

Amended by Order of Mr Justice Jack dated 1 December 2014

IN THE SUPREME COURT OF GIBRALTAR

Claim No. 2014 – C – 110

CIVIL DIVISION

BETWEEN:

CHEVRON CORPORATION

Claimant

and

(1) AMAZONIA RECOVERY LIMITED

(2) WOODSFORD LITIGATION FUNDING LIMITED

(3) PABLO ESTENIO FAJARDO MENDOZA

(4) LUIS FRANCISCO YANZA ANGAMARCA

(5) ERMEL GABRIEL CHAVEZ PARRA

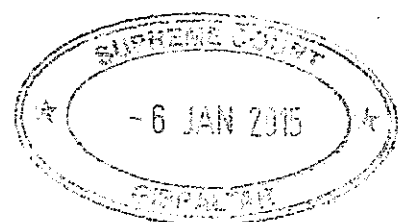
(6) JULIAN ROSS JARVIS

Defendants

AMENDED PARTICULARS OF CLAIM

**Introduction**

1. The Claimant is one of the largest global energy businesses. This claim is for damages and other relief (including an injunction) in respect of losses sustained by the Claimant as a consequence of the Defendants' involvement in and from Gibraltar in a tortious conspiracy perpetrated against the Claimant ('the Conspiracy').



2. The Conspiracy has taken many forms. At its core is the dishonest and fraudulent prosecution of a claim against the Claimant in the Republic of Ecuador (**‘the Lago Agrio Litigation’**), which resulted in a fraudulent, multi-billion dollar judgment against the Claimant (**‘the Lago Agrio Judgment’**). On 14 February 2011, the Sucumbíos Provincial Court of Justice in Ecuador (**‘the Lago Agrio Court’**) issued the Lago Agrio Judgment against the Claimant. It was an award assessed at approximately \$9,510,776,000 (all references to \$ in these Particulars of Claim are to U.S.\$). That amount was then nearly doubled for Chevron’s failure to apologise following the verdict. The total award was therefore \$18,156,936,000.00 exclusive of costs. On 9 March 2011, Chevron appealed against the first instance judgment. The appeal was heard by the Lago Agrio Intermediate Appellate Court (**‘the Lago Agrio Intermediate Appellate Court’**). On 3 January 2012, that court handed down its judgment. The appellate judgment confirmed the first instance judgment. On 13 January 2012, the Court issued a further “clarification” of its appellate judgment as pleaded in more detail in paragraph 32.4.4 below. The award was increased by the Lago Agrio Intermediate Appellate Court on 3 August 2012 to \$19,041,414,529.00 inclusive of costs. On 12 November 2013, the National Court of Justice of Ecuador (**‘the National Court’**) upheld the principal sum of the Lago Agrio Judgment in the reduced amount of approximately \$9,510,776,000 (i.e. it nearly halved the award by removing the punitive doubling of the compensatory award).
3. The other core aspect of the Conspiracy is a global public and private pressure campaign (**‘the Global Pressure Campaign’**). The Global Pressure Campaign is multi-faceted and has included numerous attacks against the Claimant in the media, protests and attacks at the Claimant’s shareholder meetings, public attacks on Chevron’s executive management and board of directors, the malicious prosecution of the Claimant’s attorneys, and even pressure directed against analysts covering Chevron in the financial markets.
4. In summary, the Claimant’s claim against the ~~First and Second~~ Defendants is as follows:
  - 4.1. For many years, the Claimant has been the target of the Conspiracy, which has been perpetrated by numerous individuals and organisations (**‘the**

**Conspirators**'). The Conspirators include, among others, Steven Donziger, the ringleader of the Conspiracy, the ~~four individual directors of the First Defendant (Pablo Fajardo, Luis Yanza, Ermel Chavez, and Julian Jarvis), and the First and Second Defendants to this claim.~~ First and Second Defendants, and the Third to Sixth Defendants who at all relevant times were the individual directors of the First Defendant ('the Director Defendants'). The Third to Fifth Defendants continue to hold office as directors of the First Defendant. The Sixth Defendant resigned as a director on 2 May 2014 (after the Claimant had sent him a Letter Before Action and request for pre-action disclosure on 22 April 2014). Where appropriate, individual and corporate conspirators are specifically identified in these Particulars of Claim.

- 4.2. The goal of the Conspiracy is to extract a multi-billion dollar payment from the Claimant for the benefit of the Conspirators.
- 4.3. The Claimant has never operated in Ecuador. Through a combination of the Lago Agrio Litigation and the Global Pressure Campaign, the Conspirators have sought to compel the Claimant to pay out billions of dollars in relation to the alleged effects of the operations of Texaco Petroleum Company ("TexPet") in Ecuador.
- 4.4. The Conspiracy has employed unlawful means. As pleaded in detail below, after a six week trial in the U.S. against other defendants (including the ringleaders of the Conspiracy), a U.S. federal judge held that "[t]he wrongful actions of [the Conspirators] would be offensive to the laws of any nation that aspires to the rule of law, including Ecuador – and they knew it." In particular:
  - 4.4.1. The Lago Agrio Litigation was and is irredeemably tainted by fraud, corruption, bribery and improper political influences, and the Lago Agrio Judgment, obtained against the Claimant from the Lago Agrio Court and ultimately the National Court as a result, is the product of such frauds and unlawful conduct. The Conspirators are seeking to enforce the Lago Agrio Judgment on an ongoing basis in order to reap

a substantial financial benefit from it (and therefore from their fraudulent and unlawful conduct).

- 4.4.2. The Global Pressure Campaign was and is devoted to the dissemination of lies, malicious falsehoods, misleading statements, and other tortious conduct in an effort to compel the Claimant to pay out a huge sum of money to the Conspirators.
- 4.5. Further or alternatively, the sole or predominant purpose of the Conspiracy is to injure the Claimant by causing it massive irreparable damage.
- 4.6. The Claimant's allegations concerning the unlawful conduct perpetrated in furtherance of the Conspiracy have recently been upheld after a full trial on the merits in a U.S. federal court. Several of the key Conspirators, including Mr Donziger and the Third and Fourth Defendants, were defendants to the action in the U.S. federal court. Its findings are conclusive against Mr Donziger. As pleaded in detail below, it is averred that the findings are also conclusive against the First Defendant and the Third to Sixth Defendants.
- 4.7. The First Defendant is a private company incorporated under the laws of Gibraltar that is ultimately owned and at all relevant times has been controlled by the Conspirators, and in particular Mr Donziger, the ~~First Defendant's directors~~ Director Defendants, and other core Conspirators who have funded the Conspiracy. The First Defendant is a core instrument of the Conspiracy in Gibraltar and therefore itself a Conspirator operating from Gibraltar. The First Defendant's express corporate purposes are to pay the expenses of the Conspiracy, to procure additional funding for the Conspiracy, to issue shares to additional lawyers, advisors, and funders of the Conspiracy, and to receive and distribute the proceeds of the Conspiracy (including any proceeds of the Lago Agrio Judgment). The First Defendant is therefore a key part of the machinery of the Conspiracy, being the clearing-house for both incoming funding and support and outgoing proceeds of the Conspirators' unlawful scheme.

4.8. The Second Defendant is an English registered company that has funded and supported the continued prosecution of the Lago Agrio Litigation (through continued multi-jurisdictional enforcement efforts and in various other legal proceedings) and the continued perpetration of the Global Pressure Campaign in the expectation of itself obtaining a substantial financial benefit as a result. The Second Defendant provided its funding and structured its investment directly or indirectly through the First Defendant in Gibraltar.

4.9. At the time it provided the aforesaid funding and support from Gibraltar, the Second Defendant had actual knowledge of or was wilfully blind to the fraudulent and dishonest nature of the Lago Agrio Litigation and/or the Global Pressure Campaign. By funding and supporting the Conspiracy in the knowledge of its unlawful means and goals, the Second Defendant joined, furthered and became a participant in the Conspiracy from Gibraltar with the First Defendant.

4.10. At all relevant times the Director Defendants served as the directors of the First Defendant. As set out in paragraph 4.1 above, the Sixth Defendant resigned as director on 2 May 2014 and accordingly where any activities of the Director Defendants are pleaded herein, such activities are intended to apply to the Sixth Defendant for the duration of his office as director of the First Defendant.

4.11. The Director Defendants are each Conspirators who have, in various roles and at various times as pleaded more fully below, played integral roles in the Conspiracy over several years. Individually and collectively, they represent the directing mind and will of the First Defendant and are its agents, and in those capacities are responsible for its involvement and actions in the Conspiracy. In the premises:

4.11.1. The Director Defendants' knowledge is to be attributed to the First Defendant as a matter of law; and

4.11.2. The Director Defendants are personally liable to the Claimant for the unlawful acts of the First Defendant that they knowingly caused or procured the First Defendant to commit.

## **Background**

### *TexPet's operations in Ecuador*

5. TexPet operated in the Oriente region of Ecuador between 1965 and 1990. TexPet's operations in Ecuador were pursuant to an oil exploration and production concession granted to it and the Ecuadorian Gulf Oil Company ('**Gulf**') in 1964 by the Government of the Republic of Ecuador ('**the RoE**'). Starting with Gulf, TexPet's exploration and production activities were carried out alongside various companies ('**the Consortium**'). Ecuador's state-owned oil company, which has over time been known by various names but is described in these Particulars of Claim as '**Petroecuador**', became a stakeholder in the Consortium in 1974, and its ownership interest increased to approximately two-thirds by the time the Consortium contract expired. On 31 December 1976, the RoE (through Petroecuador) became the 62.5% majority stakeholder of the Consortium. In 1990, Petroecuador took over from TexPet as the Consortium's operator. In 1992, the contract creating the Consortium expired and Petroecuador (and therefore the RoE) assumed 100% ownership of the Consortium's oilfields, facilities and operations.
  
6. After the cessation of the Consortium's operations, the RoE, TexPet, and Petroecuador negotiated certain environmental and social remediation work to be carried out at the former sites of the Consortium's operations (among other places) ('**the Remediation Work**'). Those negotiations culminated in a settlement agreement dated 4 May 1995 ('**the 1995 Settlement Agreement**'). Pursuant to the terms of the 1995 Settlement Agreement:
  - 6.1. TexPet (including any and all defined "*Releasees*", which included any future parent corporation of TexPet) was to be immediately and forever released and discharged from all claims based on "*Environmental Impact*" in relation to Consortium sites falling outside the scope of the Remediation Work; and

- 6.2. On completion of the Remediation Work, TexPet (again including any future parent corporation thereof) was to be similarly released in relation to the sites covered by the Remediation Work.
7. On 30 September 1998, a final release (**'the 1998 Release'**), upon which the Claimant will rely at trial for its full terms, meaning and effect, was executed by the RoE, Petroecuador (together with one of its subsidiaries), and TexPet certifying that TexPet had fully performed its obligations under the 1995 Settlement Agreement and fully and "*forever*" releasing, absolving and discharging TexPet (including all and any "*Releasees*") from any environmental liability arising from the Consortium's activities including all and any liability arising from "*collective*" or "*diffuse*" rights claims but excluding individual personal injury or property damage claims.

*The 1995 Settlement Agreement and the 1998 Release applied to the Claimant*

8. On 9 October 2001, one of the Claimant's ultimate subsidiaries merged with Texaco Inc., the ultimate parent of TexPet, and thereby became an indirect shareholder of TexPet. At all times following the transaction, the Claimant and TexPet remained separate corporate entities.
9. Although the Claimant did not succeed to or assume any of TexPet's antecedent or future obligations and liabilities as a consequence of the said transaction or otherwise, the Claimant is and was at all relevant times a "*Releasee*" within the meaning and scope of the 1995 Settlement Agreement and 1998 Release.
10. In 2009 the Claimant initiated an international arbitration against the RoE under the Bilateral Investment Treaty between the U.S. and the RoE, captioned *Chevron Corporation and Texaco Petroleum Company v The Republic of Ecuador*, PCA 2009-23, seeking vindication of its rights under the 1995 Settlement Agreement and the 1998 Release (**'the BIT Arbitration'**). The Claimant's status as a "*Releasee*" was confirmed by the Arbitral Tribunal in the BIT Arbitration. In a First Partial Award on Track I dated 17 September 2013 (**'the BIT Award'**), the Tribunal held that Chevron was a "*Releasee*" within the terms of the 1995 Settlement Agreement and the 1998 Release, and that the rights that the 1995 Settlement Agreement and 1998 Release released were "*diffuse*" or "*collective*" rights. For the avoidance of doubt, all issues

relating to the scope, and the RoE's breach, of the 1995 Settlement Agreement and 1998 Release, as well as the identity of claims in the Releases and the Lago Agrio Litigation are subject to the exclusive jurisdiction of the Tribunal in the BIT Arbitration.

### **The Conspiracy**

11. The Conspiracy involves the attempt by the Conspirators to dishonestly and fraudulently extract a multi-billion dollar payment from the Claimant in relation to alleged environmental damage allegedly caused by TexPet in Ecuador.
  
12. The Conspirators are a group comprised of numerous individuals and organisations. Where relevant, particular Conspirators are identified below. At all material times, the ringleader of the Conspiracy was and remains Mr Donziger. Mr Donziger is the overall lead advisor and driving force behind the Lago Agrio Litigation and the Global Pressure Campaign. Other key Conspirators include the ~~individual directors of~~ Director Defendants; the ~~First~~ Third Defendant: ~~Mr Pablo Fajardo~~ (the lead Ecuadorian attorney for the Conspirators in the Lago Agrio Litigation), ~~Mr Luis Yanz~~ the Fourth Defendant (a principal controller of the flow of funds to the Conspiracy, and a major media and government contact for the Global Pressure Campaign), ~~Mr Emmel Chavez~~ the Fifth Defendant (one of the key actors in the Global Pressure Campaign), and ~~Mr Julian Jarvis~~ the Sixth Defendant (one of the strategists behind the Conspirators' plans to enforce the Lago Agrio Judgment, the Global Pressure Campaign, and a key lieutenant and representative of the Conspirators' largest funder in Gibraltar).
  
13. On 1 February 2011, the Claimant issued proceedings against Mr Donziger and certain other Conspirators, including the Third and Fourth Defendants, in the United States District Court for the Southern District of New York which alleged violations of the Racketeer Influenced and Corrupt Organizations Act ('**RICO**'), among other things ('**the RICO Action**'). Those proceedings set out in detail the unlawful acts committed by the Conspirators.
  
14. On 4 March 2014, Judge Lewis A. Kaplan handed down his judgment and opinion in the RICO Action ('**the RICO Judgment**'). The RICO Judgment was in the



Claimant's favour, and upheld the Claimant's factual allegations concerning the unlawful conduct of the Conspiracy. The underlying unlawful acts set out in the following paragraphs of this section are materially identical to those relied on by Chevron and determined in its favour in the RICO Judgment. The RICO Judgment is therefore of key relevance to these proceedings. In particular, it has preclusive effect on Mr Donziger, and ~~his~~ the Third and Fourth Defendants and their privies, which the Claimant will contend include the ~~First Defendant~~ and Fifth and Sixth Defendants.

~~14.15.~~ In the 485-page written opinion in the RICO Judgment, Judge Kaplan performed a detailed examination of the evidence submitted by the Claimant in support of its allegations about the Conspiracy and the evidence submitted by the Defendants (including Mr Donziger) in response. Judge Kaplan concluded that the Claimant's case concerning the unlawful conduct of the Conspirators was proved in every material respect.

