IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

PATTON BOGGS LLP,
Plaintiff and Counterclaim Defendant,

v.

CHEVRON CORPORATION,
Defendant and Counterclaimant.

Case No. 12-cv-9176 (LAK)

MOTION OF NON-PARTIES HUGO CAMACHO NARANJO, JAVIER PIAGUAJE PAYAGAUJE AND STEVEN DONZIGER TO INTERVENE AND OBJECT TO THE APPROVAL OF THE PATTON BOGGS–CHEVRON SETTLEMENT

Public confidence in lawyers, and in turn our legal system, depends on the lawyer's undying duties of loyalty and confidentiality to the client. In the history of American law firms, it is hard to come up with a more flagrant breach of those duties than the settlement in this case.

Patton Boggs assumed a duty of loyalty when it agreed to represent Ecuadorian indigenous people and farmers in their epic legal battle to hold Chevron accountable for decades of extensive, life-threatening oil pollution in the Amazon rainforest. These vulnerable people counted on the good work of the able lawyers at Patton Boggs to help them protect their rights. Instead, Patton Boggs has become Chevron's latest victim. Faced with the threat of scorched-earth litigation fueled by the oil giant's bottomless war chest, this once-proud American law firm has sold its clients down the river. There is no way to sugarcoat it: Patton Boggs has put its own interests above those of the people it was supposed to represent, switched sides in the middle of a hotly contested legal dispute, unceremoniously abandoned the clients without so much as notifying them, and publicly expressed regret at having taken on their representation in the first

place. And it has even agreed to cooperate with Chevron in discovery, so that Chevron may use what it finds against the firm's former clients.

No court should place its imprimatur on such a rotten deal. For the reasons explained in this motion, Hugo Camacho Naranjo and Javier Piaguaje Payagauje (often referred to by this Court as the "Lago Agrio Plaintiffs" or "LAPs") and one of their attorneys, Steven R. Donziger, hereby seek leave to intervene in this action for the purposes of seeking reconsideration of this Court's decision (Dkt. 81) to enter the parties' Stipulation and Order of Dismissal with Prejudice ("Stipulated Order") and thereby approve a settlement agreement ("the Agreement"; Dkt. 81 at Ex. A) that on its face contemplates severe violations by Patton Boggs of applicable rules of professional responsibility and grievously injures Proposed Intervenors' rights.

FACTUAL BACKGROUND

Here are the facts on which this motion rests:

- Patton Boggs and Chevron publicly announced their settlement agreement in the form of a Chevron press release on May 7, 1014, that was distributed widely to the media, *see* Ex. A, Declaration of Pablo Fajardo dated May 20, 2014, at ¶ 8; Ex. B, Chevron Press Release dated May 7, 2014;

- That same day, the Ecuadorian clients of Patton Boggs learned about the settlement via media reports without even a single communication from Patton Boggs, *see* Ex. A, Fajardo Decl. at ¶¶ 8-9;

- To this day, Patton Boggs has not even provided a copy of the settlement agreement to its Ecuadorian clients, much less a translated copy of it, a necessity given that none of the clients speak or read English, *id.* at ¶ 10;

- Patton Boggs never notified its Ecuadorian clients in advance that it was withdrawing its representation, and to this day has never notified them in writing that it has withdrawn its representation, *id.* at ¶¶ 7-8;

- Patton Boggs agreed to provisions that represent flagrant violations of the Code of Professional Responsibility, including the failure to communicate with its clients, failure to take steps to avoid prejudice, violations of the duty of confidentiality, and the release of a public statement of "regret" that flogs its own clients, Dkt. 81 at Ex. A;

- The statement of "regret" contradicts repeated assurances by the firm's lawyers that they believed the judgment in Ecuador was based on valid evidence, that Chevron's attack on it through the RICO proceeding was legally and factually flawed and likely to be reversed on appeal, and that foreign enforcement courts would likely enforce the judgment, *see* Ex. A, Fajardo Decl. at ¶¶ 6, 9;

- The Ecuadorians have taken steps to notify Patton Boggs of their objections to its course of conduct and have to date received no response, *see* Ex. E, Letter from Humberto Piaguaje, Pablo Fajardo, and Juan Pablo Saenz to Edward Newberry and Charles Talisman dated May 19, 2014.

In summary, Patton Boggs apparently has agreed to something unprecedented in the legal profession: the announcement of a withdrawal of representation in the press without first notifying its clients, and the release of a public statement trashing its own clients as a condition of settlement imposed by its adversary. That Patton Boggs did this to pave the way for a merger with another law firm, *see* Ex. C, David McAfee, *Squire Sanders, Patton Boggs Merger Deal Nears Completion*, Law360, May 20, 2014—that is, to secure a benefit for its partnership at the expense of its own clients—makes the violations all the more troubling.

Mssrs. Camacho and Piaguaje and the affected Ecuadorian communities have now been almost fully abandoned by U.S. counsel on account of Chevron's campaign of litigation harassment against virtually everyone who has dared to support the affected Ecuadorian communities. The specific intent of this "bad faith, legally-futile, and vexatious stratagem" in this case has always been, as Patton Boggs itself summarized in its most recent filing here:

> to divert the resources of the Ecuadorian Plaintiffs' counsel, pressure Patton Boggs [] to abandon its clients as the result of unfavorable press, and ultimately deter any other lawyers who might otherwise be inclined to represent the Ecuadorian Amazon communities . . .

Dkt. 65 at 1. It would be hard to improve upon Patton Boggs's own words. And it is hard to avoid the conclusion that the firm has indeed, in its words, given into the "pressure" to "abandon its clients," treating them as an afterthought in a package deal to cleanse the firm of liability, grease the path toward a merger, and boost partner profits all around.

It is a sad commentary on our legal system that Chevron's strategy has succeeded so spectacularly. Absent the unethical settlement agreement submitted for approval to this Court, Patton Boggs (and its proposed merger partner) would face years of uncompensated litigation costs fending off Chevron's attacks. Prior litigation counsel for both Mssrs. Camacho and Piaguaje and Donziger were forced to withdraw—not, as Chevron would like the world to believe, due to any concern about the merits of the underlying case but rather, as stated in sworn declarations of counsel, due to this Court's "implacable hostility" toward the defendants and counsel's inability to compete with Chevron's "legal blitzkrieg" and strategy of "scorched-earth litigation, executed by its army of hundreds of lawyers, [designed] to crush defendants and win this case through might rather than merit."[1] After Chevron's brutal treatment of Patton Boggs and other counsel, Mr. Donziger has been unable to find other counsel willing to represent Mssrs. Camacho and Piaguaje or the Ecuadorian Amazon communities even for the limited purpose of challenging entry of this facially unethical settlement agreement. Proposed Intervenors thus appear before the Court to represent both their interests and Mr. Donziger's.[2]

This Court should not place its stamp of approval on what amounts to an abandonment of indigent clients by a wealthy law firm in the service of its own economic interests. If Patton Boggs and Chevron wish to end this misbegotten piece of collateral litigation by settlement, they must do so by means that do not contravene bedrock norms of professional ethics. The Court should reconsider its decision to enter the Stipulated Order and require the parties to produce a

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1 *See* Ex. D, Declaration of Craig Smyser in Support of Smyser Kaplan & Veselka LLP's Motion to Withdraw; Declaration of John W. Keker in Support of Keker & Van Nest LLP's Motion to Withdraw; Memorandum of Law in Support of Keker & Van Nest LLP's Motion to Withdraw.

2 In retaining Donziger to represent them for the limited purpose of intervening and objecting to approval of the settlement, and seeking to prevent further injury thereby, Mssrs. Camacho and Piaguaje do not in any respect accept the exercise by U.S. courts of personal jurisdiction over them on generally related matters such as Chevron's RICO case.

proposed order that is non-injurious and consistent with the Code of Professional Responsibility if they wish to proceed with dismissal of the action.

I. The Proposed Intervenors Are Entitled To Intervene As Of Right Under Federal Rule of Civil Procedure 24(a).

The Proposed Intervenors easily satisfy the standard requirements for intervention. To intervene as of right, a movant must "(1) timely file an application, (2) show an interest in the action, (3) demonstrate that the interest may be impaired by the disposition of the action, and (4) show that the interest is not protected adequately by the parties to the action." *New York News, Inc. v. Kheel*, 972 F.2d. 482, 485 (2d Cir. 1992). These requirements should be evaluated in light of a "liberal policy in favor of intervention." *United States v. City of Los Angeles*, 288 F.3d 391, 398 (9th Cir. 2002). Where these factors are met, it is clearly appropriate for the Court to grant leave to intervene to oppose a stipulated dismissal or consent order entered without proper notice to all interested parties. *See In Re Jones & Laughlin Ret. Plan*, 87 CIV. 0232 (RO), 1987 WL 8648 (S.D.N.Y. Mar. 26, 1987), *aff'd sub nom. Jones & Laughlin Ret. Plan v. LTV Corp.*, 824 F.2d 202 (2d Cir. 1987) (granting leave to intervene where application sought to vacate a consent order "on the ground that the Consent Order was obtained in a procedurally deficient manner").

With respect to timeliness, neither Mssrs. Camacho and Piaguaje nor Mr. Donziger had any notice of the Patton Boggs withdrawal or of the existence of the Agreement or any aspect of its negotiations with Chevron until Chevron's press release and related newspaper reports reached the Proposed Intervenors mid-day on May 7, 2014. *See* Ex. A at ¶ 9. It appears that the Agreement was filed and the Stipulated Order "so-ordered" by this Court the same day without

any notice to the Patton Boggs clients or, as much as a translated copy[3] of the agreement being provided to them. *Id.* at ¶ 10. They still have not been provided with any written or other specific communication regarding the withdrawal. *Id.* Neither the Patton Boggs clients nor Mr. Donziger had any advance notice or information sufficient to anticipate that the Agreement was coming and that it contained provisions so prejudicial to the interests of the Ecuadorians. *Id.* Since May 7, the Ecuadorians—having now lost their primary U.S. counsel that in the past was generally responsible for protecting client interests in the United States including in situations precisely as that faced here —have moved as expeditiously as possible to analyze the Agreement and its potential impacts and prepare and file this motion. The motion is timely filed within the 14-day period for motions to reconsider specified by Local Civil Rule 6.3.

