DEPUTY PRESIDING JUDGE OF THE NUEVA LOJA APPEALS COURT:

I, Adolfo Callejas Ribadeneira, Counsel for CHEVRON CORPORATION, in this oral summary proceeding No. 002-2003 being brought against my client by María Aguinda et al., and in response to the Court's order issued at 8:30 a.m. on 14 April 2008, hereby submit for your consideration and ruling my client's comments on the expert report submitted by Richard Cabrera Vega at 8:30 a.m. on 1 April 2008, both with respect to the legal and procedural aspects and with regard to the applicable technical and scientific aspects:

I state that Richard Cabrera's report merits a complete rebuttal by the defendant, for the reasons summarized and described in the following sections:

- The Expert failed to fulfill his mandate, inadequately carrying out—and even ignoring—technical tasks he was ordered to perform.
- The Expert assumed responsibilities beyond his role and competence, including those that belong exclusively to the Judge.
- The Expert violated his oath to perform his duties "faithfully and legally."
- The Expert failed to obey the Court's many express orders aimed at addressing Defendant's grave concerns regarding the Expert's methodology and procedure.
- The Expert acted in complicity with the plaintiffs, whose claims he uniformly accepted with no valid explanation and often in the absence of supporting data.
- The Expert manipulated and altered evidence with the purpose of justifying false conclusions.
- The Expert used scientific concepts in a superficial and inappropriate manner, and his calculations contain basic math errors.
- The Expert reached conclusions that are plainly incorrect.
- The Expert failed to disclose his methodology, preventing verification of his results and hindering Defendant's ability to analyze and challenge his report in a meaningful way.

For the Court's easy reference, outlined below are some of the most unfounded and fraudulent aspects of Mr. Cabrera's report, which will be commented on in greater detail in the body of the rebuttal brief:

Mr. Cabrera's report cannot aid the Court in deciding the issues in this case because, in virtually every respect, it fails to meet the basic standards of fairness and reliability that are required for a neutral expert report. Any objective review of the report can yield but one conclusion: Mr. Cabrera has produced an advocacy piece for the plaintiffs, not a competent or impartial assessment of the evidence. Mr. Cabrera's findings of contamination are defective, and the dollar amounts discussed in his report bear no conceivable relationship to environmental conditions in the Oriente. Even more importantly, any discussion of potential remedies is invalid because there has been no identification of pollution *caused by Chevron or TexPet*. Indeed, Mr. Cabrera's work should never even have begun: The judicial-inspection process, which was meant to scientifically investigate contamination, causation, and ongoing risk at a site-specific level, was prematurely aborted without *any* showing by the plaintiffs on causation. After abandoning the judicial-inspection process, the Court specifically tasked Mr. Cabrera with assessing causation, but he concededly makes no effort to do so. Thus, Mr. Cabrera's report continues and compounds the basic flaw in this proceeding—it threatens Chevron with potential liability even absent a showing that Chevron is responsible for current environmental conditions. This flaw is particularly egregious given that TexPet has not operated in the Oriente since 1990,

while Petroecuador has amassed a clear record of environmental mismanagement in the region in the 18 years since it assumed operations.

First, in pressuring the Court to appoint Mr. Cabrera, the plaintiffs succeeded in overturning an inspection process that was—at least on its face—court-supervised, transparent, and evidence-based. Under that process, each side was to offer its own expert assessment of the environmental conditions at 122 specific sites, with conflicting reports reviewed by a panel of independent "settling" experts. In the first (and only) such settling report, the independent experts agreed with Chevron that the reviewed site posed no significant environmental risk. With their data unable to withstand scrutiny, the plaintiffs then insisted that the Court abandon this adversarial process in favor of one in which a single Ecuadorian expert would quickly make all of the environmental assessments by himself. Uninterested in the production of a valid scientific document, the plaintiffs secured the appointment of Mr. Cabrera, a mining engineer who was unqualified to perform the work needed for a legitimate analysis.

Second, the plaintiffs insured that Mr. Cabrera would perform his work in the midst of intense political pressure to procure an exorbitant judgment for local residents against a foreign oil company. Plaintiffs have long worked behind the scenes to obtain government action in their favor. Most notably, plaintiffs sought the government's repudiation and nullification of the 1995 Settlement Agreement and 1998 Final Release, under which TexPet performed extensive remediation—more than commensurate with its minority interest in the Consortium—in exchange for a complete release from further responsibility for environmental conditions in the Oriente. Plaintiffs' politicization of this case became much more open after the election of President Rafael Correa, who personally visited the Oriente to show his support for the plaintiffs shortly after Mr. Cabrera's initial appointment. Most recently, Ecuador's Prosecutor General caved to public demands by Mr. Correa and the plaintiffs' lawyers for criminal indictment of the individuals who executed the Settlement and Release, notwithstanding that two prior investigations had revealed no basis for these spurious charges and the government had withdrawn fraud allegations in a separate proceeding. This politicization of the case, and particularly the continued expressions by Mr. Correa and other leaders of his party in support of the plaintiffs, irremediably tainted Mr. Cabrera's methods and results.

Third, Mr. Cabrera disregarded numerous court orders that required him to conduct a neutral, technical analysis. Rather than perform a detailed assessment of each of the 335 well and production sites in the former concession area, Mr. Cabrera took only a handful of soil and water samples at 49 sites, which he parlayed into a large recovery for the plaintiffs through generalization, speculation, and extrapolation. As noted, Mr. Cabrera also failed to make the mandated determination regarding the chronology of any damage. This point is critical given that Petroecuador has operated the oil fields exclusively for the past 18 years, with a well-documented record of pollution. Mr. Cabrera, however, used Petroecuador's pollution to *increase* the damages award against Chevron through the absurd assumption that TexPet is legally responsible for Petroecuador's conduct. This type of analysis eliminates any notion of independent, scientific inquiry.

