61-74*), but nonetheless has an unnecessary, errant period after the word *páginas*. One explanation is that the author of the Ecuadorian Judgment copied the statement from the Index, modified it to the full form, *páginas*, but did not delete the then spurious period.

***Identical Or Nearly Identical Word Strings Linking Unfiled January Index Summary And Ecuadorian Judgment, But Not Found In The Filed Record***

55. In Example 6, below, the Ecuadorian Judgment, in four separate clauses (clauses 1-4) has the same identical or nearly identical language as the unfiled January Index Summary, and not the same language as found in the filed Record.

56. As we see in this example, in the first clause, the Record shows *Texaco Inc.*”, *cuya* where the Index Summary has *Texaco Inc.*”, *documetno* [sic] *cuya*. Here the Ecuadorian Judgment tracks the Index Summary (except the typographical error), and not the Record. Also in this clause, the Record spells out the date, *el nueve de octubre del año dos mil uno*, while the Index Summary and Ecuadorian Judgment both use numeric spelling, *el 9 de octubre de 2001*. Again, the Ecuadorian Judgment has the same language as the Index Summary, not the Record. Further, the present tense *es* is used in both the Index Summary and the Ecuadorian Judgment; the Record uses the past tense *fue*.

57. In the second clause, the Record shows *cual* where the Index Summary has *que*. Again the Ecuadorian Judgment has the same language as the Index Summary, not the Record. Further, the phrase *Keepep, Inc* is set off by commas in the Record, but not in the Index Summary or the Ecuadorian Judgment.

58. In the third clause, the Record shows *competente* followed by a comma. The Index Summary has no comma. Once more the Ecuadorian Judgment has the same language as the Index Summary, not the Record.

59. In the fourth clause, the Record shows *competente, para*. The Index Summary and the Ecuadorian Judgment have no comma there, and have the word *emitida*. Also, *a su nueva denominación* is set off by commas in the Record, but not in the Index Summary or the Ecuadorian Judgment.

**Example 6. Identical or nearly identical language in the unfiled January Index Summary and Ecuadorian Judgment, but not in the filed Record**

Index Summary: Pruebas pedidas por SV, Rows 6-9, Column D	Ecuadorian Judgment: page 7	Record: foja 2132
Copia íntegra y certificada del “Agreement and Plan of Merger”, que dice relación con “Certificate of Merger of Keepep Inc and into Texaco <u>Inc.</u> ”, <u>documentno</u> cuya fecha de emisión <u>es el 9 de octubre de 2001</u> .	1) Copia íntegra y certificada del “Acuerdo y Plan de Fusión”, que dice relación con el “Certificado de Fusión entre Keepep Inc y Texaco <u>Inc.</u> ”, <u>documento</u> cuya fecha de emisión <u>es el 9 de octubre de 2001</u> ;	1.- Copia íntegra y certificada del “Agreement and Plan of Merger”, que dice relación con el “Certificate Of Merger Of Keepep Inc. With And Into Texaco <u>Inc.</u> ”, <u>{no “documento”}</u> cuya fecha de emisión <u>fue el nueve de octubre del año dos mil uno</u> .
Copia íntegra y certificada del documento <u>en el que</u> conste la autorización de Chevron Corporation, para que su subsidiaria <u>{no comma}</u> Keepep Inc <u>{no comma}</u> intervenga en el Merger.	2) Copia íntegra y certificada del documento <u>en el que</u> conste la autorización de Chevron Corporation, para que su subsidiaria <u>{no comma}</u> Keepep Inc. <u>{no comma}</u> intervenga en la Fusión;	2.- Copia íntegra y certificada del documento <u>en el cual</u> conste la autorización de Chevron Corporation, para que su <u>subsidiaria, Keepep Inc, intervenga</u> en el acto a que se refiere el numeral anterior.
Copia íntegra y certificada de la autorización del órgano corporativo <u>competente {no comma} para</u> que se proceda al cambio de denominación de Chevron Corporation a Chevron Texaco Corporation.	3) Copia íntegra y certificada de la autorización del órgano corporativo <u>competente {no comma} para</u> que se proceda al cambio de denominación de Chevron Corporation a Chevron Texaco Corporation;	3.- Copia íntegra y certificada de la autorización del órgano corporativo <u>competente, para</u> que se proceda al cambio de denominación de Chevron Corporation a ChevronTexaco Corporation.
Copia íntegra y certificada la autorización del órgano corporativo <u>competente {no comma} emitida para</u> que Texaco pueda incorporar <u>{no comma}</u> a su nueva denominación <u>{no comma}</u> la palabra Texaco.	4) Copia íntegra y certificada de la autorización del órgano corporativo <u>competente {no comma} emitida para</u> que Chevron pueda incorporar <u>{no comma}</u> a su nueva denominación <u>{no comma}</u> la palabra Texaco.	4.- Copia íntegra y certificada de la autorización del órgano corporativo <u>competente, para</u> que Chevron Corporation pueda <u>incorporar, a</u> su nueva <u>denominación, la</u> palabra Texaco.