~~15.16.~~ As pleaded in paragraphs 2 and 3 above, the unlawful, fraudulent, and criminal acts that comprise the Conspiracy fall broadly into two groups, the Lago Agrio Litigation (and the Conspirators' attempts to enforce the Lago Agrio Judgment) and the Global Pressure Campaign. The unlawful acts of the Conspiracy are pleaded in the following Particulars of Claim. Each of those acts had as its principal (or sole) goal the illegitimate extraction of billions of dollars from the Claimant for the Conspirators' personal enrichment.

### **The Lago Agrio Litigation**

*The Lago Agrio Litigation was commenced dishonestly and is an abuse of process*

~~16.17.~~ At the time of execution of the 1998 Release, there was no statutory or other basis in Ecuador for private individuals to pursue claims based on collective or diffuse environmental rights for damages. Only the RoE could exercise those rights pursuant to its constitutional duties. In 1999, the RoE enacted the Environmental Management Act 1999 ('**the 1999 Act**'), which conferred upon private individuals the right to bring claims for general environmental injury to the community – i.e. the same type of claims that had been forever extinguished against the Releasees (including Chevron and TexPet) by the 1995 Settlement Agreement and 1998 Release.

17-18. The Conspirators provided assistance in drafting the 1999 Act. The Conspirators used the 1999 Act to commence the Lago Agrio Litigation notwithstanding the 1995 Settlement Agreement and 1998 Release. The Conspirators pressed for the enactment of the 1999 Act for the specific purposes of (i) circumventing the effect of the 1995 Settlement Agreement and 1998 Release; and (ii) commencing the Lago Agrio Litigation.

18-19. The Lago Agrio Litigation was commenced by the Conspirators in May 2003 against the Claimant alone and not against TexPet or any other Consortium party. The action was purportedly brought in the names of 48 individuals (**'the LAPs'**) who were alleged to have been affected by the Consortium's operations. The Lago Agrio Litigation was not, however, based on claims to recover damages for personal injuries or property damage suffered by any of the LAPs individually. Instead, relying solely on the community's "*collective*" or "*diffuse*" rights, they sought and were awarded damages based on the alleged costs of remediating general "*environmental damages.*" At all material times, the Conspirators' sole or predominant goal was to extract a huge payment from the Claimant to enrich themselves, and not to remedy any alleged environmental damage in Ecuador.

*The Conspirators subverted and fabricated the expert evidence in the Lago Agrio Litigation*

19-20. Expert evidence was the principal source of evidence that was submitted in the Lago Agrio Litigation. The Conspirators, led by Mr Donziger, ensured that the evidence upon which the Lago Agrio Judgment was based was fabricated by them to support the claims they were advancing.

20-21. The expert evidence in the Lago Agrio Litigation proceeded in three broad steps:

20-1-21.1. A process known as "*judicial inspection*" (**'the Judicial Inspection Process'**), which involved each party nominating experts who were then appointed by the Court to investigate and report on conditions at selected sites (**'the Judicial Inspection Experts'**). This was the procedure adopted by the Lago Agrio Court on or around 29 October 2003.

~~20.2-21.2.~~ A process known as “*global assessment*” (**‘the Global Assessment’**), which involved the appointment by the Court of a single, purportedly independent, court expert to investigate and report on conditions at specified sites. This was the procedure adopted by the Lago Agrio Court between 29 January 2007 and around 2 August 2010. The single joint expert appointed by the Lago Agrio Court was Mr Richard Stalin Cabrera Vega (**‘Mr Cabrera’**).

~~20.3-21.3.~~ On 2 August 2010, the Lago Agrio Court gave effect to a request by the LAPs that the parties submit “*supplementary information to aid this Court in the process of assessing the global damages*” (**‘the Supplemental Experts’ Reports’**).

~~21-22.~~ The Conspirators fabricated evidence at each of the three aforementioned stages, thereby subverting the expert evidence to further the aims of the Conspiracy.

~~22-23.~~ In relation to the Judicial Inspection Process:

~~22.1-23.1.~~ Mr David Russell was the Conspirators’ chief environmental scientist during the Judicial Inspection Process in 2004. In that capacity, he oversaw their sampling and investigation of the oil production sites in 2004. Mr Russell, whose sworn evidence was accepted in full in the RICO Action, has confirmed that, among other things, the Conspirators suppressed evidence undermining their case and fabricated evidence that supported it.

~~22.2-23.2.~~ The Conspirators submitted two reports from Dr Charles Calmbacher, a Judicial Inspection Expert whom they nominated. Dr Calmbacher, whose sworn evidence was also accepted in the RICO Action, has confirmed that the reports submitted by the Conspirators in his name were not the reports authored by him and did not represent his conclusions. The Conspirators (particularly Mr Donziger) tricked Dr Calmbacher into signing blank pages and then, without Dr Calmbacher’s knowledge or consent, overtyped their own fabricated reports (containing conclusions different and opposite from those of Dr Calmbacher) on those pages and submitted them to the Lago Agrio Court in Dr Calmbacher’s name.

23-24. In relation to the Global Assessment:

23.1-24.1. The appointment of Mr Cabrera (and the cancellation of the Judicial Inspection process) was made by the Lago Agrio Court improperly and at the behest of the Conspirators, who induced the judge to do so through means which included the threat of corruption allegations against him, made during a number of *ex parte* and undisclosed meetings with the judge.

23.2-24.2. The Conspirators wanted Mr Cabrera appointed as the “*independent*” expert because they had secretly met with him and believed that he would be complicit in their scheme. To ensure his complicity, the Conspirators bribed Mr Cabrera throughout Mr Cabrera’s involvement in the Lago Agrio Litigation.

23.3-24.3. The Conspirators held *ex parte*, secret, and unlawful meetings with Mr Cabrera, prior to his appointment by the Lago Agrio Court as the single, purportedly “*independent*” expert, with the express purpose of planning the contents of his report with him in a manner favourable to the Conspirators.

23.4-24.4. The Conspirators then ghostwrote Mr Cabrera’s report, fabricating evidence that they presented as independent scientific results and analysis. The final report was submitted on 1 April 2008 (**‘the Cabrera Report’**), and purported to hold Chevron liable for damages in the sum of circa \$16 billion. The Cabrera Report falsely claimed on its face that it had been prepared by Mr Cabrera.

23.5-24.5. The Conspirators sought to compound the false impression of the independence of the Cabrera Report by drafting a series of questions and critical comments on it (dated 16 September 2008). They then, however, ghostwrote Mr Cabrera’s answers to their own questions and comments. They filed these responses almost wholesale in a supplemental report dated 17 November 2008 (**‘the Supplemental Cabrera Report’**) that purported to hold Chevron liable for damages in the sum of circa \$27 billion.

24-25. The Conspirators' unlawful collusion with Mr Cabrera, their ghostwriting of the Cabrera Report, and their dishonest attempts to bolster Mr Cabrera's "*independence*" have all been confirmed by the Conspirators' own documents, by video showing them meeting with Mr Cabrera, and by the sworn evidence of individuals from Stratus Consulting Inc. ('*Stratus*'), the Conspirators' lead scientific advisors during the Global Assessment Process. In the RICO Judgment, Judge Kaplan found that the Cabrera Report was "*not written by Cabrera,*" that in fact the Conspirators "*wrote the overwhelming bulk of his report and his responses to Chevron's objections, as well as to the deceitful comments Stratus had written on its own report,*" and that there is "*no evidence*" that Cabrera ever actually reviewed any aspect of the report that was filed under his name.

25-26. Moreover, the Conspirators themselves recognised that their conduct in relation to the Cabrera Report was unlawful. In an email dated 30 March 2010, one of the Ecuadorian Conspirators (an attorney called Julio Prieto) wrote to Mr Donziger (together with a number of other key Conspirators) expressing concern that the Conspirators' conduct in relation to Mr Cabrera was being exposed by Chevron in the U.S. In a stark statement, Mr Prieto said that the exposure of the Conspirators' conduct would be "*potentially devastating,*" could "*destroy[] the [Lago Agrio Litigation]*" and mean that "*all of us [Ecuadorian attorneys] might go to jail.*"

26-27. Finally, in the RICO Judgment, Judge Kaplan found that "*Cabrera was not even remotely independent*" and that his report was ghostwritten at the instigation of Mr Donziger who "*knew at every step that what he and [the Conspirators] did with Cabrera was wrong, deceptive, and illegal.*"

27-28. In relation to the Supplemental Experts' Reports:

27.1-28.1. \_\_\_\_\_ The Supplemental Experts' Reports were filed with the Lago Agrio Court on behalf of the LAPs on 16 September 2010 and comprised seven new experts' reports that each dealt with a specific part of the damages quantified in the Cabrera Report. The cumulative effect of the reports was to increase the quantification of the damages claimed on behalf of the LAPs to up to \$113

billion (including alleged unjust enrichment), some \$86 billion higher than the increased damages calculation in the Supplemental Cabrera Report.

~~27.2-28.2.~~ The Claimant will contend that the true reason why the Conspirators sought and obtained permission from the Lago Agrio Court to file the Supplemental Experts' Reports was because the Conspirators knew that their fraud in relation to the Cabrera Report was imminently going to be exposed by the Claimant. The Conspirators therefore arranged for the preparation of the Supplemental Experts' Reports so as to "*cleanse*" (the term used by the Conspirators, including the law firms who were acting for them) the Cabrera Report.

~~27.3-28.3.~~ The Supplemental Experts' Reports purported to be independent but, in reality, the new experts repackaged and recycled Mr Cabrera's data and arrived at conclusions such that their purported "new" reports were merely reiterations of parts of the Cabrera Report. The Supplemental Experts' Reports were prepared without conducting any genuine independent analysis of the Cabrera Report's conclusions or the data upon which the Cabrera Report was based. In the premises, they were based on the same fabricated evidence as the Cabrera Report.

*The Lago Agrio Judgment was the product of fabricated evidence, corruption, and ghostwriting*

~~28-29.~~ The first instance Judge appointed to try the Lago Agrio Litigation was Judge Nicolás Augusto Zambrano Lozada (**Judge Zambrano**). (Other judges had previously been appointed during specific parts of the case.) The Conspirators bribed Judge Zambrano to permit them to ghostwrite the Lago Agrio Judgment. In the premises, Judge Zambrano (and through him, the Lago Agrio Court) joined the Conspiracy against the Claimant.

~~29-30.~~ The Lago Agrio Judgment was delivered at first instance on 14 February 2011. As set out in paragraph 2 above, it purported to find the Claimant liable for damages assessed at \$18,156,936,000.00. The Lago Agrio Judgment was, however, drafted by the

Conspirators and based on the evidence that they had fabricated. In this regard, the Claimant will rely at trial, *inter alia*, on:

29-1-30.1. The evidence of Judge Alberto Guerra Bastidas ('**Judge Guerra**'), who has confirmed in testimony in the trial of the RICO Action that the Conspirators recruited Judge Zambrano to their number and bribed him to permit them to ghostwrite the first instance Lago Agrio Judgment.

29-2-30.2. The findings of Judge Kaplan in the RICO Action who, having heard Judge Zambrano testify for 3 days, rejected his evidence in all material respects, and held (*inter alia*) that he was "*astonishingly unfamiliar with important aspects*" of the Lago Agrio Judgment that he claimed to have written.

29-3-30.3. Forensic and linguistic expert evidence that will demonstrate that the first instance Lago Agrio Judgment relied on portions of documents and data, and contained linguistic markers, that came from the Conspirators' internal work product that was never made part of the Lago Agrio Court record and can only be the product of ghostwriting.

30-31. In the RICO Judgment, having heard evidence from Judge Zambrano and Judge Guerra, Judge Kaplan concluded that the Conspirators "*bribed [Judge] Zambrano to allow them to write the judgment and issue it under his name.*"

*The appellate judgments expressly ignored the Claimant's evidence of fraud and collusion, and were themselves the products of unlawful and illegal judicial collusion and corruption*

31-32. The Lago Agrio Intermediate Appellate Court handed down the intermediate appellate judgment on 3 January 2012, affirming the ghostwritten first instance judgment. Not only did the Lago Agrio Court expressly refuse to address the Claimant's allegations of fraud in the appellate judgment, but the appellate process itself was tainted by illegality, misconduct and improper political influences. In support of that allegation, the Claimant will rely, *inter alia*, upon the following matters:

~~31.1.32.1.~~ The selection of the appellate judges was the product of a corrupt process.

~~31.2.32.2.~~ Further and in any event, the Claimant filed its appeal against the first instance Lago Agrio Judgment on 9 March 2011. The appellate panel purported to confirm the first instance judgment on 3 January 2012, just 10 months later. Within the 10 month period of the appeal process, 5 judges were shuffled on and off the appeal panel. The final appellate panel was only in place from around 29 November 2011, just over a month before the appeal judgment was handed down on 3 January 2012. It is averred that the appellate panel could not possibly have (and did not) conducted a genuine and complete review of the Lago Agrio Court record (as it claimed to do) in that time period.

~~31.3.32.3.~~ Yet further and in any event, the appellate judgment is an inadequate document that fails to address the myriad issues raised in the case. It consists of 16 pages, yet purports to confirm a 188 page judgment, and supposedly considers and determines the Claimant's allegations of multiple frauds (as to which see paragraph 32.4.4 below), and represent a "*de novo*" review of a 237,000 page trial court record.

~~31.4.32.4.~~ Yet further and in any event, the appellate panel's treatment of the Claimant's allegations of fraud was inconsistent and (it is to be inferred) the product of further corruption by the Conspirators. In particular:

~~31.4.1.32.4.1.~~ The original appellate judgment dated 3 January 2012 expressly provided that the Lago Agrio Court had "*no competence*" to address the fraud claims raised by Chevron.

~~31.4.2.32.4.2.~~ The Conspirators, acting in the name of the LAPs, then moved for clarification and amplification of the appellate decision, asking the appeal panel to "*clarify*" that, contrary to the statement in the appellate judgment, the appeal panel had in fact reviewed Chevron's allegations of fraud.



~~31.4.3.~~32.4.3. Chevron opposed this request in a written submission filed at 4:10 p.m. on 12 January 2012.

~~31.4.4.~~32.4.4. Just a few hours after Chevron had submitted its opposition, however (a timeframe that precluded proper consideration of Chevron's objections), the appeal panel issued a clarification order on 13 January 2012 (at 8:57 a.m.), purporting to state that it had considered – and rejected – the allegations of fraud. At the same time, however, the clarification order also stated that the Lago Agrio Intermediate Appellate Court “*stays out of these accusations*” by Chevron and that its ruling was “*preserving the parties' rights ... to continue the course of the actions that have been filed in the United States of America ...*”, concluding that “... [i]t is obvious that it was not its [i.e. the Lago Agrio Intermediate Appellate Court's] responsibility to hear and resolve proceedings that correspond to another jurisdiction.”

~~31.4.5.~~32.4.5. In the premises, the appellate panel adopted a wholly inconsistent approach to its purported adjudication of the Claimant's allegations of fraud. Furthermore, the timing of the ruling by the appellate panel demonstrates that it did not give any or any proper consideration to the Claimant's objections to the Conspirators' clarification request.

