UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DANIEL CARLOS LUSITANDE YAIGUAJE, VENANCIO FREDDY CHIMBO GREFA, MIGUEL MARIO PAYAGUAJE PAYAGUAJE, TEODORO GONZALO PIAGUAJE PAYAGUAJE, SIMÓN LUSITANDE YAIGUAJE, ARMANDO WILMER PIAGUAJE PAYAGUAJE, JAVIER PIAGUAJE PAYAGUAJE, FERMÍN PIAGUAJE, LUIS AGUSTÍN PAYAGUAJE PIAGUAJE, EMILIO MARTIN LUSITANDE YAIGUAJE, REINALDO LUSITANDE YAIGUAJE, MARÍA VICTORIA AGUINDA SALAZAR, CARLOS GREGA HUATATOCA, CATALINA ANTONIA AGUINDA SALAZAR, LIDIA ALEXANDRA AGUINDA AGUINDA, CLIDE RAMIRO AGUINDA AGUINDA, LUIS ARMANDO CHIMBO YUMBO, BEATRIZ MERCEDES GREFA TANGUILA, LUCIO ENRIQUE GREFA TANGUILA, PATRICIO WILSON AGUINDA AGUINDA, PATRICIO ALBERTO CHIMBO YUMBO, SEGUNDO ÁNGEL AMANTA MILÁN, FRANCISCO MATÍAS ALVARADO YUMBO, OLGA GLORIA GREFA CERDA, NARCISA TANGUILA NARVÁEZ, BERTHA YUMBO TANGUILA, LUCRECIA TANGUILA GREFA, FRANCISCO VÍCTOR TANGUILA GREFA, ROSA TERESA CHIMBO TANGUILA, MARÍA CLELIA REASCOS REVELO, HELEODORO PATARON GUARACA, MARÍA VIVEROS CUSANGUA, LORENZO JOSÉ ALVARADO YUMBO, FRANCISCO ALVARADO YUMBO, JOSÉ GABRIEL REVELO LLORE, LUIZA DELIA TANGUILA NARVÁEZ, JOSÉ MIGUEL IPIALES CHICAIZA, HUGO GERARDO CAMACHO NARANJO, MARÍA MAGDALENA RODRÍGUEZ, ELÍAS PIYAHUAJE PAYAHUAJE, LOURDES BEATRIZ CHIMBO TANGUILA, OCTAVIO CÓRDOVA HUANCA, CELIA IRENE VIVEROS CUSANGUA, GUILLERMO PAYAGUAJE LUCITANDE, ALFREDO PAYAGUAJE, and DELFÍN PAYAGUAJE ,

Plaintiffs,

- against-

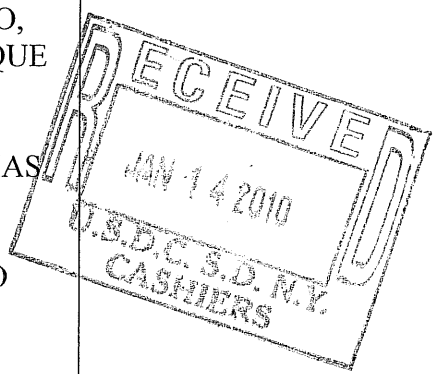
CHEVRON CORPORATION and TEXACO PETROLEUM COMPANY,

Defendants.

10 CIV. 0316

10 Civ. ____

COMPLAINT TO STAY ARBITRATION



Similar to the related case, *Republic of Ecuador v. Chevron Corporation and Texaco Petroleum Company*, No. 09 Civ. 9958, the above-named Plaintiffs, by and through their attorneys Emery Celli Brinckerhoff & Abady LLP, seek an order, pursuant, *inter alia*, to the Federal Arbitration Act, 9 U.S.C. §§ 1, *et seq.*, including § 4, (i) staying the Defendants Chevron Corporation ("Chevron") and Texaco Petroleum Company ("Texpet") from maintaining or pursuing an international arbitration against the Republic of Ecuador ("Republic") under the U.S.-Ecuador Bilateral Investment Treaty ("BIT") to the extent it would seek dismissal, nullification or avoidance of any judgment against Defendants in a pending environmental action between Plaintiffs and Chevron before a court in Lago Agrio, Ecuador; (ii) enforcing compliance by Chevron with the prior order of this Court conditioning dismissal of the predecessor litigation in this Court, styled *Aguinda v. Texaco, Inc.,* 142 F. Supp. 2d 534 (S.D.N.Y. 2001), *aff'd* 303 F.3d 470, 476 (2d Cir. 2002), on specific representations and undertakings by Chevron; and (iii) declaring that Chevron instead be required to contest claims brought by the plaintiffs only in Ecuador, and, if appropriate, in the defense of any enforcement action, in compliance with Chevron's previous representations to this Court, and not by way of a collateral attack on such claims in international arbitration or any other forum. In support thereof, Plaintiffs allege as follows:

INTRODUCTION

1. This case involves the latest tactical attempt by Chevron and certain of its subsidiaries to avoid accountability for what some experts consider the world's worst oil-related contamination – a disaster so severe it has been referred to as the "Rainforest Chernobyl." For some 26 years, Chevron systematically and deliberately discharged approximately 16 billion gallons of toxic "formation water" into the Amazon rainforest in Ecuador, one of the most pristine and biologically diverse ecosystems on the planet. The result was environmental destruction and a human catastrophe on a massive scale. This destruction includes widespread contamination of surface waters and groundwater on which indigenous groups had relied for millennia for their sustenance, and an epidemic of cancers and other oil-related medical problems that have devastated the local population.

2. In 1993, indigenous and farmer residents affected by Chevron's practices commenced a class action in the Southern District of New York seeking, among other things, remediation for the extensive pollution of their lands. That effort is now in its seventeenth year and nearing resolution. From 1993 through 2002, Chevron persistently and vigorously argued that the case should be transferred to Ecuador, which Chevron insisted was the appropriate forum for resolution of the matter. Typical of Chevron's approach was the submission to this Court in 2000 of an affidavit from Dr. Alejandro Ponce Martinez, a longtime Chevron lawyer in Ecuador. This affidavit, similar to 13 others submitted by Chevron attesting to the fairness and competency of Ecuador's court system, asserted: "[It is] my opinion, based upon my knowledge and expertise, that Ecuador's courts provide a totally adequate forum in which the plaintiffs in [*Aguinda*] could fairly pursue their claims." *See* Affidavit of Dr. Alejandro Ponce Martinez (Feb. 9, 2000) ¶ 2, attached as Ex. 1. Eventually, the Second Circuit Court of Appeals agreed to

send the case to Ecuador pursuant to the doctrine of *forum non conveniens*, but with a critical condition: that Chevron submit to jurisdiction in Ecuador. In response, Chevron made repeated, on-the-record, unambiguous and emphatic declarations that it would submit to jurisdiction in Ecuador and satisfy *any* judgment rendered there, subject *only* to remedies under New York's Recognition of Foreign Country Money Judgments Act, New York CPLR § 5304.

3. As a result, from 2003 to the present, a hotly-contested and extensive trial has been conducted in Lago Agrio, Ecuador (the "*Lago Agrio*" action). Thousands of pages of testimony have been painstakingly recorded, tens of thousands of scientific analyses have been produced by independent laboratories, and over one hundred judicial field inspections involving dozens of technical personnel and court officials have been performed. But as the trial progressed and the evidence against it amassed, Chevron changed its mind about its choice of forum, and commenced an aggressive political lobbying campaign and elaborate legal strategy to undermine the integrity of the Ecuadorian judicial system to avoid any adverse ruling which might be rendered there.

4. To circumvent the proceedings in Ecuador which it had itself precipitated, in 2005 Chevron filed an arbitration in New York before the American Arbitration Association ("AAA") seeking (i) a declaration that Chevron was not liable or, alternatively, (ii) indemnification from the Republic of Ecuador for any damages obtained through the judicial process in that country. In 2007, after a multi-year litigation, including full briefing and an evidentiary hearing, Chevron's effort was rejected in a decision issued by the Hon. Leonard B. Sand and the AAA arbitration was permanently stayed.

5. Now, with a decision from the Ecuadorian judicial system expected imminently, and undeterred by Judge Sand's 2007 decision, Chevron is attempting to obtain the

same relief in yet another arbitration forum. Once again, in addition to seeking indemnification from the Republic, Chevron seeks a panel of UNCITRAL arbitrators to declare "no liability" and release Chevron for conduct that is the subject of the trial in its preferred forum of Ecuador. This is a patently meritless and brazen attempt to extinguish plaintiffs' claims in a forum where they cannot even participate. Further, Chevron's actions would directly violate the very representations that induced the transfer of the case to Ecuador in the first place.

6. Plaintiffs support the Republic's request for an order enjoining Chevron's eleventh-hour attempt to upset almost two decades of litigation by bringing an international arbitration which violates the clear mandate of the Second Circuit, as well as Chevron's express commitment to litigate the dispute in the courts of Ecuador and to satisfy any adverse judgment against it there.

JURISDICTION AND VENUE

7. This Court has original jurisdiction over this matter pursuant to 28 U.S.C. § 1331, and also pursuant to 28 U.S.C. § 1332(a)(4), as the matter in controversy (a) exceeds the sum of $75,000, exclusive of interest and costs, and (b) is between foreign nationals (Plaintiffs), and citizens of a State or of different states (Chevron, TexPet).

8. This Court has personal jurisdiction over Chevron and TexPet because each is found, regularly transacts business, owns property, and is qualified to do business within the State of New York, and within the Southern District of New York. In addition, Chevron and TexPet have each, in person or through an agent, transacted business within the State of New York from which the claims stated herein arise, and each has conducted activity in this judicial district.