With respect to interest and threatened impairment thereto, the facts are equally straightforward. Movants here seek intervention and reconsideration of the Court's endorsement and entry of the Agreement, which was transparently designed by Chevron as an attack on the reputation of the overall litigation against Chevron in which Proposed Intervenors have an undeniably "direct, substantial, and legally protectable" interest, *Brennan v. NYC Bd. of Educ.*, 260 F.3d 123, 129 (2d Cir. 2001), as well as laying the foundation for future injury on that interest by means of the voluntary, unwarranted disclosure of confidential communications and information by Patton Boggs.

With respect to adequacy of protection, it is abundantly clear that neither Patton Boggs nor Chevron will protect Proposed Intervenors' interests in these proceedings. Again, Patton Boggs already has injured and agreed to further injure its own clients through its agreement to

[3] None of the clients of Patton Boggs in Ecuador speak English and it was customary for Patton Boggs during its representation to prepare translations of all key documents in the litigation.

issue a public statement of "regret" and provide disclosure of client information and discovery regarding confidential matters not ordered by any court.[4] Movants need only show that the existing representation "may be" inadequate, and the showing required is "minimal." *Trbovich v. United Mine Workers of America*, 404 U.S. 528, 538 n.10 (1972); *see also Dimond v. District of Columbia*, 792 F.2d 179, 193 (D.C. Cir. 1986) (potential conflict of interest satisfies the minimal burden of showing inadequate representation). That showing is obvious here.

Having satisfied the relevant factors, movants are entitled to intervene here for the limited purpose of challenging the Court's "so ordered" entry of the Stipulated Order based on the Agreement, which as set forth below is injurious to movants and so repugnant to public policy and professional ethics that the Court cannot grant tacit approval to it even by so-ordering it to dispose of a civil matter.

II. The Court Should Reconsider Its Order and Refuse to Approve Any Stipulated Dismissal Based on Flagrantly Unethical Conduct.

If this Court grants this request to intervene, Proposed Intervenors may supplement this filing with additional briefing addressing the impropriety of the Patton Boggs/Chevron settlement and the reasons why this Court should reconsider its approval of the settlement. On a motion for reconsideration, a movant must demonstrate the existence of a matter that the Court originally overlooked and that might reasonably be expected to "alter the result." *See* Local Civil Rule 6.3; *Cioce v. County of Westchester*, 128 Fed. Appx. 181, 185 (2d Cir. 2005); *O'Connor v. Pan Am Corp.*, 5 Fed. Appx. 48, 52 (2d Cir. 2001). Reconsideration should be granted where

[4] While the Agreement purports to afford the Ecuadorians "an opportunity to assert any privilege or work product protection that may attach to any information sought to be discovered," Agreement at ¶ 5(c), this "opportunity" is meaningless without counsel or the resources to retain counsel.

necessary to correct for "clear error" or to "prevent manifest injustice." *Munafo v. Metro. Transp. Auth.*, 381 F.3d 99, 105 (2d Cir. 2004).

With respect, the Court appears to have entirely overlooked and not "considered" at all the substantive issues at stake surrounding the Court's acceptance and entry of the Stipulated Order predicated on the unethical Agreement. The Stipulated Order was "so ordered" apparently within hours if not minutes of its submission. It was never filed on the public docket so that other interested parties might consider its impact on their own interests. The "so ordered" entry at Dkt. 81 contains no discussion or analysis whatsoever to reflect the Court's thinking on the appropriateness of entering such an order and effectively approving the unethical underlying Agreement.

The express authority invoked by the Stipulated Order—Federal Rule of Civil Procedure 41(b)—allows for dismissal of actions "on terms that the court considers proper." Thus, "the existence of a so ordered settlement agreement incorporates the terms of the settlement into a court order." *Thanning v. Nassau Cnty. Med. Examiners Office*, 187 F.R.D. 69, 71 (E.D.N.Y. 1999).[5] Indeed, a settlement agreement incorporated into so-ordered dismissal binds the Court as much as it binds the parties. *See Geller v Branic Intern. Realty Corp.*, 212 F3d 734 (2d Cir. 2000) ("Once the District Court 'so ordered' the settlement agreement . . . it was required to enforce the terms of the agreement, including the obligation imposed on the court"). This implicates the Court's "general responsibility to ensure that its orders are fair and lawful" and provides it with at least "some responsibility over the terms of a settlement agreement."

[5] This is certainly the case where the stipulated dismissal expressly relies on and references the underlying settlement agreement and expressly provides for continuing jurisdiction by the court to enforce its terms. *Compare Cross Media Mktg. Corp. v. Budget Mktg., Inc.*, 319 F. Supp. 2d 482, 483 (S.D.N.Y. 2004) (no continuing jurisdiction where "[t]he settlement agreement never was filed or approved").

Roberson v. Giuliani, 346 F.3d 75, 80, 82 (2d Cir. 2003) (rejecting lower court reasoning that the court's so-ordered endorsement of a settlement agreement "does not . . . constitute [legally significant] 'judicial sanctioning'"); *Smyth v. Rivero*, 282 F.3d 268, 282 (4th Cir. 2002) ("A court's responsibility to ensure that its orders are fair and lawful stamps an agreement that is made part of an order with judicial imprimatur").[6] The reality is that, in filing a settlement agreement pursuant to a stipulated dismissal, the parties "seek[] the Court's tacit approval of its terms." *Black Rock City LLC v Pershing County Bd. of Com'rs*, 2014 WL 40755 (D. Nev. Jan. 6, 2014). Such approval cannot be granted to illegal, unethical, or otherwise unenforceable settlements. *Id.*; *Health-Chem Corp. v. Baker*, 737 F. Supp. 770, 775 (S.D.N.Y. 1990), *aff'd*, 915 F.2d 805 (2d Cir. 1990).

The Agreement on its face violates concrete ethical requirements governing the conduct of the parties and is therefore contrary to law and public policy. The ethical propriety of Patton Boggs's conduct is simultaneously governed by the ethical codes of the firm's home jurisdiction, the District of Columbia, as well as the jurisdictions of New York and New Jersey, where the conduct occurred and where the related litigations proceeded, and is further governed in federal proceedings by the ABA Model Code, *see NCK Org. Ltd. v. Bregman*, 542 F.2d 128, 129 n. 2 (2d Cir. 1976).

While movants are not yet in a position to fully brief the ethical failures of the Agreement on this motion to intervene, the following *prima facie* defects of the Agreement are noted in substantiation of movants' position that the propriety of the Agreement needs further

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[6] While private settlements, distinguished from class action settlements and consent decrees, do not always specifically "entail the judicial approval," the case is different when "the terms of the agreement are incorporated into the order of dismissal." *Buckhannon Bd. & Care Home, Inc. v. W. Va. Dep't of Health & Human Res.*, 532 U.S. 598, 604 n.7 (2001).

consideration by this Court beyond the rubber-stamp "so ordered" notation that it provided on May 7:

- ***Improper withdrawal.*** Patton Boggs's unilateral withdrawal of representation does not appear to be authorized or available under either ABA/NY Rule 1.16(b) or 1.16(c). The agreement's reference to the findings of Judge Kaplan is inapposite as those findings are being vigorously challenged on appeal and are in any event suspect given that they directly contradict the findings of Ecuador's courts (where Chevron wanted the trial held). It appears that the key factual context behind the withdrawal and the Agreement, as confirmed by numerous media reports including several citing internal Patton Boggs sources, involves the firm's self-interest in settling its affairs to achieve a merger with the Squire Sanders law firm. While this might be a legitimate rationale in the context of a routine business deal, it provides no justification for a unilateral decision by a law firm to withdraw in prejudice to its clients, much less to affirmatively injure its clients.

- ***Failure to take steps to avoid prejudice.*** Irrespective of the purported bases for withdrawal, the manner in which the firm withdrew independently violates ABA/NY Rule 1.16(e), which requires a lawyer to "take steps, to the extent reasonably practicable, to avoid foreseeable prejudice to the rights of the client." As an explicit part of the Agreement, Patton Boggs issued a press statement of "regret" designed to boost the oil company's media campaign against us and the affected Ecuadorian communities. The press statement, which cannot be justified as a remedial measure to preserve candor to a tribunal, appears to have been a bargaining chip offered at the negotiating table to secure for Patton Boggs benefits at the expense and prejudice of the affected clients.

- ***Failure to communicate.*** Patton Boggs' failure to inform its clients about the substance and scope of its negotiations with Chevron such that the clients would be able to take steps to protect their interests is a clear violation of the firm's duty to communicate under ABA/NY Rule 1.4.

- ***Failure to maintain confidentiality.*** In paragraph 5 of the agreement, Patton Boggs voluntarily offers additional information to Chevron about its representation of the communities under the rubric of additional "discovery." But this "discovery" has not been ordered by any court and Patton Boggs' offer of this information and any future delivery of such information to Chevron amounts to a clear violation of the firm's confidentiality obligations under ABA/NY Rule 1.6. While the Agreement ostensibly allows the affected clients to assert privilege, this ignores the fact that the voluntary offer of unordered "discovery" in the first place violates the confidentiality obligation irrespective of privilege issues, and that with respect to privilege, the Agreement conspicuously overlooks the fact that the indigent affected clients no longer even have counsel effectively capable to make such privilege assertions after the Patton Boggs' withdrawal.

- ***Improper use of confidential information.*** The offer of "discovery" under paragraph 5—like the statement of "regret," an item offered by Patton Boggs to Chevron as a

> bargaining chip—also violates the ethical provision prohibiting the firm from using confidential information in its own self-interest (ABA/NY Rule 1.8) and/or to the disadvantage of its former clients (ABA/NY Rule 1.9).

The Court should not place its imprimatur on an Agreement that contains such ethical violations as those evident here. Indeed, if not reconsidered, the Court could soon find itself required to enforce the unethical terms of the Agreement under its ongoing jurisdiction explicitly provided for in the Stipulated Order. If the parties wish to end this litigation by settlement, they must do so by ethical means that conform to the basic requirements of the legal profession and do not offend public policy and cause injury to third parties, particularly highly vulnerable third parties such as the Ecuadorians.