Fourth, Mr. Cabrera did not perform his work in a scientific, responsible, or transparent manner. Highly qualified environmental engineers reviewed Mr. Cabrera's work plan, noting the many flaws and weaknesses, but Mr. Cabrera ignored the Court's orders directing him to take the advice of these experts—all vastly more experienced than Mr. Cabrera—into account during his assessment. Instead, Mr. Cabrera carried out his work from the erroneous starting point that TexPet had polluted the former concession area. From there, he operated with no transparency and ignored even the most basic scientific and technical principles. For example, he delegated

much of his responsibility to unqualified "team" members who were not vetted by Chevron, were not approved by the Court, and have not documented their work. Mr. Cabrera also based billions of dollars in recommended remedies on *ad hoc* surveys in which local Ecuadorians were asked leading questions like "what [do] you think should be demanded of Texaco as relief for the damages suffered?" Clearly Mr. Cabrera's results cannot be independent or neutral if he essentially allowed the alleged victims to provide a majority of his supporting "data."

Fifth, Mr. Cabrera violated his responsibility of neutrality. The assessment phase was supposed to have been a neutral process, conducted by an independent expert. That basic premise is even more critical here in circumstances where the Ecuador Government has infected the judicial process with an "us against them" stance. Certainly, Mr. Cabrera did not act impartially. The plaintiffs have enjoyed unequal access to the Expert, as was displayed during the inspections in the field, where plaintiffs' representatives and supporters accompanied and assisted Mr. Cabrera, while the Defendant was blocked from the sites with police tape. More serious still, there is evidence suggesting that the plaintiffs also affected the substance of Mr. Cabrera's report, providing both methodological tools, such as his questionable survey, as well as pre-written reports for use as annexes. Moreover, the influence of plaintiffs' representatives—and particularly the U.S. lawyers who are directing and funding their litigation—is evident in the pages of the report itself, whether from the discourse on U.S. legal concepts or the reliance on sources that can only have been provided *ex parte* by the plaintiffs.

Sixth, Mr. Cabrera failed to support his conclusions. The partial testing that he performed lacks the scientific rigor to support his broad claims of environmental contamination. For example, half of his reported samples were taken in secret, and he discarded a quarter of the samples in the field. His figures for soil remediation costs relied on insupportable assumptions that inflated every variable, including the number of pits, the percentage of pits requiring remediation, the size of the pits, the depth within and the area outside of the pits needing remediation, and the costs per cubic meter of soil to be cleaned. Mr. Cabrera included more than $1 billion for remediation of areas he did not even visit, including millions of dollars to remediate pits that clearly do not even exist.

Seventh, Mr. Cabrera went far afield to fabricate impacts and remedies to be imposed against Chevron. The Court ordered Mr. Cabrera to assess environmental damage and harmful contaminants, and to assess the steps needed to fix the damage and clean up the contaminants. Mr. Cabrera, however, assessed billions of dollars to compensate for alleged personal injuries, to improve public services, to foster indigenous cultures, to modernize Petroecuador's equipment, and to take away alleged "unfair profits." All told, nearly 90% of Mr. Cabrera's monetary figure is unrelated to the environmental remedies that Mr. Cabrera was asked to assess. Furthermore, Mr. Cabrera has no expertise bearing on these non-environmental remedies. His assumption that Chevron should be liable for them, and his calculation of the amounts, lack any legitimate basis.

In sum, in the shadow of President Correa's public condemnation of "the multinational," Mr. Cabrera has produced a report that would provide billions of dollars to his fellow Ecuadorian citizens and absolve state-owned Petroecuador of responsibility for its continued and admittedly harmful oil operations. These conclusions cannot withstand scrutiny. As shown in this rebuttal, Mr. Cabrera is not a neutral expert and he did not follow an expert process. Indeed, the numerous errors that pervade Mr. Cabrera's report betray a clear and systematic bias against Chevron. If this proceeding is to maintain any semblance of fairness, his report must be rejected.

1. Mr. Cabrera's Appointment Marked the Abandonment of the Evidentiary Process Agreed to by the Parties

Mr. Cabrera's appointment resulted from intense pressure applied by the plaintiffs on this Court. In direct contravention of prior orders, the plaintiffs sought successfully to abandon their judicial inspections; to turn the case over to a single, unqualified "expert;" and to rush the evidentiary phase of the case to a premature conclusion. Mr. Cabrera's work replaced a three-year, judicially supervised process that at least appeared to be proceeding in a reasonably orderly fashion consistent with its design. Mr. Cabrera's biased and scientifically unsound approach—discussed further below—marked a 180-degree turn away from the prior inspection process.

The judicial-inspection process focused on 122 sites and was conducted pursuant to terms of reference and field protocols that had been negotiated by the parties, and then adopted by the Court, to ensure a rigorous process of evidence collection and analysis. For each inspected site, party-nominated experts submitted reports documenting their analyses and conclusions. If necessary, those reports were reviewed and reconciled by a court-appointed panel of "settling" experts. These evidentiary submissions, including the settling experts' reports, were to form the basis of a second round of analysis, by the same set of experts, to determine the extent of any environmental damage, causation, and appropriate remediation.

The plaintiffs sought Mr. Cabrera's appointment only after it became clear that they could not meet their evidentiary burden through the judicial-inspection process. Chevron's judicial-inspection data included 1344 water and soil samples analyzed at accredited U.S. laboratories. This testing showed that TexPet's prior remediation met the requisite standards and that there is no significant risk to human health from the remediated sites:

- 98% of all the pits remediated by Texpet meet the standards set by the Government of Ecuador in the Settlement Agreement and Release.

- Greater than 99% of 172 drinking water samples meet safe drinking limits for petroleum compounds as defined by the World Health Organization (WHO) and the United States Environmental Protection Agency (USEPA).

The data of Chevron's proposed experts further indicate that impacts in the region are primarily due to Petroecuador's poor operations and well-documented history of spills and environmental mismanagement, or to factors wholly independent of oil-extraction activities, such as bacteria in the water due to poor sanitation.

In contrast, the judicial-inspection data offered by the plaintiffs were partial (only one-third of their soil and water samples were ever tested) and unreliable (plaintiffs' testing was performed at an unaccredited laboratory that repeatedly refused to submit to court inspection). This is confirmed by the only report issued to date by neutral settling experts, who analyzed the party-experts' reports on Sacha-53, a well site with pits that TexPet remediated in 1996. Faced with competing scientific submissions from the plaintiffs and Chevron, the settling experts confirmed the adequacy of TexPet's prior remediation of the site; found no hydrocarbons in nearby surface waters; and opined that that the "clayey" characteristic of the soil around the pits prevents leaching of hydrocarbons. Most significantly, the Sacha-53 settling experts concluded that the plaintiffs had failed to show that the remediated areas posed an environmental risk.

