UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Jane Doe I, et al., Plaintiffs, v. Texaco, Inc., et al. Defendants.	Case No. C 06-2820 (WHA)

DECLARATION OF CRISTOBAL BONIFAZ IN SUPPORT OF PLAINTIFFS' RENEWED MOTION TO PROCEED WITH ACTION USING PSEUDONYMS

I, CRISTÓBAL BONIFAZ, Esq., residing at 180 Maple Street, Conway, Massachusetts 01341, and having legal business offices at the same address, declare as follows:

1. I am an attorney for Plaintiffs in this action. I make this declaration in support of Plaintiffs' Renewed Motion to Proceed with Action Using Pseudonyms. I make this declaration based on my personal knowledge or on information and belief, the source of which is my discussions with persons having personal knowledge, my examination of the documents annexed hereto and other publicly available documents, and my work as an attorney at The Law Offices of Cristóbal Bonifaz.

2. Each Plaintiff in this action is a real and specific aggrieved individual. The lengthy speculation to the contrary engaged in by Defendants in their motion to dismiss is both outrageous and baseless. Furthermore, no Plaintiff in this action has ever been a party in any litigation, past or presently pending, in any forum, against Defendants.

3. In support of Plaintiffs' Renewed Motion to Proceed With Action Using Pseudonyms, Plaintiffs Jane Doe I, Jane Doe II, Jane Doe III, and Jane Doe IV have each executed a declaration. True copies of each Plaintiff's declaration, which were sent from Ecuador by

facsimile, are annexed to this declaration as Exhibit 1, with Plaintiffs' names redacted. At the Court's request, Plaintiffs will make the original declarations available for in camera review upon their receipt from Ecuador.

4. Plaintiffs have a genuine concern that they would face harassment and retaliation, including physical retaliation, if their names and/or other identifying information were to be publicly disclosed.

5. In order to explain adequately why Plaintiffs feel they may become targets for violence and/or harassment, some background information is needed. In 1993, I filed, on behalf of 73 indigenous inhabitants and other residents of the Oriente region of the Ecuadorian Amazon, and in conjunction with other attorneys, who are not involved with this present action, a class action complaint against Texaco, Inc., in the United States District Court for the Southern District of New York. In this complaint, the putative class representatives alleged that Texaco, while operating a crude oil extraction concession in the Oriente from 1971 to 1992, engaged in negligent practices that caused massive contamination of the Amazonian rainforest there. In 1994, I filed a similar complaint on behalf of indigenous inhabitants of the Peruvian Amazon, alleging that Texaco's negligent practices in Ecuador had contaminated the river Napo, depleting it of fish and impacting the plaintiffs' livelihood. These two actions, *Aguinda v. Texaco*, No. 93 Civ. 7527 (JSR) (S.D.N.Y.) and *Ashanga Jota v. Texaco*, No. 94 Civ. 9266 (JSR) (S.D.N.Y.), respectively, were consolidated by the Court.

6. The filing of the *Aguinda* and *Jota* lawsuits in the United States in 1993 and 1994 led to great expectations by many residents of the rainforest, some of whom organized themselves into associations and groups to support the lawsuits. One of these groups was an organization called

the Frente for the Defense of the Amazon (the "Frente"), which was founded in 1994 with the aid of US-based NGOs such as Oxfam America.

7. The Government of Ecuador initially opposed the *Aguinda* and *Jota* cases. Between 1993 and 1996, the Government filed at least two statements of interest requesting the District Court to dismiss the lawsuits based on comity considerations. In August 1996, the District Court dismissed the cases, in part due to international comity given the position of the Government opposing the litigation, in a decision reported at 945 F. Supp. 625 (S.D.N.Y. 1996)

8. Within days of this ruling, the Frente organized a demonstration in Quito, the capital of Ecuador. As part of that demonstration, the Frente staged a sit-in at the office of the attorney general of Ecuador, threatening not to leave the office until the Government changed its stance in the litigation. After three days of a showdown, the Government changed its previous position opposing the litigation and moved the District Court to allow it to intervene in the case and for reconsideration of the Court's order of dismissal based on the changed position of the Government.