CONCLUSION

For the foregoing reasons, Proposed Intervenors hereby respectfully request that this Court (1) grant them leave to intervene in this action; (2) reconsider its acceptance and entry of the Stipulated Order and vacate the order at Dkt. 81; (3) issue an order blocking implementation of the Patton Boggs–Chevron settlement until it can conform to the ethical rules; (4) direct the parties, if they wish to continue their efforts to settle the case, to submit a proposed order of dismissal that rests upon an ethical underlying agreement between them; and (5) only accept such a future proposed order of dismissal after it has been filed by the parties on the public docket such that all potentially interested parties have a reasonable period of time to examine it and ensure their interests are protected. Proposed Intervenors reserve the right to supplement this filing with additional briefing and support.

Dated: May 21, 2014

New York, New York

Respectfully submitted,

s/ Steven R. Donziger

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EXHIBIT A

DECLARATION

I, Pablo Fajardo Mendoza, hereby declare as follows:

1. I am the principal lawyer for the plaintiffs who won a judgment against Chevron for environmental damage in the case *Maria Aguinda v. Chevron Corporation.* The plaintiffs include Srs. Hugo Camacho Naranjo and Javier Piagauje Payaguaje, two of the defendants in the *Chevron v. Donziger* "RICO" action currently on appeal in New York.

2. The submission of this affidavit should in no way be construed that I nor any of my clients in Ecuador accept the general jurisdiction of U.S. courts or the jurisdiction of this Court in the RICO action. I submit this affidavit for the limited purpose of supporting a motion to intervene to preserve as best as possible the interests of my clients in the face of a deeply unethical and unsettling course of conduct by their U.S. counsel that I believe not only prejudices them but reflects poorly on the standards of legal representation applicable in the United States. If the Court believes that this request for intervention materially changes in any respect the jurisdictional status of me or my clients with respect to this federal district, I ask that the Court promptly inform me of the same to allow me the opportunity to consider the consequences of this Declaration under the rules of the United States legal system, with which I am not familiar.

3. On behalf of my clients in Ecuador, I retained the Patton Boggs law firm in 2010 to assist with various legal matters in the United States and elsewhere in relation to the Ecuador litigation against Chevron.

4. During the period of the Patton Boggs retention, I and other members of the legal team for the plaintiffs in the *Aguinda* case regularly communicated confidential information and attorney-client communications to various attorneys at the firm as was necessary for them to fulfill the scope of their representation. These communications included several in-person meetings and numerous emails.

5. These confidential communications took place from approximately February 2010 until recently. They were made at various times with the following attorneys at the firm: James Tyrell, Jr.; Eric Westenberger; Edward Yennock; Annie Carrasco; Adlai Small; Eric Daleo; Benjamin Chew; Jason Rockwell; and their associates and paralegal, technology, secretarial, and other support staff.

6. In approximately December 2013, I spoke by telephone to Mr. James Tyrrell, Jr., a Patton Boggs partner and the lead attorney in the firm responsible for the Ecuador litigation. On that call, Mr. Tyrrell explained to me through a translator that the firm

would continue its commitment to zealously represent the Ecuadorian plaintiffs in all pending matters, including an appellate matter before the Fourth Circuit Court of Appeals, but had yet to make a decision as to whether it would handle appeal of the *Chevron v. Donziger* matter then pending decision before this Court. Because we believed we were certain to face an adverse judgment in the RICO case (based on this Court's numerous prejudicial comments against us, the denial of the right to a jury, and for other reasons made clear in the various mandamus petitions filed with the Second Circuit and in other motions), we were extremely concerned at that time that the two Ecuadorians who appeared in the RICO trial would not have appellate counsel.

7. In approximately March of this year, after this Court ruled in the *Chevron v. Donziger* case, I talked again with Mr. Tyrrell. He explained to me through a translator that the firm's partnership had ordered him and other lawyers at Patton Boggs to forego working on the appeal of Judge Kaplan's decision and to not to undertake any new work for the Ecuadorians. He said that he personally disagreed with this decision, but that he was obligated to abide by the decision of the firm's partnership. He told me the primary driver of this decision was the contingent liability situation the firm faced at a time that it was in merger talks with another law firm. He stated clearly that Patton Boggs would abide by its ethical duties and remain loyal to the clients at all times.

8. Neither Mr. Tyrrell nor any other lawyer from Patton Boggs ever informed me the firm was negotiating a detailed "settlement agreement" with Chevron. I first learned of the withdrawal of Patton Boggs when its settlement agreement with Chevron was announced publicly on May 7, 2014. Neither I nor any other Ecuadorian plaintiff was informed of this agreement or any of its contents before it was announced to the media, and reported publicly.

9. Until the moment the agreement was announced, Mr. Tyrrell had repeatedly expressed to me his belief that the decision in Chevron's RICO case in New York was deeply flawed both factually and legally and that he thought it stood a great likelihood of being reversed on appeal. Mr. Tyrrell repeatedly stressed he based his view on an independent analysis of the facts and that his law firm fully disagreed with the findings of Judge Kaplan. He never personally expressed "regret" or indeed any misgivings for his involvement, or his firm's involvement, in the representation of the Ecuadorians.

10. To this day, nobody at Patton Boggs has provided me with a copy of the settlement agreement, either in English or a translated version (I do not speak or read English with any degree of proficiency).

11. I have had an English version of the settlement agreement procured from the internet and read to me in Spanish by a bilingual staff person in our law office, so I am familiar with its contents.

12. I was never informed by Mr. Tyrrell or any other lawyer at Patton Boggs that the firm would agree as part of its settlement with Chevron to make a public comment that it "regrets" its involvement in the *Aguinda* litigation. I would have objected strenuously had I known the provision was being negotiated. I certainly object to it now and consider it a profound betrayal by the law firm of its Ecuadorian clients and not in the least way reflective of the actual beliefs of Mr. Tyrrell, as he repeatedly expressed to me throughout his firm's representation of us up to and including our last conversation in March after the RICO decision was issued.

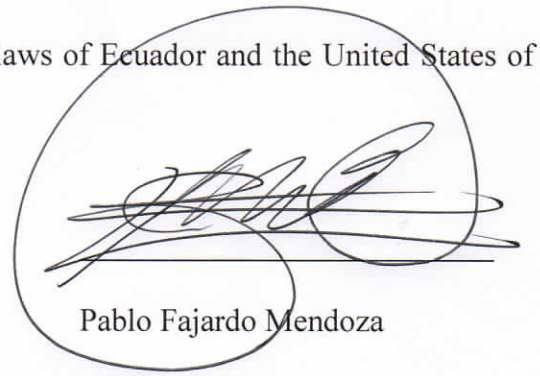
13. I was never informed by any lawyer at Patton Boggs that the firm would agree as part of its settlement to voluntarily produce documents and testimony to Chevron. I object strenuously to this provision of the settlement agreement given that any such documents are the property of the Ecuadorian clients. As their legal representative, we do not consent to any discovery being produced to Chevron and we have demanded the firm return to us all client files and their copies, which we consider to be our property and to which we will endeavor to preserve.

14. As a general matter, I did not and do not consent in any respect to the terms of the settlement agreement between Patton Boggs and Chevron. I believe several provisions in the agreement violate professional legal ethics and represent a betrayal of various duties Patton Boggs owes to its clients.

15. My clients are entirely unable to object to any of the discovery provisions under the procedures set up by the agreement because they do not now have U.S. counsel capable of doing so, given that Patton Boggs has withdrawn its representation. As both Patton Boggs and Chevron know, the affected communities currently do not have funds to retain new U.S. counsel. Mr. Julio Gomez, who represented Messrs. Piagjauje and Camacho in the *Chevron v. Donziger* case, has indicated he will do no further work on the matter absent a substantial payment of funds that we currently do not have.

16. I have made some inquiries with persons familiar with the U.S. legal market and have been informed that, after how aggressively Chevron has treated Patton Boggs and others who had been retained to help the affected communities, it is highly unlikely that any U.S. lawyer would be willing to enter this matter even for the limited purpose of asserting privilege.

I declare under penalty of perjury under the laws of Ecuador and the United States of America that the foregoing is true and correct.



Executed on May 20th, 2014

Quito, ECUADOR

Pablo Fajardo Mendoza

DECLARACIÓN

Yo, Pablo Fajardo Mendoza, por medio de la presente declare lo siguiente:

1. Yo soy el Procurador Común (Abogado Principal) de los demandantes que vencieron en juicio a Chevron por daños ambientales, en el proceso conocido como *Maria Aguinda v. Chevron Corporation.* Dentro del grupo de demandantes están los señores Hugo Camacho Naranjo y Javier Piaguaje Payaguaje, dos de los demandados en el proceso "RICO" conocido como *Chevron v. Donziger,* el cual actualmente se encuentra en su fase de apelación.

2. La presentación del presente *affidavit* no podrá ser interpretada, bajo ninguna circunstancia, como sometimiento de mi persona o de mis clientes a la jurisdicción general de las cortes de los Estados Unidos de América, o a la jurisdicción de esta Corte en el proceso RICO. Presento este *affidavit* con el objetivo exclusivo de sustentar una moción para intervenir que preserve de la mejor manera los intereses de mis clientes, frente a la conducta preocupante y profundamente anti-ética de sus abogados estadounidenses, la cual en mi opinión no solamente es perjudicial para ellos, sino que constituye una triste representación de los estándares aplicables a los abogados de los Estados Unidos. Si esta Corte estima que moción para intervenir modifica de manera material el estatus de jurisdicción de mis persona o mis clientes con respecto de este distrito federal, le solicito a la Corte que me informe de este particular inmediatamente para poder tener la oportunidad de considerar las consecuencias de esta Declaración bajo las reglas del sistema legal de los Estados Unidos, con el cual no estoy familiarizado.

3. En nombre y representación de mis clientes en el Ecuador, contraté al estudio jurídico Patton Boggs en el 2010 para que presten sus servicios con varios asuntos legales en los Estados Unidos y otros países en relación con la litigación ecuatoriana en contra de Chevron.

4. Durante el período de prestación de servicios de Patton Boggs, yo y otros miembros del equipo legal de los demandantes en el caso *Aguinda* regularmente comunicamos información confidencial y propia de la relación abogado-cliente a varios abogados de la firma a medida que esto era necesario para la consecución de los fines de su representación. Estas comunicaciones fueron tanto personales, como a través de numerosos correos electrónicos.

