UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CHEVRON CORPORATION, Plaintiff, v. STEVEN DONZIGER et al., Defendants.	:	11 Civ. 0691 (LAK)

MEMORANDUM OF LAW IN SUPPORT OF NON-PARTY PATTON BOGGS LLP'S MOTION TO QUASH SUBPOENA FOR DOCUMENTS AND FOR OTHER RELIEF

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INTRODUCTION

Patton Boggs' non-privileged documents are not the primary aim of Chevron's subpoena. The primary aim is to harass, burden, and smear active litigation counsel of Ecuadorian citizens (the "Afectados") locked in a nineteen-year legal battle with Chevron. Despite naming Patton Boggs as a "non-party co-conspirator" in its Complaint, and having directed all manner of accusations against the firm in this Court and others as early as December 2010,[1] Chevron never subpoenaed the firm in connection with the *Salazar* declaratory judgment action. In the past year, however, Patton Boggs has helped the Afectados withstand Chevron's efforts to use its vast resource advantages to steamroll the Afectados. The firm secured important victories for the Afectados in the Second, Third, and D.C. Circuit Courts of Appeal, and also recently opposed Chevron's petition for a writ of certiorari to the Supreme Court of the United States. Chevron also believes that Patton Boggs is primarily responsible for the Afectados' enforcement efforts. And now that the Afectados have asked the courts of Canada and Brazil—two rule of law jurisdictions that command universal respect[2]—to evaluate and recognize the Ecuadorian judgment against Chevron, Chevron's calculus seems to have changed. The subpoena is a strategic ploy designed to strike a blow against a firm that has been a thorn in Chevron's side.

Chevron's filing of July 13 (Dkt. 514) is a harbinger of the unfortunate mud-slinging that will follow—in a two-page brief filed in response to a simple extension request Chevron uses the word "fraud" or "fraudulent" 10 times and accuses Patton Boggs of "perpetuating the fraud in the Lago Agrio litigation and elsewhere." Drawing active counsel into discovery is antithetical to our adversarial system precisely because it lends itself to harassment and gamesmanship like

[1] *See, e.g., Chevron Corp. v. Allen*, No. 10-0091, Dkt. 44-1, at 11 (D. Vt. Dec. 12, 2010); *In re Chevron Corp. (Donziger)*, No. 10-0002, Dkt. 147, at 3–4, 14 (S.D.N.Y. Jan. 10, 2011).

[2] This is far from the bedlam forecasted by Chevron in its attempt to convince this Court of the need for a preliminary injunction. *See, e.g.*, Hr'g Tr., Feb. 18, 2011, No. 1:11-cv-0691-LAK at 73:11-12 ("The Sword of Damocles is not over our heads, it's touching our foreheads.").

this. *See, e.g.*, *Kirzhner v. Silverstein*, No. 09–cv–02858–CMA–BNB, 2012 WL 95288, at 3 (D. Colo. Jan. 12, 2012) (quashing subpoena where "Defendants not only requested production of documents in the files of plaintiff's trial counsel but demanded that . . . counsel prepare a privilege log detailing the documents withheld," recognizing the "ugliness of that type of discovery.") Chevron has made no secret of the fact that its main goal is to taint a law firm that has had the temerity to stand up for the Afectados.[3]

The gamesmanship motivating Chevron's subpoena is reason enough to quash it. But there are also other fundamental reasons. Chevron's subpoena—which contains 58 document requests—reaches every aspect of Patton Boggs' representation of the Afectados (as well as other clients). Chevron demands internal communication, notes, memoranda, draft briefs and all manner of attorney work product generated in connection with proceedings in Ecuador, judgment recognition actions, and the litany of U.S. collateral proceedings spawned by Chevron. The subpoena already has significantly disrupted Patton Boggs' business operations by diverting the time of attorneys and support staff to document collection—a situation that will only worsen should the subpoena persist. (*See* Declaration of Charles Talisman, July 20, 2012 ("Talisman Decl."), at ¶¶ 11-34.) Assuming that 50 review attorneys working nine hours per day are devoted to the project, it will take an estimated 55 to 67 weeks to review and log potentially responsive electronic documents. (*See* Declaration of Ari Perlstein, July 20, 2012 ("Perlstein Decl."), at ¶¶ 4-7.) At a minimum, it is estimated that the review of electronic documents alone will cost the firm between $6.35 million and $7.75 million dollars, plus roughly $550,000 for electronic document collection—to say nothing of the roughly 260,000 pages of paper

[3] *See* Declaration of Alyssa Young, July 20, 2012 ("Young Decl."), Ex. E, *Chevron Corp. v. The Weinberg Group*, No. 11-0409, Hr'g Tr. at 14:16–23; 23:8–20; 25:25–26:2 (D.D.C. July 6, 2012).

documents potentially encompassed by the subpoena. (*See* Perlstein Decl. at ¶¶ 6-7; Declaration of Jon Kessler, July 20, 2012 ("Kessler Decl."), at ¶¶ 5-8; Talisman Decl. at ¶¶ 18-21.).

Chevron is attempting to exploit the amorphous and unbounded nature of its civil RICO claim—particularly as applied in this unusual context. Suing one's current litigation adversary on a theory that his prosecution of legal claims in another jurisdiction should be considered a racketeering operation is a convenient pretext for demanding unfettered access to his counsel's litigation file. A line has to be drawn. This subpoena crosses it. Courts are skeptical of subpoenas served on active counsel because of the *risk* that counsel's litigation strategy will be revealed—Chevron's subpoena unabashedly *targets* counsel's strategy. Further, as to many of Chevron's document demands, Chevron can cite no basis to believe that Patton Boggs had or has any involvement with the matters in question—these demands are purely a fishing expedition. And much of what Chevron seeks—*e.g.*, documents related to Patton Boggs' payment structure and the firm's authority to represent its clients—is at best tangential, and at worst, irrelevant, to its claims. The subpoena also largely seeks cumulative discovery. Prior to serving Patton Boggs, Chevron had served roughly 73 subpoenas in the *Salazar* proceeding and its § 1782 actions. Chevron already possesses hundreds of thousands of the Afectados' documents—most of them otherwise confidential or privileged—and has taken hundreds of hours of depositions speaking to the same issues addressed by its subpoena to Patton Boggs. On these extraordinary facts, digging into opposing counsel's case file is unwarranted.

The nature of Patton Boggs' representation of the Afectados also militates against discovery. Where counsel is actively litigating, but was not itself a witness to the underlying events pivotal to the claims, the supposed benefit of discovery does not justify the burden—nor the impairment of counsel's ability to provide continued legal representation. Here, Patton

Boggs is counsel of record not only in numerous related proceedings around the country, but also in the Second Circuit and in the Supreme Court of the United States in connection with appeals arising from this Court.[4] At the same time, Chevron has no evidence that Patton Boggs was involved in or a witness to—and, in fact, Patton Boggs was *not* involved in or a witness to—any of the alleged "fraudulent" events that comprise the foundation of Chevron's RICO and fraud claims—i.e., the alleged "ghostwriting" of the Cabrera Report; alleged fraud regarding the Calmbacher Report; the alleged sham indictment of Chevron lawyers involved in securing a release from the Republic of Ecuador ("ROE") in the mid-1990s; and alleged "pressuring" of and "collusion" with Ecuadorian judges.

Apparently recognizing this, Chevron accuses Patton Boggs of "perpetuating" these and other claimed frauds insofar as Patton Boggs knows of the alleged infirmities of its clients' case, yet continues to litigate on their behalf. Given that nearly all of the documents Chevron seeks are clearly protected by the attorney-client privilege or the attorney work product doctrine, Chevron already has gone on record as to why it believes this Court should vitiate any such privilege: (i) Patton Boggs coordinated the submission of supplemental expert reports on damages issues to the Sucumbíos Trial Court after the Cabrera Report controversy arose; (ii) Patton Boggs was involved in defending against some of Chevron's 28 U.S.C. § 1782 proceedings directed to the Afectados' consultants and counsel—i.e., the alleged "obstruction strategy"; and (iii) Patton Boggs has played a role in the Afectados' effort to obtain international recognition of the allegedly fraudulent Ecuadorian judgment. (*See* Dkt. 514 at 3.) As discussed herein at Section II, none of Chevron's attempts to vilify Patton Boggs has any merit.

[4] Patton Boggs is counsel of record for the Afectados and related parties opposite Chevron in the following dockets active as of July 20, 2012: *Chevron Corp. v. The Weinberg Group*, No. 1:11-mc-409-JMF (D.D.C.); *In re Application of Chevron Corp.*, No. 2:10-cv-02675-ES (D.N.J.); *Chevron Corp. v. Naranjo*, No. 11-1428 (U.S.); *In re Application of Daniel Carlos Lusitand Yaigauje, et al.*, No. 3:10-mc-80324-CRB (N.D. Cal.); and *In re Application of Daniel Carlos Lusitand Yaigauje, et al.*, No. 3:11-mc-80087-CRB (N.D. Cal.).

Suffice it to say here that if Chevron were able to extend the crime-fraud exception to Patton Boggs under these theories, the Afectados will effectively have been stripped of their right to legal representation going forward. No confidential discussion could be had regarding how best to address Chevron's allegations of misconduct, or how best to enforce the Ecuadorian judgment. Assuming there might ever be a set of facts on which a court should deem a plaintiff's case so meritless as to justify awarding a defendant unfettered access to plaintiff's litigation strategy in an ongoing matter, this exceedingly complex dispute is not it.[5] There is obvious merit to the case against Chevron in Ecuador—no matter what misbehavior any lawyer allegedly engaged in to overcome Chevron's inordinate influence in Ecuador. That merit is born out in the 215,000 pages of record evidence on which the Sucumbíos Trial Court's judgment was based.[6] It is that evidence which has convinced Patton Boggs to weather Chevron's increasingly personal assault—the discomfort of which has, perhaps understandably, discouraged others. Chevron's Ecuadorian agent, Diego Borja, predicted on tape in 2009 that Chevron would

[5] As this Court well knows, the allegations of misconduct in the underlying litigation go both directions. By way of example, Chevron's claims of "collusion" now appear to be the height of hypocrisy. *See, e.g.*, *See* A. Klasfeld, *Leaked Cables Reveal Chevron Lobbying E*fforts, COURTHOUSE NEWS SERVICE, Sept. 22, 2011, available at http://www.courthousenews.com/2011/09/22/39994.htm (citing leaked diplomatic cables indicating that Chevron had, throughout the Lago Agrio Litigation, "quietly explore[d] with senior GOE officials" ways in which the company might be able to "make the case disappear.").