~~31.5.~~32.5. Yet further and in any event, the RoE's judiciary is biased in favour of the executive, and a number of judges have a particular allegiance to President Correa, who became a public, ardent supporter of the Lago Agrio Litigation since his election in 2006, and called the Lago Agrio Judgment the most important court ruling in the history of the RoE. The Claimant will rely on expert evidence at trial in relation to the fraud and corruption that is endemic in the Ecuadorian judicial and executive systems. Moreover, the RICO Judgment confirms that “*Ecuador, at no time relevant to [the Lago Agrio Litigation] provided impartial tribunals or procedures compatible with the due process of law.*”

~~32-33.~~ The decision of the National Court was handed down on 12 November 2013. As did the Lago Agrio Intermediate Appellate Court, the National Court refused to consider Chevron's allegations of fraud and was itself tainted by misconduct. In support of that allegation, the Claimant will rely, *inter alia*, upon the following matters:

~~32-1-33.1.~~ The National Court refused to consider Chevron's claims of fraud and misconduct, including the fact that the first instance Lago Agrio Judgment had been ghostwritten, meaning that no appellate court in Ecuador had addressed those claims.

~~32-2-33.2.~~ The author of the National Court's decision, Wilson Andino, was improperly appointed as a matter of Ecuadorian law and as a matter of natural justice and/or fairness.

~~32-3-33.3.~~ Expert evidence that proves that fraud, corruption, denial of justice and improper political interference are rampant within the judicial and executive branches of the RoE during and as a consequence of the Correa administration, particularly in cases in which President Correa takes a personal interest.

### **The Global Pressure Campaign**

~~33-34.~~ Another core part of the Conspiracy is the Global Pressure Campaign carried out by the Conspirators. The goal of the Global Pressure Campaign is to coerce the Claimant into paying off the Conspirators. The Conspirators launched a series of defamatory public and private attacks on the Claimant with a view to damaging its reputation and pressuring it to making a payment to terminate the Global Pressure Campaign. The essential premise of the Global Pressure Campaign was set out in a memorandum prepared by Mr Donziger and circulated to his team shortly after commencement of the Lago Agrio Litigation. In his memorandum, Mr Donziger explained that they would use celebrities, non-governmental "*pressure*," national and international press, a "*divestment campaign*" to convince institutional investors to sell the Claimant's stock, and a criminal case in Ecuador to force the Claimant to make a payment to the Conspirators.

34-35. The Global Pressure Campaign is multi-faceted and has included numerous attacks against the Claimant in the media, protests and attacks at the Claimant's shareholder meetings, public attacks on the Claimant's executive management and board of directors, the malicious prosecution of the Claimant's attorneys, and even pressure directed against analysts covering Chevron in the financial markets.

35-36. The public attacks launched against the Claimant by the Conspirators falsely state and/or misrepresent that the Claimant is responsible for environmental damage to the Oriente region of Ecuador, they fraudulently misrepresent the manner in which the Lago Agrio Litigation has been conducted, they falsely claim that the evidence upon which the Lago Agrio Judgment was based was genuine, and they dishonestly contend that the purported findings of the Ecuadorian Court are legitimate findings of liability.

36-37. Without prejudice to the generality of the foregoing, the Claimant will rely at trial on the following examples of the Global Pressure Campaign:

36-1-37.1. As set out in paragraph 23.1 above, Mr Russell was the Conspirators' lead scientific advisor in 2004 during the Judicial Inspection Process, and he has confirmed on evidence that the Conspirators suppressed evidence undermining their case and fabricated evidence that supported it. Furthermore, Mr Russell has confirmed on evidence that Mr Donziger deceived him into providing an estimate of damages in the sum of \$6 billion (that Mr Russell recognised was unscientific and little more than a guess based on false factual assumptions provided by Mr Donziger), and told him that the estimate was for the purpose of the Global Pressure Campaign. The Conspirators repeatedly deployed the estimate in their media campaign. When Mr Russell learned the truth about the situation in Ecuador, he asked Mr Donziger to stop using it, but was ignored. Eventually, Mr Russell was forced to write a formal letter to Mr Donziger threatening legal proceedings to compel him to stop using the dishonestly obtained estimate. Even then, the Conspirators continued knowingly to use Mr Russell's false and misleading estimate for two more years. Mr Russell's evidence was accepted in full by Judge Kaplan in the RICO Judgment.

~~36.2~~37.2. The Conspirators repeatedly blamed the Claimant for alleged illnesses and deaths in the Oriente region despite the fact that Mr Russell had told Mr Donziger that the data Mr Russell had analysed did not support any link between oil operations and illnesses or deaths. The Conspirators even paid for a photojournalist, Mr Lou Dematteis, to visit Ecuador and create a collection of photographs by searching for people who were suffering from disease (without making any or any proper or scientific attempt to ascertain the cause of that disease) and taking and publishing pictures of them.

~~36.3~~37.3. The Conspirators have repeatedly and emphatically claimed in the media and on the internet that the Cabrera Report is an independent report despite knowing that it is not. Further, the Conspirators have made such untruthful statements to U.S. federal and state government officials.

~~36.4~~37.4. The Conspirators have supported and/or arranged public demonstrations against Chevron, notably in the form of disruptions of its shareholders' meetings and planning personal attacks on Chevron's board of directors. By way of example, in an email dated 28 May 2010, Rebecca Tarbotton (Acting Executive Director of the Rainforest Action Network, a public pressure organisation harnessed by the Conspirators as part of the Global Pressure Campaign) informed supporters that "*We're entering into a phase of hitting each board member, one at a time, until Chevron moves.*"

~~36.5~~37.5. The Conspirators commissioned and paid for the production of a propaganda film, *Crude: The Real Price of Oil*, which masqueraded as a documentary but in fact propagated the Conspirators' untruthful messages.

~~36.6~~37.6. Several of the Conspirators have sought to manipulate and interfere with the Claimant's existing and potential business relationships by targeting the Claimant's shareholders, potential investors, stock analysts, and customers with false and misleading statements. In particular (but without prejudice to the generality of the foregoing), the Conspirators have made public calls for a boycott of the Claimant's products.

~~36.7.~~37.7. The Conspirators have joined with the corrupt executive branch of the RoE to disseminate the Global Pressure Campaign: in September 2013, President Correa (who was and is using his position to exert improper executive interference in the Lago Agrio Litigation and the Global Pressure Campaign) called for a global boycott of Chevron-produced products and the company's gasoline stations. He referred to Chevron as an "abusive" and "corrupt" company.

~~36.8.~~37.8. Between 2003 and 2011, the Conspirators, in conjunction with several RoE government officials, developed a strategy designed to pressure multiple Ecuadorian Prosecutors into pursuing false criminal claims against two of Chevron's attorneys in Ecuador, Ricardo Reis Veiga and Rodrigo Pérez Pallares, in relation to their certification of Remediation Work that led to the 1998 Release. In the premises, the Conspirators committed the tort of malicious prosecution against Mr Veiga and Mr Pérez.

~~37.~~38. At all material times, the Global Pressure Campaign has been spearheaded by Mr Donziger and Ms Karen Hinton, a public-relations consultant, together with the Rainforest Action Network and Amazon Watch, two activist organisations that in reality are mouthpieces for the Conspirators.

**The First Defendant is owned and controlled by the Conspirators (including the Director Defendants) as a vehicle for the perpetration of the Conspiracy from Gibraltar**

~~38.~~39. The First and Second Defendants have been core participants in the Conspiracy from Gibraltar, which has become the financial heart of the Conspirators' scheme. Save where indicated otherwise, any acts or omissions by them which are relevant to this action have been carried out in, from, or through Gibraltar.

~~39.~~40. The First Defendant is a company registered in Gibraltar under company number 107788. The First Defendant's registered office is 6A Queensway, Gibraltar. As pleaded in the following paragraphs, the First Defendant has played a central role in the Conspiracy since at least January 2013, and has been and remains responsible for the inflow and outflow of funds from it. The First Defendant's purpose is to execute the goals of the Conspiracy by funding the expenses of the Conspiracy, raising further

funds to support the Conspiracy, issuing shares to advisors, lawyers, and funders of the Conspiracy, and receiving and paying out any proceeds that the Conspirators obtain through enforcement of the unlawfully obtained Lago Agrio Judgment. At all relevant times the Director Defendants, together with Mr Donziger, have executed and, in the case of the Third to Fifth Defendants, continue to execute the First Defendant's purpose and thereby further the aims of the Conspiracy.

40-41. The First Defendant was incorporated on 4 May 2012. Another Gibraltar company, GT Nominees Limited ('GT Nominees'), is the legal owner of 95.74% of the issued shares in the First Defendant. GT Nominees is also the legal owner of 100% of the shares in another Gibraltar company, Torvia Limited ('Torvia'), which in turn owns the residual 4.26% of the issued shares in the First Defendant. Until Torvia acquired its shares in the First Defendant in January 2013, GT Nominees was the sole legal shareholder in the First Defendant. To the best of the Claimant's knowledge, GT Nominees is a wholly owned subsidiary company of Grant Thornton International. Accordingly, it is averred that at all material times between 4 May 2012 and January 2013, GT Nominees held the original shares in the First Defendant on trust and/or as nominee for a beneficial owner or owners (the identity of whom is not within the Claimant's knowledge). The Claimant will endeavour to give further details of the beneficial owner(s) of the original shares after disclosure.

*The First Defendant's ownership was restructured in January 2013*

41-42. On or around 29 January 2013, the First Defendant's shareholding was restructured to provide for a number of different classes of shares. It is averred that the restructured shareholding makes it clear that from at least January 2013, the First Defendant was intended to and did occupy a central position in the Conspiracy, bringing together in Gibraltar the financial interests of the Conspirators, including those who provided funding and advice in furtherance of the unlawful means and aims of the Conspiracy. The current structure of the First Defendant (insofar as it is known to the Claimant) provides for the following authorised classes of shares:

41-1-42.1. 1,000 Special Voting Shares, which are the material voting shares in the First Defendant. The holder(s) of the Special Voting Shares therefore control the First Defendant.

~~41.2.42.2.~~ 1,200,000 Class A Shares. According to the First Defendant's Amended Articles of Association (**'the Amended Articles of Association'**), Class A Shares are intended for funders who have participated in the Lago Agrio Litigation and/or the Conspirators' attempts to enforce the Lago Agrio Judgment.

~~41.3.42.3.~~ 250,000 Class B1 Participation Shares. According to the Amended Articles of Association, Class B1 shares are intended for lawyers who participate in the Lago Agrio Litigation and/or the Conspirators' attempts to enforce the Lago Agrio Judgment.

~~41.4.42.4.~~ 250,000 Class B2 Participation Shares. According to the Amended Articles of Association, Class B2 shares are intended for advisors who participate in the Lago Agrio Litigation and/or the Conspirators' attempts to enforce the Lago Agrio Judgment.

~~41.5.42.5.~~ 710,000 Class C Participation Shares. The Amended Articles of Association do not specify the intended owners of Class C shares.

~~41.6.42.6.~~ 25,000 Class D Participation Shares. The Amended Articles of Association do not specify the intended owners of Class D shares.

~~41.7.42.7.~~ 2,435,000 Nominal Shares. The Amended Articles of Association do not specify the intended owners of Nominal Shares.

*The key Conspirators and funders of the Conspiracy are the shareholders in the First Defendant*

~~42.43.~~ On 29 January 2013, the First Defendant allotted shares in accordance with the new shareholding structure pleaded in paragraph 42 above. GT Nominees was (and remains, along with Torvia) the legal owner of the newly allotted shares. According to the First Defendant's corporate documents, GT Nominees holds the shares in four sub-entities (**'the GT Sub-Entities'**), reflecting the particular class of shares that each sub-entity holds in the First Defendant. In particular, on 29 January 2013:

~~42.1~~43.1. GT Nominees Limited (BA) was allotted 63,000 Class B1 Participation shares;

~~42.2~~43.2. GT Nominees Limited (BB) was allotted 20,000 Class B1 Participation shares;

~~42.3~~43.3. GT Nominees Limited (CA) was allotted 710,000 Class C Participation shares; and

~~42.4~~43.4. GT Nominees Limited (SVS) was allotted 1,000 Special Voting Shares.

~~43.44.~~ The beneficial owners of the aforesaid newly allotted shares are not recorded in the First Defendant's corporate documents. It is averred, however, that the beneficial owners are all key Conspirators, including entities and individuals that have funded, supported, and advised the Conspiracy. In support of that contention, the Claimant will rely on:

~~43.1~~44.1. Mr Donziger's deposition and trial testimony in the RICO Action, in which he stated (in a deposition on 28 June 2013) that (with the exception of the law firm of Patton Boggs LLP and one other law firm) "*all the equity holders of the claim, the lawyers and funders, have shares* [in the First Defendant]." Mr Donziger also confirmed specifically (in a deposition on 25 June 2013) that he and ~~Mr Fajardo~~ the Third Defendant are shareholders in the First Defendant, and testified at trial (on 18 November 2013) that his beneficial interest in the First Defendant is "*roughly the equivalent*" to "*the contingency fee equity in the lawsuit.*"

~~43.2~~44.2. The finding of Judge Kaplan in the RICO Judgment that Mr Donziger owns shares in the First Defendant.

~~43.3~~44.3. Mr Donziger's declaration dated 11 April 2014 (filed in support of his emergency motion for a stay of the RICO Judgment pending appeal) in which



he relies on the alleged consequences of having to “*turn over my shares in Amazonia and relinquish any interest I have in the Lago Agrio litigation.*”

44.4. The Sixth Defendant’s admission (pleaded in more detail in paragraph 58 below) that he holds an interest in the Lago Agrio Judgment through Torvia Limited and the First Defendant.

~~43.4.~~44.5. Article 16 of the First Defendant’s Amended Articles of Association pleaded in paragraph 42 above, which states that Class A shares are intended for funders, Class B1 shares for lawyers, and Class B2 shares for advisors.

~~43.5.~~44.6. Article 1 of the First Defendant’s Amended Articles of Association, which defines the Special Voting Shares as “[n]on-redeemable, non-participating voting Shares in the Company held by the FDA.” The FDA is a reference to the *Frente de Defensa de la Amazonia*, also known as the Amazon Defense Front (“**the ADF**”), which is an organisation controlled by the Conspirators that has, *inter alia*, spearheaded the Global Pressure Campaign against the Claimant. The Claimant will endeavour to give further details of the foregoing after disclosure in these proceedings.

44.45. One of the principal funders and supporters of the Conspiracy has been James Russell DeLeon, a Gibraltar resident, billionaire and close personal friend of Mr Donziger. Mr DeLeon, personally and/or in conjunction with his Gibraltar-based corporate funding vehicle, Torvia, has actively supported and/or assisted the prosecution of the Lago Agrio Litigation and the continued perpetration of the Global Pressure Campaign since 2006. Mr DeLeon (directly and through Torvia) has provided or committed in excess of \$9 million — and potentially up to \$25 million — in funding to the Conspiracy. The Claimant issued proceedings in the Supreme Court of Gibraltar against Mr DeLeon and Torvia for their funding and support of the Conspiracy on 17 December 2012. Those proceedings were served on Mr DeLeon and Torvia on 6 and 8 February 2013 (Mr DeLeon and Torvia’s attempts to strike out the claim against them and for summary judgment were dismissed by Butler J on 14 March 2014). On 1 March 2013:

44.1.45.1. The First Defendant allotted Torvia 4,000 Class A2 Participation Shares and 70,797 Class A1 Participation Shares, in exchange for a certain “interest in an asset that was assigned to the Company.” Although the Claimant has no information about the “asset” assigned, to the best of its knowledge and belief, this allotment by the First Defendant was in exchange for a transfer of all or some substantial portion of Mr DeLeon and Torvia’s interests in the Lago Agrio Judgment and funding of the Conspiracy as of that date.

