

Donziger a strategy to target shareholders, Congress, and “high level media” in order to “inflict[] real economic pain on the company” and “bring[] Chevron Texaco to the negotiation table.”¹⁵¹ The plan was to “fully leverage” events in Ecuador, with a view to “apply[ing] shareholder pressure on Chevron.”¹⁵² Donziger hired him, and, in exchange for his work on the case, arranged for Lehane to be given a percentage of any eventual monetary recovery.¹⁵³

2. *Amazon Watch*

Another central player in Donziger’s publicity campaign was Amazon Watch, an NGO that declares a dedication to protecting the rainforest and the indigenous groups that inhabit it.¹⁵⁴ Amazon Watch and various of its staff – including Atossa Soltani, its founder and executive director, and Mitchell Anderson, a “field consultant” – worked with Donziger and others on the LAP team to support and publicize the lawsuit and to pressure Chevron. To that end, the organization collaborated with the LAPs to lobby regulatory agencies and elected officials,¹⁵⁵ sought support

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Id. at 1 (emphasis omitted).

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PX 734 (Oct. 1, 2005 Email from S. Donziger to J. Kohn re “Lehane’s first press plan”), at 2; *see also* PX 694 (Aug. 16, 2004 Email from C. Lehane to S. Donziger re: “Issues Outline Document”), at 2 (“We must create an ongoing storyline that ChevronTexaco faces hidden purposely concealed economic exposure because of its unresolved role in the Ecuador . . . project. Ultimate success will depend on our ability to organize and focus our efforts on impacting the company’s bottom line.”).

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June 28, 2013 Donziger Dep. Tr. at 845:24-846:4; *see also* PX 560 (Feb. 2011 Advisory Agreement between LAPs, CSL Strategies, and Mark Fabiani LLC).

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See PX 571 (2005 Amazon Watch Annual Report), at 5.

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PX 7426 (Feb. 9, 2008 Email from S. Donziger to M. Anderson, P. Paz y Mino, and K. Koenig re: “For Pat Doherty”); PX 754 (Jan. 30, 2006 Amazon Watch Ltr. from A. Soltani

among Chevron shareholders for a settlement,¹⁵⁶ and sought media attention through press releases.¹⁵⁷

Although Amazon Watch's public materials did not bear Donziger's name, Donziger himself drafted many Amazon Watch materials related to the Lago Agrio litigation.¹⁵⁸ Donziger not only controlled the content of Amazon Watch press releases pertaining to the litigation,¹⁵⁹ he drafted also complaints that Amazon Watch submitted to the SEC¹⁶⁰ and memoranda to be sent to elected

and S. Aird to C. Cox).

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PX 7542 (May 25, 2009 Amazon Watch Letter to Shareholders), at 2.

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See, e.g., PX 483R (Mar. 6, 2007 Amazon Watch press release) at 2 (“[An] independent damage assessment, by the U.S. firm Global Environmental Operations, estimates clean-up to cost at least \$6.14 billion.”); PX 472R (Apr. 26, 2006 Amazon Watch press release), at 1 (“Two rainforest leaders sparked a dramatic showdown with Chevron CEO David O’Reilly today over the oil major’s devastating \$6 billion toxic contamination of their ancestral lands . . .”).

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See, e.g., June 28, 2013 Donziger Dep. Tr. at 834:2-5 (acknowledging that “[o]n occasions [Donziger] wrote press releases that [Amazon Watch] put out”); Jan. 18, 2011 Donziger Dep. Tr. at 3177:10-13; 3178:10-20 (Q: “You drafted the [SEC] complaint letters for Amazon Watch to send; did you not?” A: “I believe at times I did.”).

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See, e.g., PX 1214 (Jan. 27, 2010 Email from S. Donziger to S. Tegel, A. Soltani, K. Koenig, and M. Anderson re: “another thought”), at 1 (“Suggestions are welcome for any press release we do; final editing authority is something we would never grant to any outsider – especially somebody not in a position to understand the art and feel of this campaign and its daily developments.”); PX 808 (Nov. 9, 2006 Email from S. Donziger to J. Ciptlet and A. Soltani re: “suggestion”), at 1 (“I also know the press releases on the Ecuador campaign are not a terrible work burden to AW because I am writing most of them.”); PX 906 (Aug. 24, 2007 Email from S. Donziger to S. Tegel, M. Anderson, A. Soltani, and K. Koenig re: “follow up on press releases”), at 1 (“[W]e are never going to outsource our editing responsibility to anybody else or any NGO . . .”).