[6] By way of example, Chevron's own attorney in March 2007 admitted that "15.834 billion gallons [of production water] were spilled in Ecuador during the operations of the Texaco Consortium between 1972 and 1990, i.e. an average of 880 million gallons per year." *See* Declaration of Alyssa Young ("Young Decl."), Ex.J.. Internal Texaco memoranda demonstrate that the company adopted a dual policy in Ecuador of destroying existing reports documenting environmental incidents and refraining from documenting future incidents, unless the public somehow independently became aware of them. *See* Dkt. 152-04. Other internal Texaco documents demonstrate that the company considered safer methods of waste management in Ecuador—such as lining their waste pits—but ultimately rejected them to maximize profit. *See also* Young Decl., Ex. P. More recently, in a 28 U.S.C. § 1782 proceeding, Chevron's own environmental expert, Douglas Mackay, produced a July 2006 email wherein he confided in a colleague: "I doubt seriously that there never were any significant environmental or public health impacts [in Ecuador] . . . ." Young Decl., Ex. B. As for the remediation that Chevron holds out as proof that the Afectados' claims are meritless, in another July 2006 email from Mackay to fellow Chevron expert Robert Hinchee, MacKay stated that "natural attenuation"—i.e., the passage of time—might eventually rectify some of the sites at which Texaco operated, but the company did not "remediate[] as they were supposed to have . . . ." *Id.* MacKay added: "[B]eyond that, I am less confident I know what to say that could truly be defended." *Id.*.

eventually use its unlimited resources to "go after" anyone on the opposite side of the litigation.[7] Chevron has now set its sights on Patton Boggs. But Chevron neither needs nor deserves discovery from Patton Boggs. It seeks to distract and harass Patton Boggs with a discovery battle, and, even more so, a crime-fraud ruling. This is not a legitimate exercise of the subpoena power. The subpoena should be quashed.[8]

ARGUMENT

Rule 45(c)(3)(A) demands that a subpoena be quashed when it "(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or (iv) subjects a person to undue burden." Fed. R. Civ. P. 45(c)(3)(A) (iii)–(iv). Whether a third-party subpoena imposes an undue burden "depends upon 'such facts as relevance, the need of the party for the documents, the breadth of the document request, the time period covered by it, the particularity with which the documents are described and the burden imposed.'" *Concord Boat Corp. v. Brunswick Corp*., 169 F.R.D. 44, 49 (S.D.N.Y. 1996) (quoting *United States v. International Bus. Mach Corp*., 83 F.R.D. 97, 104 (S.D.N.Y.1979).) "[S]pecial weight [should be given] to the burden on non-parties of producing documents to parties involved in litigation." *Copantilla,*

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[7] Diego Borja was Chevron's soil-sampling "logistics contractor" in Ecuador, who, in May and June 2009, made a series of video recordings using a hidden pen and watch camera in which he attempted to bait the judge then presiding over the Lago Agrio Litigation into judicial misconduct on camera. (Young Decl., Ex. F.) Later that year, a Borja's former childhood friend, Santiago Escobar, recorded a series of conversations in which Borja revealed that he has knowledge of Chevron's misconduct that would "make the Amazons win this just like that"—including how Chevron "cooked" the evidence in the Lago Agrio Litigation. (Young Decl., Ex. G at 3, 9 .) Borja initially threatened to "go to the other side" with this evidence, but thought better of it:

> BORJA: [T]hese guys [Chevron], once the trial is over, they'll go after everyone who was saying things about it, you get it? . . . . I mean, right now they'll win the lawsuit or whatever soon . . . and then the lawsuits will start against everyone who said things, you get it?
> ESCOBAR: The retaliations start, you're saying.
> BORJA: Yes. I mean, that, I know as . . . for a fact . . . . In other words, that's going to happen for sure . . . . They have all the tools in the world to go after everyone, you get it? Anyone who said otherwise . . . . These guys, sometimes it's surprising how far-reaching they are, dude.

Young Decl., Ex. H at 4-5; *see also* Young Decl., Ex. I at 1-2.

[8] Patton Boggs reserves the right to move for "an appropriate sanction" under Rule 45, based on Chevron's failure to take reasonable steps to avoid imposing undue burden or expense" on the firm.

et al. v. Estiatorio, 2010 WL 1327921, *10 (S.D.N.Y. April 5, 2010) (quoting *Travelers Indemnity Co. v. Metropolitan Life Insurance Co*. 228 F.R.D. 111, 113 (D. Conn. 2005).) Courts must also consider whether: "(i) the discovery sought is unreasonably cumulative or duplicative . . . ; or (iii) the burden or expense of the proposed discovery outweighs its likely benefit, considering the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues." Fed. R. Civ. Pro. 26(b)(2)(C); *see also Koch v. Greenberg*, 2009 U.S. Dist. LEXIS 61913, *5 (S.D.N.Y. July 14, 2009).

Moreover, as the Second Circuit has noted, "[c]ourts have been especially concerned about the burdens imposed on the adversary process when lawyers themselves have been the subject of discovery requests, and have resisted the idea that lawyers should routinely be subject to broad discovery." *In re Subpoena Issued to Dennis Friedman*, 350 F.3d 65, 70 (2d Cir. 2003) (citing *Hickman v. Taylor*, 329 U.S. 495, 506-14 (1947)). Hence, as part of the Rule 45 "burden" analysis, courts presented with discovery demands aimed at opposing counsel consider "the lawyer's role in connection with the matter on which discovery is sought and in relation to the pending litigation" in deciding whether an incursion into counsel's litigation file is warranted. *Id.* at 72; *see also In re Chevron Corp.*, 749 F.Supp.2d 141, 163 (S.D.N.Y. 2010) (Kaplan, J.); *Patsy's Italian Restaurant, Inc. v. Banas*, Nos.06-CV-00729 (DLI)(RER), 06-CV-5857 (DLI)(RER), 2007 WL 174131, at *1 (E.D.N.Y. Jan. 19, 2007); *Kirzhner v. Silverstein*, No. 09-cv-02858-CMA-BNB, 2011 WL 1321750, at *3 (D. Colo. Apr. 5, 2011)

Measured against these standards, Chevron's subpoena to Patton Boggs (the "Subpoena") must be quashed.

I. THE SUBPOENA IMPOSES AN UNDUE BURDEN ON PATTON BOGGS

Responding to the Subpoena's near limitless requests will be an extraordinarily disruptive and costly endeavor for Patton Boggs—indeed, it already has been. Chevron's sweeping document requests, combined with equally expansive definitions, cover virtually every document in Patton Boggs' possession related to its representation of the Afectados. As drafted, the Subpoena even calls for information related to Patton Boggs' representation of other clients unrelated to the Afectados' litigation. With an estimated 1200 gigabytes of data at issue, the electronic document collection process alone will cost roughly $550,000. (Kessler Decl. at ¶ 5.) The firm also has roughly 260 redwelds of potentially relevant paper documents. (Talisman Decl. at ¶ 19.) The collection process will significantly disrupt business operations, in terms of attorney and support staff hours, in addition to diverting IT personnel from other critical projects. (*See id.* at ¶¶ 12-29.) Multiple of the firm's offices will be implicated. (*See id.* at ¶ 20.) Every potentially responsive document must be carefully reviewed for privileges and other protections, and where necessary, redacted. (*See* Perlstein Decl., at ¶ 5.) Patton Boggs' vendor estimates it will take between 55 and 67 weeks to complete this review and logging, at a cost ranging from $6.35 million to 7.75 million. (See id at ¶ 7.)

This burden is unjustified where: (1) the Subpoena is overbroad to the point of being a fishing expedition; (2) Patton Boggs is actively litigating on behalf of its clients against Chevron in courts around the country, and was not a participant in or a witness to the alleged misconduct at the core of Chevron's claims in this case; and (3) Chevron already has elicited unprecedented levels of document discovery and deposition testimony in multiple proceedings around the U.S. concerning the same issues addressed by the Subpoena.

A. Chevron's Document Demands are Overbroad

The lion's share of Chevron's demands seek documents concerning: (i) matters that pre-date Patton Boggs' representation of the Afectados and involvement in the case; (ii) matters for

which Chevron—despite its prolific § 1782 and *Salazar* discovery—can present not a shred of evidence of Patton Boggs' involvement; (iii) issues irrelevant, or at best tangential, to its claims; or some combination thereof; (iv) they are so broad and/or ambiguous as to be truly incapable of response.

1. Requests Demanding Documents Pre-Dating Patton Boggs' Retention

Many of Chevron's document demands relate solely to events that allegedly occurred prior to Patton Boggs' representation of the Afectados, which commenced in early 2010. (Talisman Decl., ¶10.) For example, Chevron demands from Patton Boggs "All DOCUMENTS RELATED TO the selection and appointment of CABRERA as an expert in the LAGO AGRIO LITIGATION," "All DOCUMENTS RELATED TO the CABRERA WORKPLAN," and "All DOCUMENTS RELATED TO samples taken for THE CABRERA REPORTS," in addition to 15 other Cabrera-related demands. Cabrera's appointment, the submission of his workplan to the Sucumbios trial Court, and his sampling all occurred between 2007 and 2008—no less than two years before Patton Boggs began representing the Afectados. *See* Young Decl., Ex. A.

Counsel will of course come to possess documents and other information relating to matters that occurred before his or her retention. But these documents are not fodder for discovery from one's adversary's counsel. *See*,*.e.g., In re Chevron Corp.*, 749 F.Supp.2d 141 (S.D.N.Y. 2010) (Kaplan, J.) (suggesting that a subpoena to opposing counsel intended to "gain access to information that he gathered in the manner in which litigating counsel, lacking personal knowledge of any of the facts at issue in the lawsuit, normally gather information—interviewing witnesses and reviewing documents and other evidence" would be improper). If such requests were proper, there would be nothing stopping parties in every case—civil or criminal—from serving a subpoena on opposing counsel and demanding every document related to the allegations in that case.