9. Venue is proper in this district pursuant to 28 U.S.C. § 1391(c) because

Chevron and TexPet are each corporations subject to personal jurisdiction within the State of New York and within the Southern District of New York, and each has conducted activity in this judicial district giving rise to the claims herein.

PARTIES

10. Plaintiffs are citizens of Ecuador who represent approximately 30,000 inhabitants of the Amazon region of Ecuador.

11. Defendant Chevron is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 6001 Bollinger Canyon Road, San Ramon, California, USA 94583.

12. Defendant TexPet is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 6001 Bollinger Canyon Road, San Ramon, California, USA 94583. TexPet is a wholly-owned, indirect subsidiary of Texaco, Inc. ("Texaco"), a corporation with its principal place of business at the same address, and itself an indirect subsidiary of Chevron. After Texaco's acquisition by Chevron in 2001, TexPet became, and currently remains, a wholly-owned indirect subsidiary of Chevron. For convenience, TexPet, Texaco and Chevron will sometimes be referred to hereinafter as "Chevron" or "the Company."

FACTS/CLAIMS

I. Chevron's Destruction of the Amazonian Rainforest

13. From 1964 to 1992, Chevron owned an interest in an approximately 1,500 square-mile concession in Ecuador that contained numerous oil fields and more than 350 well sites. Beginning in 1964 and continuing at least until June 30, 1990 – when it ceased being operator of the concession area – Chevron engineered and presided over what some experts

believe is the worst oil-related environmental disaster in the world. It deliberately dumped many billions of gallons of waste byproduct from oil drilling directly into the rivers and streams of the rainforest covering an area roughly the size of Rhode Island. It gouged more than 900 unlined waste pits out of the jungle floor – pits which to this day leach toxic waste into soils and groundwater. It burned hundreds of millions of cubic feet of gas and waste oil into the atmosphere, poisoning the air and creating "black rain" which inundated the area during tropical thunderstorms. Chevron deliberately dumped into Ecuador's Amazon rainforest many more times the amount of oil spilled by the Exxon Valdez. In the impacted area of Ecuador today, due to the legacy created by Chevron, the natural environment of the Amazon rainforest on which thousands of people depend for their daily sustenance is for the most part poisoned.

14. To minimize production costs, Chevron built an oil extraction system that was designed to pollute. First, it discharged billions of gallons of "production water" (the contaminated waste water that is mixed with crude oil as it comes out of the ground) into streams and rivers – four million gallons *per day* at the height of the operation. Most of this "production water" contained highly toxic petroleum hydrocarbons. At Chevron's oil production facilities, the "formation water" was separated from the crude and discharged onto the ground and into the surface waters on a continuous basis, 24 hours per day, seven days per week, over a period of decades.

15. Dumping toxic waste onto the ground or into rivers and streams relied on for drinking water had been prohibited in the United States in even "oil-friendly" states such as Louisiana and Texas for several decades before Chevron entered Ecuador in 1964. The non-polluting alternative was a process known as "re-injection." For years before Chevron entered Ecuador, oil companies in the U.S. (including Chevron) had been re-injecting "formation water"

back into oil reservoirs to minimize the environmental impact and to prevent contamination of fresh water sources relied on by local communities for their drinking water. The industry-funded American Petroleum Institute published an oil field primer in 1962, outlining how re-injection of "formation waters" worked. Chevron itself owned one of the patents on the technology. Yet the Company ignored these practices in Ecuador, apparently to cut costs and increase profits.

16. Second, Chevron built some 916 open-air toxic waste pits in and around its well sites. Chevron cut these pits directly into the floor of the jungle, and they had no lining to prevent their contents from migrating into the soil and groundwater. Chevron filled the waste pits with "drilling muds" and waste crude oil and then used them for permanent storage in violation of established industry standards. "Drilling muds" are a combination of lubricants and heavy metals, which are combined with the waste oil and formation waters that are the end by-products of the well perforation and maintenance process. Chevron built many of its pits with piping systems used to drain these oil byproducts into nearby streams and rivers. Chevron would also set the pits on fire. In addition, the Company regularly dumped the oil sludge from the waste pits along dirt roads in the region.