44.2.45.2. The First Defendant also allotted Torvia a further 5,000 Class A2 Participation Shares at \$500 each, for a total of \$2,500,000. To the best of the Claimant’s knowledge and belief, those shares were not in exchange for any funding provided by or attributable to Mr DeLeon but instead were attributable to the Second Defendant’s investment in the Lago Agrio Litigation. The Claimant pleads further to this in paragraph 85 below.

45.46. In the premises, it is averred that at shareholder level the First Defendant was both controlled (through the Special Voting Shares held by the ADF) and beneficially owned by the key Conspirators, including the key funders of the Conspiracy.

*The First Defendant is controlled and operated in Gibraltar by the Conspirators*

The At all relevant times the First Defendant is has been controlled by its Directors the Director Defendants

46.47. Pursuant to its Amended Articles of Association, the First Defendant is controlled by its directors, the Director Defendants. In particular:

46.1.47.1. Pursuant to Articles 96 and 96(a) of the Amended Articles of Association, the ~~directors of the First Defendant~~ Director Defendants are obliged to “do all that is reasonably within their power to achieve the purpose of [the First Defendant].” As set out in paragraphs 59 to 64 below, the First Defendant’s express purpose is to raise funds for, satisfy the expenses of, and ultimately to reap and distribute the proceeds of the Conspiracy.

~~46.2.47.2.~~ Pursuant to Article 16 of the Amended Articles of Association, if the ~~directors~~Director Defendants decide that there are insufficient funds in and/or available to the First Defendant to meet the expenses of the Conspiracy, the First Defendant (alongside the LAPs, ADF, and the Union of the Assembly of Those Affected by Texaco (**'the Union'**, an organisation that has attempted to legitimise the Lago Agrio Litigation and Global Pressure Campaign through misleading public statements and appearances) "*should seek additional funding*" from existing or new funders. As pleaded in paragraph 42.2 above, additional Class A shares may be allotted to such funders.

~~46.3.47.3.~~ Pursuant to Article 16 of the Amended Articles of Association, if the ~~directors~~Director Defendants decide that additional lawyers or advisors are needed for the First Defendant or the Conspiracy, the First Defendant should retain such lawyers and advisors and additional Class B1 or Class B2 shares may be issued to them.

~~46.4.47.4.~~ Pursuant to Article 95 of the Amended Articles of Association, the ~~directors~~Director Defendants are to be advised "*at all times*" by a Steering Committee (**'the Steering Committee'**), appointed by the LAPs, the ADF and the Union, "*to advise and assist ... in respect of the Claim ...*" Pending disclosure, the Claimant does not know the composition of the Steering Committee or (subject to paragraph 63 below) the extent to which it has played an active role in the control and management of the First Defendant.

~~47.48.~~ In the premises, it is averred that, alongside Mr Donziger, the ~~First Defendant's~~ ~~directors~~Director Defendants are individually and/or collectively the directing mind and will of the First Defendant. Insofar as necessary, the Claimant will contend that the Steering Committee members were *de facto* or shadow directors of the First Defendant.

The Directors of the First Defendant

The Director Defendants

~~48.49.~~ The directors of the First Defendant-Director Defendants and Mr Donziger are all Conspirators who have played active roles in ~~executing~~furthering the Conspiracy against the Claimant.

Mr Donziger

~~49.50.~~ It is averred that Mr Donziger is (individually and collectively with the listed ~~directors of the First Defendant~~Director Defendants) the directing mind and will of the First Defendant. The Claimant will contend that he is a *de facto* and/or shadow director of the First Defendant. It is averred that Mr Donziger (with the Sixth Defendant, as pleaded below in paragraph 55) played a central role in conceptualising and establishing the First Defendant and its role in the Conspiracy. In support of that contention, the Claimant will rely (*inter alia*) on the fact that Mr Donziger is the global ringleader of the Conspiracy as particularised in this paragraph. Mr Donziger is an attorney in the United States, and the overall lead advisor and driving force behind the Lago Agrio Litigation. He has described himself as “*the person primarily responsible for putting [the Lago Agrio] team together and supervising it.*” Judge Kaplan found in the RICO Judgment that Mr Donziger “*was in overall charge of the entire LAP effort*” and “*was the boss of the LAP Team.*” Without prejudice to the generality of the foregoing, Mr Donziger:

~~49.1.50.1.~~ \_\_\_\_\_ Controlled the team of Ecuadorian lawyers that litigated the case in Ecuador in an unlawful, dishonest, and criminal manner;

~~49.2.50.2.~~ \_\_\_\_\_ Designed and directed the fraudulent procurement of the Lago Agrio Judgment, including by orchestrating the subversion of the expert evidence and coordinating the ghostwriting of the Cabrera Report and the Lago Agrio Judgment;

~~49.3.50.3.~~ \_\_\_\_\_ Spearheaded and controlled the Global Pressure Campaign, including the overall press strategy, against the Claimant;

49.4.50.4. \_\_\_\_\_ Solicited funding and controlled the disbursement of funds in support of the Conspiracy, including funding provided by the First and Second Defendants and by Mr DeLeon and Torvia;

49.5.50.5. \_\_\_\_\_ Misled numerous U.S. courts, government agencies, and public officials regarding fraud committed during the Lago Agrio Litigation;

49.6.50.6. \_\_\_\_\_ Positioned himself to receive the largest pay-out of all the lawyers and law firms involved in the Conspiracy should the Conspirators successfully extract money from the Claimant; and

49.7.50.7. \_\_\_\_\_ Conceived of, directs, and is implementing the Conspirators' ongoing strategy to seek recognition of and enforce the fraudulently obtained Lago Agrio Judgment.

~~Mr Fajardo~~ The Third Defendant

50.51. The Third Defendant has been a director of the First Defendant since 29 January 2013. He is the key Ecuadorian ringleader of the Conspiracy who has served as lead Ecuadorian counsel for the LAPs and who holds a large contingent fee interest in the Lago Agrio Judgment. In the RICO Judgment, Judge Kaplan found that since 2005, ~~Mr Fajardo~~ the Third Defendant was "*centrally involved*" in the Conspirators' scheme and has directed and/or facilitated key components of the Conspiracy in Ecuador. In particular (and without prejudice to the generality of the foregoing) ~~Mr Fajardo~~ the Third Defendant, acting in concert with Mr Donziger and others:

50.1.51.1. \_\_\_\_\_ Played a central role in the Conspirators' subversion of the expert evidence in the Lago Agrio Litigation, by coercing the local judge to facilitate Mr Cabrera's appointment, participating in the fabrication of evidence submitted in the Cabrera Report, arranging the payment of bribes to Mr Cabrera, and playing a key role in procuring the process by which the Supplemental Experts' Reports were filed, as part of the Conspirators' efforts to "*cleanse*" the Cabrera Report of its impropriety;

~~50.2-51.2.~~ 51.2. Coordinated the bribery of Judge Zambrano and the ghostwriting of numerous interim orders in the Lago Agrio Litigation, as well as of the Lago Agrio Judgment itself; and

~~50.3-51.3.~~ 51.3. Played a key role in furthering the Global Pressure Campaign by, *inter alia*, repeatedly and deliberately making materially false and misleading statements to the media concerning the Conspirators' conduct of the Lago Agrio Litigation (for example, that the Lago Agrio Judgment resulted from a legitimate judicial process), calling for public boycotts of the Claimant's products, and publicly requesting that governments refuse to negotiate with the Claimant.

~~Mr Yanza~~ The Fourth Defendant

~~51.52.~~ The Fourth Defendant has been a director of the First Defendant since 29 January 2013. As Mr Donziger's "*closest friend*" in Ecuador, ~~Mr Yanza~~ the Fourth Defendant has been intimately involved in furthering key aspects of the Conspiracy. In the RICO Judgment, Judge Kaplan found that ~~Mr Yanza~~ the Fourth Defendant was a "*central figure*" among the Conspirators who (i) long served as the "*coordinator of the case*"; (ii) has been involved in some of the Conspirators' most significant strategic decisions; and (iii) served as a major point of contact between the Conspirators and various Ecuadorian government officials. In particular (and without prejudice to the generality of the foregoing) ~~Mr Yanza~~ the Fourth Defendant, acting in concert with Mr Donziger and others:

~~51.1-52.1.~~ 52.1. Served as the co-founder and is the current President of the ADF. He also served as the General Manager for Selva Viva, an Ecuadorian organisation responsible for administering funds for the Lago Agrio Litigation. In that capacity, he controlled the flow of funds to the Conspiracy (from the First Defendant), and acted with Mr Donziger to procure funding for many years in furtherance of the Conspiracy;

~~51.2.52.2.~~ Acted as a key media representative for the Conspirators, making false and misleading statements to the media and others concerning the Conspirators' conduct of the Lago Agrio Litigation (including that the Lago Agrio Judgment resulted from a legitimate judicial process) and otherwise maligning the Claimant;

~~51.3.52.3.~~ Exerted influence over and colluded with Ecuadorian government and court officials as part of the Global Pressure Campaign and in furtherance of goals of the Conspiracy; and

~~51.4.52.4.~~ Facilitated the unlawful appointment of Mr Cabrera and the bribes paid by the Conspirators to Mr Cabrera and Judge Zambrano as part, and in furtherance of, the unlawful conduct pleaded in paragraphs 11 to 38 above.

~~Mr Chavez~~ The Fifth Defendant

~~52.53.~~ The Fifth Defendant has been a director of the First Defendant since 29 January 2013. He is a key Ecuadorian Conspirator involved in furthering the Global Pressure Campaign against the Claimant. In particular, he is:

~~52.1.53.1.~~ The former president of the ADF, an organisation which, as pleaded above, purports to represent the LAPs and plays a key role in furthering the Global Pressure Campaign; and

~~52.2.53.2.~~ A current or former representative of the Union.

~~Mr Jarvis~~ The Sixth Defendant

~~54.~~ The Sixth Defendant, a resident of Gibraltar, ~~has been a~~ was initially appointed as sole director of the First Defendant ~~since~~ on 24 July 2012, shortly after the First Defendant's formation on 4 May 2012. He

55. It is averred that the Sixth Defendant, along with Mr Donziger, played a central role in establishing the role of, planning for, and incorporating the First Defendant. As the sole director, the Sixth Defendant was responsible for passing all board resolutions necessary for the appointment of the Third to Fifth Defendants to the First Defendant's board, the restructuring of the First Defendant and the adoption of the Amended Articles of Association which had the effect of formalising the First Defendant's role (and Gibraltar) as the financial epicentre of the Conspiracy as pleaded at paragraphs 42, 47 and 61.

56. The Sixth Defendant resigned as director of the First Defendant on 2 May 2014 following his receipt of the Claimant's Letter Before Action and request for pre-action disclosure of documents revealing the full extent of his involvement in the Conspiracy.

53-57. At all relevant times, the Sixth Defendant has been, and continues to be, a key lieutenant of Mr DeLeon and has been intimately involved with the support provided by Mr DeLeon to the Conspiracy. In particular:

53.1-57.1. Beginning in 2009, ~~Mr Jarvis~~the Sixth Defendant advised Mr Donziger and other key-Conspirators on strategy for enforcement of the Lago Agrio Judgment;

53.2-57.2. Throughout 2012, ~~Mr Jarvis~~the Sixth Defendant worked with Mr Donziger and other Conspirators on the Global Pressure Campaign, and in particular the Conspirators' strategy to pressure the Claimant's shareholders and directors. In this capacity ~~Mr Jarvis~~the Sixth Defendant discussed and edited the Conspirators' targeted investor and shareholder letters, press releases, and reports regarding the Claimant's alleged liability in Ecuador; and

53.3-57.3. ~~Mr Jarvis~~The Sixth Defendant is also the sole publicly-listed director of Torvia, and therefore plays a material role in funding the conspiracy by overseeing the operation of Mr DeLeon's funding vehicle.



58. The Sixth Defendant holds a substantial interest in the Lago Agrio Judgment through Torvia and the First Defendant, equating to approximately \$26.6 million (roughly 4% of Torvia's interest). He continues to hold that interest notwithstanding his admitted knowledge of the extensive findings made in the RICO Judgment, which established that the Lago Agrio Judgment was procured by fraud, bribery and corruption.

**The Conspirators planned for the First Defendant to play a central role in the Conspiracy from Gibraltar, and the First Defendant's corporate documentation expressly recognises that role**

54-59. The First Defendant's express purpose is to fund the expenses of the Conspiracy, to raise further funds to support the Conspiracy, to issue shares to advisors, lawyers, and funders of the Conspiracy, and to receive and pay out any proceeds that the Conspirators obtain through enforcement of the unlawfully obtained Lago Agrio Judgment.

55-60. The Conspirators envisaged the First Defendant's role as early as 2010 when Mr James Tyrrell (an American attorney then at the law firm of Patton Boggs LLP), in a memorandum entitled "*Invictus*" and drafted in or around August 2010, formulated a strategy to receive any proceeds of the Conspiracy outside of Ecuador to maximise amounts available for distribution to the Conspirators.

56-61. On 29 January 2013, GT Nominees, as the sole legal shareholder of the First Defendant, adopted the Amended Memorandum and Articles of Association that expressly set out the purposes of the First Defendant. In particular:

56-1-61.1. Article 3 of the Amended Memorandum of Association provides that "[t]he purpose of the Company shall be ... to hold and distribute monies in order to satisfy the expenses of the Claim ... to receive the proceeds of the Award" (emphases added), and to remit those proceeds including by way of dividend to the First Defendant's shareholders.

56-2-61.2. The "*Claim*" and the "*Award*" are defined in the Amended Articles of Association:

~~56.2.1~~61.2.1. The “*Claim*” is defined expressly to include “[a]ll *anticipated and unanticipated activities related to*” the Lago Agrio Litigation, proceedings to enforce the Lago Agrio Judgment, the RICO Action, and “*settlement initiatives and related matters.*” It is averred that the width of this definition includes all aspects of the Conspiracy including the Global Pressure Campaign.

~~56.2.2~~61.2.2. The “*Award*” is defined as “[a]ny and all amounts paid in respect of the *Claim*...”

~~56.3~~61.3. Article 16 of the Amended Articles of Association provides that:

~~56.3.1~~61.3.1. If the directors of the First Defendant determine that additional lawyers or advisors should be retained by the Conspirators, the First Defendant may issue (subject to certain numerical restrictions) additional Class B1 and Class B2 shares to such additional lawyers and advisors respectively.

~~56.3.2~~61.3.2. If there are insufficient funds available to fund the Conspiracy, the First Defendant and the LAPs should “*seek additional funding*” from current or additional funders, and the First Defendant may issue shares in relation to such additional funding.