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See, e.g., PX 996 (Mar. 17, 2008 Email from S. Donziger, M. Anderson, S. Tegel, P. Paz y Mino, and A. Soltani re: “Edited SEC letter/final”), at 1 (“The final SEC letter is attached with all of AW’s edits sent to me on Friday plus some additional edits of my own . . . I think this letter will really put some heat on them. To submit this, this is what you need to do . . .”).

officials regarding Chevron.¹⁶¹ Despite Donziger's authorship, the materials bore no outward indication of his involvement – documents drafted in whole or in substantial part by Donziger were sent on Amazon Watch letterhead and signed by Amazon Watch personnel.

In addition, in April 2005 Amazon Watch used funding from the LAPs¹⁶² to launch a website that was a key conduit for Donziger's campaign.¹⁶³ Dubbed "ChevronToxico," the website posted information about the litigation as well as materials written by Donziger, Hinton, and others, some of which included deliberately misleading statements.

Hinton, Lehane, Soltani, and others at Amazon Watch became important figures in Donziger's pressure campaign against Chevron, and their names appear throughout this case. Among the campaign's first real tasks, however, was the use of a flawed \$6 billion figure to attempt to convince Chevron that it was facing multibillion dollar exposure in Ecuador and that the time had come to settle.

C. The Pressure Begins – The LAPs' First Scientist and the \$6 Billion "Drive By" Damages Estimate

Soon after the complaint was filed in Lago Agrio in 2003, Donziger hired David Russell, an environmental engineer,¹⁶⁴ to generate an initial cost estimate for remediation of the

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See, e.g., PX 7426 (Feb. 9, 2008 Email from S. Donziger to M. Anderson re: "For Pat Doherty"), at 1 ("Mitch, Attached is the memo you requested. I put it in your name.").

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Donziger June 28, 2013 Dep. Tr. at 841:19-22.

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PX 571 (2005 Amazon Watch Annual Report), at 8; Tr. (Hinton) 2180:1-24.

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PX 3200 (Russell Direct) ¶ 1. Prior to his involvement with the Lago Agrio case, Russell worked on projects involving remediation and strategic planning related to oil operations in

Concession area.¹⁶⁵ Among the purposes of the estimate was to subject Chevron to the threat of a very large recovery.¹⁶⁶

In the fall of 2003, at Donziger's direction, Russell went to the Orienté to work on his damages estimate.¹⁶⁷ There are three notable points about this estimate.

First, Russell visited only about 45 of the hundreds of oil pits in the region, and based his calculations on an extrapolation of what he observed at those sites.¹⁶⁸ But he did not analyze any soil or water samples at any of the sites he visited.¹⁶⁹ And his visits to some of those sites, he acknowledged at trial, were no more searching than driving past them at 40 or 50 miles per hour.¹⁷⁰

Second, Russell testified, and the Court finds, that Donziger instructed him to make certain assumptions in calculating costs.¹⁷¹ Among them was the assumption that Texaco was fully

the United States and Latin America. *Id.* ¶ 2.

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Id.

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E.g., Tr. (Russell) 388:14-18 (“I believe . . . that Mr. Donziger was intending to use this cost estimate to get Chevron’s attention and to attempt to get them to settle the case.”).

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PX 3200 (Russell Direct) ¶ 5; *see also* DX 1750 (Donziger Direct) ¶ 111; Tr. (Russell) 300:8-10 .

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Tr. (Russell) 304:9-12.

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PX 3200 (Russell Direct) ¶ 5. Donziger testified, however, that Russell was “provided with and reviewed a considerable amount of data, including historical records and maps.” DX 1750 (Donziger Direct) ¶ 111.

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Tr. (Russell) 309:4-8; PX 3200 (Russell Direct) ¶ 5.

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DX 1750 (Donziger Direct) ¶ 111; PX 3200 (Russell Direct) ¶ 9.

liable for all of the contamination in the region, even that caused by PetroEcuador¹⁷² after it took over operation of the Consortium properties when TexPet left in 1992.