This type of discovery is also improper because it would chill the activities that the attorney-client privilege and work product doctrine exist to promote: the free-flow of information about events relevant to the case, and counsel's candid assessment of that information, including robust internal debate. *See*, *e.g.*, *In re Richard Roe, Inc.*, 68 F.3d 38, 40 (2d Cir. 1995) (documents "reflect[ing] [counsel's] varying degrees of optimism or pessimism over particular issues and the ultimate outcome of the case" were not subject to the crime-fraud exception, and were the sort of deliberation that the attorney-client and work product privileges are "designed to promote."). Indeed, to the extent that Patton Boggs internally assessed these past events as it attempted to familiarize itself with an enormous body of facts (and the law in Ecuador) in the wake of Chevron's allegations, Chevron would seek to mine these communications for anything that can be construed as an "admission." That is what Chevron has done with similar documents obtained in the Donziger § 1782 proceeding. For example, Chevron frequently quotes from a supposedly damning email authored by then newly-retained local counsel representing the Afectados' in defense of the Stratus § 1782 proceedings in Colorado:

> When Plaintiffs' most recent (and current) Colorado counsel, Jay Horowitz, learned the truth about Stratus' role in writing the Cabrera report, he bluntly acknowledged the accuracy of Chevron's allegations in a May 16, 2010 email: "[I]t appears not only that Cabrera and plaintiffs can be charged with a 'fraud' respecting the former's report, but that Stratus was an active conspirator.

See Young Decl. at Ex. K at 1 (Chevron Br. citing Horowitz email). But Chevron fails to cite to a an email sent by the same attorney to the same recipients *two days later*, apparently after a more complete review of the facts, in which he stated:

> I have no doubt that Chevron has perpetrated a fraud upon the [Colorado] Court here. It has made a series of misrepresentations, generally in the form of omissions, particularly concerning what was occurring in Ecuador. . . . Had Chevron included for this Court a complete recitation of the Ecuadorian proceedings – the facts which it knew – it would have been impossible for them to make their strident cries about discovering that the Cabrera report contained

> 'plagiarized' Stratus material . . . Chevron . . . obviously understood that plaintiffs would be shoveling Stratus material to Cabrera. *There was, in sum, no fraud.*

(*See* Young Decl., Ex. L (emphasis added).)

Allowing discovery of documents and information obtained by Patton Boggs' regarding events that occurred years before its retention, as well as attorneys' efforts to understand and appropriately address those events, is improper and serves no legitimate purpose here.

2. Document Requests Utterly Lacking in Factual Basis

A number of Chevron's document demands seek discovery regarding alleged events without any factual basis to believe that Patton Boggs was involved in or bore witness to those events (if the events even occurred). For example, certain Chevron demands relate to its allegation that someone affiliated with the Afectados "ghostwrote" some portion of the Ecuadorian judgment, but there is no basis to believe Patton Boggs had any involvement in or evidence of the conduct alleged in this demand.[9] (*See* Young Decl., Ex. A.)

Discovery—particularly, third-party discovery—is not a "fishing expedition"; there must be a factual basis to reasonably infer that the respondent is in possession of responsive documents. *See, e.g.*, *Kirzhner v. Silverstein*, No. 09–cv–02858–CMA–BNB, 2012 WL 95288, (D. Colo. Jan. 12, 2012); *Higham v. Temple*, No. 05CIV7979WCC, 2006 WL 2714712 (S.D.N.Y. Sept. 22, 2006); *see also U.S. v. Segal*, 276 F. Supp. 2d 896, 901 (N.D. Ill. 2003).

This prohibition should apply with even greater force because Chevron has obtained an unprecedented volume of discovery from 73 subpoenas served prior to its service of the

[9] Chevron has to date subpoenaed multiple respondents who Chevron insisted were "ghostwriters" of the Ecuadorian judgment. For instance, Chevron alleged of the Oregon-based firm ELAW, a network of environmental lawyers: "The evidence shows that at the same time that ELAW was sharing its 'facilities' and 'cooperation' with [Afectados' counsel Pablo] Fajardo, Fajardo and his colleagues were actively pursuing their scheme which they later implemented—to draft or ghostwrite the Ecuadorian court's multi-billion-dollar judgment against Chevron." *See* Young Decl., Ex. C. Not only did Chevron fail to substantiate its accusations, but the United States District Court for the District of Oregon sanctioned Chevron in the amount of ELAW's attorney's fees, finding that "Chevron did not take . . .steps" to avoid placing an undue burden on ELAW, and that the subpoena "was, at least in part, meant to harass." *Chevron Corporation v. Salazar*, No. 11-0691-LAK, 2011 WL 7112979, at *3 (D. Ore. Nov. 30, 2011).

Subpoena on Patton Boggs, yet still has no evidence linking Patton Boggs to the conduct encompassed by its discovery demands. Because so many of Chevron's requests are nothing more than shots in the dark at opposing counsel, the Subpoena must be quashed.

3. Requests Seeking Documents of Tangential or Irrelevant Subject Matter

Rule 45 subpoenas are limited to "discovery regarding any nonprivileged matter that is relevant to any party's claim or defense." Fed. R. Civ. P. 26(b)(1); *see Schoolcraft v. City of New York*, 2012 U.S. Dist. LEXIS 82888, 29-30 (S.D.N.Y. June 13, 2012); *Koch*, 2009 U.S. Dist. LEXIS 61913, at *5. "To the extent [Chevron's] subpoena sweepingly pursues material with little apparent or likely relevance to the subject matter" of the litigation, it is "overbroad and unreasonable." *Concord Boat Corp. v. Brunswick Corp*., 169 F.R.D. 44, 50 (S.D.N.Y.1996). In this case, "[t]he broadness of the subpoena . . . underscores the inappropriate scope of the discovery sought." *Alessi Domenico S.P.A. v. OTC Intern. Ltd.*, No. CV 2004-5383(CPS)(MDG), 2006 WL 3050874, *2 (E.D.N.Y. Oct. 25, 2006).

Chevron seeks documents far afield from its core claims. For example, Chevron demands "All DOCUMENTS RELATED TO the scope of YOUR authority or YOUR authority to represent or act on behalf of the LAGO AGRIO PLAINTIFFS." (*See* Young Decl., Ex. A at Request ("R.") 1.) It also demands documents related to any powers of attorney that any of the Afectados may have granted to Patton Boggs (*Id.*at R. 8), as well as documents regarding Patton Boggs' compensation structure. (*Id.*at R. 50.) Chevron also seeks any and all documents—including the passports of Patton Boggs attorneys—evidencing travel to Ecuador and a litany of other South American countries, as if the fact that attorneys are present in any of these countries is somehow probative of nefarious conduct supportive of Chevron' claims. (*Id.* at R. 3, 4.) Chevron demands documents related to a variety of tangential activities—including protest marches and rallies (*Id.* at R. 53) and communications with non-governmental organizations (*Id.*

at R. 54)—that are of no significance whatsoever independent of the merits of Chevron's other allegations.

4. Document Requests That Are Impossible to Interpret

A Subpoena also should be quashed when the "particularity with which the documents are described" is insufficient. *Concord Boat Corp. v. Brunswick Corp.,* 169 F.R.D. 44, 49 (S.D.N.Y. 1996) *(quoting United States v. International Bus. Mach Corp.,* 83 F.R.D. 97, 104 (S.D.N.Y.1979); *see also United States v. Arias*, 373 F. Supp. 2d 311, 313 (S.D.N.Y. 2005). Here, it is not merely that many of Chevron's requests lack the requisite degree particularity, but that it is truly impossible to decipher their intended scope—the range of target documents is not "identifiable."

Chevron, for example, demands "All DOCUMENTS RELATED TO the contents of the INVICTUS MEMO. . . ." (*See* Young Decl., Ex, A at R. 51.) The *Invictus* memo was cited and discussed over and over again in submissions to scores of courts. Thus, this one request along might require production of a large volume of publicly available documents and drafts of those documents. There is no real way of knowing what Chevron means by asking for all documents related to another document. Equally vaporous are Chevron's request for documents "related to" various persons—e.g., "All DOCUMENTS RELATED TO Judge Alberto Guerra Bastidas; Judge Efrain Novillo Guzmán; Judge Germán Yánez Ricardo Ruiz; Judge Juan Evangelista Núñez Sanabria; Judge Leonardo Ordóñez Pina; and Judge Nicolás Augusto Zambrano Lozada in both their judicial and nonjudicial capacities." To the extent Chevron seeks all documents "related to" every judge to have presided over the Lago Agrio trial, is it seeking essentially every document related to that litigation? Every document submitted to the court? It is not possible to tell.

B. Patton Boggs was Neither a Participant in Nor a Witness to Any of the Alleged Conduct Central to Chevron's Claims in This Action

In deciding whether to quash a subpoena to opposing counsel, courts consider "the lawyer's role in connection with the matter on which discovery is sought and in relation to the pending litigation" *Friedman*, 350 F.3d at 72. As this Court has explained:

> The first of these considerations bears on the extent to which the discovery would disrupt the litigation by injecting one of the lawyers charged with its conduct into the case as a witness or by making the advocate's conduct or knowledge an issue in the proceeding. The second goes at least in part to the issue whether the lawyer is likely to have first-hand evidence that is important to the resolution of the lawsuit.

In re Chevron Corp., 749 F. Supp.2d at 163. Subpoenas to opposing counsel are regularly quashed where counsel was not a participant in or witness to events or transactions at the heart of the claims at issue. *See, e.g., Sea Tow Int'l, Inc. v. Pontin*, 246 F.R.D. 421, 427 (E.D.N.Y. 2007) (quashing subpoena, noting that that since counsel's role in the litigation was "that of counsel to Sea Tow and not of a fact witness, it follows that most, if not all, testimony that [counsel] could provide would be subject to the attorney-client privilege and the work product doctrine."); *see also New York Independent Contractors Alliance, Inc. v. Highway, Road and Street Construction Laborers' Local Union 1010 of the District Council of Pavers and Road Builders*, 2008 WL 5068870 at *2 (E.D.N.Y. 2008) (denying discovery from opposing counsel, reasoning that "plaintiffs mischaracterize [counsel] as a 'key witness' simply because he provided legal assistance to Local 1010 in connection with the extension agreement. . . . Despite the plaintiffs' contentions that the extension agreement constituted a breach of the CBA, [counsel's] role in connection with these matters appears to have been limited primarily to legal representation.").