Note: Bolding, color, and underlining in Example 6 are added. Purple underlining emphasizes the particular language feature being exemplified and bolding demonstrates identical or nearly identical language matches of those

exemplified features. (For clarity of presentation, not all identical or nearly identical language matches are bolded in this example.) Curly brackets are used to interject text or comments not in the original documents.

***Orthographic Errors And Identical Or Nearly Identical Word Strings Not Found In The Record Linking Unfiled June Index Summary And Ecuadorian Judgment***

60. The plagiaristic overlaps and errors I have identified from the unfiled *January* Index Summary also appear in the unfiled *June* Index Summary, and, in one instance, Example 7, below, I find that the June Index Summary contains plagiaristic overlap with the Ecuadorian Judgment additional to that which is found in the January Index Summary.

61. In Example 7, several phrases from the Record are compiled to create a new passage of text in the unfiled Index Summaries. Further, this compilation changes the order in which the phrases appear in the Record: the phrase “muestras las tomaron al azar”, appears in clause 2 on foja 2150 (v) in the Record, but is found as the last phrase of the passage in the unfiled Index Summaries; the phrase “me contrató el Frente” appears in clause 4 on foja 2150 (v), but is found as the first phrase of the passage in the unfiled Index Summaries; and the phrases “me imagino que”, “convenio interinstitucional”, and “entre Petrecuador[sic] y el Frente”, although appearing last in the Record, in clause 11 on foja 2151, are found in between the other two phrases in the passage in the unfiled Index Summaries. The resultant language of the compiled passage in the unfiled Index Summaries, including the reordering of the clauses, is found nearly verbatim in the Ecuadorian Judgment. In addition, the June Index adds the *r* to *Petro* and the *s* to *se*, and these additions appear in the Ecuadorian Judgment.

**Example 7. Identical or nearly identical word strings in the unfiled January and June Index Summaries and Ecuadorian Judgment, but not the filed Record.**

<p>January Index Summary: Pruebas pedidas por SV, Row 5, Columns H {"testimonio en fojas 2150. P75.C22"} and I</p>	<p>June Index Summary: Pruebas pedidas por SV, Row 5, Columns H {"testimonio en fojas 2150. P75.C22"} and I</p>	<p>Ecuadorian Judgment: page 138</p>	<p>Record: fojas 2150 vuelta and 2151</p>
<p><b>Me contrató el Frente. Me imagino que hay un convenio interinstitucional entre Pet{no "r"}o y el Frente, y por eso seguramente se imprimió en hojas de Petro. Las muestras {no "s"}e tomaron al azar.</b></p>	<p><b>Me contrató el Frente. Me imagino que hay un convenio interinstitucional entre Petro y el Frente, y por eso seguramente se imprimió en hojas de Petro. Las muestras se tomaron al azar.</b></p>	<p><b>"Me contrató el Frente. Me imagino que hay un convenio interinstitucional entre Petroecuador y el Frente, y por eso seguramente se imprimió en hojas de Petro". Este testigo asegura que las muestras se tomaron al azar</b></p>	<p>2) La metodología fue la recopilación de las muestras de suelo y agua de los diferentes campos, estas <b>muestras</b> las <b>tomaron al azar</b> y los resultados de lapsus fueron comparados con las tablas ambientales que existen en vigencia.  4) No soy asesor del Frente de Defensa de la Amazonía a mi me <b>contrató el Frente</b> de Defensa de la Amazonía para un trabajo técnico a realizarse en el listado de pozos que me presentaron.  11)...de la Amazonía me <b>imagino que</b> las hojas en las cuales se imprimió es por el <b>convenio interinstitucional</b> que hay <b>entre Petr{no "o"}ecuador y el Frente</b> de Defensa de la Amazonía.</p>

Note: Bolding and color in Example 7 is added. Bolded red text indicates exact matches between the documents. Curly brackets are used to interject text or comments not in the original documents.