~~56.4~~61.4. Article 114 of the Amended Articles of Association provides for a “waterfall” for the distribution of any proceeds of the Conspiracy by way of dividend to the Conspirators who beneficially own shares in the First Defendant. Pursuant to the “waterfall” the holders of Class D shares first receive dividends from the First Defendant, followed by Class A shares, Class B1 shares, Class B2 shares, and Class C shares.

~~57.62.~~ In a deposition on 25 June 2013, Mr Donziger confirmed that the First Defendant’s role “*concerns funding of the [Lago Agrio Litigation],*” and that it was created as a “*distribution mechanism for recovery of the judgment.*” The recovery of the judgment was one of the ultimate means by which damage was to be inflicted upon the

Claimant, and the distribution was the reward available to shareholders for supporting the execution of the Conspiracy.

~~58-63.~~ In the RICO Judgment, Judge Kaplan found that the Conspirators created the First Defendant in Gibraltar “*for receipt and distribution of any funds in consequence of the Judgment.*”

~~59-64.~~ In the premises, it is averred that the express purpose of the First Defendant, as envisaged by the Conspirators prior to its formation and confirmed by Mr Donziger since that time, is to further the Conspiracy by paying the expenses of the Conspiracy, by receiving funds for that purpose, by receiving the proceeds of the Conspiracy (whether such proceeds result from enforcement of the Lago Agrio Judgment or from the Global Pressure Campaign), and by paying out those proceeds to the Conspirators in accordance with their beneficial ownership of shares in the First Defendant.

**The First Defendant has played and continues to play a central role in the Conspiracy in accordance with its corporate purpose**

~~60-65.~~ In accordance with the Conspirators’ intentions and its corporate documents, the First Defendant has since at least January 2013 played a central role in furthering the Conspiracy against the Claimant.

~~61-66.~~ In furtherance of the common design and goals of the Conspiracy, the First Defendant became and remains the conduit for the funding into and the “*funnel*” (as found by Judge Kaplan in the RICO Judgment) for any proceeds out of the Conspiracy. In furtherance of this role, as pleaded in paragraphs 43 to 46 above, the First Defendant has knowingly served as a conduit for the ongoing investment in the Conspiracy by Mr DeLeon and Torvia. Further, as pleaded in paragraphs 78 to 86 below, the First Defendant has also knowingly served as a conduit for the investment in the Conspiracy by the Second Defendant.

~~62-67.~~ The First Defendant (through its Steering Committee) has also been responsible for approving the expenditure of the expenses of the Conspiracy. Financial documents disclosed by Joshua Rizack (described by Mr Donziger as his “*accountant*”) in connection with the RICO Action expressly indicate that as of July 2012, payments to

meet the expenses of the Conspiracy, including payments to Mr Donziger's law firm and to Ms Hinton (in support of the Global Pressure Campaign) were subject to the approval of the Steering Committee.

63-68. The First Defendant has directly funded the Conspiracy. On 4 April 2013, the First Defendant transferred \$149,000 to Selva Viva (which as pleaded in paragraph 52.1 above is an Ecuadorian organisation responsible for administering funds for the Lago Agrio Litigation).

64-69. As recently as 11 April 2014, Mr Donziger has confirmed that the First Defendant continues to play a central role in the Conspiracy. In particular, in the declaration referred to in paragraph 44.3 above, Mr Donziger stated that "*Amazonia is a corporation that exists to enforce the Ecuadorian judgment against Chevron and to distribute any funds recovered from that enforcement. Its corporate documents entitle shareholders to vote on various corporate matters.*"

**Unless it is restrained by an injunction, the First Defendant will continue to perpetrate the Conspiracy against the Claimant from Gibraltar**

65-70. As set out above, the First Defendant's express corporate purposes are to pay the expenses of the Conspiracy, to procure additional funding for the Conspiracy, to issue shares to additional lawyers, advisors, and funders to the Conspiracy, and to receive and remit the proceeds of the Conspiracy (including any proceeds of the Lago Agrio Judgment).

66-71. To the best of the Claimant's knowledge, the First Defendant therefore continues to be involved in the Conspiracy in that (i) any new funding that the Conspirators obtain to further the common design and goals of the Conspiracy will be "*funnelled*" into the Conspiracy through the First Defendant; (ii) the First Defendant will continue to pay expenses of the Conspiracy, including, for example, the costs of actions to enforce the unlawfully obtained Lago Agrio Judgment and the costs of the Global Pressure Campaign; and (iii) any proceeds of the Conspiracy will be "*funnelled*" through the First Defendant and out to the Conspirators, including those who have funded the Conspiracy.

~~67-72.~~ It is averred that the First Defendant, through ~~its directors~~the Director Defendants and Steering Committee members, will continue to seek to achieve those purposes and thereby further the Conspiracy unless and until it is (and the Director Defendants are) prevented from doing so by relief granted by the Court. By way of example, the Conspirators are (notwithstanding the RICO Judgment) actively seeking to enforce the Lago Agrio Judgment in Brazil, Argentina, Canada, and Ecuador. Moreover, ~~Mr Fajardo~~the Third Defendant stated (on 19 March 2014) that “[n]o judge in [other jurisdictions] is under any obligation to abide by Judge Kaplan’s ruling” and that the Conspirators are “*putting together proactive cases all over the world.*”

**At all material times the First Defendant ~~has~~and the Director Defendants have had actual knowledge of, and/or alternatively the Sixth Defendant was wilfully blind to, the unlawful means and goals of the conspiracyConspiracy**

~~68-73.~~ At all material times since its formation on 4 May 2012, the First Defendant has had actual knowledge of the unlawful means and goals of the Conspiracy.

~~69-74.~~ The aforesaid actual knowledge is imputed to the First Defendant by reason of the actual knowledge of ~~each of its directors (including~~the Director Defendants (and Mr Donziger, its shadow and/or de facto director)-) and/or alternatively, the wilful blindness of the Sixth Defendant. Each of ~~these individuals~~the Director Defendants is a key Conspirator against the Claimant, who, as pleaded in paragraphs 49 to ~~058~~58 above, has direct personal knowledge of (and is directly involved in) some or all of the key unlawful acts committed against the Claimant. Each of those individuals is, individually and collectively, the directing mind and will of the First Defendant: and the First Defendant’s agent. In the premises, the knowledge of the Director Defendants (individually and collectively) is to be imputed to the First Defendant as a matter of law. Paragraphs ~~47 to 54~~47 to 54~~58~~ above are repeated.

75. The Claimant’s alternative case in respect of the Sixth Defendant is that at all relevant times leading to and throughout his appointment as a director of the First Defendant he was wilfully blind to the underlying unlawful acts that had been, were being and continue to be carried out in connection with the Conspiracy. In particular:

75.1 The Sixth Defendant had actual knowledge of the Claimant's allegations of fraud and the targeted and specific materials and evidence on which those allegations were based. In particular, but without prejudice to the generality of the foregoing:

75.1.1 On 3 April 2008 the Third, Fourth and Sixth Defendants received an email from Mr Donziger forwarding an Associated Press article that referenced the Claimant's allegations of fraud concerning Mr Cabrera: *"Chevron on Wednesday called the expert biased, and the trial a farce... The oil company says Cabrera is not qualified to make the analysis and has questioned his impartiality. 'This trial is a farce,' said Ricardo Reis Veiga, Chevron's vice president for Latin America... 'The court's appointee has knowingly violated the judge's orders and delivered a report that is biased and scientifically indefensible,' Veiga said. 'No legitimate court in the world would permit such a charade.'"*

75.1.2 As part of his role to develop global enforcement strategies, on 24 September 2009 the Sixth Defendant forwarded an email to Mr Donziger and copied Mr DeLeon, reporting on his initial contact with Richard Meeran of Leigh Day & Co. Mr Meeran noted in his email to the Sixth Defendant that "[r]egarding the latter – fairness of the proceedings – I note from their website that Chevron has filed a complaint alleging unfairness on the part of the trial judge, in particular that he allegedly stated, before conclusion of the proceedings, that he intended to hold Chevron liable for substantial damages." In the email, the Sixth Defendant wrote to Mr DeLeon and Mr Donziger, "I will have another dig around for possible candidates and come back to you...let me know if [sic] any relevant developments on your end."

75.1.3 On 15 December 2011, the Sixth Defendant received an email from Anthony Fisher of Global Strategy Limited forwarding a 12 December 2011 Reuters article titled "Can Ecuadorean plaintiffs keep funding case against Chevron?" The article described Chevron's claims of a "corrupt judgment" in Ecuador and noted that Burford Capital Limited, the world's largest litigation funder had stated in a press release that it "is not putting any more capital into the Chevron case, despite a maximum

financing commitment of \$15 million. 'Further developments have led Burford to conclude that no further financing will be provided and thus decide to reduce commitment level in the special situations portfolio accordingly.' ...So at this point, according to Burford, it has no remaining exposure in the Chevron litigation..."

75.1.4 In March 2012, the Sixth Defendant prepared a draft letter on behalf of the Third and Fourth Defendants aimed at the Claimant's analysts and shareholders which gave an extensive exposition of the Sixth Defendant's knowledge of the Claimant's allegations and the evidence on which they were based, in particular the incontrovertible potency of the Crude outtakes, the improper relationship with Mr Cabrera and the ghost-writing of his report, the improper pressure exerted by the Conspirators on the Lago Agrio Court and ultimately the ghostwriting of the Lago Agrio Judgment.

75.1.5 On 3 June 2012, Karen Hinton circulated a San Francisco Chronicle article regarding the filing of the LAP Team's enforcement action in Canada to the Sixth Defendant and others including Charles Manduca, the CEO of the Second Defendant. The article outlines the Claimant's claim that the Lago Agrio Judgment was produced by fraud and specifically that "the judicial process there was marred by politics, official misconduct and fraud."

75.2 As set out at paragraph 55 above, the Sixth Defendant played a central role in establishing the role of, planning for, and incorporating the First Defendant. As set out in paragraph 57 above, at all relevant times, the Sixth Defendant has acted as Mr DeLeon's lieutenant and has overseen his and Torvia's investment in the Conspiracy. In the premises, it is to be inferred that the targeted and specific material and evidence of fraud referred to in paragraphs 95 to 115 below came to the Sixth Defendant's attention, or would have had he not deliberately chosen to ignore the same.

75.3 Further and in any event, in the light of the Sixth Defendant's close association with Mr Donziger and the Third to Fifth Defendants it is to be reasonably inferred that he has shared in and acquired the full extent of their

knowledge of the fraudulent and unlawful conduct pursued in furtherance of the aims of the Conspiracy.

~~70-76.~~ Further, the First Defendant continues to have a central role in the Conspiracy notwithstanding the fact that the RICO Judgment represents final findings of fact concerning the unlawful and criminal means and goals of that Conspiracy, and Mr Donziger (who as pleaded above plays a central role in the control of the First Defendant) was a defendant to that action and is bound by its findings (along with his privies, including the First Defendant).

~~71-77.~~ In the premises, it is averred that the First Defendant ~~has~~ and the Director Defendants have supported and perpetrated the Conspiracy (and ~~continues~~continue and will continue to do so) in the full knowledge of, or, in the case of the Sixth Defendant, alternatively with wilful blindness to, its unlawful and criminal means and goals.

**The Second Defendant funded and supported the Conspiracy through the First Defendant and Torvia in Gibraltar**

~~72-78.~~ The Second Defendant is one of the core funders of the Conspiracy, providing millions of dollars in funding at a time when the Conspirators' criminal and dishonest activities had been exposed by the Claimant in the public domain. By providing funding and support knowingly to further the unlawful common design and goals of the Conspiracy, the Second Defendant has joined the Conspiracy and is itself a Conspirator.

~~73-79.~~ The Second Defendant's business model is marketed on its website as a "*responsive, open partnership*" in which the Second Defendant provides "*both deep pockets and an acute understanding of the legal process.*" The Second Defendant offers a flexible approach to litigation funding, where "*each partnership is motivated by different priorities.*"

~~74-80.~~ In addition to providing funding, the Second Defendant markets itself as willing and able to source legal advice and assistance for its clients, "*using our connections in the legal world.*"



75-81. In the RICO Action, Mr Donziger testified (on 19 November 2013) that the Second Defendant provided \$2.5 million to the Conspiracy in March or April 2013. Ms Hinton testified (on 13 November 2013) that, for her work on the Global Pressure Campaign, she was paid in March 2013 by a litigation funder called "*Woodsworth or something like that.*" It is averred that this was a reference to the Second Defendant.

76-82. Mr Donziger also testified:

76-1-82.1. That the Second Defendant's funds were used, *inter alia*, to pay debts and fund actions seeking to enforce the Lago Agrio Judgment;

76-2-82.2. That he could not remember whether he personally signed the funding agreement with the Second Defendant, but that he had met individuals from the Second Defendant "*three to four times*" prior to the Second Defendant providing funding; and

76-3-82.3. That he had conversations with representatives of the Second Defendant after the Second Defendant had provided funding and that there were ongoing discussions with the Second Defendant (and other potential funders) about additional investments.

77-83. The Second Defendant's funding of the Conspiracy has also been referred to in articles in *Businessweek* (22 October 2013), *The American Lawyer* (20 November 2013), and *Forbes* (22 November 2013).

78-84. On 13 December 2013, the Claimant wrote to the Second Defendant setting out what it knew about the Second Defendant's role in the Conspiracy and inviting the Second Defendant to provide disclosure of relevant documents and information. The Second Defendant responded on 29 January 2014 refusing to provide any documents or information but not denying that it had provided funding and support to the Conspiracy. The Claimant will seek disclosure of the emails and other documents evidencing the circumstances in which the Second Defendant agreed to provide

funding, and evidencing the funding provided by the Second Defendant and the ways in which that funding has been used by the First Defendant and the other Conspirators.

~~79-85.~~ The Second Defendant provided its funding and support to the Conspiracy through Torvia in Gibraltar:

~~79-1-85.1.~~ As pleaded in paragraph 44.1 above, Mr Donziger has confirmed that with the exception of two law firms, as of June 2013, “*all the equity holders of the claim, the lawyers and funders*” had shares in the First Defendant. The First Defendant’s public company documents in Gibraltar, however, do not include records of a sale or transfer of any Class A Shares (shares that are reserved for funders) to the Second Defendant or any unknown entities in consideration for the Second Defendant’s funding of the Conspiracy (which was confirmed by Mr Donziger as pleaded in paragraph ~~76~~81 above).

~~79-2-85.2.~~ The First Defendant’s allotment to Torvia of 5,000 Class A2 Participation Shares (as pleaded in paragraph 45.2 above) in exchange for \$500 per share, totalling \$2.5 million, is consistent with the timing and amount of the Second Defendant’s funding of the Conspiracy and does not correspond to any known Torvia funding.

~~79-3-85.3.~~ Further and in contrast to the fresh \$2.5 million in cash for shares, Torvia separately received additional Class A Participation Shares in the First Defendant in exchange for an “*interest in an asset that was assigned*” to the First Defendant (as pleaded in paragraph 45.1 above). To the best of the Claimant’s knowledge and belief, this allotment by the First Defendant was in exchange for a transfer of all or some substantial portion of Mr DeLeon and Torvia’s interests in the Lago Agrio Judgment and funding of the Conspiracy as of that date.

~~79-4-85.4.~~ Yet further, Torvia changed its ownership structure in March 2013 from disclosed entities believed to be either in Mr DeLeon’s control or affiliated with him to a more opaque structure in which GT Nominees is the sole listed shareholder without disclosed beneficial shareholders.