Patton Boggs was retained by the Afectados in early 2010. This was roughly: (i) two years after the Cabrera Report was submitted to the Sucumbíos Trial Court; (ii) five years after the Calmbacher report was submitted to the Sucumbíos Trial Court; and (iii) two to three years

after the events depicted in the outtakes from the 2009 film *Crude*, on which Chevron's Complaint relies so heavily. These events and the allegations surrounding them unmistakably form the core of Chevron's claims. In comparison, Chevron's accusations against Patton Boggs—*i.e.*, that the firm coordinated additional expert reports that cited to the Cabrera Report; that the firm fought Chevron's efforts to obtain discovery by defending against § 1782 proceedings; and that the firm is involved in enforcing the Ecuadorian judgment—are derivative of and secondary to Chevron's fraud allegations.

Indeed, this Court's stated reasoning for upholding Chevron's subpoena to Steven Donziger illustrates why the Patton Boggs subpoena must be, in contrast, quashed:

> Nor is this a case in which the applicants have sought discovery of Donziger to gain access to information that he gathered in the manner in which litigating counsel . . . normally gather information. . . . Rather, the proposed discovery focuses on matters concerning which Donziger is a percipient witness and a principal actor. In other words, the discovery is sought to shed light on what Donziger and those working with him did, allegedly in corrupting the process in Ecuador. The special solicitude ordinarily shown to litigation counsel with respect to discovery in the cases that they handle is unwarranted in these circumstances.

In re Chevron Corp., 749 F.Supp.2d at 163. According to Chevron, Patton Boggs is and was a "witness and a principal actor" only in helping its clients respond to allegations of fraud regarding the Cabrera Report, and to obtain international recognition of a judgment through the prosecution of legal proceedings in countries where Chevron conducts business. In short, Patton Boggs is not a "witness" at all. It is entitled to the "special solicitude" identified by this Court.

C. The Subpoena Demands Largely Cumulative Discovery

Over the past two-and-a-half years, Chevron filed over 20 discovery actions pursuant to 28 U.S.C. § 1782 in 16 different jurisdictions throughout the United States. These proceedings resulted in the production of hundreds of thousands of pages of documents and roughly 320 hours of depositions. In fact, between its § 1782 proceedings and the *Salazar* proceedings,

Chevron has served 73 subpoenas, not counting the Patton Boggs Subpoena. These prior subpoenas have the issues central to Chevron's Complaint well-covered indeed:

- *52 respondents received demands regarding the Cabrera Report*: 3TM Consulting; 3TM International; Douglas Allen, P.A.; Christopher Arthur; Banco Pichincha; Lawrence Barnthouse; Laura Belanger; Douglas Beltman; Cristobal Bonifaz; Charles Calmbacher; Charles Champ; David Chapman; Richard Clapp; Ted Dunkelberger; Steven Donziger; ELAW; E-Tech International; Laura Garr; Thomas Golojuch; Katia Fach Gomez; Google; H5; Hotmail; Peter Jones; Richard Kamp; Joseph Kohn; Kohn, Swift & Graft; Orin Kramer; Ann Maest; David Mills; Aaron Marr Page; Daria Fisher Page; Brian Parker; Jennifer Peers; Carlos Picone; William Powers; Mark Quarles; Kerry Roche; Daniel Rourke; Robert Scardina; Marla Scarola; Jonathan Shefftz; Stratus; Sun Trust Bank; Uhl, Baron, Rana & Associates; Uhl & Associates; Juan Cristobal Villao; The Weinberg Group; Matthew Weinberg; Andrew Woods; Alberto Wray; and Yahoo!.[10]

- *16 respondents received demands regarding the Calmbacher Report*: Douglas Allen; Christopher Arthur; Banco del Pacifico; Charles Calmbacher; Steven Donziger; Laura Garr; Katia Fach Gomez; H5; Joseph Kohn; Kohn, Swift & Graft; Aaron Marr Page; Daria Fisher Page; Brian Parker; The Weinberg Group; Andrew Woods; and Alberto Wray.[11]

- *17 respondents received demands regarding the alleged "ghostwriting" of the Ecuadorian Judgment*: Douglas Allen; Christopher Arthur; Richard Clapp; Steven Donziger; ELAW; Laura Garr; Katia Fach Gomez; H5; Joseph Kohn; Kohn, Swift & Graft; Orin Kramer; Aaron Marr Page; Daria Fisher Page; Brian Parker; Uhl & Associates; The Weinberg Group; and Andrew Woods.[12]

- *26 respondents received demands regarding the supplemental experts*: Douglas Allen; Christopher Arthur; Lawrence Barnthouse; Richard Clapp; Steven Donziger; Ted Dunkelberger; ELAW; Laura Garr; Thomas Golojuch; Katia Fach Gomez; H5; Joseph Kohn; Kohn, Swift & Graft; Orin Kramer; Aaron Marr Page; Daria Fisher Page; Brian Parker; Carlos Picone; Kerry Roche; Daniel Rourke; Robert Scardina; Marla Scarola; Jonathan Shefftz; The Weinberg Group; Matthew Weinberg; and Andrew Woods.[13]

- *31 respondents received demands regarding counsel's alleged undue influence over the Ecuadorian judiciary*: Douglas Allen; Christopher Arthur; Cristobal Bonifaz; Charles Champ; Richard Clapp; Ted Dunkelberger; Steven Donziger; E-Tech International;

[10] *See* Declaration of Caroline Marino ("Marino Decl."), Exs. 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 19; 20; 21; 22; 23; 24; 25; 26; and 28; 29; 30; 31; 32; 33; 34; 35; 36; 37; 38; 39; 40; 41; 42; 45; 46; 4748; 50; 51; 52; 53; 54; 55; 56; 57; 58; 59; 60; 61; 62; 63; 64; 65; and 66.

[11] See Marino Decl., Exs. 3; 4; 5; 7; 15; 18; 26 37; 44; 50; 52; 53; 55; 56; 57; 59; 60; 61; 62; 63; 64; and 66.

[12] *See* Marino Decl., Exs. 2; 3; 42; 45; 50; 52; 53; 54; 55; 56; 57; 59 60; 61; 62; 63; 64; 65; and 66.

[13] *See* Marino Decl., Exs., 2; 3; 4; 5; 11; 12; 13; 14; 15; 16; 17; 30; 31; 32; 33; 34; 35; 45; 50; 52; 53; 54; 55; 56; 57; 59; 60; 61; 62; 63; 65; 66; 66.

ELAW; Laura Garr; Thomas Golojuch; Katia Fach Gomez; H5; HomeTown Bank; Richard Kamp; Joseph Kohn; Kohn, Swift & Graft; Orin Kramer; Aaron Marr Page; Daria Fisher Page; Brian Parker; Carlos Picone; Kerry Roche; Daniel Rourke; Robert Scardina; Marla Scarola; Jonathan Shefftz; The Weinberg Group; Matthew Weinberg; Andrew Woods; and Alberto Wray.[14]

- *17 respondents received demands regarding alleged sham criminal charges against Chevron attorneys in Ecuador*: Cristobal Bonifaz; Charles Champ; Steven Donziger; ELAW; E-Tech International; Laura Garr; Katia Fach Gomez; H5; Richard Kamp; Joseph Kohn; Kohn, Swift & Graft; Orin Kramer; Aaron Marr Page; Daria Fisher Page; Brian Parker; Andrew Woods; and Alberto Wray.[15]

Chevron does not need to access opposing counsel counsel's litigation file for discovery concerning these same, well-tread areas of inquiry.

Chevron undoubtedly will contend that Patton Boggs' documents are somehow uniquely critical, but where it already subjected the Afectados' lead counsel for the past 19 years, Steven Donziger, to 16 days of deposition and collected more than 18,000 documents from him, that claim rings hollow. Of the 58 document requests in Chevron's Subpoena to Patton Boggs, 33 are identical and 23 are nearly identical to discovery demands issued to Mr. Donziger. *Compare* Young Decl., Ex. A with Young Decl., Ex. M. Moreover, while Chevron's principal complaint about Patton Boggs seems to be the firm's coordination of the supplemental expert reports submitted to the Sucumbíos Trial Court in September 2011, Chevron already obtained, through § 1782, a complete production of documents and testimony from all six of the experts who prepared these reports.[16] Chevron also obtained additional documents on the "cleansing report" issue from the Weinberg Group—the consulting firm hired to oversee preparation of these reports—in the U.S. District Court for the District of Columbia, and is now pursuing the

[14] *See* Marino Decl., Exs. 3; 6; 8; 10; 11; 13; 14; 15; 16; 17; 26; 31; 32; 33; 35; 45; 50; 52; 53; 54; 56; 57; 59; 60; 61; 62; 65; 66.

[15] *See* Marino Decl., Exs. 2; 3; 4; 5; 6; 7; 8; 9; 10; 26; 50; 52; 53; 54; 55; 57; 59; 60 61; 62; 63; 64; 65.

[16] *Chevron Corporation v. Rourke*, 8:10-cv-02989-AW (D. Md.); *Chevron Corp. v. Picone*, No. 8:10-mc-02990-AW (D.Md.); *Chevron Corp. v. Barnthouse*, No. 1:10-mc-00053-SSB (S.D. Ohio); *Chevron Corporation v. Scardina*, No. 7:10-mc-00067-JCT (W.D. Va.); *Chevron Corporation v. Allen*, No. 2:10-mc-00091-WKS (D. Vt.); *Chevron Corporation v. Shefftz,* No. 1:10-mc-10352-JLT (D. Mass.).

Weinberg Group's privileged documents in that proceeding.[17] The possibility that Chevron could potentially acquire some quantity of additional documents from Patton Boggs regarding these subjects does not justify disrupting the adversarial process with an incursion into opposing counsel's litigation file.