17. Chevron's operation was grossly substandard by any measure: it violated, *inter alia*, then-current U.S. industry standards, Ecuadorian environmental law, the Company's contract with Ecuador's government – which prohibited Chevron from using production methods that contaminated the environment – and international law. Even Chevron's own internal audits of its environmental impacts, conducted in the early 1990s by independent outside consultants and placed in evidence in the *Lago Agrio* trial, found extensive contamination at Chevron's oil production facilities. These internal audits found oil hydrocarbon contamination requiring remediation at all Chevron production facilities. They also concluded that Chevron had

deliberately discharged "formation water" into rivers and streams without treatment, refused to clean up oil spills or maintain pipelines, and had no system to monitor the environmental and human health impacts created by the use of its substandard operational practices. Consistent with its willful neglect of Ecuador's Amazon and the people who lived there, Chevron also engaged in deliberate malfeasance: a 1972 memo from R.C. Shields, then head of Latin American production for Chevron, issued a blunt directive to Chevron's acting manager in Ecuador to destroy previous reports of oil spills and to forego documenting future spills in writing unless they were already known to the press or regulatory authorities. The Company never even kept a log of the locations of its 916 waste pits so that the local population could be warned of the dangers of exposure to toxic chemicals.

18. Six indigenous groups inhabited the land where Chevron operated: The Cofan, Secoya, Huaorani, Siona, Quichua, and Tetete. These groups had prospered for millennia before oil began to be extracted by Chevron in the rainforest. Today, oil contamination has robbed them of their ancestral lands and devastated their cultures.

II. By Touting and Claiming to Submit to the Jurisdiction of the Ecuadorian Court System, Chevron Successfully Evades a Class Action Lawsuit in the Southern District

19. In 1993, the Amazon communities (the "*Aguinda*" plaintiffs) filed a federal class-action lawsuit against Chevron in the Southern District of New York, the site of Chevron's global headquarters. Plaintiffs "sought money damages under theories of negligence, public and private nuisance, strict liability, medical monitoring, trespass, civil conspiracy, and violations of the Alien Tort Claims Act," as well as "extensive equitable relief to redress contamination of the water supplies and environment." *Aguinda v. Texaco, Inc.*, 303 F.3d 470, 473 (2d Cir. 2002).

20. From the lawsuit's inception, Chevron did everything it could to transfer the case away from New York to the courts of Ecuador. Chevron moved to dismiss *Aguinda* on *forum non conveniens* and international comity grounds, alleging that "the Ecuadorian courts provide an adequate forum for claims such as those asserted by the plaintiffs in [*Aguinda*]." *See, e.g.*, Affidavit of Dr. Rodrigo Perez Pallares (Dec. 1, 1995) ¶ 7, attached as Ex. 2; Affidavit of Dr. Enrique Ponce y Carbo (Dec. 7, 1995) ¶ 12, attached as Ex. 3; Affidavit of Dr. Vicente Bermeo Lanas (Dec. 11, 1995) ¶ 10, attached as Ex. 4. In 1996, the District Court granted Chevron's motion and unconditionally dismissed *Aguinda* on grounds of *forum non conveniens* and international comity. *Aguinda v. Texaco, Inc.*, 945 F. Supp. 625 (S.D.N.Y. 1996). In 1998, however, the Second Circuit Court of Appeals vacated the dismissal and remanded the case to the District Court, holding "that dismissal on the ground of forum non conveniens was erroneous in the absence of a condition requiring [Chevron] to submit to jurisdiction in Ecuador," and that "the dismissal on the ground of comity was erroneous" for the same reason. *Jota v. Texaco, Inc.*, 157 F.3d 153, 155 (2d Cir. 1998); *id.* at 159 ("[D]ismissal for *forum non conveniens* is not appropriate, at least absent a commitment by [Chevron] to submit to the jurisdiction of the Ecuadorian courts for purposes of this action.").

21. On remand before the Hon. Jed S. Rakoff, Chevron "advise[d] the Court that it [wa]s willing to consent to jurisdiction in Ecuador . . . by the Aquinda [sic] plaintiffs." Conference Before The Honorable Jed S. Rakoff, United States District Court (November 17, 1998), at 7:3-6, attached as Ex. 5. Judge Rakoff commented that Chevron's representation "answered dispositively the issue . . . put to them," *id.* at 10:4-6, *i.e.*, "whether [Chevron] w[ould] submit to Ecuador's jurisdiction." *Id.* at 6:11-12.

22. To further induce dismissal of the *Aguinda* action, Chevron confirmed its

oral in-court representation in a written filing expressly consenting to jurisdiction in Ecuador. *See* Texaco Inc.'s Memorandum of Law in Support of Its Renewed Motions to Dismiss Based on Forum Non Conveniens and International Comity, dated Jan. 11, 1999, attached as Ex. 6. In response to plaintiffs' continued concerns that Chevron might not satisfy any judgment issued by an Ecuadorian court, Chevron promised that it would satisfy any "judgments" entered against it in Ecuador, subject only to those defenses to enforcement provided under the New York CPLR § 5301 et seq. *Id.* at 16-17. Chevron represented:

> [CHEVRON] TEXACO'S CONSENT TO JURISDICTION IN ECUADOR . . . : If this Court dismisses these cases on forum non conveniens or comity grounds, [Chevron] will agree as follows: (i) first, it will accept service of process in Ecuador and not object to the civil jurisdiction of a court of competent jurisdiction in Ecuador as to the *Aguinda* . . . plaintiffs; . . . (ii) second, [Chevron] will waive statute of limitations-based defenses that may have matured between the dates when the *Aguinda* . . . plaintiffs filed their Complaints in this Court . . . and 60 days after dismissal[] by this Court to give plaintiffs an opportunity to re-file in Ecuador . . . ; (iii) third, plaintiffs and [Chevron] may utilize the extensive discovery obtained to date in lawsuits to be filed in Ecuador . . . ; and (iv) fourth, [Chevron] will *satisfy* judgments that might be entered in plaintiffs' favor, subject to [Chevron's] rights under New York's Recognition of Foreign Country Money Judgments Act, N.Y.C.P.L.R. § 5301 *et seq.* (McKinney 1998).

Id. (emphasis added). In its reply brief in support of the *forum non conveniens* motion, Chevron reiterated these representations and promises to the District Court. Chevron "agreed to satisfy *any* judgments in plaintiffs' favor, reserving its right to contest their validity *only in the limited circumstances permitted by New York's Recognition of Foreign Country Money Judgments Act.*" *See* Texaco Inc.'s Reply Memorandum of Law in Support of Its Renewed Motions to Dismiss Based on Forum Non Conveniens and International Comity at 21 (emphasis added), dated Jan. 25, 1999, attached as Ex. 7.

23. The District Court relied on Chevron's repeated, unambiguous, and

emphatic representations. *Aguinda v. Texaco, Inc.*, 142 F. Supp. 2d 534 (S.D.N.Y. 2001). The court noted that "[f]ollowing remand, [Chevron] provided the missing commitment to submit to the jurisdiction of the courts of Ecuador . . . and then renewed its motion to dismiss on ground of *forum non conveniens.*" *Id.* at 538. As the court explained, a *forum non conveniens* dismissal requires an adequate alternative forum which can generally be satisfied by "an agreement by the defendant to submit to the jurisdiction of the foreign forum." *Id.* at 539 (quoting *DiRienzo v. Philip Servs. Corp.*, 232 F.3d 49, 57 (2d Cir. 2000)) (citing *Jota v. Texaco, Inc.*, 157 F.3d 153, 159 (2d Cir. 1998)). Because and only because "[Chevron] ha[d] . . . unambiguously agreed in writing to being sued on these claims (or their Ecuadorian equivalents) in Ecuador, [and] to accept service of process in Ecuador," the court could dismiss on *forum non conveniens* grounds. *Id.* at 539 (citing Texaco Inc.'s Memorandum of Law In Support of Its Renewed Motions to Dismiss Based on Forum Non Conveniens and International Comity, at 12-13; Texaco Inc.'s Notice of Agreements in Satisfying Forum Non Conveniens and International Comity Conditions; Transcript of Hearing on Texaco's Renewed Motion to Dismiss, Feb. 1, 1999, at 5).

24. The *Aguinda* plaintiffs appealed the District Court's second dismissal to the Second Circuit. In opposition, Chevron[1] specifically and repeatedly referred to its District Court representations. Brief for ChevronTexaco, Inc., U.S. Court of Appeals for the Second Circuit (Dec. 20, 2001), at 1, attached as Ex. 8; *see also id.* at 15 (Chevron "consented to personal jurisdiction in Ecuador as to the *Aguinda* plaintiffs . . . in order to litigate their claims in these cases. It did so through counsel at a November 17, 1998 hearing (JA5161), and then reiterated its consent in its opening brief in support of its [renewed] motions to dismiss.").

25. Relying upon Chevron's representations below, the Second Circuit

[1] Chevron acquired Texaco in 2001.

affirmed Judge Rakoff's second dismissal on *forum non conveniens* grounds. *Aguinda v. Texaco*, 303 F.3d 470, 476 (2d Cir. 2002). The Second Circuit once again cited Chevron's many representations to the District Court and on appeal, noting that "[Chevron] [had] consented to personal jurisdiction in Ecuador as to the *Aguinda* plaintiffs," in addition to its stipulation to waive statute of limitations defenses and its agreement to allow the plaintiffs to utilize U.S. discovery in Ecuador. *Id.* at 475. The Second Circuit also focused on the district court's reliance on these representations: "The court ruled that [Chevron] had demonstrated the availability of an adequate alternative forum, . . . underscor[ing] that [Chevron] had now consented to jurisdiction in Ecuadorian . . . courts." *Id.* at 476.

26. Finally, the Second Circuit concurred with Chevron and its numerous expert witnesses who had opined that Ecuadorian courts were perfectly adequate to hear these types of claims. *Id.* at 477-78.