With every indication being that they could not prove their case in this adversarial process, the plaintiffs began an intense campaign to abort it. After the Sacha-53 settling expert report came

out against them, the plaintiffs ceased paying their share of court-ordered settling-expert fees. They then improperly sought to "waive" their remaining 64 judicial inspections, demanding that this Court proceed to a very different process than agreed upon by the parties, with a single Ecuadorian expert assessing contamination, causation, and remediation throughout the entire concession area—on an expedited basis and without input from the parties. Chevron urged the Court to hold the plaintiffs to their burden of proof and to respect the original evidentiary plan, including the completion of all ordered site inspections. Although the Court (correctly) denied plaintiffs' motion on two occasions, it finally relented after the plaintiffs had commenced a press campaign, including a courthouse protest, accusing the Court of favoring a corporate foreigner over Ecuadorian nationals.

After refashioning the inspection process to shift it entirely into the hands of a single expert, the Court appointed an individual—Mr. Cabrera—who was patently unqualified for the task. Ecuador law requires experts "to have sufficient knowledge of the subjects about which they are to report," and the plaintiffs' original motion for expert investigation requested experts qualified in the fields of "applied ecology and environmental engineering." Mr. Cabrera, however, is a mining engineer with no comparable experience in the evaluation of hydrocarbon impact. As shown below, he produced not a neutral, scientific analysis but an overtly political report that is analytically unsound, fails to address key questions presented by the Court, and—in an undisguised effort to secure a high-dollar figure for the plaintiffs—fabricates impacts and remedies stretching far beyond the scope of the expert determination.

2. Mr. Cabrera's Work Was Tainted by Political Pressure

The overtly political nature of Mr. Cabrera's report is the direct result of the intensely political environment in which he worked. Ecuador's President, Rafael Correa, and other government officials and members of Mr. Correa's party have responded to plaintiffs' urgings and made this case a top political priority. Through a series of public statements and actions, Mr. Correa and others have made clear that they fully support the plaintiffs and their efforts to obtain a huge judgment against "the multinational":

- Soon after taking office, Mr. Correa "offered the National Government's full support" to plaintiffs and publicly pledged to provide plaintiffs with "assistance in gathering evidence" against Chevron. (*Government Backs Actions of Assembly of Persons Affected by Texaco*, Government of Ecuador Press Release, Mar. 20, 2007.) More recently, Mr. Correa again met with "representatives of the Amazon Defense Front who have been fighting for decades against ChevronTexaco," confirming that the plaintiffs continued to enjoy the full support of the National Government. (President's Weekly Radio Program, January 19, 2008.)

- During a highly publicized trip to the former concession area, accompanied by plaintiffs' representatives and attorneys, Mr. Correa announced that he was "'furious' about the damages caused, ***in his opinion***, by the [U.S.] company Texaco in its 20 years of operations in the Amazon forests" and labeled TexPet's representatives who signed the Settlement Agreement and Release "traitors . . . who for a few dollars are capable of selling souls, country, [and] family." (*Correa says he is "furious" about the damages Texaco caused in the Amazonian Region*, Agencia EFE – Servicio Económico, Apr. 28, 2007 (emphasis added).)

- Constituent Assembly members have also endorsed the plaintiffs unequivocally: "We want justice and directly support the tireless struggle of those who have sued Texaco,

> the remediation of damages, compensation for thousands of sick people." (Assembly, February 12, 2008 (quoting Representative Manuel Mendoza).) At the same time, they place full blame for problems in the Oriente on TexPet: "The economic, social and cultural impacts on the [indigenous] native groups, as well as on the colonists are substantial. The largest environmental disaster ever caused in our country was caused by Texaco." (Ecuador TV, Inside the Assembly, June 6, 2008 (quoting Representative Nelson López).)

Mr. Cabrera proved unable to ignore this relentless political campaign by President Correa and his top allies, who have amassed overwhelming power. The linchpin of President Correa's increasing authority was a Constituent Assembly that, once convened, openly declared that judges who did not recognize its supremacy would be prosecuted.

The extent of Mr. Correa's influence and his efforts to help the plaintiffs is underscored by the indictments just handed down by the Prosecutor General. For years, the plaintiffs' lawyers have been pushing the government to nullify and undermine the 1995 Settlement and 1998 Final Release by, among other things, alleging that TexPet's remediation was fraudulent. In a 2005 exchange of correspondence with plaintiffs' lawyers (a copy of this document is attached as _____), Ecuador's then Deputy Attorney General stated:

> *[T]he Attorney General's Office and all of us working on the State's defense were searching for a way to nullify or undermine the value of [TexPet's] remediation contract and the final [release]. . . . The Attorney General remains resolved to have the Comptroller's Office conduct another audit . . . and he wants to criminally try those who executed the contract.*

Indeed, the Comptroller General's complaint was rejected not once but twice by the Prosecutor General's Office, which found no evidence of any criminal liability. Unable to force a fraud prosecution in Ecuador, the Republic brought a fraud claim against Chevron in separate litigation then underway in a U.S. court, but there, too, was forced to withdraw its allegations after failing to produce any evidence in support.

Recently, however, this line of attack has taken on renewed prominence, as plaintiffs struggle to make their case in Lago Agrio and Mr. Correa uses the power of his office to help secure the necessary results on their behalf. In April 2007, Mr. Correa began to call for the prosecution and indictment of the "corrupt people and traitors" who "signed the document certifying that Texaco had complied with the environmental repair work" (*Correa says he is "furious" about the damages Texaco caused in the Amazonian Region*, Agencia EFE – Servicio Económico, Apr. 28, 2007), even going so far as to publicly characterize the execution of the 1995 settlement agreement as a "crime against humanity." (*President Correa: There is no way to hide the pollution caused by Texaco*, El Mercurio, May 1, 2007.) In April 2008, TexPet representatives were informed that the criminal investigation was being reopened *for the third time*, despite there being no new evidence as required under Ecuador law.