II. THE SUBPOENA PRIMARILY SEEKS DOCUMENTS PROTECTED BY THE ATTORNEY-CLIENT PRIVILEGE AND THE ATTORNEY WORK PRODUCT DOCTRINE

The attorney-client privilege "recognizes that sound legal advice or advocacy . . . depends upon the lawyer's being fully informed by the client." *Upjohn Co. v. U.S.*, 449 U.S. 383, 389 (1981). Similarly, the work product doctrine has its roots in the "orderly prosecution and defense of legal claims." *Hickman v. Taylor*, 329 U.S. 495, 510 (1947). The doctrine is fundamental to our adversarial system:

> It is essential that a lawyer work with a certain degree of privacy, free from unnecessary intrusion by opposing parties and their counsel. Proper preparation of a client's case demands that he assemble information, sift what he considers to be the relevant from the irrelevant facts, prepare his legal theories and plan his strategy without undue and needless interference. . . . This work is reflected, of course, in interviews, statements, memoranda, correspondence, briefs, mental impressions, personal beliefs, and countless other tangible and intangible ways[.]

Hickman, 329 U.S. at 510–11. "Opinion" or "core" work product—which can reveal the "mental impressions, conclusions, opinions, or legal theories of an attorney or other representative—is entitled to even greater, "special protection." *In re Grand Jury Subpoena Dated July 6, 2005*, 510 F.3d 180, 183 (2d Cir. 2007) (*citing United States v. Adlman*, 134 F.3d 1194, 1197 (2d Cir. 1998)); *Upjohn Co. v. United States*, 449 U.S. 383, 401–02 (1981).

For the past two years, Patton Boggs has appeared on behalf of the Afectados in numerous federal district courts and courts of appeal, and has supported co-counsel in still other jurisdictions, particularly in terms of bearing the legal-briefing load. The vast majority of its

[17] *See Chevron Corporation v. The Weinberg Group*, No. 1:11-mc-00409-JMF (D. D.C.).

responsive documents are—at a minimum—core attorney work product. In circumstances such as these, courts regularly quash subpoenas directed to counsel on the basis of privilege without requiring counsel to log its case file. *See*, *e.g.*, *Estate of Ungar v. Palestinian Authority*, 400 F. Supp. 2d 541, 554 (S.D.N.Y. 2005) (quashing subpoena directed to White & Case LLP due to "the excessive number of documents requested, the unlikelihood of obtaining relevant information, and the existence of attorney-client privilege for all documents"), *aff'd*, 332 Fed. Appx. 643 (2d. Cir. 2009) (noting that subpoena was quashed outright because it "asked for essentially every document White & Case LLP possessed relating to its representation of [defendant-client] all over the world"); *Kirzhner v. Silverstein*, No. 09-cv-02858-CMA-BNB, 2011 WL 1321750, at *3 (D. Colo. Apr. 5, 2011) ("[T]he defendants are engaged in discovery abuse by attempting to require the [plaintiff's counsel] to prepare a privilege log justifying its redaction or refusal to produce privileged documents from trial counsel's file. Such an undertaking would be enormous; is unreasonably burdensome and intended to be harassing and vexatious; and would unnecessarily expand the scope and cost of the litigation."); *Nocal, Inc. v. Sabercat Ventures, Inc.*, No. C 04–0240 PJH(JL), 2004 WL 3174427 (N.D. Cal. Nov. 15, 2004) (quashing subpoena directed at counsel and opining that "burden of production outweigh[ed] the benefits" where subpoena demanded counsel's entire case file and document collection and privilege log would require "hundreds of hours and thousands of dollars").

Chevron's Subpoena is replete with demands that call for the production of Patton Boggs' privileged communications with its clients and the core work product of its attorneys. For example, Chevron is blatantly attempting to uncover the Afectados' legal strategy for judgment enforcement. Chevron demands:

> All DOCUMENTS RELATED TO any attempt or plan to enforce the LAGO AGRIO JUDGMENT or attach CHEVRON's assets anywhere in the world,

> including but not limited to COMMUNICATIONS with current or former government officials, analyses of CHEVRON's assets, analyses of legal systems, and the retention of agents for the purpose of obtaining an interest in any CHEVRON asset.

See Young Decl., Ex. A at R. 46; *see also* R. 1. Equally brazen is Chevron's demand for all documents related to Patton Boggs' "actual or potential involvement in the preparation of any brief, motion, or pleading in connection with the Lago Agrio Litigation or the appeal of the Lago Agrio Judgment." *Id.* at R. 2.[18] Other demands seek to discern legal strategy, such as where the Plaintiffs may seek to enforce the Ecuadorian judgment, in a more subtle way. For example, Chevron seek Patton Boggs' and it clients' travel-related documents, including passports, itineraries, credit card bills, and invoices related to travel to Argentina, Brazil, Canada, Columbia, Panama, or Venezuela. (*Id.* at R. 4, 6.) Because these documents are only relevant insofar as they might reveal legal strategy—Chevron's only possible intent in requesting them—they are protected. *See Diversified Group, Inc. v. Daugerdas*, 304 F.Supp.2d 507 (S.D.N.Y. 2003) (noting that "correspondence, bills, ledgers, statements, and time records which also reveal the motive of the client in seeking representation, litigation strategy, or the specific nature of the services provided fall within the privilege."). Because these, and nearly all other, demands seek in large part protected materials, the subpoena should be quashed.

Chevron has already forecast its intent to defend its unabashed demand for privileged documents and attorney work product on the grounds that the crime-fraud exception vitiates any privilege adhering to Patton Boggs' documents—or at least those pertaining to the supplemental expert discovery; to Patton Boggs' supposed strategy to oppose discovery in Chevron's § 1782

[18] According to the Subpoena, "Preparation . . . means and refers to writing, creating, proposing, drafting, editing, ghostwriting, advance knowledge, revising, or advising as to the contents or drafting of a Document." *See* Young Decl., Ex. A at 16.

actions; and to efforts to obtain international recognition of the Ecuadorian judgment. (Dkt. 514 at 2.) None of these attempts to apply the crime-fraud doctrine withstand scrutiny.

First, the supplemental expert reports did not "perpetuate" any alleged fraud regarding the authorship of the Cabrera report. Whether or not Chevron's Cabrera allegations amounted to misconduct in the context of Ecuadorian civil practice (a disputed issue then and now), Chevron's allegations of attorney misconduct and false pretenses threatened to overshadow the merits not only of the scientific data embodied in the report (which was drawn predominantly from the court record), but of the Afectados' case against Chevron more broadly. Hence, the Afectados asked the Sucumbios Trial Court for an opportunity to submit supplemental reports to affirm that plaintiffs' damages theories were based on sound methodologies notwithstanding the controversy regarding the authorship of the Cabrera Report.[19] Recognizing that controversy, the court granted the request, and permitted both parties to submit additional materials justifying their respective positions on damages (not causation).[20] With the aid of the Weinberg Group, the Afectados hired U.S.-based experts to review limited, relevant aspects of the Ecuadorian record, including the Cabrera Report (which itself assembled and appended substantial scientific data drawn directly from the court record), and to offer their expert opinions regarding damages issues. The four expert reports that relied on the Cabrera Report (two did not) cited the report

[19] *See* Young Decl., Ex. S.

[20] *See* Young Decl., Ex. R ("[A]fter studying the file, that there are several documents related to the petition to declare null and void the expert investigation conducted by Expert Richard Cabrera and, after studying each of them as filed by the defendant, each text studied clearly showed disagreement with Expert Richar[d] Cabrera's Report. . . . [T]he judge is not required to agree with the opinion of the experts. [] [I]n order to obtain more information and insight and more elements of judgment, the judge . . . orders the parties to submit, through the Office of this Presidency, a document setting forth and justifying their positions on the economic and applicable criteria for environmental damage remediation, without this meaning in any way an admission or implicit acknowledgement of the party, or a prejudgment at the discretion of the court as to the existence of any damage.")

openly—there was no effort to disguise that reliance.[21] Nor did they purport to be something greater than what they were—the reports were candid about their inherent limitations and the assumptions they were based upon,[22] which allowed the Ecuadorian courts to weigh them in conjunction with Chevron's various allegations. The Sucumbios Trial Court noted this in rejecting Chevron's charge that submission of the reports amounted to misconduct.[23] The Ecuadorian courts apparently agreed that there would be no justice in punishing the Afectados for their lawyers' alleged errors, and allowing Chevron—whose hands were very far from clean[24]—to escape liability notwithstanding the evidence against it. Whatever this Court may think of Chevron's allegations concerning the authorship of the Cabrera Report, the efforts to defend the substance of Plaintiffs' damages theories reflected in the Cabrera Report—to prevent the baby from being thrown out with the bathwater certainly do not warrant application of the crime-fraud doctrine.

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[21] *See, e.g.*, *Chevron Corp. v. Barnthouse*, No. 1:10-mc-00053, Dkt. 36, at 21 (S.D. Ohio Nov. 26, 2010) (rejecting application of crime-fraud doctrine to documents held by "cleansing" expert Lawrence Barnthouse, opining: "While Chevron has presented evidence showing serious questions going to the authorship of the Cabrera Report . . . there is no factual basis for Chevron's assertion that Mr. Barnthouse was involved in any alleged ongoing fraud in this case. In fact, *Mr. Barnthouse was explicit in his attribution of much of his report to the Cabrera Report in his assessment of damages in the Lago Agrio Litigation. Barnthouse's Report specifically notes that his 'evaluation relies heavily on Cabrera (2008) but notes significant limitations and uncertainties related to this study.*'") (emphasis added); *see also* Young Decl., Ex. FF at 2 (13-page expert report of Paolo Scardina referencing the Cabrera Report no fewer than 35 times); Ex. Y at 3 (expert report of Douglas Allen noting "[t]he primary information and data used by [Allen] for this valuation . . . included: (1) the expert reports and associated annexes of Richard Cabrera; (2) technical reports cited in the Cabrera reports"); Ex. W at 1 (expert report of Jonathan Shefftz noting on page one: "I have also reviewed the unjust enrichment calculations in the report prepared by Court-appointed expert Richard Stalin Cabrera Vega ('Cabrera'). . . . Starting with the Cabrera report's engineering figures and cost estimates, I have performed my own financial analysis").

[22] *See*, *e.g.*, Young Decl., Ex. FF ("Developing detailed, up-to-date costs for the regional systems described by Cabrera (2008) would require an in-depth engineering design effort and is not the intent of this report. Rather, the conceptual approach recommended was examined using largely information developed by Cabrera (2008, Appendix R) during his more detailed research and system design analysis. . . .").