5. Estas comunicaciones confidenciales tuvieron lugar aproximadamente desde febrero del 2010 hasta recientemente. Ocurrieron en diversos momentos con los siguientes abogados de la firma: James Tyrell, Jr.; Eric Westenberger; Edward Yennock; Annie

Carrasco; Adlai Small; Eric Daleo; Benjamin Chew; Jason Rockwell; y sus diversos asociados, paralegales, y equipo secretarial y de soporte.

6. Aproximadamente en diciembre del 2013, mantuve una conversación telefónica con el señor James Tyrrell, Jr., socio de Patton Boggs y el abogado principal de la firma y responsable con respecto a la litigación ecuatoriana. En dicha llamada telefónica, el Sr. Tyrrell me explicó a través de un traductor que la firma continuaría con su compromiso a representar celosamente a los demandantes ecuatorianos en todos los asuntos pendientes, incluyendo un proceso de apelación ante el Cuarto Circuito de Apelación, sin embargo aún no había decidido si la firma representaría a los demandantes ecuatorianos en la apelación del proceso *Chevron v. Donziger* pendiente ante esta Corte. Dado que nosotros pensamos que con seguridad obtendríamos una sentencia adversa en el caso RICO (debido a los numerosos comentarios perjudiciales que esta Corte lanzó en nuestra contra, la negación de nuestro derecho a tener un jurado, y por otras razones que se han explicado con claridad tanto en las varias peticiones de *mandamus* presentadas ante el Segundo Circuito como en otras mociones) en ese momento nos preocupó sobremanera que los dos ecuatorianos que comparecieron en el juicio RICO no tendrían abogados para la apelación.

7. Aproximadamente en marzo de este año, luego de que esta Corte dictara sentencia en el caso *Chevron v. Donziger*, conversé nuevamente con el Sr. Tyrrell. Me explicó a través de un traductor que los socios de su estudio jurídico le habían ordenado a él y a otros abogados de Patton Boggs que no asuman trabajo alguno en la apelación de la decisión del Juez Kaplan, y que no trabajen más para los ecuatorianos. Dijo que personalmente él no estaba de acuerdo con dicha decisión de los socios del estudio jurídico, pero que estaba obligado a acatarla. Me dijo además que el principal motivo detrás de dicha decisión era la situación de responsabilidad contingente que el estudio jurídico enfrentaba en ese momento, y que ésta estaba en negociaciones de fusión con otro estudio jurídico. Señaló con claridad que Patton Boggs honraría sus obligaciones éticas, y permanecería leal a los clientes en todo momento.

8. Ni el Sr. Tyrrell ni otro abogado de Patton Boggs me informó jamás que el estudio jurídico estaba negociando un acuerdo transaccional ("*Settlement Agreement*") con Chevron. Yo me enteré de la retirada de Patton Boggs recién cuando su acuerdo transaccional con Chevron fue hecho público el 7 de mayo del 2014. Ni yo, ni ningún demandante ecuatoriano, fuimos informados sobre este acuerdo ni su contenido antes de que éste sea anunciado a los medios de comunicación, y reportado públicamente.

9. Hasta el momento en que el acuerdo transaccional fue anunciado, el Sr. Tyrrell repetidamente compartió conmigo su convicción que la sentencia en el caso RICO de Chevron en Nueva York adolecía de profundos errores tanto facticos como legales, y

él afirmó que dicha sentencia tenía una gran probabilidad de ser revocada en apelación. El Sr. Tyrrell recalcó repetidamente que sustentaba su parecer en un análisis independiente de los hechos, y que su estudio jurídico estaba en completo desacuerdo con las conclusiones del Juez Kaplan. En ningún momento expresó "arrepentimiento" o ningún sentimiento negativo sobre su rol, y el rol de su firma, en la representación de los ecuatorianos.

10. Hasta este día, nadie de Patton Boggs me ha facilitado una copia del acuerdo transaccional, ni en su inglés original, ni en español (no leo ni hablo inglés con facilidad).

11. He instruido que la versión en inglés del acuerdo transaccional sea obtenido del internet, y me ha sido leía en español para un miembro bilingüe de mi estudio jurídico, así que estoy familiarizado con su contenido.

12. Jamás se me informó por medio del Sr. Tyrrell u otro abogado de Patton Boggs que la firma aceptaría, como parte de su acuerdo con Chevron, el hacer un comentario público en el sentido de que "se arrepiente" de su participación en el caso *Aguinda*. De haber sabido que dicha provisión estaba siendo negociada, yo me hubiera opuesto vehementemente a la misma. Me opongo a la misma hasta este momento, y la considero una profunda traición por parte del estudio jurídico en contra de sus clientes ecuatorianos. Dicha provisión no refleja en lo más mínimo los pareceres y conclusiones reales del Sr. Tyrrell, tal y como me fueron comunicados éstos repetidamente a lo largo de la representación de la firma, incluyendo nuestra última conversación de marzo, después de que la sentencia RICO había sido dictada.

13. Jamás fui informado por ningún abogado de Patton Boggs que la firma acordaría, como parte de su acuerdo transnacional, el entregar voluntariamente documentos y testimonios a Chevron. Me opongo vehementemente a esta provisión del acuerdo transaccional, dado que todos y cada uno de esos documentos son de propiedad de los clientes ecuatorianos. Como su Procurador Común, no acepto que ningún tipo de *discovery* le sea entregado a Chevron, y hemos exigido que el estudio jurídico nos entregue todos los archivos de los clientes con sus copias, los cuales estimamos son de nuestra propiedad, y buscaremos preservar.

14. Como un asunto general, jamás he consentido ni jamás consentiré con ningún respecto los términos y provisiones del acuerdo transaccional entre Patton Boggs y Chevron. Es mi parecer que varias provisiones y cláusulas del acuerdo son violatorias de la ética profesional legal, y constituyen una traición a varias obligaciones de Patton Boggs para con sus clientes.

15. Mis clientes se encuentran en total incapacidad de objetar a las estipulaciones de *discovery* dentro de los procedimientos establecidos por el acuerdo transaccional, puesto que ahora no cuentan con abogados estadounidenses capaces de hacer esto, ya que Patton Boggs ha renunciado a su representación. Como tanto Patton Boggs como Chevron saben, las comunidades afectadas no tienen fondos para contratar nuevos abogados en EEUU. El Sr. Julio Gomez, quien representó a los señores Camacho y Piaguaje en el caso *Chevron v. Donziger*, ha indicado que no va a realizar más trabajo en el caso sin que se le entregue un pago sustancial que se le debe, lo cual ahora es imposible por falta de fondos.

16. He realizado algunas consultas con personas familiares al sistema legal de los Estados Unidos, y me han informado que, luego de la agresividad con la que Chevron ha tratado a Patton Boggs y otros que han sido contratados a lo largo del tiempo para ayudar a las comunidades afectadas, es muy poco probable que cualquier abogado estadounidense esté dispuesto a ingresar a este caso, aunque sea por el limitado propósito de alegar privilegio.

Declaro bajo pena de perjurio bajo las leyes del Ecuador y de los Estados Unidos de América que lo anterior es verdadero y correcto.

Dado el 20 de mayo

Quito, ECUADOR

Pablo Fajardo Mendoza

EXHIBIT B

Chevron

Human Energy

Chevron Corporation Reaches Settlement Agreement With Patton Boggs Law Firm

SAN RAMON, Calif., May 7, 2014 – Chevron Corporation (NYSE: CVX) today announced it has reached a settlement agreement with Patton Boggs LLP, a lobbying and law firm headquartered in Washington, D.C. Chevron had filed counterclaims in federal court against Patton Boggs for its role in a lawsuit against the company in Ecuador. In today's settlement, Patton Boggs has resolved those claims by withdrawing from the fraudulent Ecuador litigation, issuing a statement of regret, assigning its interests in the litigation to Chevron, and making a payment to Chevron of $15 million. Chevron, in turn, has agreed to release all claims against Patton Boggs and its partners.

"We are pleased that Patton Boggs is ending its association with the fraudulent and extortionate Ecuador litigation scheme. Chevron detailed its objections to Patton Boggs' conduct in its counterclaim, and today's agreement brings that litigation to an end. Chevron encourages others to disassociate themselves from this fraud," said Hewitt Pate, Chevron's vice president and general counsel.

On March 4, 2014, Judge Lewis Kaplan of the U.S. District Court for the Southern District of New York ruled that the $9.5 billion judgment against Chevron in Ecuador was the product of fraud and racketeering activity, finding it unenforceable in the United States and holding Donziger liable for RICO violations. Patton Boggs began working with Donziger and the Lago Agrio Plaintiffs in early 2010 in exchange for a stake in the Ecuadorian judgment. Patton Boggs also filed a series of three separate lawsuits on its own behalf in the United States against Chevron. All of that firm's claims against Chevron were rejected by U.S. federal courts. On March 31, 2014, Judge Kaplan granted Chevron's application to pursue counterclaims against Patton Boggs relating to that firm's role in connection with the Ecuadorian action and related litigations against the company. Today's settlement resolves those counterclaims.

In settling this matter, Patton Boggs is the latest party, among many others, to disassociate itself from Steven Donziger and the Lago Agrio Plaintiffs. During the recent seven-week federal racketeering trial against Steven Donziger, there were more than a dozen former insiders and allies who testified against him, including his former co-counsel, environmental consultants, funders, employees and his Ecuadorian collaborators.

Chevron is one of the world's leading integrated energy companies, with subsidiaries that conduct business worldwide. The company's success is driven by the ingenuity and commitment of its employees and their application of the most innovative technologies in the world. Chevron is involved in virtually every facet of the energy industry. The company explores for, produces and transports crude oil and natural gas; refines,

markets and distributes transportation fuels and other energy products; manufactures and sells petrochemical products; generates power and produces geothermal energy; provides energy efficiency solutions; and develops the energy resources of the future, including biofuels. Chevron is based in San Ramon, Calif. More information about Chevron is available at www.chevron.com.

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EXHIBIT C

LAW360
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Squire Sanders, Patton Boggs Merger Deal Nears Completion

David McAfee

Law360, Los Angeles (May 14, 2014, 10:39 PM ET) -- Struggling law firm Patton Boggs LLPis on the verge of completing a much-anticipated merger with Squire Sanders LLP in a move that would shut down a competing merger offer made by Dentons, Legal Week reported Wednesday citing a source involved in the discussions.