In recent months, plaintiffs and the U.S. lawyers funding and directing the litigation held a press conference in Quito, providing detailed information about the supposedly sealed criminal investigation and urging the Prosecutor General to indict TexPet representatives immediately so as to avoid *"leaving unpunished a serious crime committed against all Ecuadorians."* The plaintiffs stated, in a document distributed at the press event, that they have provided "new evidence"—presumably the Expert Report—to support an indictment. (A copy of that document is attached as _____.) The plaintiffs, their U.S. lawyers, and the president of the FDA

also recently accompanied a member of Ecuador's Commission on Civic Control of Corruption to the Lago Agrio courthouse. There, they met with a judge who, although not presiding over this case, authorized the release of portions of the Expert's Report to the commission representative as part of that entity's investigation of the "alleged irregularities in the environmental remediation of fields and facilities that are . . . associated with the performance of remediation contracts linked to TEXACO's environmental liabilities." (A copy of the Commission's original request to the Court is attached as _____.) Given the current political climate, and with pressure literally coming from all sides, it is no surprise that the Prosecutor General caved and issued new indictments against TexPet's representatives in late August 2008.

Just as the Prosecutor General acted against evidence but in lockstep with President Correa's public requests, Mr. Cabrera began his work with the baseless premises supplied by Correa's public statements—that there is massive environmental contamination in the Oriente, that TexPet should be held liable, and that Petroecuador's responsibility should be ignored. Thus, Mr. Cabrera's report is not a neutral, judicial investigation into the existence and cause of contamination. It is an effort to manufacture evidence of the alleged contamination by TexPet and to attach a huge number to an outcome pre-ordained by Ecuador's political powers.

3. Mr. Cabrera Did Not Conduct the Investigation Ordered By the Court

As ordered by the Court, Mr. Cabrera's mandate was to (i) evaluate and to describe in detail the environmental damage—if any—to natural resources; (ii) specify the origins, both causal and chronological, of any damage; (iii) ascertain the existence of substances posing an ongoing threat to the environment or population; (iv) specify technical measures to remediate and restore the environment; and (v) determine the various parameters and environmental standards to be attained. This mandate limited Mr. Cabrera to evaluating *environmental* damage, not generalized ills existing in Ecuador and many other countries.

As discussed above, however, Mr. Cabrera formulated his work plan and began his field work in an even more highly politicized atmosphere than the one that had forced his appointment. Against this backdrop, Mr. Cabrera did not conduct the neutral, scientific inquiry that this Court ordered. He forayed well beyond the topics that, as dictated by the Court, should have been the sole focus of his assessment—environmental damage, health risks, and remediation and restoration. And even as to these topics, Mr. Cabrera failed to comply with the Court's clear instructions to evaluate and ascertain whether environmental harm and ongoing threats were present. Instead, he defined his task as a search for "contamination wherever it may be," with the apparent corollary being a lack of any interest in the overwhelming evidence indicating an *absence* of harm or risk. Similarly, in his effort to establish ongoing risk, Mr. Cabrera offered a laundry list of all the things that *could* occur in some situations where hydrocarbons are present, without ever determining if any substances actually are present in the former concession area in a way that could create any real risk, much less constitute damage requiring remediation.

Even more significantly, Mr. Cabrera fulfilled his search for contamination by "finding" it at hundreds of sites that he did not even visit. Despite repeated court orders that he inspect every site, Mr. Cabrera visited only 48 of a total 316 wells and one of 19 production stations. This means that, at a rate of over $5 million per site, Mr. Cabrera is seeking to make Chevron pay roughly $1.4 billion that supposedly is earmarked for soil remediation at sites he never even saw. Mr. Cabrera attempted to make up for not visiting most of the sites by relying on aerial photography to determine the total number of pits in the former concession area. Aside from the fact that this review is inadequate and would always require verification on the ground, Mr.

Cabrera fails to provide the aerial photos—or any other evidence—for 67% of the total pits he alleges exist. Similarly, Mr. Cabrera cannot mitigate the inadequacy of his field work by using data from the judicial inspections of sites he failed to visit. Mr. Cabrera's role is not that of a settling expert, and cherry-picked judicial-inspection data does not substitute for the work he was ordered to do. In all events, Mr. Cabrera fell far short of a complete assessment even if the judicial-inspection sites are included. As the Court's orders reflect, each concession site is different, and Mr. Cabrera cannot replace a site-specific analysis with data taken from another area of the concession.

Perhaps most significantly, the Court's instructions to specify the origin of any damages went wholly ignored. Far from specifying the chronology that the Court ordered, Mr. Cabrera admittedly fails to make even the most general distinction between harms that originated before and after 1990/1992, when Petroecuador took over operations and TexPet ceased all involvement. Unable to perform the requisite *factual* analysis, Mr. Cabrera makes a *legal* assertion that TexPet is responsible for all environmental impact, regardless of chronological origin. Thus, an oil spill by Petroecuador 18 years after TexPet ceased operations is, under Mr. Cabrera's twisted analysis, TexPet's responsibility. But Petroecuador, of course, has acted of its own volition to generate billions of dollars in oil revenue for Ecuador by, among other things, drilling more than 270 new wells in the concession area since 1990. The notion that TexPet somehow forced Petroecuador over the past 18 years to operate in the concession area —and to do so in an environmentally irresponsible way—is simply absurd. Mr. Cabrera's failure to provide the court-ordered factual analysis, therefore, deprives his report of any value with respect to the Court's resolution of the key factual issues in the case.

4. Mr. Cabrera's Methodology Was Not Scientific, Responsible, or Transparent

Mr. Cabrera not only failed to perform the required analysis but also used invalid methods in the work that he did perform. The defects were apparent even from Mr. Cabrera's proposed work plan, to which Chevron repeatedly objected. A panel of renowned environmental engineers with years of cumulative experience on petroleum-remediation cases criticized the work plan as neither complete nor transparent and as unlikely to yield results able to withstand rigorous scientific review. Among the critical elements they found lacking in the work plan were: (i) a team of highly qualified, experienced and unbiased technical experts; (ii) a clear statement of scope; (iii) a transparent process allowing both parties to participate in developing the strategy for collection of any additional samples and data; (iv) detailed work plans describing the field work, the samples or data to be collected, and the sampling methodology, analysis, and quality assurance and control procedures to be used; and (v) a thorough and careful evaluation and analysis of all available and defensible data. A similar critique warned that both the work plan and its execution lacked transparency and emphasized the need "to open this process to technical oversight and review of methodologies being used, sufficiency of data being collected, quality assurance procedures, identification and qualification of experts, and identification of volunteer workers or workers being funded by third parties."