Third, as the report itself made clear, Russell's "cost projections [w]ere very rough."¹⁷³ He testified that this was due to "the amount of unknowns and the lack of information [he] had with regard to not only levels of contamination but the extent of those levels of contamination."¹⁷⁴ And he informed Donziger and other members of the LAP team as early as December 2004 that his estimates were "best guesses based upon a week of looking at the sites, without any scientific data," and encouraged the team not to "rush to judgment" based on a "guesstimate."¹⁷⁵ He was entirely candid at trial on the consequences of this lack of data – the quantities he used in generating the \$6 billion figure were, he said, were "SWAG," an acronym for a "scientific wild ass guess."¹⁷⁶

D. Donziger Touts Russell's "SWAG" and Other Misleading Descriptions of Conditions in the Orienté to Put Pressure on Chevron

Russell's \$6 billion SWAG figure quickly became a key weapon in Donziger's effort to exert pressure on Chevron and convince the company – and the world – that the damages in the

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PX 3200 (Russell Direct) ¶ 6; *see also* DX 1750 (Donziger Direct) ¶ 111.

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PX 2414 (Russell Damages Estimate), at 2.

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Tr. (Russell) 339:4-7.

¹⁷⁵

PX 3201 (Dec. 12, 2004 Email chain including D. Russell, C. Bonifaz, A. Wray, S. Donziger, and M. Pareja).

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Tr. (Russell) 339:10-11.

Orienté were substantial and the threat of an enormous judgment against it was real. As we shall see, Donziger and his public relations operation avidly used Russell's \$6 billion figure in the media to generate leverage despite the fact that they knew that it could not withstand serious analysis.

David Russell left the LAP team in early 2005 because, among other reasons, the LAP team owed him money and refused to pay it.¹⁷⁷ By that time he had made explicit to Donziger that his cost estimate had been "wildly inaccurate and that it should not be used."¹⁷⁸ But that did not stop Donziger and his public relations team from using the number, over Russell's protests, to pressure Chevron through the media.¹⁷⁹

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PX 3200 (Russell Direct) ¶ 38.

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Id. ¶ 14.

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Id. ¶¶ 12-13, 20; *see generally* PX 766 (Feb. 13, 2006 Email chain including D. Russell, L. Salazar-Lopez, and S. Donziger re: "Cease and Desist!"); PX 764 (Feb. 14, 2006 Ltr. from D. Russell to S. Donziger re "Cease and Desist"), at 1-2; PX 766 (Feb. 16, 2006 Email from L. Salazar-Lopez to D. Russell re: "Cease and Desist!") (stating that Amazon Watch "respect[s] your request and have decided to take [the] report off of [the Amazon Watch] website"); PX 466R (Mar. 17, 2006 ChevronToxico press release), at 2; PX 467R (Mar. 22, 2006 Amazon Defense Coalition press release), at 1 ("Chevron is resorting to increasingly desperate measures to cover its tracks in the landmark environmental trial in Ecuador in which the oil giant faces a \$6 billion clean-up tab."); PX 472R (Apr. 26, 2006 Amazon Watch press release), at 1 ("Two rainforest leaders sparked a dramatic showdown with Chevron CEO David O'Reilly today over the oil major's devastating \$6 billion toxic contamination of their ancestral lands . . ."); PX 480R (Oct. 30, 2006 Amazon Watch press release), at 1-3 (referring to "landmark \$6 billion pollution trial" and remediation cost estimates of "at least \$6 billion"); PX 18A (Undated *Crude* Clip), at CRS-138-02-CLIP-02; PX 788 (Aug. 15, 2006 Email from S. Donziger to D. Russell re "I asked you once . . .") ("No problem, I will contact the Frente to have that removed . . ."); PX 476R (Aug. 25, 2006 Amazon Watch press release), at 1 ("Clean-up is estimated at \$6.1 billion."); PX 494R (Aug. 30, 2007 Amazon Defense Coalition press release), at 3 ("Global Environmental Services, an Atlanta-based company that assessed the damage, called the area the 'Rainforest Chernobyl' and estimated clean-up would cost at least \$6 billion.").