~~79.5-85.5.~~ In the premises, it is to be inferred that the Second Defendant funded the Conspiracy by purchasing shares or otherwise acquiring an interest in Torvia, which in turn holds shares in the First Defendant.

~~79.6-85.6.~~ As pleaded in paragraph 41 above, the entire legal shareholding in Torvia is owned by GT Nominees as nominee and/or trustee for Torvia's beneficial owners.

~~79.7-85.7.~~ It is averred that the Second Defendant's financial interest in the Conspiracy is held in Gibraltar by or through Torvia and ultimately the First Defendant, whether pursuant to a nominee or trustee arrangement with Torvia and/or GT Nominees or otherwise.

~~80-86.~~ In the premises, it is averred:

~~80.1-86.1.~~ That the Second Defendant entered into a "partnership" with the Conspirators in Gibraltar, in which it offered a flexible approach to funding and supporting the Conspiracy, as set out on its website;

~~80.2-86.2.~~ That the Second Defendant has provided at least \$2.5 million in funding to the Conspiracy as pleaded in paragraph ~~76~~81 above;

~~80.3-86.3.~~ That the funding in question has been provided to the Conspiracy in Gibraltar through Torvia and/or the First Defendant;

~~80.4-86.4.~~ That the funds in question have been used to support the ongoing Conspiracy, including, *inter alia*, the Global Pressure Campaign;

~~80.5-86.5.~~ That a representative or representatives of the Second Defendant met with Mr Donziger on multiple occasions prior to funding the Conspiracy; and

~~80.6-86.6.~~ That since providing funding, the Second Defendant has continued to speak with Mr Donziger, in particular about possible further investment.

**The Second Defendant's knowledge of the unlawful means and goals of the Conspiracy at the time that it funded and supported it**

~~81-87.~~ The Second Defendant funded and supported the Conspiracy with actual knowledge of – or wilfully blind to – the underlying unlawful acts that had been, were being and continue to be carried out in connection with it.

*The Second Defendant was aware of the Claimant's allegations of fraud and criminal conduct*

~~82-88.~~ From at the latest 3 June 2012, the Second Defendant was aware of the Claimant's allegations of fraud concerning the Conspiracy. On that day, Ms Hinton emailed the Second Defendant's Chief Executive Officer, Mr Charles Manduca, an article from the *San Francisco Chronicle*. Ms Hinton's email was addressed to Mr Manduca and other "*Friends*." The article contained multiple express references to the Claimant's allegations of fraud. In particular:

~~82.1-88.1.~~ The first line stated that "[f]or the past year, Chevron Corp. has refused to pay an \$18 billion dollar lawsuit judgment from a court in Ecuador, arguing that the judicial process there was marred by politics, official misconduct, and fraud."

~~82.2-88.2.~~ The article included a quote from the Claimant that referred to the Lago Agrio Judgment as "... a product of bribery, fraud" and "illegitimate," and referred to the RICO Action and the fact that Chevron had "gained access to [the Conspirators'] attorneys' memos and emails."

~~82.3-88.3.~~ The article referred to a ruling from the Tribunal in the BIT Arbitration that "ordered the Ecuadorian government to block enforcement of the [Lago Agrio Judgment]."

~~82.4-88.4.~~ The article concluded with a quotation from the Claimant's CEO, Mr John Watson, that the LAPs' lawyers were "criminals who are trying to defraud [Chevron]."

*According to the Second Defendant's own publicity it conducted – or had the resources to conduct – full due diligence on the Conspiracy before investing in it*

83-89. The Second Defendant's website describes how its experienced team engages in a review of all cases prior to investing in them:

*“Our Investment Advisory Panel brings together senior figures from the world of litigation and international arbitration, with direct experience spanning many areas of law. This unique in-house resource sets us apart from other funders: we don't rely on outside counsel to take decisions.”*

84-90. Further, the Second Defendant is a funder member of the Association of Litigation Funders of England and Wales (**the ALF**). According to its website, the ALF *“is dedicated to promoting best practice in the Litigation Funding industry...”* and promotes *“... ethical behaviour amongst Litigation Funders.”* The Second Defendant's Investment Officer, Mr Timothy Mayer, is a member of the Board of Directors of the ALF.

85-91. It is averred that due diligence is a core part of any *“best practice”* or *“ethical behaviour”* for litigation funders, to ensure (*inter alia*) that the activities they are funding are themselves ethical and *bona fides*, and that the funding in question will not be used for any unlawful or unethical purpose or to fund any unlawful or unethical activities.

86-92. In the premises, it is averred that the Second Defendant, relying on its alleged in-house legal experience, conducted substantial due diligence on the Conspiracy prior to entering into any agreement to fund it. Alternatively, it is averred that the Second Defendant had the resources to conduct that due diligence and deliberately chose not to do so.

87-93. At a minimum it is averred that the Second Defendant's due diligence must have included:

~~87.1~~93.1. A full factual investigation into the allegations made by the Claimant against the Conspirators;

~~87.2~~93.2. Analysis of all publicly available legal judgments, orders, and opinions in the RICO Action, any other U.S. proceedings, the Gibraltar proceedings pleaded in paragraphs 45 above and 116 below, and the BIT Arbitration; and

~~87.3~~93.3. Detailed analysis and investigation of the Conspirators' present funding position, what funding they had already received, the terms upon which they had received it, and the status of the previous funders and funding agreements.

~~88~~94. In the following paragraphs ~~90~~95 to ~~110~~115, the Claimant sets out the matters that it is averred came to the Second Defendant's attention in the course of its due diligence. Alternatively, all of the matters set out below would have come to the Second Defendant's attention if it had not deliberately chosen not to conduct due diligence to avoid confirmation of the facts that it had good reason to believe were true.

*At the time the Second Defendant funded the Conspiracy, two of the Conspirators' principal litigation funders, including the largest commercial litigation funder in the world, had publicly withdrawn all support for the Conspiracy because they had been deceived by the Conspirators*

~~89~~95. Burford Capital Limited ('**Burford**') is the world's largest provider of litigation funding and, alongside the Second Defendant, a funding member of the ALF. Burford provided funding to the Conspirators in November 2010.

~~90~~96. Eventually, however, Burford realised that it had been misled and lied to by the Conspirators, who tricked it into investing in the Conspiracy. Burford (and its funding vehicle, Treca Financial Solutions ('**Treca**')) withdrew from providing any further funding to the Conspiracy. The reasons for that withdrawal were fully set out in a letter (which as pleaded below was publicly available to the Second Defendant well before it invested in the Conspiracy) from the CEO of Burford, Christopher Bogart, to

(*inter alia*) Mr Donziger and Mr Fajardo the Third Defendant on 23 September 2011.

In particular:

90.1-96.1. Burford stated that the Conspirators had made “*misrepresentations*” to it and that their conduct “*amounts to fraud.*”

90.2-96.2. Burford pointed out that facts revealed in publicly available court filings led Burford and Treca to believe that the Conspirators “*engaged in a multi-month scheme to deceive and defraud in order to secure desperately needed funding from Treca, all the while concealing material information and misrepresenting critical facts in the fear that we would have walked away had we known the true state of affairs.*”

90.3-96.3. Burford referred to the fact that the Conspirators had lied to it about the extent and unlawfulness of their subversion of the expert evidence in the case and in particular the ghostwriting of the Cabrera Report (as set out in paragraph 24 above). The letter referred to the Conspirators’ own admissions that (i) they had ghostwritten the Cabrera Report (admitted by Mr Donziger in a deposition on 18 January 2011); and (ii) that the conduct was unlawful in Ecuador and could result in the Conspirators there being sent to jail (as acknowledged by the Conspirators in the email referred to in paragraph 26 above). Burford’s letter noted that the Conspirators’ admissions “*flatly contradict [the Conspirators’] representations that the contacts [with Mr Cabrera] were limited and lawful and that Chevron’s allegations to the contrary were false,*” and that there is “*no question*” that Treca would not have funded the Conspiracy had it been aware of the true nature of the LAP Team’s illicit relationship with Mr Cabrera at that time.

91-97. There were numerous references to Burford’s withdrawal – and the reasons for that withdrawal – in documents and in the media that were publicly available before the Second Defendant funded the Conspiracy. In particular:

91.1-97.1. The letter set out in paragraph 9196 above was publicly filed in the RICO Action on 7 January 2013.

~~91.2.97.2.~~ On 28 January 2013, the Claimant filed a motion for summary judgment in the RICO Action. That motion expressly referred to Burford's withdrawal from the Conspiracy and the fact that Burford had accused the Conspirators of "... *perpetrating 'a multi-month scheme to deceive and defraud in order to secure desperately needed funding' for their litigation/pressure campaign against Chevron, 'all the while concealing material information and misrepresenting critical facts in the fear that [Burford] would have walked away had [it] known the true state of affairs.'*"

~~91.3.97.3.~~ Furthermore, Burford's withdrawal from the Conspiracy, and the public reasons given for that withdrawal, were referred to in at least four widely published articles in the mainstream and legal press, namely (i) in *Law 360* on 10 January 2013; (ii) *CNN Money* on 10 January 2013; (iii) in *Hot Air* on 12 January 2013; and (iv) in *Businessweek* on 15 January 2013. Each of the aforesaid articles expressly referred to the letter pleaded in paragraph ~~94~~96 above.

~~92.98.~~ Years before the Second Defendant invested, it was also publicly known that the Conspirators' other principal funder (and key legal advisor), Mr Joseph Kohn, had withdrawn from the Conspiracy when he learned the nature and extent of the Conspirators' actions. Mr Kohn and his law firm, Kohn, Swift & Graf P.C., were major financial and legal supporters of the LAPs for several years. Their relationship soured, however, when Mr Kohn learned of the unlawful acts carried out by the Conspirators. On 9 August 2010, Mr Kohn replied to a letter from the LAPs' Ecuadorian attorneys in which they stated that they were terminating Mr Kohn's and his firm's involvement in the Lago Agrio Litigation. Mr Kohn set out at length his grave concerns about the conduct of the Lago Agrio Litigation and said that he was "*shocked by recent disclosures concerning potentially improper and unethical, if not illegal, contacts with the court-appointed expert, Mr. Cabrera, which are coming out in U.S. discovery proceedings being initiated by Chevron.*" Mr Kohn stated that Mr Donziger and other Conspirators had assured him that there had been no improper contact with Mr Cabrera, but that "[i]t is now clear in hindsight that those statements were blatant lies." Mr Kohn's letter was referred to in various publicly available



filings in the U.S. Courts, including proceedings in the District Court for the Eastern District of Pennsylvania on 3 December 2010 and in two separate proceedings in the District Court for the Southern District of New York on 6 February 2011 and 29 June 2011. In a sworn deposition taken on 6 June 2013, Mr Kohn confirmed that he and his law firm “*disavowed any economic interest in the Lago Agrio judgment.*”

93-99. It is averred that, prior to funding the Conspiracy and in the course of its due diligence, the Second Defendant would have: (i) investigated the prior funding of the Lago Agrio Litigation and the Global Pressure Campaign; (ii) reviewed the publicly available court records in the RICO Action; and (iii) reviewed the mainstream and legal press for references to developments in the Lago Agrio Litigation. Doing any of these things would have revealed Burford’s withdrawal, as well as the prior withdrawal of Mr Kohn, and the reasons for those withdrawals.

94-100. In the premises, it is averred that the Second Defendant had actual knowledge of (or was wilfully blind to) the matters pleaded in paragraphs 9095 to 9398 above.

*At the time the Second Defendant funded the Conspiracy, numerous courts in the U.S. had made public findings of prima facie fraud*

95-101. In the period leading up to the Second Defendant’s decision to fund the Lago Agrio Litigation, multiple U.S. federal judges had made *prima facie* findings that the Conspirators had engaged in criminal and/or fraudulent activity in connection with the Lago Agrio Litigation. Many of the findings came in relation to disclosure proceedings instituted by the Claimant in the U.S. that resulted *inter alia*, in the disclosure of the outtakes of *Crude* (which as set out above was the Conspirators’ propaganda film). Those outtakes provided video evidence of much of the unlawful conduct of the Conspirators.

96-102. Without prejudice to the generality of the foregoing, the following judgments of U.S. courts were publicly available when the Second Defendant decided to fund the Conspiracy:

96-1-102.1. On 11 June 2010, the United States District Court for the District of New Jersey ruled that “*the provision of materials and information by*

*consultants on the litigation team of the Lago Agrio plaintiffs in what appears to be a secret and an undisclosed aid of a supposedly neutral court-appointed expert in this Court's view constitutes a prima facie demonstration of a fraud on the tribunal."*

96.2-102.2. On 30 August 2010, the United States District Court for the Western District of North Carolina commented in relation to the Conspirators' interference with the Cabrera Report that "[w]hile this court is unfamiliar with the practices of the Ecuadorian judicial system, the court must believe that the concept of fraud is universal, and that what has blatantly occurred in this matter would in fact be considered fraud by any court. If such conduct does not amount to fraud in a particular country, then that country has larger problems than an oil spill."

96.3-102.3. On 1 September 2010, the United States District Court for the District of New Mexico ruled that "[t]he release of many hours of the [Crude] outtakes has sent shockwaves through the nation's legal communities, primarily because the footage shows, with unflattering frankness, inappropriate, unethical and perhaps illegal conduct... The outtakes support, in large part, Applicants' contentions of corruption in the judicial process. They show how non-governmental organizations, labor organizations, community groups and others were organized by the Lago Agrio attorneys to place pressure on the new Ecuadorian government to push for a specific outcome in the litigation, and how the Ecuadorian government intervened in ongoing litigation."

96.4-102.4. On 10 September 2010, the United States District Court for the Southern District of California ruled that "[t]here is ample evidence in the record that the [LAPs] secretly provided information to Mr. Cabrera, who was supposedly a neutral court-appointed expert, and colluded with Mr. Cabrera to make it look like the opinions were his own."

96.5-102.5. On 13 September 2010, the United States District Court for the District of New Mexico ruled that it had "viewed [the Crude outtakes] and finds that they are sufficient to establish a prima facie case of attempted fraudulent

*activity by attorney Donziger, including... having a purportedly neutral expert sign his name to a report that was actually prepared by [the LAPs'] attorneys and experts without Chevron's knowledge."*

96-6-102.6. On 20 October 2010, Judge Kaplan (presiding over disclosure proceedings against Mr Donziger in the Southern District of New York) specifically cited and quoted three of the earlier rulings of United States District Courts finding *prima facie* evidence of fraud. Judge Kaplan also specifically referred to the outtakes from *Crude*, commenting that they contained "*substantial evidence that [Mr] Donziger and others (1) were involved in ex parte contacts with the court to obtain appointment of the expert, (2) met secretly with the supposedly neutral and impartial expert prior to his appointment... and (3) wrote some or all of the expert's final report...*"

96-7-102.7. On 31 August 2011, the United States District Court for the District of Maryland found that "... *probable cause* [to suspect fraud in the ghostwriting of the Lago Agrio Judgment] *has been established if for no other reason than for the production of the admittedly co-authored, or documents co-authored by [interns for the LAPs], which has found its way into the decision in Ecuadorian court.*"

96-8-102.8. On 25 January 2013, the United States District Court for the District of Maryland, found that the crime-fraud exception applied to the conduct of the Conspirators in relation to the submission of the reports in Dr Calmbacher's name, the Cabrera Report, the "*cleansing*" experts' reports, and the ghostwriting of the Lago Agrio Judgment.