[23] Dkt.245-1 at 58 (court opining that Chevron's charge of "ideological forgery" as to the reports was "reckless [and] without merit," because to the extent that these experts reviewed and relied on work found in the Cabrera Report, that reliance was fully disclosed to the Court; and because plaintiffs had delivered to the court precisely what it had ordered).

[24] The Sucumbíos Appellate Panel noted, in its affirmance of the trial court, described Chevron's tactics throughout the eight-year litigation as "abusive" and "rarely seen in the annals of administration of justice in Ecuador." (Dkt. 417-1 at 16.)

Second, Chevron accuses Patton Boggs of engaging in an alleged "obstruct and delay" strategy to prevent Chevron from obtaining the discovery it desired. The law in this District cannot be more clear: "even if encouraging a witness to assert valid grounds against discovery were deemed undesirable or inappropriate, that is not tantamount to concluding that such action comes within the scope of the crime-fraud exception to the privilege." *Johnson Electric N. Am. Inc. v. Mabuchi N. Am. Corp.*, 88 Civ. 7377 (JES), 1996 U.S. Dist. LEXIS 5227 (S.D.N.Y. 1996) (rejecting argument that "privilege cannot be used to conceal communications designed to 'obstruct' discovery," and holding that crime-fraud exception was inapplicable to allegedly fraudulent suit filed to block the collection of discovery in a foreign proceeding, because proceeding was not totally lacking in merit). Further, this Court should not accept Chevron's invitation to condemn the conduct of counsel or the merits of its legal positions advocated before other federal judges perfectly capable of policing their own courtrooms. *See In re Case*, 937 F.2d 1014, 1023 (5th Cir. 1991); *Chrysler Credit Corp. v. Country Chrysler, Inc.*, 928 F.2d 1509, 1522 (10th Cir. 1991). Thus, absent Rule 11 sanctions from the courts where Patton Boggs allegedly sought to "obstruct and delay" discovery, Chevron's argument does not hold up.

Far from imposing Rule 11 sanctions, multiple circuit courts of appeal vacated production orders in several of Chevron's collateral discovery proceedings, and several district courts rejected Chevron's crime-fraud arguments.[25] Nevertheless, Chevron appears to take particular issue with Patton Boggs' alleged conduct in the District of Colorado, citing emails for the proposition that Paton Boggs devised a plan to assert frivolous arguments to delay Chevron's acquisition of documents. *See* Dkt. 47-54 at 1. But Chevron fails to cite to other emails in its possession

[25] *See, e.g., In re Application of Chevron Corp.*, 650 F.3d 276 (3d Cir. 2011); *Chevron Corp. v. Weinberg Grp.*, 682 F.3d 96 (D.C. Cir. 2012).

drafted by the same Patton Boggs lawyers regarding these same issues in Colorado.[26] Finally, Chevron moved in the District of Colorado for costs based on the alleged improper conduct of Patton Boggs and the court held that "all counsel in this action have acted professionally and appropriately . . . ." *See*, *e.g.*,Young Decl., Ex. DD. Indeed, no court has found that any attorney from Patton Boggs acted inappropriately in Chevron's collateral discovery actions.

Third, it is also not a "fraud" for attorneys to seek to enforce a judgment that a judgment debtor claims was "procured by fraud." As Chevron would have it, allegations and purported evidence of misconduct in the underlying proceedings would render attorneys culpable for even *asking* a foreign court to decide whether a judgment is entitled to recognition. (Dkt. 514 at 2). This circular argument cannot be correct. Indeed, if it were, Chevron will have ostensibly received another worldwide injunction because the Afectados will essentially have been stripped of their right to legal representation going forward.[27] How could it be "fraudulent" to present a foreign judgment for judicial evaluation, where the court in that proceeding will determine whether that judgment does or does not possess bona fides making it worthy of recognition? Chevron's claim and purported evidence that the judgment was "procured by fraud" will be considered, where appropriate consistent with applicable laws, in enforcement courts.

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[26] In a subsequent email, Eric Westenberger of Patton Boggs states:

> This judge has given [u]s two orders now where he has made it pretty clear that we can assert in good faith whatever privileges we believe are available to us. Indeed, it is pretty clear to Chevron – they appealed. . . . The judge may (and probably will) ultimately disagree with our privileges, but that does not mean that asserting them constitutes bad faith – especially when we are producing significant numbers of privileged documents.

See Young Decl., Ex. GG.

[27] The subtext of Chevron's argument that no privilege adheres to any of the Afectados' enforcement activities is familiar and disturbing: courts in other countries—like Canada and Brazil, in this instance—"are inherently assumed insufficiently trustworthy to recognize what is asserted to be the extreme incapacity of the legal system from which the judgment emanates." *Chevron Corp. v. Naranjo*, 667 F.3d 232, 244 (2d Cir. 2012).

III. THE SUBPOENA SEEKS DOCUMENTS IMMUNE FROM DISCOVERY AND PROTECTED BY PRIVILEGES HELD BY OTHER THIRD-PARTIES[28]

Chevron's subpoena reaches beyond Patton Boggs' representation of the Afectados. Patton Boggs directly represents numerous Chevron subpoena respondents in open litigation in districts across the United States. For example, Patton Boggs represents Uhl, Baron, Rana & Associates, Douglas C. Allen, Carlos Emilio Picone, Daniel Rourke, Jonathan Shefftz, Lawrence W. Barnthouse, Robert Paolo Scardina, and the Weinberg Group. Patton Boggs appeared in proceedings and has counseled, or is counseling, these respondents in connection with responding to subpoenas propounded by Chevron.[29] Chevron's document requests encompass documents created in the course of those representations and in Patton Boggs' provision of legal advice to those clients – clients who are not present and not parties in this action. For example, Chevron requests "[a]ll DOCUMENTS RELATED to the work of Uhl, Baron, Rana & Associates." (*See* Young Decl., Ex. A, at R. 22.) Patton Boggs represents Uhl, Baron, Rana & Associates ("UBR") in responding to a subpoena in an ongoing § 1782 proceeding in the District of New Jersey. (*See* Dkt. 496, at 4 (noting Patton Boggs' representation).)

Because the subpoena is directed to the law firm as a whole, the subpoena appears to call for the production of documents from Patton Boggs attorneys that serve as registered agents to the Embassy of Ecuador.[30] (*See*, *e.g.*, Young Decl., Ex. A, at R. (All DOCUMENTS RELATED

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[28] Patton Boggs' counsel and Chevron's counsel have met and conferred and are attempting to resolve this issue. If able to resolve the issue, counsel will promptly inform the court.

[29] *Chevron Corp. v. Rourke*, 8:10-cv-02989-AW (D. Md.); *Chevron Corp. v. Picone*, No. 8:10-mc-02990-AW (D.Md.); *Chevron Corp. v. Barnthouse*, No. 1:10-mc-00053-SSB (S.D. Ohio); *Chevron Corporation v. Scardina*, No. 7:10-mc-00067-JCT (W.D. Va.); *Chevron Corp. v. Allen*, No. 2:10-mc-00091-WKS (D. Vt.); *Chevron Corp. v. Shefftz,* No. 1:10-mc-10352-JLT (D. Mass.); *Chevron Corp. v. The Weinberg Group*, No. 1:11-mc-00409-JMF (D.D.C.); *In re Application of Chevron Corp.*, No. 2:10-cv-02675-ES (D.N.J.). Patton Boggs has also assisted co-counsel in representations in other proceedings.

[30] Patton Boggs' registered agent status is a matter of public record. As a sovereign agent, Patton Boggs regularly files disclosures to the United States Department of Justice, National Security Division, "concerning the Firm's activities as an agent of the sovereign" which are available on the Department of Justice's website. (Talisman Decl.,

TO any COMMUNICATIONS by [Patton Boggs] . . . with any current or former elected or appointed government officials . . . includ[ing] . . . any ambassador.").) Thus, Patton Boggs may possess documents responsive to certain subpoena requests by Chevron.

To the extent Patton Boggs possesses any responsive documents, communications, etc. that it prepared or obtained in the course of its representation of the Republic of Ecuador they are immune from discovery under the Foreign Sovereign Immunities Act (the "FSIA"). The FSIA provides a foreign sovereign with both jurisdictional immunity and immunity over the foreign sovereign's property located in the United States. *See* 28 U.S.C. §§ 1604, 1609. "FSIA's immunity provisions aim to protect foreign sovereigns from the burdens of litigation, including the cost and aggravation of discovery." *Rubin v. Islamic Republic of Iran*, 637 F.3d 783, 795 (7th Cir. 2011) (citing *Republic of Philippines v. Pimentel*, 553 U.S. 851, 865 (2008)). These immunities are presumptive unless an exception applies. *Walter v. Indust. and Comm. Bank of China, LTD.*, 651 F.3d 280, 287 (2d Cir. 2011). Moreover, the appearance of the foreign sovereign in the action is irrelevant as to the application of the immunities—a "court may consider the issue [of immunity] once it is suggested by *any* party—or, for that matter, non-party—even if there is no reason to confer a special right of 'third party standing' on that party." *Id.* at 292-93; *Rubin*, 637 F.3d at 799. As the sovereign's agent, Patton Boggs here raises immunity as to only those documents created in Patton Boggs' ongoing agency relationship with the Embassy of Ecuador.

The Republic is indisputably entitled to the protections and immunities granted by Congress in the FSIA. In connection with the services Patton Boggs provides to the Republic, the firm possesses documents, communications, and other materials which are the rightful

¶ 8; *see also* Young Decl., ¶¶ 15-16; *see also* Young Decl. ¶ EE (*The Blog of Legal Times* article reporting on Patton Boggs' representation of the sovereign).)

property of that client. *See Polin v. Wisehart & Koch,* No. 00CIV.9624, 2002 WL 1033807, at *2-3 (S.D.N.Y. May 22, 2002) (ordering law firm to produce to former client law firm's work-product created in representing client). Accordingly, the property at issue (those documents created or obtained in Patton Boggs' ongoing representation of the Embassy of Ecuador) is immune from discovery under the FSIA and no exceptions are applicable that would waive this presumptive immunity.[31]

IV. IN THE ALTERNATIVE, THE COURT SHOULD GRANT RELIEF TO REDUCE THE BURDEN, COST AND HARM TO PATTON BOGGS

Should the Court decide not to quash the subpoena in its entirety: (i) the Subpoena should be modified substantially; (ii) the Court should grant a protective order limiting the scope of permissible use and disclosure; and (iii) Chevron should bear the costs attendant to Patton Boggs' response to the Subpoena.