62. The June Index Summary, further, is the source for other errors that reoccur in the Ecuadorian Judgment. One instance is Example 8, below, where a citation error from the June Index is repeated, two times, in the Ecuadorian Judgment.

63. The document entitled “ACTA DE INSPECCION JUDICIAL POZO SHUSHUFINDI – 13” is located in the Record at fojas 74973-75003. In this example, the citation to the Acta in the June Index Summary begins correctly at 74973; however, the citation ends incorrectly at 75013. Foja 75013 is actually a one-page document entitled “Razon” (“certification”). The Ecuadorian Judgment replicates the same citation error as in the unfiled June Index Summary—it states the Acta ends at 75013 instead of 75003—and does so on two separate pages.

**Example 8. Ecuadorian Court record citation errors from the unfiled June Index Summary found in the Ecuadorian Judgment.**

June Summary Index: Indice, Row 930, Columns B and D	Ecuadorian Judgment: page 142	Ecuadorian Judgment: page 150	Record: fojas 74973 - 75003
<b>Acta de inspección judicial de pozo Shushufindi 13  74973-750<u>13</u></b>	Concordantemente, en la <b>inspección judicial de Shushufindi 13</b> (ver <b>acta</b> en fojas <b>74973-750<u>13</u></b> ),	En la <b>inspección judicial de Shushufindi 13</b> (foja <b>74973-750<u>13</u></b> ),	<b>ACTA DE INSPECCION JUDICIAL POZO SHUSHUFINDI –13 74973-750<u>03</u></b>

Note: Bolding, color and underlining in Example 8 are added. Bolded red text indicates identical or nearly identical matches between the documents. Purple underlining emphasizes the particular language feature being exemplified. Curly brackets are used to interject text or comments not in the original documents.

64. The June Index Summary also has other citation errors, similar to the one illustrated above, that reoccur in the Ecuadorian Judgment. These are identified in PX2164.

65. These examples above demonstrate identical or nearly identical word strings and identical errors in both the unfiled Index Summaries and the Ecuadorian Judgment, but these strings and errors are not found in the filed Record. Based on this evidence, I conclude to a reasonable degree of scientific certainty that the Ecuadorian Judgment was plagiarized from the

unfiled Index Summaries, as opposed to relying on the filed Record.

***Identical Or Nearly Identical Word Strings And Transcription And Citation Errors Linking Unfiled Fajardo Trust Email And Ecuadorian Judgment But Not Found In The Record***

66. I examined the language evidence for plagiaristic overlap between the Ecuadorian Judgment and the unfiled **Fajardo Trust Email**, i.e., language overlap between the Ecuadorian Judgment and the unfiled Fajardo Trust Email that was not also found in the filed Registro Oficial—the official register #339 dated May 17, 2008. Portions of the Ecuadorian Judgment and the unfiled Fajardo Trust Email contain matching or similar word strings, as well as identical citation errors, and identical mistranscriptions, whose presence is not explainable either as set phrases or by chance. I demonstrate below that the language evidence indicates that the author of the Ecuadorian Judgment used language from the Fajardo Trust Email and not from the filed Registro Oficial, since the language used in the Ecuadorian Judgment is not found in the filed Registro Oficial but in the unfiled Fajardo Trust Email.

67. As shown in example 9 below, the Fajardo Trust Email and the Ecuadorian Judgment share identical or nearly identical word strings of more than 40 words. This textual overlap is not attributable to both drawing upon the Registro Oficial. Rather, in the email, an unidentified individual is introducing this language and summarizing Ecuadorian trust law to Pablo Fajardo.

68. Furthermore, the Fajardo Trust Email and the Ecuadorian Judgment both incorrectly cite the Concha Case using the same incomplete shorthand notation. The Fajardo Trust Email purports to cite the Concha case as one of “the Supreme Court decisions” dealing with “the legal basis of the trust.” It does so using the citation “229-2002, R. O. 43 de marzo 19 de 2003.” However, I reviewed the Concha case as well as a summary of the Concha case produced by the Ecuadorian plaintiffs. There is nothing contained in the Concha case about trusts. Nonetheless, the same citation appears in the Ecuadorian Judgment on the same topic.