The work plan that Mr. Cabrera submitted to the Court indicated that he considered pollution by TexPet to be a foregone conclusion. This predisposition precluded any neutral examination of whether contamination exists and, if so, how it occurred, and, naturally, flouted the critical mandate by the Court—that Mr. Cabrera scientifically determine the cause of the contamination and its chronological development. Similarly, Mr. Cabrera seemed to assume the existence of environmental damage based on the nature of TexPet's operating practices. To the contrary, as Chevron has previously documented for the Court, TexPet's operations in the Oriente complied with Ecuador law and accepted industry standards, such as decanting and then discharging

produced water; using earthen pits where soil characteristics prevent leaching; and safely flaring excess natural gas. These and other operating practices, furthermore, were carried out with the oversight and approval of the Republic, which regulated hydrocarbon activities, and Petroecuador, which, as the majority stakeholder in the Consortium, reviewed and approved all expenses and major projects. In addition, when TexPet performed its share of the remediation arising from the Consortium's operations, it did so under the close supervision of the Republic and Petroecuador. Notably, TexPet adhered to stringent remediation standards that took into account criteria in use in other petroleum-producing countries at the time, and its work was certified by the Republic and Petroecuador and even recognized for its "engineering excellence" by the American Council of Engineering Companies. Thus, Mr. Cabrera eschewed scientific analysis of current environmental conditions in favor of legal conclusions about decades-old practices—legal conclusions that were outside his mandate, beyond his area of supposed expertise, and plainly biased and wrong.

As noted in the critiques of the work plan, moreover, Mr. Cabrera relied heavily on an unapproved "team" about which little is known. From the resumes of some members, which were presented for the first time in an annex to the report, most of the team appears to have been comprised of environmental activists, inexperienced students, and others with no qualifications relevant to the ordered environmental assessment. Chevron has been offered no opportunity or means to vet Mr. Cabrera's team, and the Court has not even attempted to certify them as experts in their indicated fields. Thus, the expert determination was conducted not by a team of court-appointed judicial-inspection experts—as originally agreed by the parties and ordered by the Court—but by an amorphous team that lacked the requisite qualifications, never received judicial approval, and worked in secret. It also is impossible to know who on this team contributed what to the overall assessment, since the supporting exhibits submitted with the report are elusively signed "Engineer Richard Cabrera's Technical Team," with no further indication of specific authorship. Without this and other essential information about Mr. Cabrera's work, Chevron is prevented from meaningfully commenting on the defects in the supposed work of this team. This obstacle to Chevron's ability to fully challenge the modified expert-determination process is a clear violation of its due process rights.

Another critical flaw in Mr. Cabrera's methodology was his use of "surveys" to assess alleged impacts of oil operations. Mr. Cabrera relied on these surveys to find a myriad of ills suffered by the local population, including cancer, miscarriages, birth defects, human rights abuses, and alterations in indigenous culture and identity. Indeed, the supposed support for nearly $4 billion of damages against Chevron comes from the surveys, which were *ad hoc*, unscientific, and severely biased. The invalidity of a survey that uses questions like "what [do] you think should be demanded of Texaco as relief for the damages suffered?" is self-evident. None of these questionnaires, furthermore, was presented to this Court for review and approval, and all were administered in secrecy by, and to, unknown individuals.

A survey that allows unidentified lay persons to provide self-serving speculation as to the cause of undocumented injuries for the purpose of collecting compensation is inherently invalid—and absurd. Its use here is especially troubling given the misconduct of Cristóbal Bonifaz, the former lead counsel for the plaintiffs and architect of their complaint. In a separate lawsuit filed against Chevron in U.S. federal court in California, Mr. Bonifaz was sanctioned $45,000 and reported to his state bar for submitting false declarations from Ecuadorians claiming to have cancer caused by Consortium operations. The fraud was uncovered only when Chevron met with the individual Ecuadorians and demanded medical records to verify their claims. Worse than Mr. Bonifaz's manufactured claims, Mr. Cabrera's surveys carry an illusion of legitimacy, but they are not corroborated by any other evidence and do not even provide the names of

individuals from whom verification might be sought. In fact, Mr. Cabrera's assessment is contradicted by official statistics gathered by the Ecuador Government, which indicate that there is no relation between oil activities and cancer death rates in the Oriente. Mr. Cabrera's failure to conduct his assessment in a scientific and technically sound manner invalidates his findings and the proposed remedies they allegedly support.

5. Mr. Cabrera Violated His Responsibility of Neutrality

The use of the crude and biased schemes mentioned above to drive up a "damages" recommendation against Chevron confirms Mr. Cabrera's allegiance to the plaintiffs—fellow Ecuadorians who enjoy the strong public backing of President Correa himself. But Mr. Cabrera's actions went far beyond a sentimental preference for one side or the other; instead, Mr. Cabrera acted in complicity with the plaintiffs to promote their litigation position and propose the type of fantastical monetary award that has long driven plaintiffs' media and lobbying campaign, in the absence of any scientific or legal support for their allegations. More critically, however, through their complicity, Mr. Cabrera and the plaintiffs have effectively stripped Defendant of its right to the neutral process that is the foundation of a fair and impartial trial.

The improper relationship between the Expert and the plaintiffs is best demonstrated by the full and direct access to Mr. Cabrera that plaintiffs enjoyed during his expert determination. Mr. Cabrera was shepherded around the former concession area during his site inspections by—and with—the plaintiffs' representatives. In addition, Mr. Cabrera's field workers and other "volunteers" often consisted of the same individuals who had worked for the plaintiffs during the judicial inspections, as shown in the photographs attached as Exhibit _____. In stark contrast, Mr. Cabrera roped off his inspection sites and blocked Chevron's view despite Court orders directing him to grant both parties the access they needed to observe and oversee his work. This *ex parte* contact between the Expert and the plaintiffs clearly continued until the moment Mr. Cabrera submitted his report. Although Mr. Cabrera had requested and received an extension from this Court for submission of his report, only a few days later, and long before the new deadline he had requested, Mr. Cabrera arrived at the courthouse virtually arm-in-arm with the plaintiffs and their legal team to submit his report, without prior notice to either the Court or the Defendant.