Dentons' Global Chief Executive Officer Elliott Portnoy **said in March** that the firm made an offer to Patton Boggs and that the deal was still on the table despite Patton Boggs' ongoing talks to be absorbed by Squire Sanders. But now, a source close to the matter has said that Dentons' offer hasn't evolved or progressed beyond initial talks, according to Legal Week.

Instead, Patton Boggs plans to complete its previous deal with Squire Sanders. The new firm would have approximately 1,700 lawyers in 45 offices across 22 countries, according to the news report.

Representatives for Patton Boggs, Dentons and Squire Sanders didn't immediately return requests for comment late Wednesday night.

The media report of the merger deal between Patton Boggs and Squire Sanders nearing completion is the most recent development in the ongoing discussions between the various firms, coming less than a month after two more Patton Boggs partners **joined a steady stream of departures** from the struggling lobbying firm as it negotiated the deal.

Among the latest to exit were litigation partners Scott Weber, who had been attached to the firm's Newark, New Jersey, office, and Shannon Conway, who recently left Patton Bogg's shrinking Dallas outpost. The pair joined a growing list of partners who have left in recent months as Patton Boggs tried to stabilize amid a cash shortage and sharply down revenues in the last two years.

Washington, D.C.-based Patton Boggs made two rounds of lawyer and staff layoffs last year as it tried to shed overhead and re-engineer its partner compensation system, and has hired a restructuring "work out" firm and a bankruptcy lawyer. The firm's year-to-year gross revenues dropped 12 percent last year to $278 million.

Patton Boggs has been engaged since at least February in merger talks with the far larger Squire Sanders and a previous deal to be absorbed by Texas' Locke Lord LLP fell apart as partners at Locke Lord balked at potential liability springing from Patton Boggs' involvement in a fight over a pollution judgment in Ecuador against Chevron Inc.

Earlier this month, however, Patton Boggs **paid Chevron $15 million** and expressed regret for pressing the discredited $9.5 billion Ecuadorian pollution judgment, an extraordinary settlement that attorneys said not only resolves the firm’s substantial liability on the cheap, but also removes a major obstacle in its search for a merger partner.

--Additional reporting by Andrew Strickler. Editing by Chris Yates.

EXHIBIT D

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CHEVRON CORPORATION, Plaintiff, v. STEVEN DONZIGER, THE LAW OFFICES OF STEVEN R. DONZIGER, et al., Defendants.	CASE NO. 11-CV-0691(LAK) **DECLARATION OF CRAIG SMYSER IN SUPPORT OF SMYSER KAPLAN & VESELKA, L.L.P.'S MOTION TO WITHDRAW AS ATTORNEY IN CHARGE FOR DEFENDANTS HUGO CAMACHO AND JAVIER PIAGUAJE**

I, Craig Smyser, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746, that the following is true and correct:

1. I am a partner at the law firm of Smyser Kaplan & Veselka, L.L.P., counsel for Defendants Hugo Gerardo Camacho Naranjo and Javier Piaguaje Payaguaje ("Defendants") in the above-captioned matter. I make this declaration based on personal knowledge and in support of Smyser Kaplan & Veselka, L.L.P.'s Motion to Withdraw as Attorney in Charge for Defendants Hugo Camacho and Javier Piaguaje.

2. In June 2011, Defendants Hugo Gerardo Camacho Naranjo ("Camacho") and Javier Piaguaje Payaguaje ("Piaguaje") retained Smyser Kaplan & Veselka, L.L.P. ("SKV") to represent them in this matter. Without waiving any attorney-client privilege, this retainer agreement provided for payment of fees at SKV's standard hourly billing rates, with Defendants responsible for payment of all costs and expenses.

3. Without waiving any attorney-client privilege, after the litigation proved to be too costly for Camacho and Piaguaje, SKV agreed to convert its fee arrangement for this representation to provide for a mixed hourly and contingent fee, with Defendants retaining responsibility for payment of all costs and expenses.

4. Without waiving any attorney-client privilege or work product protection, as of May 2, 2013, Camacho and Piaguaje owe SKV over $1.77 million. After further fees and expenses from April 2013 are incorporated, that number will be even higher. Camacho and Piaguaje have been in arrears to SKV for over a year.

5. Due to Chevron's legal blitzkrieg, which included over 100 lawyers at Gibson Dunn & Crutcher LLP alone, SKV has had to bill over 16,000 hours on this representation since June 2011. Many of those hours were spent defending Camacho and Piaguaje in the Count 9 action, while the rest have been spent defending two Ecuadorians against a third-party fraud claim in New York.

6. SKV is a law firm of eleven full-time lawyers and two of counsel, one of whom is a law school professor who does not practice regularly at SKV. During the last nearly two years, at one time or another eight of SKV's eleven lawyers have worked on this matter on behalf of Camacho and Piaguaje. Currently, four SKV lawyers work full-time on the representation, with others working part-time. At the current and projected pace of this matter, SKV cannot financially survive as a law firm without payment of the fees it is owed under its contract with Camacho and Piaguaje.

7. Without waiving any attorney-client privilege, I and others at SKV have discussed the issue of non-payment of fees with Messrs. Camacho and Piaguaje and with their lawyers in Ecuador. We have explained on several occasions over the last year that absent payment, SKV would be forced to withdraw from the representation in this matter. Camacho and Piaguaje and their representatives in Ecuador have been unable to raise sufficient funds to meet their contractual obligations to SKV. Some of the unpaid invoices are nearly one year old. There is no reasonable prospect of SKV's recovery of its current outstanding receivable of nearly $1.8

million, nor of receiving substantial payment for the future fees and costs that would be incurred if SKV were to continue on as counsel.

8. SKV does not have a retaining or charging lien.

9. Without waiving any attorney-client privilege, after discussing this issue with SKV, Camacho and Piaguaje and their representatives in Ecuador have stated that they are unable to pay the fees owed. Without waiving any attorney-client privilege, Camacho and Piaguaje have expressed their understanding of SKV's financial position and do not oppose SKV's motion to withdraw.

Dated: May 6, 2013
Houston, Texas

By: /s/ Craig Smyser
Craig Smyser
Admitted Pro Hac Vice
Federal ID 0848

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

CHEVRON CORPORATION, Plaintiff, v. STEVEN DONZIGER, et al., Defendants.	Case No. 11-CV-0691 (LAK)

DECLARATION OF JOHN W. KEKER IN SUPPORT OF KEKER & VAN NEST LLP'S MOTION TO WITHDRAW AS COUNSEL FOR DEFENDANTS STEVEN DONZIGER, THE LAW OFFICES OF STEVEN R. DONZIGER AND DONZIGER & ASSOCIATES, PLLC

I, JOHN W. KEKER hereby declare under penalty of perjury pursuant to 28 U.S.C. §1746, that the following is true and correct:

1. I am a partner in the law firm of Keker & Van Nest LLP, counsel of record for Defendants Steven Donziger, The Law Offices of Steven R. Donziger, and Donziger & Associates, PLLC (collectively "Donziger") in the above-captioned matter. I submit this Declaration in support of Keker & Van Nest's Motion to Withdraw as Counsel.

2. This action against Donziger was commenced on February 1, 2013. Donziger retained Keker & Van Nest on February 17, 2011, and Keker & Van Nest has since that time represented Donziger in this action, 11-CV-0691 (LAK), and the *Chevron v. Salazar* "Count 9" action, 11-CV-3718 (LAK), as well as in related appellate and mandamus proceedings in the Court of Appeals for the Second Circuit. *See Chevron v. Naranjo, et al.*, Docket Nos. 11-1150-cv(L); 11-1264-cv(CON).

3. On March 7, 2011, this Court granted a Preliminary Injunction, Dkt. No. 181, from which Defendants appealed. On April 15, 2011, this Court granted Chevron's Motion to Bifurcate Count 9 for a separate trial, Dkt. No. 278, and stayed discovery in the remainder of the action, Dkt. No. 279. Five days later Chevron filed an amended complaint, Dkt. No. 283, which dropped Donziger from Count 9. Donziger moved to intervene in the Count 9 action, and on May 31, 2011, the Court effectively denied Donziger's motion to intervene. Dkt. No. 327. The Court granted Donziger's motion to intervene for the limited purpose of cross examining witnesses or parties at deposition on issues relating to Donziger, and objecting to other discovery to the extent such discovery violates an evidentiary privilege personal to Donziger. *Id*. at 15-16. From late May 2011 until early 2012, Keker & Van Nest, therefore, continued to represent

Donziger with respect to certain discovery proceedings in Count 9, as well as Donziger's appeal of the Court's preliminary injunction order.

4. On September 19, 2011, the Court of Appeals for the Second Circuit issued an order vacating the March 7, 2011 preliminary injunction, and staying the District Court proceeding. *Chevron v. Camacho et al*., 11-1150 (2d Cir.), Dkt. No. 597. The Court of Appeals filed its Opinion on January 27, 2012. Dkt. No. 385. On February 16, 2012, this Court lifted the stay which had been entered on April 15, 2011, and active litigation of Claims 1-8 in this action re-commenced. Dkt. No. 389.

5. In the fourteen months since February 2012 when the stay was lifted, this case has been litigated at a feverish pace, which has increased at an exponential rate. A review of the docket sheet shows 81 entries for the first quarter of 2012; 43 entries for the second quarter of 2012; 81 entries for the third quarter of 2012; 114 entries for the fourth quarter of 2012; and 261 entries for the first quarter of 2013. April has yielded another 130 docket entries, plus a three day evidentiary hearing. Letters, discovery responses, meet and confer calls, and other non-docketed materials have all also followed the same trajectory of exponential increase. Now, with the addition of two special masters, there is the additional burden of responding to the Special Master's various letters, orders, and emails.

6. Chevron served over 210 document requests to Donziger, many with subparts, as well as dozens of pages of interrogatories and 1,228 requests for admission, many with multiple subparts. Our firm has spent thousands of hours dealing with Chevron's seemingly limitless discovery demands.