27. Chevron heralded the Second Circuit's decision, stating it was "pleased with the ruling of the U.S. Court of Appeals affirming the lower court's dismissal of these claims," which "vindicate[d] Chevron[]'s long-standing position and the arguments we have made to the court: The appropriate forum for this litigation is Ecuador . . . ." Press Release, Texaco, Inc., ChevronTexaco Issues Statement on U.S. Circuit Court Decision Affirming Dismissal of Ecuador Litigation, Aug. 19, 2002, attached as Ex. 9.

III. The Ongoing Trial in Ecuador Reveals Overwhelming Evidence of Chevron's Liability and Plaintiffs' Damages

28. After final dismissal of the *Aguinda* action in 2002, the same plaintiffs undertook the extraordinary burden of hiring local counsel and refiling the case in Lago Agrio, Ecuador. Trial began in 2003, and is ongoing. It has been highly contested and vigorously defended by Chevron. The record contains more than 200,000 pages of evidence, roughly

63,000 chemical sampling results produced by laboratories contracted by both parties and the court expert, testimony from dozens of witnesses, and 102 judicial field inspections of former Chevron well and production sites conducted over a five-year period under the auspices of the court. Soil samples from the production wells and separation stations inspected reveal extensive contamination in violation of Ecuadorian law and relevant U.S. norms. Chevron's purported remediation, undertaken in the mid-1990s, was at best ineffective, and at worst a fraud: the small number of well sites that Chevron supposedly remediated were found by a court-appointed Special Master to be as contaminated as the sites that Chevron did not remediate. According to scientific experts, Chevron also used an inappropriate laboratory test that captured only a fraction of the contamination in the soil samples tested at its "remediated" sites, and then represented those laboratory results to the Republic as accurate in order to obtain a limited release of claims owned by the Republic. Though this release is now the subject of litigation in the *Lago Agrio* trial, and its validity and scope have yet to be ruled on by the *Lago Agrio* court, the Company is attempting to use it as a centerpiece of its strategy to collaterally attack *Aguinda* and the *Lago Agrio* trial before the arbitral panel under the BIT.

29. The best and most recent independent estimate available of the human health impact of this contamination is provided by the neutral Special Master appointed by the court to provide advice on damages. The Special Master, Ecuadorian environmental engineer and geologist Dr. Richard Cabrera, has conducted numerous environmental assessments for oil companies in Ecuador and previously had been accepted without objection by Chevron as a court-appointed expert in the *Lago Agrio* case. To carry out his mandate, Dr. Cabrera appointed a team of 14 technical officials covering the various disciplines needed to develop a comprehensive clean-up assessment. The Cabrera team reviewed the entire body of evidence

produced by the parties and Dr. Cabrera himself conducted independent sampling at 49 former Chevron oil production facilities. Dr. Cabrera found that 100% of Chevron's former well sites and oil production facilities inspected during the trial show extensive levels of toxic contamination in violation of legal norms in Ecuador, and that both plaintiffs' and Chevron's sampling evidence corroborated his conclusions.

30. The trial evidence reviewed by Dr. Cabrera included various peer-reviewed health studies that document high cancer rates in the region where Chevron operated, survey data of more than 1,000 persons from different families living near oil production facilities, and population statistics. Using conservative measures, the final report produced by the Cabrera team estimated 1,401 excess cancer deaths in the region where Chevron operated due to oil contamination. The report also concluded that the closer people lived to the sources of the contamination, the more likely it was that they would suffer from leukemia and other cancers. In the area where Chevron operated, scientific studies in evidence have found elevated rates of oil-related health problems such as spontaneous miscarriages, dermatitis, skin mycosis, dizziness, nausea, muscular pain, and chromosomal damages at the DNA level. Other peer-reviewed studies found significantly elevated levels of cancers of the stomach, rectum, skin, soft tissue, and kidney in men; increased incidents of cancers of the cervix and lymph nodes in women; and increases in the incidence of hematopoietic cancers and leukemia in children.

31. The Cabrera report calculated damages at up to $27.3 billion to cover clean-up of soils and groundwater, the installation of proper technology in the oilfields to prevent further discharges, damages from health impacts, compensation for excess cancer deaths, installation of potable water, and the cost of mitigating cultural impacts to the indigenous groups. Environmental remediation experts from the United States have reviewed the Cabrera report and

found its conclusions reasonable and its damages assessment consistent with the costs of other large environmental clean-ups around the world. The damages assessment is not binding on the court; ultimately the presiding judge will issue a final decision to resolve all questions of liability and damages. The losing party will have the option of availing itself of two layers of appeal in Ecuador, and in Chevron's case, challenging any enforcement action consistent with its earlier representation to this Court.