97-103. It is averred that the Second Defendant, prior to funding the Conspiracy and in the course of its due diligence, would have reviewed the publicly available court records in relation to the Lago Agrio Litigation. Each of the judgments set out above was publicly and readily available at the time that the Second Defendant chose to finance the Conspiracy. In the premises, it is averred that the Second Defendant had actual knowledge of (or alternatively, was wilfully blind to) those judgments and the findings of *prima facie* fraud contained therein.

*At the time the Second Defendant funded the Conspiracy, the Claimant had exposed the Conspirators' fraud in the RICO Action*

98-104. \_\_\_\_\_ As set out above, on 4 March 2014, judgment was given in the Claimant's favour in the RICO Action. The Claimant's pleadings in the RICO Action, and numerous supporting documents, were available to the Second Defendant when it chose to fund the Conspiracy. The Second Defendant was therefore aware of each of the allegations that the Claimant had made and on notice of the evidence and submissions relied on in support of those allegations. It is averred that the facts and matters raised in the RICO Action formed part of the Second Defendant's due diligence leading up to its decision to fund the Conspiracy (or would have done had the Second Defendant not deliberately chosen to fail to carry out such due diligence).

99-105. \_\_\_\_\_ Further, well before the Second Defendant chose to fund the Conspiracy, Judge Kaplan had made numerous findings of *prima facie* fraud against the Conspirators in the context of the RICO Action. In particular:

99-1-105.1. \_\_\_\_\_ In a 126-page opinion issued on 7 March 2011, Judge Kaplan described the facts supporting the Claimant's allegations of fraud as "*essentially undisputed.*" The legal ruling was ultimately overturned on appeal on jurisdictional grounds relating to the scope of a preliminary injunction granted by Judge Kaplan, but the appellate court did not interfere with or question Judge Kaplan's finding that:

*"There is ample evidence of fraud in the Ecuadorian proceedings. The LAPs, through their counsel, submitted forged expert reports in the name of Dr. Calmbacher. Their counsel orchestrated a scheme in which Stratus ghost-wrote much or all of Cabrera's supposedly independent damages assessment without, as far as the record discloses, notifying the Ecuadorian court of its involvement. . . . Despite the apparent relationship between the LAPs and Cabrera, both parties repeatedly misrepresented to the Ecuadorian court that there was no relationship or any form of inappropriate contact that might prejudice Chevron in the proceedings ... When it became evident that the LAPs' improper contacts with Cabrera, including the pre-appointment*

*meetings, ghost-writing, and illicit payments, would be revealed through the Section 1782 proceedings, LAP representatives undertook a scheme to “cleanse” the Cabrera report. They hired new consultants who, without visiting Ecuador or conducting new site inspections and relying heavily on the initial Cabrera report, submitted opinions that increased the damages assessment from \$27 billion to \$113 billion ... it likely is impossible to separate the tainted Cabrera process from the final judgment. This is especially so in this case, as the Ecuadorian judiciary lacks independence, is highly susceptible to politics and pressure, and was subject to pressure and intimidation by the LAPs.” (emphases added).*

~~99-2-105.2.~~ In the same opinion, Judge Kaplan also made a preliminary factual finding that the 1999 Act had been drafted, and its enactment procured, by Mr Donziger and his team.

~~99-3-105.3.~~ The Claimant filed a further motion for partial summary judgment in the RICO Action on 1 March 2012. Judge Kaplan granted the motion in part, and held, in an opinion dated 31 July 2012 that, the “*procurement of the termination of judicial inspections, the adoption of the global assessment, and the appointment of Cabrera all unquestionably were tainted. The secret participation of the [Conspirators] in Cabrera’s activities and its secret drafting of the bulk of Cabrera’s report were tainted as well. Moreover, there are serious questions concerning the preparation of the Judgment itself ... especially in light of the undisputed pattern of ex parte advocacy in the Lago Agrio Litigation and the undisputed instance of the [Conspirators’] coercion of and duress on one of the judges to obtain a desired result.*”

~~100-106.~~ On 28 January 2013, the Claimant filed the Guerra Declaration in the RICO Action. As set out above, Judge Guerra is a former judge of the Lago Agrio Court who has provided direct evidence that Judge Zambrano was bribed by the Conspirators to permit them to ghostwrite the Lago Agrio Judgment. In addition to being publicly available in the RICO Action, Judge Guerra’s evidence was also referred to in numerous widely published press articles, including reports published in *Reuters*, *Fortune*, *Businessweek*, *Forbes*, *The Financial Post*, and *Business Roundtable*.

~~101~~.107. \_\_\_\_\_ The RICO Action was and remains one of the most widely publicised sets of proceedings in the world. It is inconceivable that the Second Defendant, at the time that it chose to fund the Conspiracy, was not aware of the RICO Action, its pleadings and the interlocutory decisions handed down in those proceedings. In the premises, it is averred that at the time it chose to fund the Conspiracy, the Second Defendant had actual knowledge of (or was wilfully blind to) the allegations, evidence, and findings set out in paragraphs ~~99~~104 to ~~101~~106 above.

*At the time the Second Defendant funded the Conspiracy, the Claimant had issued proceedings in Gibraltar against the Conspirators' remaining major funder and advisor*

~~102~~.108. \_\_\_\_\_ After Burford's withdrawal from the Conspiracy, the Conspirators' last remaining substantial funder was Mr DeLeon, who also provided strategic advice and support from Gibraltar. As set out in paragraph 45 above, Mr DeLeon, together with his funding vehicle Torvia, has provided millions of dollars to the Conspiracy beginning in 2006.

~~103~~.109. \_\_\_\_\_ As set out in paragraph 45 above, on 17 December 2012, the Claimant filed an action against Mr DeLeon and Torvia in the Supreme Court of Gibraltar seeking damages and other relief in relation to Mr DeLeon and Torvia's funding and supporting of the Conspiracy. Those proceedings were served on Mr DeLeon and Torvia, respectively, on 6 and 8 February 2013, and the Particulars of Claim became publicly available on 27 February 2013, the date by which both Defendants had filed Acknowledgments of Service.

~~104~~.110. \_\_\_\_\_ On 4 March 2013, Amazon Watch issued a public press release referring to a fraud lawsuit "*against a key supporter in Europe,*" i.e. the claim against Mr DeLeon and Torvia.

~~105~~.111. \_\_\_\_\_ It is averred that any due diligence undertaken by the Second Defendant would have revealed the existence of the Claimant's claim against Mr DeLeon and Torvia and, in the premises, it is averred that the Second Defendant was aware of (or alternatively was wilfully blind to) that action when it chose to fund and support the Conspiracy. This is particularly so if (as the Claimant avers to the best of its

information and belief) the Second Defendant structured its investment in the Conspiracy through Torvia.

*Additional material that came to the Second Defendant's attention*

~~106.112.~~ The following additional material was publicly available when the Second Defendant chose to fund the Conspiracy:

~~106.1.112.1.~~ In or around March 2010, Constantine Cannon LLP, a law firm which had been retained by the Conspirators with respect to certain of the U.S. § 1782 proceedings, withdrew after the firm learned of the Conspirators' subversion of the Cabrera Report. The Claimant referred to Constantine Cannon LLP's withdrawal in the RICO Complaint dated 1 February 2011 and in a publicly filed motion dated 5 February 2011.

~~106.2.112.2.~~ Also in March 2010, another law firm, Brownstein Hyatt Farber Schreck, LLP, withdrew from representing and/or working with the Conspirators because the firm was (according to Mr Donziger in a sworn deposition taken on 29 December 2010) "*troubled by the allegations... about Stratus' role writing materials to be given to Cabrera.*" The senior partner of the firm believed, as he stated in an email to Mr Donziger dated 21 March 2010, that "*...if we proceed I may be compromising the firm's reputation and ethical stature...*" Again, the Claimant referred to the firm's withdrawal in the RICO Action in its publicly filed motion dated 5 February 2011.

~~107.113.~~ As set out above, it is averred that the Second Defendant's due diligence comprised (or would have comprised had the Second Defendant not deliberately chosen not to do it) a review of the publicly available court filings (especially those in the U.S.). Further, it is averred that the Second Defendant would have been particularly interested to learn the fate of previous funders and advisors involved in the Lago Agrio Litigation and the Global Pressure Campaign. In the premises, it is averred that, at the time it chose to invest in the Conspiracy, the Second Defendant had actual knowledge of the matters set out in paragraph ~~107.112~~ above.

~~108~~.114. In addition to the specific matters pleaded above, there was an enormous quantity of other documents, including media reports, press releases and court filings, which were all publicly available when the Second Defendant chose to fund the Conspiracy. Those documents referred to the Claimant's allegations of fraud in circumstances which ought, at the very least, to have made the Second Defendant aware that there were grave questions about Mr Donziger's (and the Conspirators') conduct of the Lago Agrio Litigation that required investigation.

~~109~~.115. It is averred that the Second Defendant had actual knowledge of (or was wilfully blind to) each of those public documents. Without prejudice to the generality of the foregoing and strictly by way of examples, in January 2013, when (it is to be inferred) discussions between the Second Defendant and the Conspirators were culminating in a concluded funding agreement, the news of Burford's withdrawal from the litigation became widely publicised (as pleaded in paragraph ~~92~~97.3 above). Similarly, on 28 January 2013, the Guerra Declaration (confirming, as pleaded in paragraph 30.1 above, that the Conspirators had bribed Judge Zambrano to permit them to write the first instance Lago Agrio Judgment) was publicly filed in the RICO Action, and on the same day, *Forbes Magazine* published an article titled "*Chevron Says Plaintiffs Offered Ecuador Judge \$500,000 For Verdict.*" That article referred in detail to the contents and effect of the Guerra Declaration.

*At the time it chose to invest in the Conspiracy, the Second Defendant had actual knowledge of the fraudulent and unlawful conduct perpetrated by the Conspirators*

~~110~~.116. In the premises, it is averred that, at the date the Second Defendant funded the Conspiracy, it did so with actual knowledge of the fraudulent and unlawful conduct perpetrated against the Claimant. In particular (but without prejudice to the generality of the foregoing), the Claimant will rely on:

~~110.1~~.116.1. The Second Defendant's own assertions as to its investigative and due diligence processes leading to any investment as set out in paragraphs ~~84~~89 to ~~88~~93 above;

~~110.2~~.116.2. The Second Defendant's knowledge of the allegations made by the Claimant in relation to the Conspirators' conduct; and



~~110.3-116.3.~~ The incontrovertible evidence and judicial findings of fact supporting those allegations that were fully and readily available and published in the public domain prior to the Second Defendant's decision to invest in the Conspiracy.

*Alternatively, at the time it chose to invest in the Conspiracy, the Second Defendant was wilfully blind to the fraudulent and unlawful conduct perpetrated by the Conspirators*

~~111.117.~~ Alternatively, if the Second Defendant did not have actual knowledge of the fraudulent and unlawful acts committed by the Conspirators at the time that it funded the Conspiracy, it is averred that it was wilfully blind to those facts. In particular:

~~111.1-117.1.~~ The Second Defendant had actual knowledge of the allegations of fraud and unlawfulness made by the Claimant against the Conspirators;

~~111.2-117.2.~~ The Second Defendant's knowledge of the allegations of fraud was targeted knowledge of specific factual allegations of fraud, which were supported by independently verifiable evidence and judicial findings of *prima facie* fraud in the public domain, as pleaded in paragraphs ~~96~~101 to ~~102~~107 above;

~~111.3-117.3.~~ In the premises, it is averred that the aforesaid knowledge caused the Second Defendant to believe that the Claimant's allegations of fraud arising out of Mr Donziger's and the other Conspirators' conduct were true, or alternatively raised concerns that they might be true, such as to require investigation;

~~111.4-117.4.~~ The Second Defendant either:

~~111.4.1-117.4.1.~~ Deliberately chose not to conduct any or any proper investigation into the truth or otherwise of the Claimant's allegations in order to avoid confirmation of the facts supporting those allegations, which it had good reason to believe to be true; or

~~111.4.2, 117.4.2.~~ If it did conduct any investigation into the factual allegations, deliberately chose to ignore the results of it to avoid confirmation of the facts in whose existence it had good reason to believe.

**The Second Defendant continues to fund and support the Conspiracy from Gibraltar with actual knowledge of its unlawful means and goals**

~~112.118.~~ As pleaded in paragraph ~~778~~2.3 above, in the RICO Action Mr Donziger testified (on 19 November 2013) that there are “*ongoing discussions*” with the Second Defendant (among others) about providing further funding to the Conspiracy.

~~113.119.~~ Further and in any event, it is averred that in exchange for its \$2.5 million investment in the Conspiracy, the Second Defendant obtained a substantial financial interest in any proceeds that the Conspirators manage to extract from the Claimant. Pending disclosure the Claimant is unable to provide any particulars of the Second Defendant’s financial “*upside*” in the Conspiracy, albeit that it is averred that it will be substantially in excess of the total amount of the Second Defendant’s investment. Accordingly, it is averred that the Second Defendant has a financial interest in the ongoing pursuit of the Conspiracy and is consequently supporting the Conspirators’ ongoing attempts to (for example) enforce the Lago Agrio Judgment.

~~114.120.~~ As set out above, on 4 March 2014, Judge Kaplan handed down the RICO Judgment. Judge Kaplan made findings of fact that confirm each aspect of the Claimant’s case concerning the unlawful and criminal perpetration of the Conspiracy against Chevron. Further, the RICO Judgment referred to the Second Defendant as a provider of funding to the Conspiracy.

~~115.121.~~ On 14 March 2014, Butler J in this Court handed down his judgment dismissing the applications by Mr DeLeon and Torvia to strike out and/or for summary judgment in respect of the claim against them. Butler J held that, on the assumption that the facts pleaded against Mr DeLeon and Torvia are true, “*it would be a startling proposition to the lay person that residents of Gibraltar engaged in such conspiracies should be immune from suit from those they have deliberately harmed.*”

~~116.122.~~         Patton Boggs LLP (**Patton Boggs**) was a lobbying and law firm headquartered in Washington, D.C. that began working with Mr Donziger and the LAPs in early 2010 in exchange for a stake in the Lago Agrio Judgment (in June 2014 the firm merged with Squire Sanders). On 7 May 2014, Patton Boggs assigned its interest in the Judgment to the Claimant and publicly stated that “[t]he recent opinion of the United States District Court for the Southern District of New York in the [RICO Action] includes a number of factual findings about matters which would have materially affected our firm’s decision to become involved and stay involved as counsel here. Based on the Court’s findings, Patton Boggs regrets its involvement in this matter.”

~~117.123.~~         It is averred that the Second Defendant is aware of the RICO Judgment, the judgment of Butler J in Gibraltar, and the withdrawal of Patton Boggs from the Conspiracy. To the best of the Claimant’s knowledge, however, notwithstanding this knowledge the Second Defendant (i) is continuing to negotiate with the Conspirators (including Mr Donziger) in relation to the potential provision of further funding to the Conspiracy; (ii) in any event, stands to gain millions of dollars from the Conspirators’ ongoing attempts to enforce the Lago Agrio Judgment; (iii) has not terminated its involvement with the Conspirators and the Conspiracy; and (iv) has not disclaimed any interest in the Lago Agrio Judgment or the Conspiracy.