69. Much of the data, adduced below, such as identical or nearly identical strings of more than 40 words, identical citation errors, and identical mistranscriptions, support the opinion, to a reasonable degree of scientific certainty, that the co-occurrence of language between parts of the Ecuadorian Judgment and the unfiled Fajardo Trust Email is due to common authorship. In other words, I conclude to a reasonable degree of scientific certainty that portions of the Ecuadorian Judgment were plagiarized from the Fajardo Trust Email.

**Example 9. Identical or nearly identical word strings (more than 40 words) in the unfiled Fajardo Trust Email and the Ecuadorian Judgment, but not in the filed Registro Oficial**

Fajardo Trust Email	Ecuadorian Judgment: page 186	Registro Oficial: page 29
<p><b>La procedencia del fideicomiso como modo de cumplir las obligaciones</b> tiene como fundamento el artículo 24, numeral 17 de la Constitución anterior (debe haber una norma similar en la actual) y <b>ha sido reconocida</b> (la procedencia del modo) <b>en las resoluciones de Corte Suprema números 168-2007 de abril 11 de 2007, juicio No. 62-2005, propuesto por Andrade c. CONELEC; y, 229-2002, R. {space} O. 43 de marzo 19 de 2003;</b></p>	<p><b>la procedencia del fideicomiso como modo de cumplir las obligaciones ha sido reconocida en las resoluciones de Corte Suprema números 168-2007 de abril 11 de 2007, juicio No. 62-2005, propuesto por Andrade c. CONELEC; y, 229-2002, R.O. 43 de marzo 19 de 2003,</b></p>	<p>{other than “artículo 24, numeral 17, de la Constitución”, no overlap with the Fajardo Trust Email is found.}</p>

Note: Bolding and color in Example 9 are added. Bolded red text indicates exact matches between the unfiled Fajardo Trust Email and the Ecuadorian Judgment. Curly brackets are used to interject text, spaces, or comments not in the original documents.

70. As shown below in example 10, the unfiled Fajardo Trust Email, following the introduction and summary, purports to give a transcription of language in the Conelec case. That transcription however, contains three misquotations when compared to the actual official language of the Conelec case:

- one, substituting “condena” for “Ecuadorian Judgment”;
- two, substituting “la presente Ecuadorian Judgment” for “el presente caso”; and
- three, stating “a través de” instead of “con”.

71. The exact same misquotations found in the unfiled Fajardo Trust Email appear verbatim in the Ecuadorian Judgment. This overlap between the unfiled Fajardo Trust Email and the Ecuadorian Judgment is thus not attributable to “stock language” because the stock language from the Registro Oficial does not contain those precise quotations.

**Example 10. Identical or nearly identical word strings in the unfiled Fajardo Trust Email and the Ecuadorian Judgment, but not in the filed Registro Oficial**

Fajardo Trust Email	Ecuadorian Judgment: page 186	Registro Oficial: page 29
<b>Finalmente, es necesario establecer un mecanismo adecuado de ejecución de la <u>condena</u>, que permita asegurar que el criterio de Justicia empleado en <u>la presente Ecuadorian Judgment</u> se haga realidad, asegurando la tutela judicial efectiva</b>	<b>Finalmente</b> , considerando que <b>es necesario establecer un mecanismo adecuado de ejecución de la <u>condena</u>, que permita asegurar que el criterio de Justicia empleado en <u>la presente Ecuadorian Judgment</u> se haga realidad, asegurando <u>así</u> la tutela Judicial efectiva,</b>	<b>Finalmente, es necesario establecer un mecanismo adecuado de ejecución de la <u>sentencia</u>, que permita asegurar que el criterio de Justicia empleado en <u>el presente caso</u> se haga realidad, asegurando la tutela Judicial efectiva</b>
<b>y procurando precautelar los</b> intereses de Juan Pablo Andrade Bailón <b>a través de la aplicación del mismo criterio que ha servido para fijar las indemnizaciones</b> por daños materiales	<b>y procurando precautelar los</b> derechos de los demandantes y de los afectados, <b>a través de la aplicación del mismo criterio que ha servido para fijar las indemnizaciones,</b>	<b>y procurando precautelar los</b> intereses de Juan Pablo Andrade Bailón <b>con la aplicación del mismo criterio que ha servido para fijar las indemnizaciones</b> por daños materiales.