A. The Subpoena Must at a Minimum Be Modified Substantially

If the Subpoena is not quashed, it should be modified to (1) limit the amount of privileged material Patton Boggs will need to collect, review, produce, and log, and (2) focus the requests on categories of documents relevant to Chevron's allegations as set forth in its Amended Complaint. *See* Fed. R. Civ. P. 45(c)(3)(A)(iii)-(iv).[32] For example, although Magistrate Judge Francis' now-vacated order in the *Salazar* action provided that "documents created in connection with this litigation and the related § 1782 proceedings need not be logged or produced" (No. 11-

[31] In the alternative to the immunity for property provided under 28 U.S.C. § 1609, this Court also lacks jurisdiction over the Republic of Ecuador under the jurisdictional immunity provided in 28 U.S.C. § 1604. Because Chevron would not be able to obtain these documents if it subpoenaed the Republic directly, it should not be able to circumvent the Republic's immunity by seeking them from Patton Boggs. *See In re Sarrio, S.A.*, 119 F.3d 143, 146 (2d Cir. 1997) ("where documents unobtainable by subpoena while in the possession of the client are transferred to a lawyer to obtain legal advice, making the documents available to process would defeat the purposes of the attorney-client privilege."); *see also Catskill Dev. L.L.C. v. Park Place Ent'm Corp.*, 206 F.R.D. 78, 92 (S.D.N.Y. 2002) (attorneys for sovereign possess sovereign immunity to same extent possessed by sovereign itself).

[32] In the accompanying addendum, Patton Boggs highlights illustrative examples of proposed Subpoena modifications that would reduce the burden on the law firm.

cv-3718 (LAK), Dkt. 289), in a meet-and-confer to attempt to limit the scope of the Requests at issue, Chevron refused to afford Patton Boggs the reasonable limitation contemplated by Magistrate Judge Francis, suggesting instead that Patton Boggs can "categorically log" its privileged documents. Chevron also refused to modify the subpoena to exclude work product created in the course of Patton Boggs' prosecution of collateral suits against Chevron and Gibson Dunn.

The Subpoena has no temporal limitations. Chevron rejected Patton Boggs proposal that the subpoena be limited to documents created between January 1, 2003 and February 1, 2011, when Chevron initiated this action.[33] Left unmodified, Chevron's subpoena instructions literally call for the production of documents "through the present." (Chevron Subpoena, Instruction ¶ 16.)

During its representation of the Afectados, Patton Boggs sought assistance from various vendors, law firms, and other entities. Despite the significant burden that Patton Boggs faces in the collection, processing, filtering, review and privilege logging of *its own* documents, the Subpoena also calls for documents outside of Patton Boggs' physical possession – including in the possession of "agents, attorneys, and accountants" not affiliated with the law firm. (*See* Chevron Subpoena, Definition 82 (purporting to define "YOU" and "YOUR").) As a non-party already saddled with significant business interruption and costs associated with collection, it is unreasonable to require extensive collections of privileged documents in the offices of local counsel and appellate printers across the nation.

Patton Boggs should also not be required to log internal communications between and among Patton Boggs attorneys in the course of their representation. Chevron's counsel Jones

[33] Chevron instead proposed a date limitation of February 14, 2011, but suggested that for certain Requests, Patton Boggs would need to produce documents far later.

Day, in responding to a subpoena served on behalf of Defendants Hugo Gerardo Camacho Naranjo and Javier Piaguaje Payaguaje in the *Salazar* proceedings, argued that "[s]ubstantive communications solely between Jones Day," should not be required to be placed on a privilege log. *See Chevron Corp. v. Salazar, et al., 3:11-mc-90219-JSW*, Jones Day Motion, at 11. Chevron's counsel explained that "[l]ogging such documents would not plausibly give defendants any information with which they could challenge these privileges" and whatever "marginal benefit" may be derived from such a log is "substantially outweighed by the burden on Jones Day of reviewing and logging all of the internal communications." The same concerns are equally applicable to Patton Boggs.

B. A Protective Order Should Limit the Scope of Permissible Use and Disclosure of any Production

Patton Boggs respectfully requests the Court enter a protective order to prohibit any public disclosure of discovery materials.[34] "Fed. R. Civ. P. 26(c) authorizes a federal court, for good cause, to issue an order to protect a party or person from whom discovery is sought from annoyance, embarrassment, oppression, or undue burden or expense." *Duling v. Gristede's Operating Corp.*, 266 F.R.D. 66, 71 (S.D.N.Y. 2010) (internal quotations omitted); *see also U.S. v. Prado*, No. CR S–02–21, 2009 WL 4018147, at *1 (E.D. Cal. Nov. 18, 2009).

Accordingly, Patton Boggs seeks a protective order that would allow, subject to Court review, discovery material to be designated as "confidential" where the discovery material: (1) contains personally identifying information of Patton Boggs' employees and clients such as personal home and cellular telephone numbers, home addresses, social security numbers, bank account information, email addresses, personal communications and other sensitive information;

[34] Counsel for Patton Boggs and Chevron are presently negotiating a Protective Order. Patton Boggs will promptly advise the Court if an agreement is reached.

(2) is claimed to be protected work product, privileged, or otherwise protected and immune; (3) contains privileged and sensitive information inadvertently produced pertaining to unrelated cases and/or client matters; and (4) contains information relevant to Patton Boggs' internal law firm operations and administration which would disadvantage Patton Boggs if disclosed vis-à-vis its competitors.[35]

C. Chevron Should Bear the Costs Attendant to Patton Boggs' Response to the Subpoena

It is estimated that Patton Boggs' efforts to comply with the subpoena – *i.e.*, the process of collecting documents from custodians in multiple offices, processing and filtering that data, and reviewing and logging– could cost as much as $8,300,000.00, and that does not include Patton Boggs attorney and professional time. (Perlstein Decl., ¶7; Kessler, ¶9.) As a non-party, Patton Boggs should not be forced to bear that cost. Patton Boggs requests that any order to produce documents be contingent on Chevron reimbursing the law firm for all costs incurred and that Chevron be required to advance reasonable costs for the retention of attorneys to review and log the documents at issue.

Fed. R. Civ. P. 45(c)(2)(B)(ii) requires a court to "protect [a non-party] from significant expense resulting from compliance." Such expenses include costs related to the retrieval, review, and production of documents as well as legal fees.[36] Courts generally consider the following factors in deciding whether to award expenses to a non-party: "(1) whether the nonparty has an interest in the outcome of the case; (2) whether the nonparty can more readily

[35] (*See* Talisman Decl., at ¶ 30–33 (offering a more detailed description of these particular concerns).)

[36] *In re First American Corp.*, 184 F.R.D. 234, 241 (S.D.N.Y. 1998) ("A nonparty's legal fees . . . have been considered a cost of compliance reimbursable under Rule 45(c)(2)(B)); *see also Kahn v. General Motors Corp.*, No. 88 Civ. 2982, 1992 WL 208286, at *2 (S.D.N.Y. Aug. 14, 1992) (ordering reimbursement of non-party's legal fees incurred "in connection with the retrieval, identification, and review of documents called for by the subpoena")).

bear the costs; and (3) whether the litigation is of public importance."[37] *In re First American Corp.*, 184 F.R.D. at 241.

Patton Boggs is not a party to this action and does not have a direct interest in the outcome of the RICO action, particularly in light of this Court's dismissal of Chevron's declaratory judgment action claims.[38] By contrast, Chevron is one of the world's most profitable corporations with profits numbering many billions of dollars and can more readily bear the costs. The public interest in the disclosure of Patton Boggs' documents is minimal and what remains of Chevron's claims is a civil suit between private parties. The estimated costs of collection and review are so high because Chevron intended them to be so: as documented herein, many of Chevron's document requests are made without limitation and seek information far afield of the litigation. Chevron should be required to bear these costs.

CONCLUSION

Respectfully, for all of the foregoing reasons, the Court should quash the Subpoena in its entirety. In the alternative, Patton Boggs respectfully requests that the Court: (i) order substantial modification of the Subpoena; (ii) enter a protective order limiting the scope of permissible use and disclosure of documents produced; and (iii) order Chevron to bear the costs attendant to Patton Boggs' response to the Subpoena.[39]

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[37] Additional factors are: "[(1)] the breadth and scope of the subpoena, [(2)] the willingness of the serving party to narrow its scope, [(3)] the level of effort required to comply, [(4)] the nature of [the non-party's] business[; and (5)] the relationship of [the non-party] to the parties and the nature of the litigation." *Prescient Acquisition Group, Inc. v. MJ Publishing Trust*, No. 05 Civ.6298, 2006 WL 2996645, at *2 (S.D.N.Y. Oct. 13, 2006).

[38] Even if this Court finds that Patton Boggs is not the typical disinterested non-party, it should at the least apportion the costs between Chevron and non-party Patton Boggs. *See Dow Chem. Co. v. Reinhard*, No. M8-85, 2008 WL 1968302, at *2 (S.D.N.Y. Apr. 29, 2008) (splitting costs between non-party and requesting party despite finding that non-party was "not the 'quintessential, innocent, disinterested bystander'").

[39] Pursuant to this Court's order (Dkt. 515), Respondent reserves all rights to assert privilege (inlcuding, but not limited to, attorney client, work product, joint defense and common interest) claims with respect to individual documents if this Court does not quash the Subpoena in its entirety.

Dated: July 20, 2012

Respectfully submitted,

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ADDENDUM TO NON-PARTY PATTON BOGGS LLP'S MOTION TO QUASH
~ Document Request Modification Proposals ~

Chevron's subpoena is 37 pages with 58 Requests. At least one request (Request 21) has 18 subparts. Space does not permit each Request to be "set forth verbatim" or addressed in this brief. *See* S.D.N.Y. L. Civ. R. 37.1. Patton Boggs served written objections setting forth specific objections to each Request. Set forth here are a number of proposed modifications to the subpoena to provide the Court with concrete, illustrative examples of the broad-reaching scope of the subpoena, the resulting burden, and the nature of the revisions necessary.