32. The matter is now *sub judice*. The trial court in Lago Agrio has not yet issued a judgment.

IV. Chevron Unsuccessfully Attempts to Evade the Ecuadorian Courts With a Bogus AAA Arbitration That is Permanently Enjoined by the SDNY

33. With its enormous financial resources, long history of political influence in Ecuador, teams of highly skilled American and Ecuadorian lawyers, and numerous public relations firms and lobbyists, Chevron was apparently convinced it could defeat any effort by a group of indigenous peoples to prevail against it in Ecuador's courts. But Chevron did not account for one thing: the capacity of the indigenous peoples and farmer communities to actually force the case to trial and to be able to produce a record of overwhelming evidence of Chevron's environmental malfeasance and its resulting devastation of an entire population. It is this enormous, indisputable evidentiary record, painstakingly compiled over six years in thousands of pages of exhibits, testimony, technical documents, expert reports, and analytical results from independent laboratories, that has created the possibility that Chevron will be held to account for one of the worst man-made environmental disasters in history.

34. Unable to hide the overwhelming factual evidence of its own misconduct, Chevron tried to use its political influence in Ecuador and elsewhere to engineer an extrajudicial result in its favor. For example, both before and after the commencement of the *Lago Agrio* trial,

Chevron repeatedly and inappropriately sought an official declaration from Ecuador's Attorney General that it was not liable for the *Aguinda* claims after representing to this Court and the Court of Appeals that it would litigate those claims in Ecuador. Notwithstanding its desire to litigate the *Aguinda* claims in Ecuador, its repeated representations to the Southern District Court and the Second Circuit Court of Appeals that it would subject itself to jurisdiction in that country, and those Courts' express rulings relying on those representations, Chevron decided mid-trial that Ecuador's judicial system was no longer a suitable forum in which to resolve the issues raised by the *Aguinda* action. The same party that promised repeatedly "to satisfy *any* judgments in plaintiffs' favor" in Ecuador sought an AAA arbitration award in New York City in an attempt to shut down the *Lago Agrio* case or to shift liability from itself to the Republic.

35. On June 11, 2004, rather than seek to implead the Republic or PetroEcuador in the *Lago Agrio* litigation, Chevron served a Demand for Arbitration and Statement of Claim on PetroEcuador. PetroEcuador and the Republic filed a petition to stay Chevron's AAA Arbitration in New York County Supreme Court, and the case was later removed to federal court in the Southern District. After extensive discovery, cross-motions for summary judgment and an evidentiary hearing, Judge Leonard B. Sand issued a decision and order permanently staying the AAA Arbitration. *Republic of Ecuador v. ChevronTexaco Corp.*, 499 F. Supp. 2d 452 (S.D.N.Y. 2007). On appeal, Judge Sand's decision staying the AAA Arbitration was summarily affirmed by the Second Circuit Court of Appeals. *Republic of Ecuador v. ChevronTexaco Corp.*, No. 07-2868-cv, 296 F. App'x 124, 2008 WL 4507422 (2d Cir. Oct. 7, 2008). The Supreme Court denied review. *ChevronTexaco Corp. v. Republic of Ecuador*, 129 S. Ct. 2682 (2009). Shortly thereafter, Chevron withdrew its AAA Arbitration.

V. Chevron's Latest Attempt to Evade the Ecuadorian Courts through a BIT Arbitration Should Be Rejected

36. In a 2007 press release, Chevron promised the plaintiffs in the *Lago Agrio* action a "lifetime" of appellate and collateral litigation if they persisted in pursuing their claims. *See* Press Release, Chevron, Chevron Calls for Dismissal of Ecuador Lawsuit, Oct. 8, 2007, attached as Ex. 10.[2] Now, in the seventeenth year of the *Aguinda* matter, Chevron apparently is trying to make good on this threat. It is seeking yet another new venue – international arbitration – in hopes of evading responsibility for its misconduct. On September 23, 2009, Chevron filed a "notice of arbitration" under the UNCITRAL rules pursuant to the U.S.-Ecuador BIT. *See* Notice of Arbitration, Sept. 23, 2009, attached as Ex. 12. Chevron seeks no less than a "declaration" that Chevron "ha[s] no liability or responsibility for environmental impact" for its destruction of the Amazonian rainforest, *id.* at ¶ 76(1), as well as "[a]n order and award requiring Ecuador to inform the court in the Lago Agrio Litigation" that Chevron "has been released from all environmental impact arising out of the former Consortium's activities," *id.* ¶ 76(3). In short, Chevron is seeking an order through the arbitral panel requiring that the Republic's President violate Ecuador's own Constitution, interfere in the country's independent judiciary, and quash a trial brought by his own citizens against Chevron in the very court in which Chevron sought to have the claims heard.