In fact, the improper relationship between Mr. Cabrera and the plaintiffs began even earlier. Plaintiffs' original evidentiary request specifically stated that the expert determination would be carried out by the same experts who were appointed for the judicial inspections. During that process, Mr. Cabrera was nominated by the Court as an expert for three site inspections; however, he never submitted a single judicial-inspection report. Later, the Court improperly attempted to retroactively redefine Mr. Cabrera's role as that of "settling expert," yet he never issued a settling report either. Nevertheless, at a time when plaintiffs were otherwise refusing to pay their share of expert fees, the Amazon Defense Front ("FDA")—plaintiffs' primary support base and designated beneficiary of any award in plaintiffs' favor—made a personal arrangement with Mr. Cabrera to ensure he was paid. Mr. Cabrera filed a document with the Court advising of this payment and also hand-delivered a copy to Defendant's attorneys requesting that his fees be paid. (A copy of this document is attached as _____.) Defendant's attorneys, however, immediately informed Mr. Cabrera that any direct payment to him by plaintiffs was in violation of the established procedure by which all expert payments were made by the Court from monies provided by the parties. Mr. Cabrera then returned to the courthouse and enlisted the assistance of the former judge to withdraw his letter and erase evidence of the arrangement with the FDA from court records. (A copy of the clerk's report, showing that she was instructed by the judge to return the letter to Mr. Cabrera without notice to Defendant, is attached as

_____.) This sequence of events not only confirms Mr. Cabrera's improper relationship with the FDA, but also strongly suggests that the plaintiffs were involved in "positioning" Mr. Cabrera for his June 2007 appointment.

In addition to these documented incidents evidencing Mr. Cabrera's complicity with the plaintiffs, there are various other indications that plaintiffs had direct control over and in fact affected the substance of Mr. Cabrera's assessment and report. There is, for example, strong evidence that the FDA funded and controlled the bogus "survey" that forms the basis for Mr. Cabrera's recommendation of billions of dollars in remedies for areas far beyond his mandate. Specifically, Defendant has evidence that, in January 2008, the FDA's leader (acting in the name of the FDA's funding arm, "*Selva Viva*") exchanged (and likely executed) a draft contract with fellow Ecuadorian activists from *Acción Ecológica* and Oil Watch International, groups that openly and actively support the plaintiffs in this lawsuit. Under this contract, the FDA's funding arm paid for Oil Watch to conduct a survey of residents in the Oriente region, to "document the testimonies of the people affected by petroleum operations." (A copy of the draft contract and related correspondence is attached as _____.) In addition, Defendant has received reports that the FDA's leader and an activist representing *Acción Ecológica* and Oil Watch were the ones administering the survey in the field, questioning local indigenous leaders and other residents.

Based on the above, and knowing what little valid field work or other research and investigation Mr. Cabrera undertook, the obvious question is whether he even prepared the Expert Report himself. From various characteristics of the report itself, it is evident that the U.S. lawyers directing and funding plaintiffs' litigation at least closely collaborated in the report's drafting and supplied supporting documents. For example, despite not having a single lawyer on his supposed "team," Mr. Cabrera attempts (unsuccessfully) to use U.S. legal principles and theories to uphold his proposed compensation for supposed "unjust enrichment" and alleged "excess cancer deaths." Those arguments echo similar statements that have been made by plaintiffs and their representatives in both court and the media—some of them even resemble failed arguments rejected by a U.S. court in a suit brought by plaintiffs' former lead lawyer. Similarly, Mr. Cabrera's report is riddled with linguistic markers that indicate it was not written by a native Spanish speaker.

In addition, Mr. Cabrera lists as a reference, in his Annex H on the history of TexPet's operations and the use of pits, a compilation of documents that he refers to as Chevron's Judicial Inspection reports, specifically indicating Annexes A-F and J. This clearly is a reference to a "Resource Book" that Defendant compiled to gather the key scientific and technical annexes presented with the judicial inspection reports submitted by the experts proposed by the Defendant; however, this compilation was never submitted to the Court or otherwise made public in that precise format. The original Resource Book consisted of 12 subsections, or annexes, running from A through L. During discussions between the parties designed to determine common ground on scientific issues, Chevron's attorneys provided plaintiffs' lawyers —on a confidential basis—with an excerpt of the Resource Book, containing only Annexes A-F and J, precisely the same annexes cited by Mr. Cabrera. Because this compilation was not available to Mr. Cabrera from any other source, it is indisputable that the plaintiffs' lawyers provided the documents to Mr. Cabrera on an *ex parte* basis—or, alternatively, drafted at least the portion of the report that includes this reference.

The cumulative effect of these various indicators of complicity and bias—viewed in the context of the many blatant and one-sided defects in Mr. Cabrera's report—is to demonstrate the lack of a neutral process and to suggest strongly that Mr. Cabrera did little more than act as a "front man" for the plaintiffs' lawyers. In these circumstances, any evaluation of the Cabrera Report

must begin with a complete inquiry into the relationship between the plaintiffs and their allies and Mr. Cabrera and his team. It is incumbent on this Court to investigate the serious questions regarding Mr. Cabrera's independence and, therefore, the weight that can be given to his report. As things stand, one can see without even examining the report's substance that it is an advocacy piece for the plaintiffs, not the work of an independent and impartial expert, and has no more credibility or validity than it would if it had been openly prepared, signed, and submitted by the plaintiffs themselves.

6. Mr. Cabrera Failed To Support His Conclusions

In keeping with plaintiffs' inability to provide sound legal or scientific support for their claims, as demonstrated during the judicial-inspection phase, and Mr. Cabrera's lack of qualifications and the invalidity of his methods, the Expert's conclusions regarding the existence of contamination and health risks in the former concession area are not supported by valid evidence. For example, in seeking to require Chevron to fund medical care for the entire region, Mr. Cabrera claims that there is widespread contamination affecting people throughout the area. Elsewhere in his report, however, Mr. Cabrera concedes that any contamination in the former concession area is—in his own words—"localized in areas around wells, production stations and spills."