E. False and Misleading Representations to Incite Governmental Action Against Chevron

The press was not the only intended audience for Russell's disavowed \$6 billion figure and other false and misleading comparisons. Donziger and his public relations team employed both in efforts to instigate action and put pressure on Chevron from federal and state officials and agencies. One aim was to create the perception that the litigation threatened serious harm to the company, was material to Chevron's bottom line, and would result in a lower share price and lower profits for Chevron shareholders. In Lehane's words, "the Ecuadorian Amazon ChevronTexaco project can be reduced, in the end, to a single strategic imperative: 'Bringing ChevronTexaco to the negotiation table by inflicting real economic pain on the company.'"¹⁸⁰

To that end, Donziger in late 2005 drafted a letter¹⁸¹ that ultimately was sent by Amazon Watch to the Securities and Exchange Commission ("SEC"). The letter "request[ed] that [it] open an investigation into the Chevron Corporation (CVX) for violating SEC regulations governing disclosure obligations. . . ." ¹⁸² The letter promoted Russell's SWAG remediation estimate, stating that "[o]ne environmental remediation expert estimated that a basic clean-up would cost at least \$6 billion"¹⁸³ despite the fact that Donziger knew when he wrote it that Russell had told

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PX 728 (Apr. 27, 2005 Email from C. Lehane to S. Donziger and J. Kohn attaching Ecuadorian Issues Outline) (emphasis omitted).

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PX 736 (Nov. 1, 2005 Email from S. Donziger to C. Lehane and J. Kohn re: "SEC ltr/other").

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PX 754 (Jan. 30, 2006 Amazon Watch Ltr. from A. Soltani and S. Aird to C. Cox).

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Id.

him that it was wildly inaccurate.¹⁸⁴ The letter asserted also that Chevron had “creat[ed] toxic contamination over 30 times larger than the Exxon Valdez”¹⁸⁵ and decried Chevron’s alleged failure to disclose its “potential liability” to its shareholders.¹⁸⁶ He used the same figure, despite subsequent confirmation that it was exaggerated, in later testimony before a Congressional commission on human rights, and in press releases.¹⁸⁷

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PX 3200 (Russell Direct) ¶ 14 (“I told Donziger on several occasions from late 2004 through early 2005 that my initial cost estimate was wildly inaccurate and that it should not be used.”).

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PX 754 (Jan. 30, 2006 Amazon Watch Ltr. from A. Soltani and S. Aird to C. Cox).

In 2007, Bill Powers, a member of the LAPs’ technical team, investigated the claim that the contamination in the Orienté was 30 times larger than the contamination caused by the Exxon Valdez. He concluded that it was vastly exaggerated and so informed Donziger and Soltani of Amazon Watch. PX 861 (May 24, 2007 Email from A. Soltani to S. Donziger re: “exxon valdez 30x”); PX 862 (May 24, 2007 Email from B. Powers to S. Donziger, A. Soltani, S. Tegel, K. Koenig and J. Ciplet re: “FOE is on our team RE: Exxon Valdez 30x”). Soltani responded that Amazon Watch – which had featured the Exxon Valdez comparison in press releases – needed to “save face” and remove the references to the spill. PX 861 (May 24, 2007 Email from A. Soltani to S. Donziger re “exxon valdez 30x”). But Donziger insisted that they stick to the claim. He warned that there would be “HUGE implications for the legal case” if they disavowed the comparison to Exxon Valdez, and told Amazon Watch that it “[w]ould terribly prejudice the people it is trying to help if it makes this change.” PX 860 (May 24, 2007 Email from S. Donziger to S. Tegel re: “private”). Despite Soltani’s reservations, ChevronToxico continued to tout the claim. *See, e.g.*, PX 492R (July 4, 2007 Amazon Watch press release), at 2; PX 2309R (Aug. 28, 2009 Amazon Defense Coalition Press Release), at 2; PX 503 (May 21, 2008 Amazon Defense Coalition press release), at 2 (“30 times more pure crude than in the Exxon Valdez disaster”); PX 510 (Sept. 16, 2008 Amazon Defense Coalition press release), at 2 (“The Ecuadorians have accused Texaco . . . of committing the worst oil-related disaster on the planet on their ancestral lands – one at least 30 times worse than the Exxon Valdez spill.”); PX 513R (Oct. 15, 2008 ChevronToxico press release), at 2 (“All told, the amount of oil dumped in Ecuador by Texaco is at least thirty times greater than the amount spilled during the Exxon Valdez disaster, according to the plaintiffs in the civil suit.”).

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PX 754 (Jan. 30, 2006 Amazon Watch Ltr. from A. Soltani and S. Aird to C. Cox).