Note: Bolding, color, and underlining in Example 10 are added. Bolded red text indicates exact matches among the three documents or between the unfiled Fajardo Trust Email and the Ecuadorian Judgment. Purple underlining emphasizes the particular language feature being exemplified. Curly brackets are used to interject text, spaces, or comments not in the original documents.

72. Having reviewed the unfiled Fajardo Trust Email, the Ecuadorian Judgment, and the filed Registro Oficial supposedly quoted from, I conclude that the author of the Ecuadorian Judgment used language from the email and not the filed Registro Oficial, since the language used in the Ecuadorian Judgment is not found in the filed Registro Oficial but in the unfiled Fajardo Trust Email. The filed Final Alegato was also searched for the language used in the Ecuadorian Judgment, but the matches between the unfiled Fajardo Trust Email and the Ecuadorian Judgment are not found in the filed Alegato either.

73. Specifically, as noted above, the unfiled Fajardo Trust Email and the Ecuadorian Judgment overlap in their use of identical or nearly identical word strings of more than 40 words, identical citation errors, and identical mistranscriptions, i.e., their use of identical substituted language (e.g., “condena” instead of “Ecuadorian Judgment”, “la presente Ecuadorian Judgment” instead of “el presente caso”, and “a través de” instead of “con”).

74. Thus, this is evidence supporting the hypothesis of co-occurrence of language due to common authorship, and demonstrates that the co-occurring strings were plagiaristically copied from one document to the other (i.e., from the unfiled Fajardo Trust Email to the Ecuadorian Judgment).

75. Analysis of the language evidence revealed a number of matches between the Ecuadorian Judgment and the unfiled Fajardo Trust Email. That email predates the Ecuadorian Judgment. Since we know that copying must be done at a later time from a previously existing document, I conclude that parts of the Ecuadorian Judgment must likely have had their origin in the unfiled Fajardo Trust Email.

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***Identical Or Nearly Identical Word Strings Not Found In The Record Linking Unfiled Clapp Report And Ecuadorian Judgment***

76. Analysis of the unfiled Clapp Report and the Ecuadorian Judgment reveals, as shown in example 11 below, matches of two strings of identical words. The first string is 34 identical words in the identical order, and the second is 9 identical words in the identical order, for a total of 43 identical words in a single paragraph.

**Example 11. Identical word strings in the unfiled Clapp Report and the Ecuadorian Judgment, but not in the filed Record**

Clapp Report: page 7	Ecuadorian Judgment: page 109-110	Anexo K of Cabrera Report
<p><b>Las muestras de suelo y agua tomadas durante las inspecciones judiciales han indicado niveles excesivos de plomo que puede plantear riesgos de salud para las poblaciones locales. Los niveles de plomo en el suelo</b> más que duplican el límite legal y prueban <b>que el envenenamiento con plomo es un riesgo real</b> que fue creado por operaciones de producción de PETRÓLEO en la concesión de Texaco en la amazona ecuatoriana.</p>	<p><b>Las muestras de suelo y agua tomadas durante las inspecciones judiciales han indicado niveles excesivos de plomo que puede plantear riesgos de salud para las poblaciones locales. Los niveles de plomo en el suelo</b> son mucho más elevados de lo normal, lo que contribuye a corroborar <b>que el envenenamiento con plomo es un riesgo real.</b></p>	<p>{While the filed Anexo K of the Cabrera report appears to be based on the unfiled Clapp Report, it does not include this string.}</p>

Note: Bolding and color in Example 11 are added. Bolded red text indicates exact matches. Curly brackets are used to interject text, spaces, or comments not in the original documents. The translation of this word string in the Ecuadorian Judgment is: “Soil and water samples taken during the judicial inspections have indicated excessive lead levels that could pose health risks for local populations. Lead levels in the ground are much higher than normal, which tends to corroborate that lead poisoning is a real risk.”

77. The overlap of identical word strings between the unfiled Clapp Report and the Ecuadorian Judgment is further evidence that portions of the Ecuadorian Judgment were plagiaristically copied from the Ecuadorian Plaintiffs’ unfiled work product. Based on this



80. Combining the results of Mr. Lynch's analysis with my own analysis, over 30 pages of the Ecuadorian Judgment contain material from the Ecuadorian Plaintiffs' unfiled work product.

I declare under penalty of perjury foregoing facts are true and correct.

Executed this 8th day of October, 2013.

Handwritten signature of Robert A. Leonard in cursive script.

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Robert A. Leonard, Ph.D.