9. The District Court rejected the Government's motion to intervene and upheld its dismissal of the case, in a decision reported at 175 F.R.D 50 (S.D.N.Y. 1997). In 1998, however, the Second Circuit Court of Appeals reversed and remanded, in a decision reported at 157 F.3d 153 (2d Cir. 1998), on the ground that the dismissal of the case on *forum non conveniens* grounds was inadequate in failing to require Texaco to subject itself to the jurisdiction of Ecuadorian Courts. While the Second Circuit also directed the lower court to reconsider its analysis of the Government's intervention motion in light of the Government's changed position, by then a new administration in Ecuador had resolved to take a neutral stance in the litigation and not to pursue further a possible intervention in the case.

10. After another four years of litigation, the *Aguinda* and *Jota* cases were ultimately dismissed by the District Court in 2001 under the doctrine of *forum non conveniens*, after Texaco agreed to subject itself to the jurisdiction of Ecuadorian Courts. This decision is reported at 142 F.Supp.2d 534 (S.D.N.Y. 2001). This time, the Second Circuit affirmed the dismissal on appeal, in a decision reported at 303 F.3d 470 (2d Cir. 2002).

11. Following the dismissal in New York, I, together with my co-counsel in the *Aguinda* case, retained Ecuadorian counsel in order to recommence the *Aguinda* litigation in Ecuador. The complaint in that litigation, now known as the Lago Agrio litigation, was filed on May 7, 2003 in Lago Agrio, Ecuador, on behalf of the same group of individual plaintiffs from the *Aguinda* case. The Lago Agrio complaint is partially based on Article 43 of the Environmental Management Law, which was enacted by the Ecuadorian legislature in 1999 to allow individuals in polluted regions to sue those responsible for the pollution in a kind of collective action to seek environmental remediation on behalf of all residents of the affected region.

12. The Frente is not a plaintiff in the Lago Agrio litigation. However, the Lago Agrio complaint requests that the Frente be named as the trustee in charge of administering any monies awarded by the court for remediation of the pollution in the Lago Agrio plaintiffs' region. The Frente has repeatedly claimed to the Ecuadorian public and media that the Lago Agrio litigation will result in a six billion dollar judgment against Chevron. In Ecuador, the prevailing public expectation is that the Frente will soon control billions of dollars. As a result, the organization has become a powerful political force with many members, wielding great influence in the Oriente.

13. The Frente is likely to see this action as a threat to the money and political power that it has gained and/or hopes to gain from the Lago Agrio litigation. I believe that if the identities

and addresses of Plaintiffs in this action are disclosed, the Frente will attempt to intimidate and harass Plaintiffs.

14. Furthermore, the Frente's long-running publicity campaign against Texaco and Chevron has created expectations in the region that a lawsuit against Chevron could be worth billions of dollars. On October 30, 2003, *El Comercio*, the principal and most respected newspaper in Ecuador, published an article on one such press conference held by the Frente in Ecuador to publicize the Lago Agrio case. A true copy of this article is attached to this declaration as Exhibit A.

15. If the identities and/or addresses of Plaintiffs in this action were disclosed in the region, Plaintiffs would become likely targets for violence from other persons or groups. The region of the Ecuadorian rainforest where Plaintiffs reside is lawless. Ecuador's border with Colombia is within 20 kilometers, and the leftist paramilitary group "Fuerzas Armadas Revolucionarias de Colombia" ("FARC") operates freely in Plaintiffs' region, along with other paramilitary and criminal groups. These groups notoriously engage in kidnappings for ransom, robberies, drug trafficking, and other unlawful acts, which they use to raise money to sustain themselves. If the identities and addresses of Plaintiffs in this action were publicly disclosed, Plaintiffs would become targets for being kidnapped, on the belief that Plaintiffs' United States attorneys are rich and would be able to pay a heavy ransom to ensure Plaintiffs' safety.

16. There are no local police forces in the Oriente. The Ecuadorian Army provides what little security there is, maintaining military bases in the region. Given the remote and lawless nature of the region, Chevron's lawyers in the Lago Agrio are under the constant protection of the Army.