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PX 1130R (Apr. 28, 2009 S. Donziger Testimony before Tom Lantos Human Rights Comm’n, Hr’g on Ecuador, Nigeria, West Papua: Indigenous Communities, Environmental

The day after the SEC letter was sent, Donziger wrote to Soltani of Amazon Watch: “[n]ow that the SEC ltr is filed, it is key we come up with a coherent strategy to build pressure for the April shareholder’s [sic] meeting.”¹⁸⁸ Donziger called on Amazon Watch and others – including Chevron shareholders (whom Amazon Watch was to address at an upcoming shareholder meeting) – to send letters to the SEC calling for investigation into Chevron’s conduct in Ecuador.¹⁸⁹ Donziger suggested that Amazon Watch “seek a meeting with [SEC chairman Christopher] Cox or one of his deputies” in order “to press for them to open a real investigation.”¹⁹⁰ He insisted that Amazon Watch could “get a lot of legs out of this if it is exploited with a little follow-up” and emphasized that the “key . . . to [the] strategy . . . is to keep this alive and active so it is hanging over their heads

Degradation, and International Human Rights Standards), at 60.

Douglas Beltman, another scientist then working for the LAPs, also challenged the accuracy of the Exxon Valdez claim. He asked Donziger: “do you know where the 30 times number comes from?” PX 1110 (Mar. 1, 2009 Email from D. Beltman to S. Donziger re “Pls answer questions”), at 1. Donziger replied: “*My own calculations. If that doesn’t suffice then kiss my butt.*” *Id.* (emphasis added).

Shortly thereafter, Donziger recited the Exxon Valdez comparison in his testimony and continued to use the statistic in press releases and blog posts throughout 2009 and 2010. PX 522R (Apr. 27, 2009 Amazon Defense Coalition press release), at 2; PX 527R (Oct. 22, 2009 Amazon Defense Coalition press release), at 2 (“Experts for the plaintiffs have concluded the disaster is at least 30 times larger than the Exxon Valdez spill”); PX 529R (Dec. 30, 2009 Amazon Defense Coalition press release), at 2 (“Experts consider the disaster at least 30 times worse than the damage caused by the Exxon Valdez.”); PX 533R (*The Chevron Pit* Blog Entry), at 3 (“Experts have concluded that the Chevron [sic] discharged at least 345 million gallons of pure crude oil directly into the rainforest ecosystem . . . and approximately 11 million gallons of pure crude was spilled during the Exxon Valdez disaster.”).

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PX 756 (Jan. 31, 2006 Email from S. Donziger to A. Soltani and J. Ciptet re: “Plan for SEC follow up”).

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Id.

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PX 759 (Feb. 1, 2006 Email to A. Soltani, S. Aird, J. Ciptet, L. Salazar Lopez, and S. Tegel re: “imp follow up with SEC”).

as long as possible, and so it can be used to get other shareholders to write their own letters.”¹⁹¹

By the end of February 2006, Russell had sent his first cease and desist emails to Donziger and Amazon Watch.¹⁹² Donziger emailed Soltani to suggest that they send “the SEC letter in ASAP, making [the] slight change that another report will be coming with a multi-billion damage figure, without disavowing or mentioning Russell’s report.”¹⁹³

Donziger’s efforts to incite an SEC investigation did not amount to much. After meeting with an SEC investigator, he wrote to his team that the investigator thought that “the probability of a negative judgment [in the Lago Agrio litigation] was so attenuated that they [SEC staff] did not think it [*i.e.*, the possible \$6 billion exposure] was material yet.”¹⁹⁴ But while Donziger admitted that he “sort of fe[lt] [that the investigation he sought was] bogus,” he insisted that he would “keep feeding them [the SEC] stuff” as long as the SEC was willing to continue talking with them.¹⁹⁵ This was not the only time Donziger and his public relations team would reach out to the SEC in an effort to gain leverage over Chevron.¹⁹⁶

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Id.

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PX 764 (Feb. 14, 2006 Ltr. from D. Russell to S. Donziger re “Cease and Desist”), at 1.

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PX 768 (Feb. 23, 2006 Email from S. Donziger to A. Soltani, L. Salazar-Lopez, S. Tegel, J. Ciplet re: “important – SEC ltr”).

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PX 781 (July 12, 2006 Email from S. Donziger to A. Page and D. Fisher re: “SEC investigation/Chevron”).

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Id.

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Amazon Watch wrote to SEC Chairman Cox again in March 2008 to request “that the SEC impose sanctions on Chevron . . . for violations of its disclosure obligations” with respect to its liability in the Lago Agrio litigation. In that letter, Amazon Watch stated that the case