~~118.124.~~         In the premises it is averred that the Second Defendant will continue to perpetrate the Conspiracy and further its common design and goals unless and until it is prevented from doing so by relief granted by the Court.

#### **Torts committed by the ~~First and Second~~ Defendants**

~~119.125.~~         As set out in paragraphs ~~5559~~ to ~~6569~~ above, the First Defendant has been an essential part of the machinery of the Conspiracy in Gibraltar and has, in accordance with its express corporate objects, played a core role in furthering the common design and unlawful goals of the Conspiracy. The First Defendant is owned and controlled by the key individual Conspirators, including Mr Donziger and the Director Defendants, and it is averred that the knowledge of those Conspirators is attributed to the First Defendant as a matter of fact and law. In the premises, the First Defendant is itself a

key Conspirator and liable to the Claimant for the losses caused by the Conspiracy since the First Defendant's incorporation on 4 May 2012.

126. The Director Defendants are personally liable for causing and/or procuring the First Defendant to participate in the Conspiracy and thereby further its aims. At all relevant times when causing or procuring the First Defendant to participate in the Conspiracy, the Director Defendants had actual knowledge of, or alternatively, in the case of the Sixth Defendant only, was wilfully blind to the underlying unlawful acts that had been, were being and continue to be carried out in connection with it.

~~120.127.~~ As set out in paragraphs ~~8489~~ to ~~112117~~ above, at the time the Second Defendant funded the Conspiracy it had actual knowledge of or was wilfully blind to:

~~120.1.127.1.~~ The Claimant's detailed allegations of fraud against the Conspirators in relation to each of the matters set out in paragraphs ~~99104~~ to ~~106111~~ above;

~~120.2.127.2.~~ The withdrawal of Burford from the Conspiracy on the basis that the Conspirators had lied to it about their unlawful acts to convince it to provide funding;

~~120.3.127.3.~~ The findings of multiple U.S. federal judges that the Conspirators had committed fraudulent, unlawful, unethical, and criminal acts;

~~120.4.127.4.~~ The fact that the Conspirators were subject to the RICO Action and that the Claimant had set out its allegations, together with supporting evidence (including evidence from Judge Guerra), in minute detail in the pleadings and motions filed in that action;

~~120.5.127.5.~~ The fact that the Court hearing the RICO Action had made an interlocutory finding that the facts supporting the Claimant's lengthy and detailed allegations of fraud were "*essentially undisputed*", and granted in part a motion for summary judgment finding that the Conspirators' actions "*unquestionably were tainted*";

~~120.6.~~127.6. The fact that the Claimant had commenced proceedings against Mr DeLeon and Torvia in Gibraltar for funding and supporting the Conspiracy; and

~~120.7.~~127.7. All of the other evidence, documents, findings and statements in the public domain that established the existence of the Conspiracy, the fraudulent, criminal and unlawful means that the Conspirators adopted in its execution, and the fact that two other law firms, and the Conspirators' first principal backer (Mr Kohn) had withdrawn when the Conspirators' acts were revealed.

~~121.~~128. Further and in any event, the ~~First and Second~~ Defendants continue to perpetrate and/or fund and/or support the Conspiracy notwithstanding the existence (and the ~~First and Second~~ Defendants' knowledge) of the RICO Judgment (in which the Third and Fourth Defendants were defendants) and the judgment of Butler J in Gibraltar.

*Unlawful means conspiracy: the First Defendant and the Director Defendants*

~~122.~~129. The First Defendant and the Director Defendants and each of them conspired with the ~~Conspirators in and from Gibraltar~~ each other and in particular (at least) with Mr Donziger, Mr Fajardo, Mr Yanza, Mr Chavez, Mr Jarvis, Mr DeLeon, and Torvia by the means and with the purpose set out below, namely:

~~122.1.~~129.1. The First Defendant conspired with the Conspirators to provide funding and support to the Conspiracy from Gibraltar to continue it and thereby its common design and unlawful goals and means. In the premises, the First Defendant joined the Conspiracy in Gibraltar and further or alternatively, entered into a further conspiracy in Gibraltar with the same object.

~~122.2.129.2.~~ The Conspiracy was carried into effect by the First Defendant:

~~122.2.1.129.2.1.~~ Performing the role and functions that the Conspirators envisaged for it (as pleaded in paragraphs ~~5559~~ to ~~6064~~ above) prior to its incorporation;

~~122.2.2.129.2.2.~~ Adopting the Amended Memorandum and Articles of Association pleaded in paragraph 42 above, which formalised the First Defendant's role (and Gibraltar) as the financial epicentre of the Conspiracy, including, *inter alia*, to pay the expenses of the Conspiracy, to procure additional funding for the Conspiracy, to issue shares to additional lawyers, advisors, and funders of the Conspiracy, and to receive and remit the proceeds of the Conspiracy (including any proceeds of the Lago Agrio Judgment); and

~~122.2.3.129.2.3.~~ Executing the aforesaid, for example (and without prejudice to the generality of the foregoing) by (i) issuing shares to key Conspirators to secure their financial interests in the unlawful Conspiracy; (ii) procuring and/or receiving funding from core funders of the Conspiracy including Mr DeLeon, Torvia, and the Second Defendant; (iii) approving (through the Steering Committee) the expenses of the Conspiracy; (iv) paying the expenses of the Conspiracy; (v) positioning itself to receive any payments unlawfully extracted from the Claimant by means of the Conspiracy; and (vi) positioning itself to pay those proceeds to the Conspirators to ensure that they reap the benefits of their unlawful acts.

~~122.3.129.3.~~ The Conspiracy involved the use of tortious and criminal unlawful means against the Claimant and/or third parties as pleaded in paragraphs 11 to 38 above.

~~122.4.129.4.~~ At the time that it joined the Conspiracy, the First Defendant knew that the Conspiracy had been and was being conducted by unlawful means, and was the product of those unlawful means.

~~122.5-129.5.~~ Notwithstanding its knowledge, the First Defendant acted in furtherance of the Conspiracy, its common design, and its unlawful means. The First Defendant thereby adopted those unlawful means as its own and entered into a common design that they and the Conspiracy should continue to be carried out.

~~122.6-129.6.~~ Further or alternatively, the First Defendant, on joining the Conspiracy, participated in and perpetuated the aforesaid unlawful acts.

*Unlawful means conspiracy: the Second Defendant*

~~123-130.~~ The Second Defendant conspired with the Conspirators in and from Gibraltar and in particular (at least) with Mr Donziger, the First Defendant, and Torvia by the means and with the purpose set out below, namely:

~~123.1-130.1.~~ The Second Defendant conspired with the Conspirators and in particular (at least) with Mr Donziger, the First Defendant, and Torvia to provide funding from Gibraltar and/or support to the Conspirators to cause or permit the Conspiracy to continue and thereby further its common design. In the premises, the Second Defendant joined the Conspiracy in and from Gibraltar and, further or alternatively, entered into a further conspiracy in Gibraltar with the same object.

~~123.2-130.2.~~ The Conspiracy was carried into effect by the Second Defendant paying the funding to and/or through companies incorporated in Gibraltar, pleaded in paragraphs 8085 to 8186 above, in the expectation of profiting from the Conspiracy.

~~123.3-130.3.~~ From its inception in 2003, the Conspiracy involved the use of tortious and criminal unlawful means against the Claimant and/or third parties as pleaded in paragraphs 11 to 38 above.

~~123-4~~130.4. At the time that it joined the Conspiracy, the Second Defendant knew or was wilfully blind to the fact that the Conspiracy had been and was being conducted by unlawful means, and was the product of those unlawful means.

~~123-5~~130.5. Notwithstanding its knowledge or wilful blindness, the Second Defendant provided funding to the Conspirators through and from Gibraltar. The Second Defendant thereby adopted those unlawful means as its own and entered into a common design that they and the Conspiracy should continue to be carried out.

~~123-6~~130.6. Further or alternatively, the Second Defendant, on joining the Conspiracy and providing the funding, participated in and perpetuated the aforesaid unlawful acts.

#### *Conspiracy to injure*

~~124~~131. If, which is denied, any of the aforesaid acts carried out by the Conspirators (including the ~~First and Second Defendants~~) were not in themselves unlawful (for the purpose of the tort of unlawful means conspiracy or otherwise), the Defendants in any event conspired with the Conspirators, and in particular Mr Donziger, to injure the Claimant. The sole or predominant purpose of that conspiracy was to injure the Claimant by unlawfully and dishonestly compelling it to make a multi-billion dollar pay-out to the Conspirators. ~~Neither~~None of the Defendants ~~was~~were at any time acting in furtherance of any lawful or legitimate interest.

~~125~~132. In the premises, the Defendants are also liable to the Claimant in the tort of conspiracy to injure.

#### **Loss, damage and relief sought against the Defendants**

##### *Loss and damage*

~~126~~133. By reason of the aforesaid tortious acts, the Claimant has suffered and continues to suffer loss and damage.



~~127-134.~~ The Defendants are liable to the Claimant for the loss caused to it by each part of the Conspiracy which they adopted and/or procured and/or participated in and/or conspired and/or entered into a common design for the Conspirators to carry out in, from, or through Gibraltar. The ~~First and Second~~ Defendants are so liable from the time that, with actual knowledge of (or alternatively, in the case of the Second Defendant, wilfully blind to) the underlying unlawful acts, they adopted and/or procured and/or participated in those unlawful acts and/or conspired and/or entered into a common design for the Conspirators to carry them out.

~~128-135.~~ It is not possible at the present time to provide particulars of the loss for which the ~~First and Second~~ Defendants are liable, as the amount of such loss will depend both on findings of fact of the Court and expert evidence.

~~129-136.~~ The Claimant has suffered and continues to suffer losses arising from and caused by the Conspiracy, including by the Lago Agrio Judgment being wrongfully entered against it in Ecuador (including but not limited to legal costs) and the ongoing Global Pressure Campaign (including but not limited to loss of goodwill). For the avoidance of doubt, the Claimant's claim is for all losses caused as a result of the Conspiracy from the point at which the ~~First and Second~~ Defendants joined it.

~~130-137.~~ Owing to the fact that the losses suffered by the Claimant can only be calculated after trial, the Claimant is entitled to and claims an inquiry as to the damages payable by the ~~First and Second~~ Defendants.

~~131-138.~~ Further, the Claimant is entitled to and claims exemplary damages. The ~~First and Second~~ Defendants' conduct was at all material times calculated to make a profit with cynical disregard for the Claimant's rights, in circumstances where it is averred that the ~~First and Second~~ Defendants believed that their profits would exceed the damages risk to them.

~~132-139.~~ Yet further, in the premises the Claimant is entitled to be indemnified in respect of any liability it has or continues to incur under or in respect of the Lago Agrio Litigation and Lago Agrio Judgment.

~~133.140.~~ Yet further, the Claimant claims interest under section 14 of the Contract and Tort Act at such rate and for such period as the Court thinks fit.

*Relief sought in connection with the ~~First and Second~~ Defendants' ongoing involvement in the Conspiracy*

~~134.141.~~ As set out in paragraphs ~~66~~51 to ~~68~~58 and ~~70~~ to ~~72~~ above, to the best of the Claimant's knowledge the First Defendant ~~continues~~ and the Director Defendants (save, following his resignation, the Sixth Defendant, although the Claimant's position in this respect is reserved pending disclosure) continue to perpetrate the Conspiracy and further its common design from Gibraltar by performing ~~the~~ the First Defendant's express corporate purposes that are central to the Conspirators' goals. As pleaded in paragraph 58 above, the Sixth Defendant by his own admission retains a multi-million dollar interest in the fraudulently procured Lago Agrio Judgment.

~~135.142.~~ As set out in paragraphs ~~113~~118 to ~~119~~124 above, to the best of the Claimant's knowledge the Second Defendant continues to participate in the Conspiracy through or from Gibraltar, whether by its continued financial interest in it and/or ongoing negotiations for further funding and/or otherwise.

~~136.143.~~ Injunctions are necessary to prevent further and ongoing injury to the Claimant given the Conspirators' continued attempts – supported by the ~~First and Second~~ Defendants – to enforce the Lago Agrio Judgment and/or otherwise coerce the Claimant (through the Global Pressure Campaign) into making a payment to the Conspirators.

~~137.144.~~ In the premises the Claimant is entitled to and claims permanent injunctions:

~~137.1.144.1.~~ Against the First Defendant restraining it from performing any act in furtherance of the Conspiracy including but not limited to: (i) sourcing or receiving any funding for the Conspiracy; (ii) providing any funding to the Conspiracy whether as payment for the defrayal of costs or otherwise; (iii) approving any expenses or other acts of the Conspirators; (iv) receiving and/or paying out any proceeds of the Conspiracy; (v) issuing or allotting shares to new lawyers, advisors, or funders of the Conspiracy; and (vi) any other acts in

furtherance of its corporate purposes set out in its Amended Memorandum and Articles of Association.

144.2. Against the Director Defendants, (i) restraining them from executing or performing any acts in furtherance of the Conspiracy in or from Gibraltar, whether in their respective capacities as directors of the First Defendant or otherwise; and (ii) restraining them from obtaining any benefit (whether financial or otherwise) from the Conspiracy, including (but not limited to) any benefit as a consequence of any direct or indirect interest in the First Defendant.

~~137.2-144.3.~~ Against the Second Defendant restraining it from: (i) providing any further or additional funding or other support to the Conspirators or any other person or entity in relation to the Conspiracy (including the Lago Agrio Litigation and its enforcement efforts and the Global Pressure Campaign); and (ii) obtaining any benefit (whether financial or otherwise) from its involvement in the Conspiracy, whether pursuant to the terms of any funding agreement or otherwise.

~~138-145.~~ Further, the Claimant is entitled to and claims a declaration that the Conspiracy has used unlawful and criminal means and that any continued funding and/or support provided by the ~~First and/or Second Defendant~~ Defendants to the Conspiracy is and will be unlawful.

~~139-146.~~ Yet further, the Claimant is entitled to and claims a declaration that any proceeds of the Conspiracy paid to the ~~First and/or Second Defendant~~ Defendants (through enforcement of the Lago Agrio Judgment or otherwise) are held by the recipient Defendant on constructive trust for the Claimant.

AND THE CLAIMANT CLAIMS as against the Defendants and each of them:

- (1) Damages (to include exemplary damages);
- (2) An inquiry into the quantum of the aforesaid damages;
- (3) An Indemnity;

- (4) Interest under section 14 of the Contract and Tort Act;
- (5) Permanent injunctions;
- (6) Declarations;
- (7) Further or other relief;
- (8) Costs.

JAMES CORBETT QC  
ANDREW STAFFORD QC  
STEPHEN V CATANIA  
ROBIN RATHMELL  
PETER TYERS-SMITH

**STATEMENT OF TRUTH**

The Claimant believes that the facts stated in these Particulars of Claim are true. I am duly authorised by the Claimant to sign this statement.

Dated the 5<sup>th</sup> day of January 2015 ~~18<sup>th</sup> day of June 2014~~

Full name: Stephen V Catania

Position or office held: Partner, Attias & Levy

Signed..........

(If signing on behalf of firm, company or corporation)