Even Mr. Cabrera's finding of localized contamination is without basis. His testing of water from open boreholes in pits, and from the surface of open pits, which were improperly collected, was comprised of fewer than ten samples, and the results do not bear out his sweeping conclusions. Most strikingly, although he did not take a *single* sample of drinking water to establish contamination, Mr. Cabrera would have Chevron contribute $428 million towards improvements to the Republic's potable-water system. Mr. Cabrera reaches a similarly inexplicable conclusion of contamination with respect to the area's rivers and estuaries, which he also neglected to test. Mr. Cabrera acknowledges that Chevron's judicial-inspection evidence, which included 339 water samples, establishes that these surface waters meet current environmental standards. But, at the same time, he faults Chevron for failing to prove that *all* water in the former concession area is free of contamination—an utterly unprovable negative. With this flawed reasoning, Mr. Cabrera frees himself to disregard Chevron's contemporaneous data on surface water and make a baseless contamination "finding" that is merely a reference to outdated studies that say nothing about current conditions.

Similar errors permeate the report's soil evaluation, where Mr. Cabrera's chosen techniques and methods again ignore accepted norms for defensible scientific research. During his sampling of pits, Mr. Cabrera was observed "fishing" for samples—discarding numerous samples that appeared unlikely to return the results he was seeking. He provided no explanation for this major violation of settled scientific method. To avoid scrutiny of such methods, Mr. Cabrera attempted to block Chevron's access to sites. When that effort was defeated by court orders confirming Chevron's access rights, Mr. Cabrera began having samples taken without even notifying Chevron or the Court that he was doing so. Laboratory documents submitted in a report annex show that 50% of Mr. Cabrera's reported test results are from this secret field work. Those data, and Mr. Cabrera's conclusions from them, are simply inadmissible. In addition to being highly selective, Mr. Cabrera's own sampling and analysis was also too limited, totaling only 134 soil samples, whereas Chevron took 849 soil samples during judicial inspections. Mr. Cabrera's procedures were insufficient to establish the perimeter of a pit, much less the general condition of its contents.

Without sound evidence of his own, Mr. Cabrera is left to claim that his findings are supported by the judicial-inspection data offered by Chevron. To the contrary, however, Chevron's judicial-

inspection reports—comprised of thousands of pages of carefully documented analysis—confirm the soundness of TexPet's prior remediation and demonstrate that there are no substantial petroleum-related risks to human health in the remediated areas. Chevron's judicial-inspection data, furthermore, were accepted by the settling experts in their Sacha-53 report, which notably contradicts several of Mr. Cabrera's speculative conclusions. For example, whereas Mr. Cabrera condemns TexPet's use of earthen pits, the Sacha-53 settling report carefully evaluates evidence from both parties and concludes that the Oriente's "clayey" soil "creat[es] barriers that prevent the free vertical displacement of the contaminants."

Thus, while there undoubtedly are pits and spill areas that must be cleaned up by Petroecuador—which refused to perform its share of remediation in the mid-1990s, gave TexPet a complete release, and has had a well-documented record of environmental mismanagement for decades—Mr. Cabrera has not validly identified them. Similarly, Mr. Cabrera has grossly inflated the amount and cost of the soil remediation that is needed. His report and annexes contain three different estimates for the proposed remediation, and all of those estimates are based on unreasonable speculation and invalid assumptions, rather than sound science. For example:

- Mr. Cabrera arbitrarily claims that 80% of well-site pits and 100% of production-station pits should be remediated, without determining whether specific sites in fact require remediation or considering whether they were previously remediated (by either TexPet or Petroecuador), are currently in use by Petroecuador, or are slated for remediation within the broad scope of PEPDA ("Project for the Elimination of Pits in the Amazon District"), Petroecuador's current remediation program. It is noteworthy that PEPDA's plans include the remediation of 370 pits in the former concession area by 2010, and over 80% of those pits were constructed before 1990.

- Relying exclusively on aerial photographs, Mr. Cabrera overestimates the total number of pits in the former concession. His report illustrates, for example, that an area he judged to be a pit from an aerial photograph was actually only a tree and its shadow. Mr. Cabrera visited this site and had to have seen that the "pit" was actually a tree. Nevertheless, Mr. Cabrera not only continued to rely on the photographs but did not even correct for the errors evident from his field work, resulting in his assessment of millions of dollars for remediation of indisputably nonexistent pits.

- Even for the small percentage of pits that Mr. Cabrera sampled, he did not purport to use that data to calculate the total volume of soil to be remediated. For example, Mr. Cabrera lists the surface area for each 916 pits in Anexo H-1 based solely on his interpretation of aerial photos, but he does not provide photos for 74% of these sites, and furthermore, he simply assumes without any explanation or supporting data that there is an additional area of contaminated soil and spills outside each pit that also requires remediation. Based on nothing more than his "professional experience," Mr. Cabrera increased the estimated surface area of each pit by 50% to account for these surrounding soils. Mr. Cabrera also assumes—again with no data to support his conclusion—that contamination exists to a depth of four meters not only across the entire pit surface but also in the additional area outside the pits.

- Notwithstanding Ecuador's strong rule against applying its laws retroactively—and counter to the plaintiffs' repeated disavowal of any attempt to do so—Mr. Cabrera assumes that TexPet can be held responsible for remediating soil to current

environmental standards. Thus, he disregards TexPet's compliance with standards in existence prior to 1990, when it operated the Consortium, and the standards established by the Republic in 1995, when TexPet performed its share of the Consortium's remediation.

- Mr. Cabrera's unit costs for remediation are several orders of magnitude higher than actual costs for similar projects. He inflates his number by using figures for sites in the United States that do not involve oil-related activities at all, but rather other chemicals that are much more difficult to treat. Moreover, Mr. Cabrera disregards the closest proxy for well pit clean up—Petroecuador's reported costs for PEPDA. With the goal of cleaning up all pits and spills in the former concession area, PEPDA has a budget of $67.8 million, *less than four percent* of the $1.7 billion assessed by Mr. Cabrera. In another glaring inconsistency, Mr. Cabrera attempts to reject the PEPDA remediation as inadequate despite the fact that, elsewhere in his report, he himself admits that most PEPDA pits "show a post-remediation environmental quality index of 90-100%," which is *stricter* than the remediation standard he recommends for Chevron.