17. Texaco, and now Chevron, have long had close ties to the Ecuadorian military. Throughout the Lago Agrio litigation, Chevron has made use of Ecuadorian military bases and otherwise worked closely with the Ecuadorian military. Chevron's current chief of security in Ecuador, Manuel Bravo, is a former captain in the Ecuadorian Army. The military of Ecuador benefits greatly from crude oil exported from Ecuador and its interest is primarily to maintain the flow of oil at all costs.

18. On February 2, 2006, the American newspaper *The Christian Science Monitor* published an article reporting that Chevron, along with at least 16 other multinational oil companies, had secret, classified agreements with the Ecuadorian military to provide security for their installations and operations. A true copy of this article is annexed to this declaration as Exhibit B.

19. Further, given the remoteness of the Oriente region from Quito, the Government does not always exercise effective control over local military units and commanders in the Oriente. Chevron, which enjoys great influence in the region, often induces local military units and commanders to act for the private benefit of Chevron, rather than for the benefit of the Government.

20. On October 19, 2005, the Lago Agrio court suspended a process of pretrial judicial fact-finding inspections of allegedly contaminated rainforest sites, at the request of Chevron, after the Ecuadorian military reported (and the court agreed) that "the minimum security conditions to complete the process do not exist." This ruling was reported in an October 20, 2005 article in *El Comercio*. A true copy of this article is annexed to this declaration as Exhibit C.

21. On November 8, 2005, two lawyers for the Lago Agrio plaintiffs and two leaders of Ecuadorian indigenous groups petitioned the Organization of American States for protection

from Ecuadorian military intelligence. The petitioners stated that they had been harassed and intimidated, and that they believed their lives were in danger. One of the lawyers stated that his office had been robbed on October 28, 2005, and that computers and documents relating to the case were stolen. This petition was reported in a November 10, 2005 article in *El Comercio*. A true copy of this article is annexed to this declaration as Exhibit D.

22. On March 6, 2006, *El Comercio* published an article reporting that the Lago Agrio plaintiffs accused Chevron of coordinating with the Ecuadorian military in ongoing efforts to sabotage the Lago Agrio litigation. A true copy of this article is annexed to this declaration as Exhibit E.

23. I believe that the threats, harassment, and intimidation of the lawyers and indigenous leaders in Lago Agrio by the Ecuadorian military are indicative of what would happen to Plaintiffs in this action if their names and/or other identifying information were to be publicly disclosed.

24. There is little question that the plaintiffs in this litigation will place their lives in danger from a variety of sources if their names are divulged to the public, thus the need to be protected from public identification.

25. As an attorney at The Law Offices of Cristóbal Bonifaz, I acted as co-counsel for the Plaintiffs in *John Roe v. Unocal, Inc.*, No. 96 Civ. 6112 (RAP) (C.D. Cal.), a case involving pseudonymous plaintiffs. In 9 years of litigating that case, the parties operated under a protective order, which allowed for the action to proceed with relative efficiency, while striking an effective balance between the plaintiffs' need for protection from potential harm due to disclosure of their identities and addresses and the defendants' need to prepare an adequate defense. Based on my experience with the *Unocal* case, I believe that if the Court were to adopt

order in this case, Plaintiffs would be able to proceed pseudonymously without any significant prejudice to Defendants. As demonstrated by the Declaration of Thomas J. Cmar, my co-counsel in this action, and the exhibits annexed thereto, Plaintiffs have proposed such a protective order to Defendants, under the terms of which Plaintiffs are willing to disclose their names and identifying information to Defendants immediately, but Defendants have declined to discuss Plaintiffs' proposal.

FURTHER DECLARANT SAYETH NAUGHT.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: Conway, Massachusetts
June 9, 2006

Cristóbal Bonifaz

COMMONWEALTH OF MASSACHUSETTS

Franklin County **Conway, Massachusetts**

Cristóbal Bonifaz appeared before me today June 9, 2006 and was sworn as to the truth of all the matters asserted in this Affidavit.

Notary Public

My Commission Expires on 8-5-11