General Requests Without Limitation

15. All DOCUMENTS ~~RELATED TO~~ **evidencing** any alleged fraud or alleged failure to perform by any party under the TEXPET REMEDIATION AND RELEASE. **This request shall not be construed as calling for the production of draft filings or communications created in connection with trial or appellate strategy in this or other proceedings.**[1]

17. All DOCUMENTS ~~RELATED TO~~ **evidencing** any suspected, purported, or actual fraudulent testing, sampling, or measuring of samples by the LAGO AGRIO PLAINTIFFS **or their agents**~~, the LAGO AGRIO PLAINTIFF RELATED PARTIES, the LAGO AGRIO PLAINTIFF CONSULTANTS, the LAGO AGRIO PLAINTIFF LABORATORIES~~ or CHEVRON.[2]

"Criminal Cases"

16. All DOCUMENTS ~~RELATED TO the CRIMINAL CASES and any purported basis for the CRIMINAL CASES, including documents~~ PROVIDED to the Ecuadorian Attorney General in support of ~~criminal prosecution~~ **seeking to initiate any criminal case against Rodrigo Pérez Pallares and Ricardo Veiga**.[3]

"Ghostwriting" Allegations

14. All DOCUMENTS ~~RELATED TO~~ **evidencing** the writing, drafting, creation, editing, advance knowledge of, or revision by any of the LAGO AGRIO PLAINTIFF RELATED PARTIES of any official communication, order, statement, ruling, report, judgment, sentencia, escrito, providencia, edict or other writing issued by the LAGO AGRIO COURT, any appellate court reviewing any ruling of the LAGO AGRIO COURT, or ROE REGARDING CHEVRON or the CHEVRON LITIGATION.

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[1] **REQUEST 15**: The use of the phrase "RELATED TO" in Request 15 could require the production of a substantial amount of Patton Boggs' litigation file, including draft briefs and other work product, because Chevron raises in all *fora* its argument that the company was released from all claims by the Ecuadorian government.

[2] **REQUEST 17**: Request 17 presents similar issues, as applied to Chevron's and the Afectado's allegations regarding laboratories which have been raised and litigated in proceedings in multiple *fora*.

[3] **REQUEST 16**: As currently drafted, any piece of paper in Patton Boggs' possession with either of Chevron attorneys Rodrigo Pérez Pallares' and Ricardo Veiga's names would be "RELATED TO the CRIMINAL CASES" and therefore subject to being collected, processed, filtered, reviewed, and logged. Patton Boggs should not be compelled to bear this burden.

29. All DOCUMENTS ~~RELATED TO~~ **evidencing** the writing, drafting, editing, advance knowledge of, or revision of the LAGO AGRIO JUDGMENT by any of the LAGO AGRIO PLAINTIFF RELATED PARTIES.

31. All DOCUMENTS and COMMUNICATIONS of the LAGO AGRIO PLAINTIFF RELATED PARTIES ~~RELATED TO~~ **evidencing** the proposing, writing, drafting, creation, editing, advance knowledge, or revision of any order, statement, ruling, report, or other writing RELATED TO the LAGO AGRIO LITIGATION and issued by the LAGO AGRIO COURT or the LAGO AGRIO APPELLATE PANEL, including but not limited to the LAGO AGRIO JUDGMENT, the LAGO AGRIO APPELLATE DECISION, the LAGO AGRIO APPELLATE CLARIFICATION ORDER, the February 17, 2012 Order of the LAGO AGRIO APPELLATE PANEL, and the March 1, 2012 Order of the LAGO AGRIO APPELLATE PANEL, including any commenting or advising as to the content of same.[4]

"Unfiled" Documents

28. All DOCUMENTS ~~RELATED TO~~ **evidencing** the ~~drafting, use, and~~ distribution of the UNFILED LAGO AGRIO PLAINTIFFS' WORK PRODUCT ~~in connection with~~ **to** the LAGO AGRIO ~~JUDGMENT~~ **COURT** or any **Ecuadorian** appellate court ~~review of the LAGO AGRIO JUDGMENT.~~

~~**30.** All DOCUMENTS PROVIDED by any LAGO AGRIO PLAINTIFF RELATED PARTY for use in any way by the author(s) of the LAGO AGRIO JUDGMENT, but not contained in the RECORD.~~[5]

Richard Cabrera

20. ~~All DOCUMENTS RELATED TO the writing, drafting, creation, editing, or revision of any DOCUMENT or draft DOCUMENT or other writing filed with the LAGO AGRIO COURT, including but not limited to any DOCUMENT or draft DOCUMENT or other writing filed with the LAGO AGRIO COURT under the signature of or in the name CABRERA.~~

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[4] **REQUESTS 14, 29, and 31:** There is a difference between, on the one hand, requesting documents *evidencing* that the Ecuadorian court's judgment was prepared by a person other than Provincial Court Judge Nicolas Zambrano and, on the other hand, requesting documents *relating to* Chevron's allegations that the judgment was ghostwritten. Patton Boggs does not possess any evidence or knowledge responsive to these requests. But left to Chevron's broad terms, Patton Boggs has potentially tens of thousands of documents "RELATED TO" Chevron's "ghostwriting" allegations. Chevron has raised its allegations before this Court, the Ecuadorian appellate court, the Second Circuit, and in other pending proceedings throughout the United States – proceedings in which Patton Boggs is counsel of record. Public filings addressing the allegations – as well as drafts of such filings and communications expressing attorney thoughts and trial strategy in responding to the allegations – would appear to be "RELATED TO" this Request, but do not provide any evidence that any Ecuadorian court decisions were drafted by anyone other than the court. Patton Boggs should not be forced to produce public filings on this subject or collect, review and log documents work product discussing counsel's strategy for responding to Chevron's allegations.

[5] **REQUESTS 28 AND 30:** Patton Boggs does not possess any evidence or knowledge that unfiled materials were improperly submitted to the Ecuadorian courts. Requests 28 and 30 rely on an implicit assumption that certain words, phrases, sentences, and/or terms were allegedly not incorporated into any of the more than 216,000 pages of filings that constitute the Ecuadorian trial court record or were not otherwise properly submitted to the Ecuadorian court. (*See* Definition 80.) However, Chevron performed only an "*ineffective search* of parts of the lower court record . . . and it would be inappropriate to assert that material claimed to be unfiled could not possibly be present in the lower court record." (Young Decl., Ex. HH, at ¶ 29.) In fact, Chevron's own version of the record, produced in the *Salazar* litigation, was made up of files that were "extremely inaccurate" and contained errors that would prevent whole sections of the record from being searched for purportedly "unfiled" language. (*See id.* at ¶ 27.) As a non-party subpoena respondent, Patton Boggs is not in any position to determine which documents – or portions of documents, to the extent they were incorporated into other filings – constitute part of the Ecuadorian record.

21. ~~All DOCUMENTS RELATED TO CABRERA or the PURPORTED CABRERA TEAM, including but not limited to:~~

[Subparts "a" and "b" are not capable of modification and should be stricken entirely.]

c. All COMMUNICATIONS with CABRERA or any member of the PURPORTED CABRERA TEAM;

d. All DOCUMENTS ~~RELATED TO~~ **evidencing** meetings with CABRERA or any member of the PURPORTED CABRERA TEAM;

[Subparts "e", "f", "g" are not capable of modification and should be stricken entirely.]

h. All DOCUMENTS ~~RELATED TO~~ **evidencing** payments or compensation to CABRERA or any other member of the PURPORTED CABRERA TEAM, including but not limited to payments made **to CABRERA** through the bank account referred to as the "secret account" in DONZ-HDD-0124585;

i. ~~All DOCUMENTS RELATED TO WORK by any of the LAGO AGRIO PLAINTIFF CONSULTANTS appearing in whole or in part in THE CABRERA REPORTS or any DOCUMENT filed in the LAGO AGRIO LITIGATION by CABRERA~~;

j. ~~All DOCUMENTS RELATED TO revisions, edits, modifications or changes made by any and all lawyers to THE CABRERA REPORTS, including but not limited to changes made by or at the direction of any LAGO AGRIO PLAINTIFF RELATED PARTY who is or purports to be a lawyer~~;

k. ~~All DOCUMENTS RELATED TO CABRERA's independence or lack thereof or~~ **Any** claims or statements ~~made by any person or entity~~ relating to CABRERA's independence or lack thereof **that post-date the submission of THE CABRERA REPORTS, to the extent any such documents or communications were submitted to U.S. or Ecuadorian courts or disclosed to third parties**;

l. ~~All DOCUMENTS RELATED TO~~ **A**ny claims that any member of the PURPORTED CABRERA TEAM acted independent of the LAGO AGRIO PLAINTIFF RELATED PARTIES **that post-date the submission of THE CABRERA REPORTS, to the extent any such documents or communications were submitted to U.S. or Ecuadorian courts or disclosed to third parties**;

[Subparts "m" and "n" are not capable of modification and should be stricken entirely.]

o. ~~All DOCUMENTS~~ **All COMMUNICATIONS** with the ROE RELATED TO CABRERA or THE CABRERA REPORTS;

p. ~~All COMMUNICATIONS RELATED TO CABRERA or the CABRERA REPORT with any PERSON who financially supported or invested in, was asked to financially support or invest in, or offered to financially support or invest in the LAGO AGRIO LITIGATION;~~

q. All DOCUMENTS ~~RELATED TO~~ **evidencing** samples taken for THE CABRERA REPORTS; and

r. All DOCUMENTS RELATED TO CABRERA's scheduled deposition, including but not limited to COMMUNICATIONS among any of the LAGO AGRIO PLAINTIFF RELATED PARTIES REGARDING pressuring the LAGO AGRIO COURT to prevent the deposition.[6]

[6] **REQUESTS 20 and 21(a)-(r):** Chevron's use of the term "RELATED TO" would once again require the production an enormous amount of material including publicly available materials, briefing, and work product solely because they reference Cabrera. Patton Boggs should not be forced to collect, process, filter, review, and log documents merely because those documents contain the word "Cabrera." And, even as modified, any responsive documents would necessarily implicate attorney investigation and evaluation of the allegations in the interests of Patton Boggs' clients because Patton Boggs was not retained until 2010, and Chevron's allegations surrounding Cabrera involve a report filed in 2008.