7. Mr. Cabrera Went Far Afield To Fabricate Both Impacts and Remedies

As shown above, the $1.7 billion that Mr. Cabrera claims is necessary for soil remediation at the well sites and production stations is grossly overstated and wholly unjustified. Yet even this bloated figure is barely 10% of the $16-billion figure that plaintiffs have trumpeted in their public-relations campaign seeking to give legitimacy to Mr. Cabrera's report. The remaining 90% of that figure has nothing to do with the environmental damage, remediation, and restoration that Mr. Cabrera was actually ordered to assess. In an apparent effort to compensate for his inability to concoct other damages claims, Mr. Cabrera goes on a roving patrol and, using innuendo and speculation, attempts to ascribe to TexPet endemic social problems that are plainly not of its making. The common thread that connects these various non-environmental remedies is their failure to address matters within Mr. Cabrera's mandate and the lack of evidence to support them.

Mr. Cabrera proposes that Chevron pay $2.9 billion as compensation for alleged excess deaths due to cancer. Such compensatory damages have nothing to do with the environmental remediation that the Court appointed a mining engineer to address. Mr. Cabrera does not identify a single individual, does not offer a single medical report to verify his "finding" of oil-related deaths, and does not provide a single fact supporting his conclusion that TexPet's oil production caused even a single cancer death. And, as explained, the plaintiffs' self-serving and unsubstantiated answers to questionnaires do not compensate for this complete failure of proof.

Mr. Cabrera also proposes that Chevron pay to resolve failures in public services, but this again does not involve clean-up of contamination or restoration of the environment. The recommendation that Chevron put nearly half a billion dollars towards upgrading the Republic's potable water system is altogether unjustified. As noted, Mr. Cabrera produced *no* data to support this item, which is contradicted by Chevron's judicial-inspection data showing that the Oriente drinking water meets relevant Ecuadorian, U.S. and international standards. Mr. Cabrera, furthermore, concedes that "poor sanitation" in the Oriente—clearly the responsibility of the Republic—has caused contamination of the water supply. Nonetheless, the report proposes forcing Chevron to pay all the costs of a new potable-water system. In a similar vein, Mr. Cabrera recommends that Chevron pay $480 million towards a new comprehensive health program even while he admits that this program "goes beyond the treatment of the

conditions and illnesses directly and strictly caused by TexPet's operations." His rationale for doing so—"that there is harm that is not necessarily health-related and may not be remedied by the company, but the inhabitants should nevertheless be compensated"—betrays a systematic bias against Chevron: Where the evidence does not support a payment by Chevron in one area, Chevron should be made to pay for other things *for which it concededly is not responsible*, so long as the end result is a large payment by Chevron to the plaintiffs supported by the Correa administration.

Mr. Cabrera's next two proposals address general consequences not of any operational decision by TexPet, but of specific government policies to develop national resources and colonize the Oriente. For example, Mr. Cabrera's survey-based claims about effects of Consortium operations on indigenous communities ignore the indisputable fact that those communities were displaced as a result of the Republic's colonization program, which required settlers to clear land for productive use before they could obtain title. What is more, Mr. Cabrera determines liability of $430 million notwithstanding his concession that "it is very difficult to establish a value for the damage caused, which is why I have not done so." Even more fundamentally, the strengthening of indigenous culture is plainly something that the Court did not ask the mining engineer to address. Similarly, Mr. Cabrera speculates about the need for remediation based upon the *possible* effect of contaminants on flora and fauna, but acknowledges that "sufficient information is not available" to justify any specific remediation or restoration measures. Instead, Mr. Cabrera alleges that Chevron must pay as much as $1.6 billion because 627 hectares of land were occupied by the wells, stations, and other Consortium installations. Significantly, Mr. Cabrera does not suggest that TexPet could have done anything to avoid the use of this land. He thus presumes that the mere existence of oil exploration and production activity in the Oriente—which has been national policy for decades—constitutes an environmental harm for which TexPet is liable. Mr. Cabrera provides nothing in logic or law to support this outlandish legal conclusion.

Mr. Cabrera goes on to hold Chevron liable for $375 million worth of improvements to *Petroecuador*'s oil-production infrastructure in order to "prevent[] future contamination of the environment caused by *Petroecuador*'s current operations." But Chevron plainly is not responsible for any contamination caused by Petroecuador's operations now or in the future, 18 years and counting since TexPet transferred operations to Petroecuador. All production decisions in the Oriente—including whether and how to use, maintain, and modernize existing infrastructure—are made solely by Petroecuador and the Republic, and they are amenable to suit by the plaintiffs and other third parties to enjoin any unlawful practices. It is preposterous to hold Chevron liable, potentially indefinitely, for actions by third parties wholly outside of its control.

In the clearest example of Mr. Cabrera's penchant for finding creative ways to make Chevron pay where environmental remediation cannot be justified, Mr. Cabrera proposes holding Chevron liable for billions of dollars in supposed "unfair profits" it received by failing to implement appropriate environmental control techniques during the Consortium. Apart from the fact that Chevron employed reasonable procedures widely used throughout the industry, this figure ignores that Chevron was the *minority* owner of the Consortium. If unfair profits were had (and they were not), they were enjoyed by Petroecuador, which received 62.5% of the Consortium's profits, and the Republic, which took virtually all of TexPet's 37.5% share through an exorbitant "host government take." This baseless attempt to make Chevron pay an *additional* $8.3 billion in damages is further evidence of Mr. Cabrera's result-oriented approach, whose only evident principle is to make a foreign company pay local plaintiffs as much money as possible.

In essence, despite the fact that Ecuador reaped $25 billion worth of oil from the Petroecuador-Texaco Consortium, and took over operations in 1990 so as to further increase its revenue, Mr. Cabrera tries to turn his report into a vehicle to make Chevron pay for every alleged problem in the Oriente, whether related to the environment or not, going back more than 40 years. This wholly unsustainable claim, along with the rest of Mr. Cabrera's unfounded report, must be rejected.