7. On March 1, 2013, counsel for Defendants Camacho and Payaguaje and Donziger sent the Court a letter, attached as **Exhibit A**, asking the Court to control and manage this

litigation. The Court never responded. On March 28, 2013, defense counsel sent a letter to Court advising that our clients could not pay the Special Masters. A copy of this letter, and the Court's response to it as Dkt. No. 999, is attached as **Exhibit B**. On April 9, my partner Jan Little advised Judge Katz's assistant that defendants would not be able to pay any bills submitted by the Special Masters. A copy of this email is attached as **Exhibit C**. On April 23, I wrote to Judge Katz and advised him that Mr. Donziger would not be able to pay his bills. A copy of my letter and the cover email is attached as **Exhibit D**.

8. Without waiving any attorney-client privilege, I advise that Keker & Van Nest's retainer agreement with Donziger imposes a straight hourly rate billing structure. There is no contingency or bonus feature.

9. Without waiving any attorney client privilege or attorney work product protections, I advise that Donziger kept largely current with paying fees for the first eighteen months of Keker & Van Nest's representation of him. However, by September 2012, he was no longer able to keep current. Since September 2012, Keker & Van Nest has had an outstanding receivable from Donziger. Notwithstanding some partial payments made during the last six months, our firm's receivable has grown steadily since the fall of 2012, and now exceeds $1.4 million dollars. This is so despite a contractual fee agreement calling for payment of all invoices with 15 days of receipt, and despite repeated requests by Keker & Van Nest to Donziger for payment of fees and costs. Furthermore, this is despite the fact that Keker & Van Nest has made numerous attempts to obtain payment from Donziger, and has made clear to Donziger that his failure to make the requested payment could result in the firm making a motion to withdraw as attorney to him in this case.

10. I estimate that to litigate against Chevron through discovery, motions, pretrial proceedings and trial will cost between six and ten million dollars in attorney time for lawyers in this firm, and for costs. That estimate is conservative, based on billing rates Mr. Donziger is contractually obligated to pay. It is a small portion of what Chevron will pay its lawyers at Gibson Dunn & Crutcher during the same period, which I estimate to be $5-10 million a month. That estimate is based on the number of Gibson Dunn & Crutcher lawyers working full time on this case, and the fact that at last week's hearing before Judge Kaplan there were always 25-30 Chevron or Gibson Dunn & Crutcher lawyers or paralegals in the courtroom.

11. Without waiving any attorney client privilege, I advise that I am unaware of any current prospect for recovering this outstanding receivable of over one million dollars, including for work presently being conducted, nor for receiving substantial payment of any future fees and costs that would be incurred if Keker & Van Nest were to continue on as counsel.

12. Written discovery has been completed, but few depositions have yet been taken in this case. Depositions are in the process of beginning now. Discovery is set to close on May 31, 2013. Dkt. 494. Trial is set for October 15, 2013.

13. Pursuant to this Court's March 15, 2013 Rule 16 Order, the parties can depose up to 42 fact witnesses, and these depositions will take place all over the United States and abroad, including several in Lima, Peru. Dkt. No. 910. Chevron's recent correspondence to Defendants and Special Masters Judge Katz and Max Gitter demonstrates that it intends to engage in extensive motion practice regarding many of these depositions. *See* Parties' April 5, 2013 joint submission to Special Masters, at 2. (Attached hereto as **Exhibit E** is a true and correct copy of the parties' April 5, 2013 Joint Submission to Special Masters). Furthermore, the parties have the right to appeal any rulings made by the Special Master at the deposition to the Court within

forty-eight hours after the deposition, which will likely result in substantial additional motion practice. Dkt. No. 942, at 2-3.

14. Without waiving any attorney client privilege or attorney work product protection, I advise that I have discussed the motion to withdraw with Mr. Donziger. He does not at this time have substitute counsel and, given his funding limitations, is not optimistic about being able to engage substitute counsel. He will represent himself and his law firms during the remainder of the pretrial stage of this case, with the hopes of either securing new outside counsel or re-engaging our firm to participate in the October trial.

15. On February 1, 2013, Chevron announced that its profits for 2012 were $26.2 billion, and it ended the year with $21.9 billion in cash. A copy of Chevron's press release is attached as **Exhibit F**.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 6th day of May in San Francisco, California.

/s/ John W. Keker
JOHN W. KEKER

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

CHEVRON CORPORATION, Plaintiff, v. STEVEN DONZIGER, et al., Defendants.	Case No. 11-CV-0691 (LAK)

MEMORANDUM OF LAW IN SUPPORT OF KEKER & VAN NEST LLP'S MOTION TO WITHDRAW AS COUNSEL FOR DEFENDANTS STEVEN DONZIGER, THE LAW OFFICES OF STEVEN R. DONZIGER AND DONZIGER & ASSOCIATES, PLLC

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Pursuant to Southern District of New York Local Civil Rule 1.4, Keker & Van Nest LLP ("Keker & Van Nest") submits this memorandum of law in support of its Motion to Withdraw as Counsel for Defendants Steven Donziger, The Law Offices of Steven R. Donziger, and Donziger & Associates, PLLC (collectively, "Donziger"), on the grounds of non-payment of fees.

I. INTRODUCTION

It is with regret that undersigned counsel is forced to make this motion to withdraw. This is an extraordinary case, which has degenerated into a Dickensian farce. Through scorched-earth litigation, executed by its army of hundreds of lawyers, Chevron is using its limitless resources to crush defendants and win this case through might rather than merit. There is no sign that Chevron wants a trial on the merits. Instead, it will continue its endless drumbeat of motions—for summary judgment,[1] for attachment,[2] to reinstate long-dismissed claims,[3] for penetration of the attorney client privilege,[4] for contempt and case-ending sanctions,[5] to compel discovery already denied or deemed moot,[6] etc., etc.—to have the case resolved in its favor without a trial. Encouraged by this Court's implacable hostility to Donziger, Chevron will file any motion, however meritless, in the hope that the Court will use it to hurt Donziger. Donziger does not have the resources to defend against Chevron's motion strategy, and his counsel should not be made to work for free to resist it.

In the fourteen months since the stay was lifted in February 2012, this case has been litigated at a feverish pace, which has increased at an exponential rate. The docket sheet shows

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[1] *See, e.g.*, Dkt. Nos. 396, 483, 583, 744.
[2] *See, e.g.*, Dkt. Nos. 353, 404.
[3] *See* Dkt. No. 782.
[4] *See, e.g.*, Dkt. Nos. 475, 562, 656, 850, 1031.
[5] *See* Dkt. No. 893
[6] *See, e.g.*, Dkt. Nos. 1018, 1074.

81 entries for the first quarter of 2012; 43 entries for the second quarter of 2012; 81 entries for the third quarter of 2012; 114 entries for the fourth quarter of 2012; and 261 entries for the first quarter of 2013. April has yielded another 130 docket entries, plus a three day evidentiary hearing. Letters, emails, discovery responses, meet and confer calls, and other non-docketed materials have all followed the same trajectory of relentless increase. Chevron served over 210 document requests to Donziger, many with subparts, as well as dozens of pages of interrogatories, and 1,228 requests for admissions, many with multiple subparts. Donziger's counsel has spent thousands of hours in recent months dealing with Chevron's seemingly limitless discovery demands. Now, with the addition of two special masters and their associate and assistants, there is the additional burden of responding to their various letters, orders and emails. Keker Decl. ¶¶ 5 & 6.[7]

Defense counsel has sought the Court's intervention to control and manage what has become unmanageable. *See* Keker Decl., Ex. A (March 1, 2013 letter to Judge Kaplan). The Court did not respond to this letter and indeed, in the weeks since March 1, has made matters worse by consistently and cumulatively increasing the litigation burden on defendants: allowing dozens of fact depositions to occur from Park Avenue to Peru;[8] ordering over objection the appointment of two very expensive special masters with burdensome procedural requirements;[9] ordering a three-day evidentiary hearing in New York on a Chevron motion seeking sanctions because an Ecuadorian went to court in Ecuador to clarify his Ecuadorian attorneys' responsibilities under Ecuadorian law;[10] threatening defense counsel that they were to "proceed

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[7] "Keker Decl." refers to the Declaration of John W. Keker, filed concurrently herewith.
[8] Dkt. Nos, 882, 910, 941.
[9] Dkt. No. 942.
[10] Dkt. No. 997.

at their own risk" and "at their peril" when they wrote to the court and special masters that Donziger could not pay his lawyers, much less the exorbitant fees of the special masters;[11] forcing Donziger's counsel to spend hundreds of thousands of dollars on attorney time responding to a motion for summary judgment, which counsel begged to be put off until after discovery closed,[12] only to rule on the motion by announcing that it was denied without prejudice until after discovery closed, and could be reinstated later;[13] and ordering not one seven-hour day, but three days of depositions (on top of 16 previous days of deposition) of Donziger.[14]

This Court's hostility towards Donziger, already the subject of a motion to recuse and currently the subject of a pending mandamus proceeding, has in recent weeks become even more pronounced. When Chevron complains about defense counsel's possible role in an Ecuadorian lawyer seeking an order from an Ecuadorian court, the Court responded by ordering a three-day evidentiary hearing in New York, but when defense counsel complained about Chevron making blatantly false statements, the Court responded by accusing defense counsel of "bickering" and "venting of [counsel's] spleen."[15] During the recent evidentiary hearing, and in its order demanding Donziger's presence at a deposition for three days, the Court has made plain that its mind is made up, and its hostility toward Donziger is implacable.

Chevron's litigation tactics, which this Court has endorsed and encouraged throughout these proceedings, notwithstanding the dictates of Federal Rule of Civil Procedure 1, have made the costs of this litigation unsustainable to Donziger. Simply put, Donziger cannot afford to pay

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[11] Dkt. No. 999, 1055.
[12] Dkt. No. 780.
[13] Dkt. No. 1063.
[14] Dkt. No. 1060.
[15] *See* Dkt. No. 1055.

what is required to litigate effectively against a hostile wealthy corporation in a hostile court. As set forth in the accompanying Declaration of John W. Keker, Donziger has since September 2012 fallen into significant payment arrears such that Keker & Van Nest is now owed more than $1.4 million in unpaid fees and costs, including for work presently being conducted. Keker Decl. ¶ 9. More significantly, to even stay alive in this case, without appearing at depositions or other frills, through discovery and trial will cost another six to ten million dollars in attorney time and costs—an amount about equal to what we estimate Chevron is paying its lawyers each month. *See id.* ¶ 10. There is no reasonable prospect of payment of the current receivable, nor of payment of the future fees and costs anticipated to be incurred through trial. *See id.* ¶ 11.