37. Chevron's effort to short-circuit the *Lago Agrio* litigation after first inducing the transfer of the case to Ecuador, and then actively defending the case on the merits for six-plus years, contradicts its own representations to this Court, is an outrage against the rule of law, reeks of forum shopping, and violates any notion of basic fairness. Having put plaintiffs

[2] A Chevron spokesperson recently said the Company would "fight" the *Aguinda* case "until hell freezes over" and then "fight it out on the ice." *See* John Otis, *Chevron vs. Ecuadorean activists*, The Global Post, May 3, 2009, attached as Ex. 11.

to the high burden of a multi-year trial in a jurisdiction not of their choosing, Chevron now directly contradicts its representations to this Court and to the Court of Appeals that it would submit to Ecuadorian jurisdiction and satisfy any Ecuadorian judgment, subject *only* to CPLR 5301 *et seq*. Chevron's proposed BIT arbitration violates the express orders of this Court and the Second Circuit, which required it to submit to Ecuadorian jurisdiction and to satisfy any Ecuadorian judgment as a condition of the *forum non conveniens* dismissal. Chevron seeks to treat the Ecuadorian judiciary like a kangaroo court, where the executive branch, under compulsion of an arbitration award, simply tells the local judge to end the case and therefore the case is ended. Chevron seeks to re-litigate the key issues that already have been fully and fairly litigated in the *Lago Agrio* case in an arbitration where the *Lago Agrio* plaintiffs are not parties. Indeed, on the eve of judgment, Chevron seeks to end years of litigation in Ecuador and the United States by beginning anew before an arbitral panel comprised of three law professors that meets behind closed doors, whose decisions are not subject to review, and where neither the *Aguinda* nor the *Lago Agrio* plaintiffs can appear. Chevron's gambit to upend the table before the winning hand is revealed cannot be countenanced.

38. Federal courts have continuing jurisdiction, grounded in collateral, judicial and equitable estoppel, to enjoin a party from relitigating issues in a non-federal forum that were already decided in federal court.

39. Here, Chevron clearly and unambiguously represented to this Court and to the plaintiffs, as a condition of the District Court dismissing their claims in the Southern District of New York, that it would submit itself to the jurisdiction of the Ecuadorian Courts. Chevron further promised "to satisfy any judgments in plaintiffs' favor, reserving its right to contest their validity only in the limited circumstances permitted by New York's Recognition of Foreign

Country Money Judgments Act."

40. In making these representations, Chevron reasonably expected that the Southern District Court would rely on them to dismiss the Plaintiffs' claims.

41. Chevron's promises did in fact induce the Southern District Court to dismiss plaintiffs' claims in the *Aguinda* litigation on *forum non conveniens* grounds. Chevron's promises also induced the Plaintiffs to re-file their claims in Ecuador and to litigate the *Lago Agrio* case in Ecuador for six years, expending enormous time and resources. Both the Southern District Court and Plaintiffs reasonably and foreseeably relied on Chevron's promises. Chevron is judicially and equitably estopped from attempting to defeat the jurisdiction and to avoid the judgment of the Ecuadorian courts. Chevron knowingly and intentionally waived any otherwise available defense to enforcement of an adverse judgment in Lago Agrio, excepting only New York CPLR § 5304.

42. In addition, although Chevron initially attempted to dismiss the *Aguinda* litigation without promising to consent to jurisdiction in Ecuador, the Southern District Court and the Second Circuit Court of Appeals required Chevron to submit to jurisdiction in Ecuador and to satisfy any Ecuadorian judgment, subject only to CPLR 5301 *et seq.*, as a condition for granting the *forum non conveniens* motion. The orders of this Court and the Second Circuit collaterally estop Chevron from attempting to relitigate the issue of (1) its obligation to submit to jurisdiction in Ecuador; (2) the validity of any judgment arising from the *Lago Agrio* case; and/or (3) its obligation to satisfy any Ecuadorian judgment, subject only to CPLR § 5301 *et seq.*

43. After this Court's *forum non conveniens* order, Plaintiffs litigated their claims in Ecuador for more than six years.

44. The unconscionable injustice of denying Plaintiffs the resolution of their

claims can be avoided only by enforcement of Chevron's promises.

RELIEF

WHEREFORE, Plaintiffs request the following relief:

1. A judgment declaring that Defendants have violated their promise to subject themselves to the jurisdiction of the Ecuadorian courts for resolution of Plaintiffs' claims;

2. A preliminary and permanent order staying Defendants from maintaining or pursuing any international arbitration against the Republic of Ecuador under the U.S.–Ecuador BIT to the extent it would have the effect of dismissing, nullifying, or avoiding any judgment against Defendants relating to the pending environmental action between Plaintiffs and Defendants in Lago Agrio, Ecuador;

3. A preliminary and permanent order enjoining Defendants from violating, and requiring it to honor, the prior order of this Court conditioning dismissal of predecessor litigation in this Court styled as *Aguinda v. Texaco, Inc.*, 142 F. Supp. 2d 534 (S.D.N.Y. 2001), *aff'd* 303 F.3d 470, 476 (2d Cir. 2002), on specific representations and undertakings by Chevron;

4. An order awarding disbursements, costs, and attorneys' fees; and

5. Such other and further relief as may be just and proper.

Dated: January 14, 2010
New York, New York

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