Keker & Van Nest therefore seeks to withdraw as counsel. Mr. Donziger will represent himself and his law firms for the remainder of the pretrial phase of this case. If he is able to hire (or re-hire) outside counsel for trial, he will do so. But for now, his counsel is unwilling to continue on a *pro bono* basis under the current conditions, and should not be made a slave to this impossible situation.

II. DONZIGER IS NOT ABLE TO PAY HIS COUNSEL

Keker & Van Nest's retainer agreement with Donziger imposes a straight hourly rate billing structure. There is no contingency or bonus feature. Keker Decl. ¶ 8. During the course of Keker & Van Nest's representation of Donziger in this litigation, Keker & Van Nest has performed a substantial amount of work in connection with the pleading and discovery phases of this action. Donziger kept largely current with paying Keker & Van Nest's billed fees and costs for the first year and a half of Keker & Van Nest's representation of him. However, by September 2012, Donziger was no longer able to keep current. *See id.* ¶ 9.

Since September 2012, Donziger has owed Keker & Van Nest for fees and costs. Keker Decl. ¶ 9. Notwithstanding some partial payments made during the last six months, Keker &

Van Nest's receivable has grown steadily since last Fall, and now exceeds $1.4 million dollars, including for work being performed currently. *Id.* This is so despite a contractual fee agreement calling for payment of all invoices within 15 days of receipt, and despite repeated requests by Keker & Van Nest to Donziger for payment of its fees and costs. *Id.*

There is no reasonable prospect of Keker & Van Nest's recovery of its current outstanding receivable of over one million dollars, nor of receiving substantial payment for future fees and costs that would be incurred if Keker & Van Nest were to continue on as counsel. Keker Decl. ¶ 11.

As the Court is aware, written discovery has been completed, but few depositions have yet been taken in this case. Keker Decl. ¶ 12. Depositions are in the process of beginning now. *Id.* Discovery currently is set to close on May 31, 2013. Dkt. No. 494. Trial is set for October 15, 2013. Dkt. No. 606

III. ARGUMENT

Under Local Civil Rule 1.4 of the Local Rules of the United States District Courts for the Southern and Eastern Districts of New York:

> An attorney who has appeared as attorney of record for a party may be relieved or displaced only by order of the court and may not withdraw from a case without leave of the Court granted by order. Such an order may be granted only upon a showing by affidavit or otherwise of satisfactory reasons for withdrawal or displacement and the posture of the case, including its position, if any, on the calendar.

Accordingly, "[w]hen considering whether to grant a motion to dismiss, district courts must thus analyze two factors: the reasons for withdrawal and the impact of the withdrawal on the timing of the proceeding." *Blue Angel Films, Ltd. v. First Look Studios, Inc.*, No. 08 Civ. 6469 (DAB)(JCF), 2011 WL 672245, at *1 (S.D.N.Y. Feb. 17, 2011).

A. Donziger's failure to pay Keker & Van Nest's fees and costs justifies granting leave to withdraw.

Donziger's failure to pay legal fees in accordance with contractual arrangements warrants an order from this Court granting Keker & Van Nest leave to withdraw as counsel. *See* Local Civil Rule 1.4; *Police Officers for a Proper Promotional Process v. Port Auth. of New York and New Jersey*, No. 11 Civ. 7478 (LTS)(JCF), 2012 WL 4841849, at *1 (S.D.N.Y. Oct. 10, 2012) (citation omitted) ("it is well-settled in the Eastern and Southern Districts of New York that non-payment of legal fees is a valid basis for granting a motion to withdraw pursuant to Local Civil Rule 1.4."); *Centrifugal Force, Inc. v. SoftNet Commc'n, Inc.*, No. 08 Civ. 5463(CM)(GWG), 2009 WL 969925, at *2 (S.D.N.Y. Apr. 6, 2009) ("Attorneys are not required to represent clients without remuneration, and the failure to pay invoices over an extended period is widely recognized as grounds for leave to withdraw."). "It is well-settled in the Eastern and Southern Districts of New York that non-payment of legal fees is a valid basis for granting a motion to withdraw pursuant to Local Civil Rule 1.4." *Melnick v. Press*, No. 06-cv-6686 (JFB)(ARL), 2009 WL 2824586, at *3 (E.D.N.Y. Aug. 28, 2009); *Team Obsolete Ltd. V. A.H.R.M.A. Ltd.*, 464 F.Supp.2d 164, 166 (E.D.N.Y. 2006) ("Courts have long recognized that a client's continued refusal to pay legal fees constitutes a 'satisfactory reason' for withdrawal under Local Rule 1.4"); *D.E.A.R. Cinestudi S.P.A. v. Int'l Media Films, Inc.*, No. 03 Civ. 3038 (RMB), 2006 WL 1676485, at *1 (S.D.N.Y. Jun. 16, 2006) ("It is well-settled that nonpayment of fees is a valid basis for the Court to grant counsel's motion to withdraw." (citation omitted)).

More specifically, applying Second Circuit law, courts in the Southern and Eastern districts have reiterated that non-payment of fees constitutes a "satisfactory reason" under Local Civil Rule 1.4 supporting an order granting withdrawal. According to these courts, "[a]lthough there is no clear standard for what may be considered a 'satisfactory reason' for allowing a

withdrawal, it seems evident that the non-payment of legal fees constitutes such a reason." *Blue Angel Films*, 2011 WL 672245, at *1 (citation omitted); *Diarama Trading Co. In. v. J. Walter Thompson U.S.A. Inc.*, No 01 Civ. 2950 (DAB), 2005 WL 1963945 at *1 (S.D.N.Y. Aug 15, 2005) ("'Satisfactory reasons' include failure to pay legal fees."); *Cower v. Albany Law Sch. Of Union Univ.*, No. 04 Civ. 0643 (DAB), 2005 WL 1606057, at *5 (S.D.N.Y. Jul. 8, 2005) ("It is well settled that nonpayment of fees is a legitimate ground for granting counsel's motion to withdraw"). Accordingly, these courts conclude that "[c]ourts have uniformly granted motions to withdraw when attorneys allege non-payment of fees by their clients." *Itar-Tass Russian News Agency v. Russian Kurier, Inc.*, No 95 Civ. 2144 (JGK), 1997 WL 109511, at *2 (S.D.N.Y Mar. 11, 1997), *reversed on other grounds by* 140 F.3d 442 (2d Cir. 1998).

In addition, courts in this district repeatedly have held that counsel should not be compelled to represent a client *pro bono*. *See, e.g.*, *Cower*, 2005 WL 1606057, at *5 ("The Court cannot force Plaintiff's counsel to proceed *pro bono*."); *HCC, Inc. v. RH & M Mach. Co.*, No. 96 Civ. 4920 (PKL), 1998 WL 411313, at *1 (S.D.N.Y. Jul. 20, 1998) (granting withdrawal and stating that it would not "impose on counsel an obligation to continue representing [corporate] defendants pro bono").

Donziger currently owes over $1.4 million dollars in fees and costs to Keker & Van Nest for work performed in this case. Keker Decl. ¶ 9. Although Donziger has made minimal partial payments during the last six months, they are far below the amount billed for fees and costs, causing Keker & Van Nest's account receivable to balloon. *Id.* Despite extensive efforts to work with Donziger to resolve this situation, there is no workable plan to pay Keker & Van Nest the fees that Donziger already owes, or fees that will be incurred in the future. *Id.* ¶11. And given the recent pace of this litigation, Keker & Van Nest anticipates that it will cost millions of

dollars to finish discovery, to prepare the case for trial, and to defend Donziger at trial. *Id.* ¶ 10.

Regarding discovery, deposition costs alone will be substantial, if Donziger could afford to have his attorneys participate. Pursuant to this Court's March 15, 2013 Rule 16 Order, the parties can depose up to 42 fact witnesses, and these depositions will take place all over the United States and abroad, including in New York, San Francisco, Denver, Houston, Washington, DC, and Lima, Peru. Keker Decl. ¶ 13; Dkt. No. 910. We expect extensive motion practice regarding these depositions, including briefing concerning unresolved privilege issues and to preclude Defendants from deposing certain of Chevron's employees and agents. Keker Decl. ¶13; Ex. E at 2; *see also, e.g.*, Dkt. Nos. 1065, 1067, 1069. Furthermore, the parties have the right to appeal any rulings made by the Special Master at the deposition to the Court within forty-eight hours after the deposition, which will likely result in substantial additional motion practice. Dkt. No. 942, at 2-3. Expert discovery and depositions will impose grievous additional costs, especially given that Chevron has disclosed more than three dozen experts, and the Court so far has declined to require Chevron to reduce the number of experts . Dkt. No. 1052.

There is no reason to think that Chevron's fusillade of motions, correspondence, and various other demands will diminish as the case approaches trial; Chevron made clear years ago that it intends to "fight until hell freezes over" and then "fight it out on ice[.]"[16] Its CEO John Watson said in February 2013, when asked when the litigation will end, "the short answer is it will end when the … lawyers give up."[17] Before depositions even began, Chevron already filed three separate partial summary judgment motions, two motions for attachment, and a motion for terminating sanctions, and innumerable discovery and procedural motions. Keker & Van Nest

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[16] January 9, 2012, Reversal of Fortune, *New Yorker*, available at: http://www.newyorker.com/reporting/2012/01/09/120109fa_fact_keefe

[17] Chevron's Expensive Problems, *Forbes Magazine*, March 4, 2013 issue, http://www.forbes.com/sites/christopherhelman/2013/02/13/chevrons-expensive-problems/.

estimates that it will cost between six and ten million dollars to litigate this case through trial. This estimate is probably conservative given the litigation tactics that Chevron (and its counsel Gibson Dunn) has employed to date. Keker Decl. ¶ 10.

With revenues in the billions of dollars,[18] Chevron can afford to litigate this case "until hell freezes over." But Donziger can't, and his counsel cannot continue to defend him going forward with no realistic prospect of payment for its efforts. "The Court cannot force [Keker & Van Nest] to proceed *pro bono*." *Cower*, 2005 WL 1606057, at *5.

B. Withdrawing at this stage of the litigation would not unduly disrupt the existing case schedule.

Where discovery has not yet closed and a case is not "on the verge of trial readiness," withdrawal of counsel is unlikely to cause either prejudice to the client or such substantial disruption to the proceedings as to warrant a denial of leave to withdraw. *Winkfield v. Kirschenbaum & Phillips, P.C.*, No. 12 Civ. 7424 (JMF), 2013 WL 371673, at *1 (S.D.N.Y. Jan. 29, 2013) (quoting *Blue Angel Films*, 2011 WL 672245, at *2); *accord Karimian v. Time Equities, Inc.*, No. 10 Civ. 3773 (AKH) (JCF), 2011 WL 1900092, at *3 (S.D.N.Y. May 11, 2011).

Indeed, courts frequently grant motions to withdraw as counsel at equivalent, or even later, stages of litigation. *See, e.g., D.E.A.R. Cinestudi*, 2006 WL 1676485, at *1-2 (granting counsel's motion to withdraw due to lack of payment of fees where discovery was complete and trial was months away); *Spadola v. New York City Trans. Auth.*, No. 00 CIV 3262, 2002 WL 59423, at *1 (S.D.N.Y. Jan. 16, 2002) (allowing counsel to withdraw where discovery had been completed and client had not paid outstanding legal fees because client "would not be unduly

[18] Chevron's profits for 2012 exceeded $26 billion, and they ended the year with $21.9 billion cash on hand. Keker Decl. ¶ 15; Ex. F.

prejudiced by his counsel's withdrawal at this stage of litigation."); *Promotica of America, Inc. v. Johnson Grossfield, Inc.*, No. 98 CIV. 7414, 2000 WL 424184, at *1-2 (S.D.N.Y. Apr. 18, 2000) (granting motion to withdraw where discovery was closed and case was ready for trial); *Cf. Furlow v. City of New York*, No. 90 Civ. 3956 (PKL), 1993 WL 88260, at *2 (S.D.N.Y. Mar. 22, 1993) (where document discovery was complete but depositions had not been taken, withdrawal permissible because "this action is not trial ready and resolution of this matter will not be delayed substantially by counsel's withdrawal at this juncture").

C. Donziger is prepared to represent himself and his law firms in this matter.

At the present time, Donziger does not have substitute outside counsel. And, given his inability to fund his current counsel, he is not likely to be successful in finding substitute outside counsel. Accordingly, Donziger intends to represent himself and his law firms during the remainder of the pretrial stage of this case, with hopes of either securing new counsel, or re-engaging his present counsel, for the trial.

As courts have recognized, "[a] litigant's unrepresented status is often 'not the product of choice,' but 'the result of necessity and economic reality'." Cynthia Gray, *Judicial Ethics and Self Represented Litigants*, American Judicature Society (2005), at p. 11 (quoting *Jacobsen v. Filler*, 790 F.2d. 1362, 1367-68 (9th Cir. 1985) (Reinhardt, dissenting)). The right of self-representation is as old as the Judiciary Act of 1789, is codified in the United States Code at 28 U.S.C. § 1654, and has been affirmed by the Supreme Court, *Faretta v. California*, 422 U.S. 806, 812-13 (1975). For Donziger, it is not only a right but a necessity.

If Donziger is able to secure outside counsel to represent him at trial he will do so, whether by re-engaging Keker & Van Nest, or by hiring other trial counsel. But for now, he is not paying his current counsel, his contractual obligations to counsel are being disregarded, and his counsel Keker & Van Nest is no longer willing or able to represent him under these

circumstances.

IV. CONCLUSION

For all the foregoing reasons, Keker & Van Nest respectfully requests that the Court enter an order permitting Keker & Van Nest to withdraw from its representation of Donziger in this action, and allowing him represent himself and his law firms in this action.

Respectfully submitted,

KEKER & VAN NEST LLP

Dated: May 6, 2013

By: */s/ John W. Keker*

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EXHIBIT E

May 19, 2014

Mr. Edward J. Newberry
Managing Partner, Patton Boggs
Mr. Charles E. Talisman
General Counsel, Patton Boggs

Dear Sirs:

We write in reference to your firm's settlement agreement with Chevron, dated May 7, 2014. We have further considered the agreement and remain extremely perturbed by its provisions. We require you not to pursue or further engage in a course of action which you must be aware is extremely likely to cause us, your former clients, very considerable damage and prejudice.

It appears to us that your settlement agreement wholly aligns you with Chevron; in particular it would align you with the various actions and steps they have taken to interfere with our rights, including our right to be fairly represented and to raise money to achieve that end, and with the serious and unlawful steps they have taken to interfere with and prejudice the due administration of justice, witnesses, our lawyers and funders. This has been the position of your law firm as assured us by your own lawyers, and demonstrated by your own court filings, until the public announcement of this agreement.

While we respect the right of Patton Boggs to make an appropriate withdrawal from its representation, we believe the manner in which the firm is trying to effectuate this withdrawal is in direct breach of contract and the retainer, and violates various provisions of the Code of Professional Ethics; it also imposes the most serious prejudice on the Ecuadorian villagers. It has quite clearly been done solely in pursuit of your own interests, for your own purposes and to enable you to conclude the now public merger negotiations you have been engaged in and with no regard for our rights and interests. It is Chevron's oppressive threats and actions that have prevented you from merging without this settlement. We accordingly believe the settlement to be unlawful and invalid. We, your former clients, continue to reserve all our rights.

In the meantime, to protect our interests and mitigate any damage made by your firm's withdrawal, we insist that Patton Boggs take the following steps immediately and without delay:

1. Patton Boggs should turn over all client files and all copies of such files related to the Ecuador litigation, including electronic and written correspondence, communications, advice, notes, attendance notes, research and analysis. These client files are the property of the clients. Patton Boggs no longer retains any lien on those files given that it has assigned and/or waived all of its rights to any fees. We do not agree to you keeping copies, but will undertake not to delete or destroy anything you hand over to us.

2. That you bear the reasonable cost of this process given that the clients are indigent and do not have counsel. These files should be turned over and delivered to Juan Pablo Sáenz in Quito with a copy to Aaron Page, a U.S. lawyer who lives in the metropolitan area of the District of Columbia. We understand you have been talking to Mr. Page about this already. We want this part of the process to finish forthwith.

3. That Patton Boggs provide a written undertaking to us that it will not turn over information to Chevron that belongs to the clients, whether confidential or not, that is covered by, or the subject matter of, the attorney-client relationship. This covers both disclosure and depositions. We expressly require you not to proceed with either disclosure or depositions and to undertake that you will not do so.

4. There are at least two fundamental problems with the relevant provisions of your agreement: we believe they violate your firm's duties including its duty of confidentiality to its clients, and we believe it is now virtually impossible for us to protect our privileges and confidentiality given that we are devoid (as a direct result of your firm's withdrawal) of competent counsel to do so on our behalf. At a minimum, should the agreement be implemented, we believe it would be entirely appropriate for Patton Boggs to pay the legal fees of independent counsel, to be chosen by the communities, to help protect our rights in respect of the proposed "discovery" process voluntarily agreed to by your firm that is causing us such prejudice. Please confirm by return that you will do so to the extent of a minimum of $150,000. We note this amount represents a small fraction of the amount your firm has agreed to pay Chevron so it will cease its pressure campaign against your law firm.

5. It is clear to us from the settlement that Patton Boggs agreed to a "discovery" process that violates the right to confidentiality of your former clients in foreign enforcement jurisdictions where litigation against Chevron is pending. It is incomprehensible, and in clear breach of your professional and contractual obligations, duties and responsibilities, that Patton Boggs voluntarily agreed to "fully cooperate" with Chevron in the disgorging of this information; a fact exacerbated greatly by the fact that we, your former clients, are now defenseless and without counsel due in large part to our inability to raise funds to finance representation, a state of affairs which has been brought about by the oppressive conduct of Chevron and the orders of Judge Kaplan.

6. We ask that you withdraw your statement of "regret" that Chevron apparently demanded as a condition of the settlement. This statement contradicts repeated assurances given to us by lawyers at your firm that Judge Kaplan's decisions and the entire RICO proceedings (*Chevron v. Donziger*) were legally and factually flawed, and were underpinned by the judge's personal animus. You expressly told and advised us that the proceedings were defective and that the record should be preserved as far as possibly in front of a hostile and biased judge as his judgment was highly likely to be overturned on appeal. We dispute that any new information emerged from that trial process that was not previously known to you and would justify the agreement you have reached with Chevron and the position you have taken in the settlement document, or the damaging public statement made by you. In fact, your firm made it entirely clear at all times that you expected Judge Kaplan to rule against the defendants as he was very biased and the proceedings were being conducted in an entirely unfair and oppressive manner.

7. In any event, we believe it is entirely inappropriate for Patton Boggs to rely on that decision to express its "regret" when Judge Kaplan's findings contradict findings by Ecuador's highest courts -- the very courts chosen by Chevron to hear the environmental dispute-- and which (unlike Judge Kaplan) actually heard all of the scientific and other evidence underpinning the finding of liability; are further being contested in this country and in other jurisdictions; and will never be "final" for purposes of foreign enforcement actions, where judges will make independent decisions about the facts. Further, the public statement by Patton Boggs has already caused severe prejudice to us in violation of the ethical rules, and apparently was clearly made, and the settlement entered into, with the prime goal of obtaining an economic benefit for your firm which has been at the expense of your former clients. Again, we ask that you publicly withdraw this statement.

We require that you consider the requests herein as a matter of utmost urgency and respond in full in writing by return. The complaints about the ethical violations contained in this letter are not exhaustive, as we believe there might be other violations as well. At the same time, we require that you provide us with appropriate written undertakings that Patton Boggs will comply with these requests or that you explain in detail why you will not do so.

We intend to hold the firm and its partners responsible for your actions and for any damage we suffer as a result. We believe that in addition to our existing rights and claims, in the event that Judge Kaplan's decision is overturned on appeal, you will not have any argument open to you to defend a very substantial claim against you for damages.

Sincerely,

Humberto Piaguaje Lucitante
Director of UDAPT, Siekopai Leader,

Pablo Fajardo Mendoza
Procurador Común, Ecuadorian Villagers

PFM

Juan Pablo Saenz M.
Counsel, Ecuadorian Villagers

CC: James Tyrrell Jr., Eric Westenberger, Steven Donziger, Aaron Page, David Spears, Julian Jarvis, Adam Bialek.